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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Stonewall Jackson Kimball, Special Circuit Court Judge

Circuit Court Case No. 2014-CP-46-1425
Appellate Case No. 2016-001613

Ryan Powell,. . . . . Petitioner,

v.

Amy Boheler d/b/a York County Auditor,
Beth Latham d/b/a York County Treasurer, and
Robert Kiser d/b/a York County Delinquent Tax Collector,
each in their individual and official capacities, ... Respondents.

Appendix to Petition for Writ of Certiorari

Ryan Powell
c/o 25056 Timberlake Drive
Fort Mill, South Carolina
919-400-6339
Petitioner

W, Keith Martens
HAMILTON, MARTENS, BALLOU &
CARROLL, LLC,
P.O. Box 10940,
Rock Hill, SC 29731
803-329-7672
Attorney for Respondents

Appendix Index

RECORD ON APPEAL - INDEX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Ryan Powell,	)	Case No. 2014-CP-46-1425
Plaintiff,	)	
v.	)	**ORDER SUBSTITUTING DEFENDANT AND ORDER OF DISMISSAL**
Amy Boheler d/b/a York County Auditor, Beth Latham d/b/a York County Treasurer, Robert Kiser d/b/a York County Delinquent Tax Collector,	)	
Defendants.	)	

This matter came before me on June 19, 2014, upon Defendants' motion to substitute York County as Party Defendant, and to dismiss Plaintiff's complaint pursuant to Rules 12(b)(1) and 12(b)(6) S.C.R.P. Plaintiff appeared *pro se*, and Defendants were represented by W. Keith Martens. Based on the record presented, I find and conclude the following.

Summary of Plaintiff's Claims

Plaintiff brought this action against Amy Boheler "d/b/a York County Auditor," Beth Latham "d/b/a York County Treasurer" and Robert Kiser "d/b/a York County Delinquent Tax Collector." Plaintiff's causes of action include claims for (1) 'sham legal process,' (2) fraud, (3) trespass *quare clausum fregit*, (4) money had and received, (5) slander of title, (6) false light invasion of privacy/libel, (7) breach of contract, (8) negligence per se, (9) civil conspiracy, and (10) intentional infliction of emotional distress.

Plaintiff's complaint and legal memoranda read like a doctrinal manifesto. It is a rambling presentation of twisted, disconnected and inapplicable legal theories that contradicts all statutory and case law governing the issues presented. It challenges the right and authority of the County to assess and collect *ad valorem* property taxes on realty, as well as the owner's obligation to pay those taxes.

According to Plaintiff, no land owner is required to pay property taxes, unless the owner's deed has been recorded. Instead, property owners elect to pay property taxes when they choose to record their deeds. Plaintiff asserts that a property owner can avoid any liability for property taxes by simply choosing not to record his deed. Because Plaintiff chose not to record

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his deed, Plaintiff contends that York County cannot assess taxes against his real property, which is a conclusion unrelated to any personal liability for the taxes. Applying such "logic", Plaintiff asserts that he is not liable for property taxes on a parcel that he owns in York County, and that the County lacks the authority to collect such taxes through the delinquent tax collection process.

The Complaint alleges that Plaintiff is the owner of a parcel of real property that was conveyed to him by deed in December, 2012, by a now-dissolved trust known as San Juan Holdings. Plaintiff alleges that he has intentionally not recorded his deed in the York County property records, because he did not want to become liable for taxes on the property. Plaintiff's transferor did, however, record a document captioned a "Notice of Sale, Transfer or Exchange" on December 20, 2012, which stated that the transferor had conveyed the property to an unidentified "unenfranchised living man" (presumably Plaintiff), and that the transferor trust "no longer owns the property." Nevertheless, the trust remains the record owner of the property.

According to Plaintiff, the York County Tax Assessor generated and sent a tax bill for 2012 taxes to the dissolved trust, which the trust did not pay. The York County Delinquent Tax Collector then came onto Plaintiff's property without Plaintiff's permission, posted a notice of levy on Plaintiff's property, and advertised the property for sale at the York County delinquent tax sale. When plaintiff became convinced that his property was going to be sold for unpaid taxes, he paid the taxes under protest.

Plaintiff contends that he can have no property tax liability to York County because he never recorded his deed. Plaintiff further contends that his property cannot be "seized" or sold by York County to satisfy the tax liability of Plaintiff's transferor.

Substitution of Party Defendant

As an initial matter, I find and conclude that York County, and not the individuals named by Plaintiff as defendants, is the proper defendant. Each of the defendants named in Plaintiff's suit is an employee of York County, and each of the defendants was sued for acts undertaken on behalf of the County. There is no issue of fact presented that any named Defendant was acting outside the scope of his or her official duties as employees of the County.

South Carolina's Tort Claims Act (S.C. Code Ann. § 15-78-10 *et seq.* (1976, as amended).) ("Tort Claims Act") provides "[i]n the event that [an] employee is individually named [as a defendant in a tort action], the agency or political subdivision for which the employee was acting must be substituted as the party defendant." S.C. Code Ann. § 15-78-70 (1976, as amended). Therefore, Defendants' motion to substitute York County as the proper

defendant must be granted, and Amy Boheler, Beth Latham and Robert Kiser shall be dismissed with prejudice as party defendants.

Rule 12(b)(1) S.C.R.P.

As already indicated, Plaintiff's Complaint is a rambling narrative, but to the extent it challenges the authority of York County to tax Plaintiff's real property or to collect those taxes from Plaintiff, this court lacks subject matter jurisdiction to adjudicate Plaintiff's claims. The South Carolina Revenue Procedures Act (S.C. Code Ann. § 12-10-60 *et seq.* (1976, as amended).) (hereinafter "RPA") expressly provides, with one limited exception not applicable here, that ". . . there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80(A)(1976, as amended). The RPA also prescribes a "contested case" procedure whereby a ". . . property taxpayer may object to a property tax assessment made by a county assessor : . . ," and vests South Carolina's Administrative Law Court with the exclusive jurisdiction to decide contested cases. *Id.,* §§ 12-60-2520-2540. Therefore, to the extent Plaintiff's complaint challenges the taxing authority of York County as it relates to his property, the complaint must be dismissed pursuant to Rule 12(b)(1) S.C.R.P.

Rule 12(b)(6) S.C.R.P.

Plaintiff also alleges that York County's employees committed various torts in issuing a notice of levy against his real property, and in otherwise attempting to collect delinquent taxes assessed against the property. Accepting the factual allegations of the Complaint as true, Plaintiff fails to allege any facts that would entitle him to relief.

Plaintiff's tort claims are all barred by the doctrine of sovereign immunity, and the provisions of the Tort Claims Act. Section 15-78-20(b) provides: "The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit from any tort except as waived by this chapter." Further, § 15-78-60 provides:

> The governmental entity is not liable for a loss resulting from: . . . (3) execution, enforcement, or lawful implementation of any process; (4) adoption, enforcement, or compliance with any law . . . whether valid or invalid . . . ; (9) entry upon any property where the entry is expressly or impliedly authorized by law; . . . . (11) assessment or collection of taxes or special assessments or enforcement of tax laws.

"Exceptions to the waiver of sovereign immunity under the Tort Claims Act must be construed liberally in favor of limiting the liability of the state and its political subdivisions."

Arthurs v. Aiken County, 338 S.C. 253, 270, 525 S.E.2d 542, 551 (Ct. App. 1999), *aff'd as modified sub nom. Arthurs ex rel. Estate of Munn v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579 (2001), *citing* § 15–78–20(f); *see, also, Steinke v. South Carolina Dep't of Labor, Licensing and Regulation,* 336 S.C. 373, 520 S.E.2d 142 (1999).

Plaintiff has failed to allege that Defendants took any action not ". . . expressly or impliedly authorized by law . . ." in their efforts to enforce the tax laws of the County and the State. (§ 15-78-60(9).) Further, every act that Plaintiff has alleged to be actionable clearly relates to the ". . . assessment or collection of taxes or special assessments or enforcement of tax laws." (§ 15-78-60(11).) In summary, I find and conclude that Plaintiff has alleged no facts to support any legitimate claim against York County, or against any of the individuals named, under any theory of liability.[1] I further find and conclude that Plaintiff's claims are entirely frivolous. Thus, all of Plaintiff's claims shall be dismissed with prejudice.

ORDER

For the reasons set forth herein, it is ordered as follows:

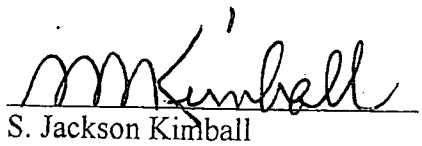
1. York County is substituted as the party defendant in this action, and Amy Boheler, Beth Latham and Robert Kiser are all dismissed as parties to this action, with prejudice.

2. Plaintiff's claims for monetary damages are all dismissed with prejudice.

3. To the extent Plaintiff challenges the authority of York County to assess and collect taxes against his real property, this court lacks subject matter jurisdiction to adjudicate such matters, and all such claims are dismissed.

AND IT IS SO ORDERED.

June 24, 2014



S. Jackson Kimball
Special Circuit Court Judge
York County

#4

[1] Plaintiff's breach of contract action appears to be an attempt by Plaintiff to circumvent the Tort Claims Act. However, Plaintiff has failed to allege any facts by which this court could conclude or infer that he entered into an enforceable contract with York County, or with any of the individuals named as defendants in Plaintiff's lawsuit. Thus, the cause of action must fail as a matter of law.

#5

FORM 4

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

FILED-RECEIVED
2014 OCT 23 PM 3:33
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP4601425

Ryan Powell	York County
PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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. ☐ See Page 2 for additional information.

☐ **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:

This matter came before me on October 16, 2014, upon Plaintiff's motion pursuant to Rule 59(e), SCRCP, asking the Court to alter or amend the Court's Order filed June 25, 2014. Representing the parties were: Plaintiff appearing *pro se*; and, W. Keith Martens for Defendant.

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to ". . . reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. *See Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009); and, *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009).

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order. Therefore, it is ordered that Plaintiff's Motion pursuant to Rule 59(e), SCRCP, be denied.

AND IT IS SO ORDERED.

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)

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.**

	3063	10/17/2014
Special Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on 10/23/14, and a copy mailed first class or placed in the appropriate attorney's box on 10/23/14, to attorneys of record or to parties (when appearing pro se) as follows:

Ryan Powell 25056 Timberlake Drive Fort Mill, SC 29715

ATTORNEY(S) FOR THE PLAINTIFF(S)

Walter Keith Martens 130 E. Main Street Rock Hill, SC 29731

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Shirley Broome

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

State of South Carolina

County of York

Case No. 2014 CP46-1425

Ryan Powell, a private person of full capacity,
Plaintiff,

v.

AMY BOLHER d/b/a York County Auditor,
BETH LATHAM d/b/a York County Treasurer,
ROBERT KISER d/b/a York County Delinquent Tax Collector,
Each in their personal and official capacities,
Defendants.

In the Circuit Court,
Court of Common Pleas

In the Common Law

Verified
Complaint for Damages and
for Writ of Mandamus

Jury Trial Demanded

Plaintiff complaining of the Defendants herein sues for money damages arising from Defendants attempts to fraudulently, illegally, and unlawfully take Plaintiff's land and for the issuance of a writ of mandamus to compel Defendants to correct their records so that they cease their on-going attempts to fraudulently, illegally, and unlawfully take Plaintiff's land. Plaintiff alleges the following in support of this action:

Jurisdictional Allegations

1. Plaintiff is one of the people of South Carolina, also known as a "private person" in the common law. Plaintiff is the absolute owner of land that is physically located on York county, South Carolina (hereinafter "**Plaintiff's allodial land**") which has the street location of 25056 Timberlake Drive.
2. Defendant Amy Boheler d/b/a York County Auditor (hereinafter "**Auditor**"), Beth Latham d/b/a York County Treasurer (hereinafter "**Treasurer**"), and Robert Kiser d/b/a York County Delinquent Tax Collector (hereinafter "**Tax Collector**") are all public officers.
3. Defendants act in their official capacity as taxing and collection agents for the private company named "County of York" which that also does business as "York County Register of Deeds" (hereinafter "**a private company**").

4. Defendants' primary business address is: 18 West Liberty St., York, SC 29745.
5. The allegations made herein all took place in York county.
6. The amount in controversy exceeds $7,500.
7. This Circuit Court was created by S.C. Const. art. V § 1 as a judicial court of record and it has jurisdiction over the parties and of this action.

Law of the Case

8. The parties have consented to this action being brought in the common law and under the mandatory provisions of the Constitution of the State of South Carolina[1]. "*Consent makes the law: the terms of a contract, lawful in its purpose, constitute the law as between the parties*" - common law maxim[2].
9. According to Supreme Court[3] and the parties' contract, Defendants are precluded from any further breaches of their contract by relying on any legislation [statutes] or [court] rules that abrogate any of Plaintiff's inherent rights protected to him by the Constitution of the State of South Carolina or of the United States. Should Defendants [individually or through their attorney] further breach their contract and cause any additional damages during this litigation, Plaintiff reserves his right to amend this complaint to join any additional defendant(s) or add any additional damages resulting therefrom.
10. Since Defendants cannot convey title to anyone unless they own **Plaintiff's allodial land**[4], Defendants are required to produce evidence of such ownership. Absent the production of such evidence, Defendants must be held personally liable for the damages that they have caused Plaintiff in this matter[5].

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[1] See Count Seven – Breach of Contract pgs 11-12.

[2] "Maxim: An established principle or proposition. A principle of law universally admitted, as being just and consonant with reason", Bouvier's Law Dictionary, (1856)

[3] "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them", Miranda v. Arizona, 384 U.S. 436, 491 (1966).

[4] "a seller cannot convey title to that which he does not own" Sackett v. Wilson, 373 SE 2d 10 (Ga Supreme Court 1988) quoting Smith v Hooker/Barnes, Inc., 253 Ga 514, 322 SE2d 268.

[5] "Government officers and agents are required to affirmatively prove whatever authority they claim. In the absence of proof, they may be held personally accountable for loss, injury and damages". Ryder v. United States, 115 S.Ct. 2031, 132 L.Ed.2d 136, 515 U.S. 177

89

Allegations as to Matters in Issue

11. On December 20, 2012 San Juan Holdings, a private, unregistered trust (hereinafter "**SJH**"), sold and assigned all rights, title, and interest in their land to Plaintiff.
12. On December 20, 2012 the trustee for **SJH** executed and recorded his Notice of Sale and Transfer (hereinafter "**the Notice**") into the records of **a private company** showing that **SJH'** land had been sold and transferred to a private man. **The Notice** also evidences that after December 20, 2012 it was impossible for **SJH** to receive any notice, pay any debt, or defend in any court action because **SJH** no longer existed in fact or in law. **Exhibit A** is a certified copy of **the Notice** and is attached and incorporated fully herein by reference.
13. There is no evidence that can show that any person other than Plaintiff holds any rights, title, or interest in **Plaintiff's allodial land** or that any person has ever been given permission by Plaintiff to, *inter alia*, seize, possess, sell, or trespass on his land.
14. Any person aggrieved by any misconduct of any public officer can sue on the bonds of such public officer.

Writ of Mandamus

Each of the above allegations is incorporated into this claim for relief by reference.

15. This is not a cause of action but a claim for needed relief.
16. Defendant **Auditor** received **the Notice** on or about December 21, 2012.
17. Defendants' statutes give them the legal authority to lien, levy, seize, and sell **ONLY** land that is at the time of Defendants' action owned by a person who has recorded their deed with **a private company** (hereinafter "**a person liable**").
18. There is no evidence that could show that Plaintiff has ever recorded a deed to his land with **a private company**.
19. There is no evidence that could show **SJH** has owned any property in York county since December 20, 2012.

20. Defendants' internet access to their records shows **Plaintiff's allodial land** is still listed as being owned by **SJH** even though over fifteen (15) months have elapsed since Defendants received **the Notice** showing **SJH** no longer owns **Plaintiff's allodial land**.
21. There is no evidence that could show that Defendant **Auditor** has any discretion to refuse to correct her duplicate list to remove **Plaintiff's allodial land** especially when such refusal leads to the unlawful and illegal taking of land that is not owned by **a person liable**.
22. On or about May 1, 2013 Defendant **Tax Collector** did create a levy against **Plaintiff's allodial land** in the name of **SJH** authorizing its seizure.
23. On November 18, 2013 Defendants did attempt to sell **Plaintiff's allodial land** in the name of **SJH** at a public auction held by Defendant **Tax Collector**.
24. There is no evidence that could show that Defendants ever provided Plaintiff with any due process of law before or after they took (seized) and attempted to sell **Plaintiff's allodial land** on November 18, 2013.
25. Through telephone conversations with Defendants shortly after November 18, 2013 to discuss their outright refusal to keep their records honest and accurate Defendant **Treasurer** told Plaintiff that Defendants have a duty to <u>continue</u> to tax, seize, and sell **Plaintiff's allodial land** <u>in the name of **SJH**</u> until Plaintiff records his deed. During that conversation Defendant **Treasurer** acknowledged that she was aware of **the Notice**.
26. Plaintiff has suffered money damages as the direct and proximate result of Defendants actions and will continue to suffer additional money damages, or possibly irreparable harm, until this Court compels Defendants to cease their attempts to illegally and unlawfully take **Plaintiff's allodial land** made possible by their outright refusal to correct their false and fraudulent records.

WHEREFORE Plaintiff demands this Court issue a writ of mandamus ordering the following: compelling Defendants to return to the Plaintiff his $5,118.00 dollars extorted from him plus interest at the rate of 1% per month from November 18, 2013 until paid; Defendants update their records to remove all references to **Plaintiff's allodial land** as it is no longer owned by **a person liable** for any taxes or assessments

311

that Defendants are authorized to collect; Defendants void all collection attempts against **Plaintiff's allodial land** because as of December 20, 2012 that land was no longer owned by **a person liable**; compel Defendants to seek the collection of any debt **SJH** may owe them from any other asset **SJH** owns; and with such other and further relief as the Court may deem reasonable and just under the circumstances.

Count One - Sham Legal Processes

Each of the above allegations is incorporated into this cause of action by reference.

27. Defendants created a "lien" against **SJH** on or about December 31, 2012 for the tax year 2013 approximately ten (10) days after Defendants received **the Notice** showing **SJH** no longer owned any property in the county and no longer existed in fact or in law.
28. Defendant **Treasurer** did create and sign a "tax execution" against **SJH** on or about March 17, 2013 for the tax year 2012 but it listed property that she knew or should have known was no longer owned by **SJH** and was at that time not owned by **a person liable**.
29. Defendant **Tax Collector** did create and sign a "levy" on or about May 1, 2013 for the tax year 2012 that authorized the seizure of **Plaintiff's allodial land** but it listed property that he knew or should have known was no longer owned by **SJH** and was at that time not owned by **a person liable**.
30. Defendant **Tax Collector** was personally informed of **the Notice** on or about May 14, 2013 via a letter he received from the former protector of **SJH**.
31. Defendant **Tax Collector** did create and sign a "Notice of Levy" on or about September 17, 2013 for the tax year 2012 but it listed property that he knew was no longer owned by **SJH** and was at that time not owned by **a person liable**.
32. Defendants created another "lien" against **SJH** on or about December 31, 2013 for the tax year 2014 approximately 12 months after they received **the Notice** showing **SJH** no longer owned any property in the county and no longer existed in fact or in law.

33. Defendant **Treasurer** did create and sign a "tax execution" against **SJH** on or about March 17, 2014 for the tax year 2013 but it listed property that she knew was no longer owned by **SJH** and was at that time not owned by **a person liable**.
34. Plaintiff suffered money damages, as the direct and proximate result of Defendants' creation of six "*sham legal processes*" in this matter.

WHEREFORE Plaintiff demands this Court enter an order adjudging the Defendants liable to the Plaintiff in the amount of $85,000.00 dollars for the actual and punitive damages caused by the six "*sham legal processes*" that Defendants knowingly issued in this matter together with costs and reasonable attorney fees.

Count Two – Fraud

Each of the above allegations is incorporated into this cause of action by reference.

35. Fraud vitiates everything it touches.
36. Plaintiff did originally file his action against the Defendants on or about December 31, 2013 into the original jurisdiction of the Supreme Court of South Carolina; the Supreme Court of South Carolina refused to hear Plaintiff's action.
37. Defendants' legal authority to update their database with the name of a new "grantee of record" is limited to only a person who has recorded his deed.
38. Defendants discovered Plaintiff's name as the owner of his private land, not from any deed recorded with **a private company** but from his SC Supreme Court action, and then they inserted Plaintiff's name into their database as **a person liable** for taxes and assessments on **Plaintiff's allodial land**.
39. Defendants did fabricate an address different from the one on Plaintiff's filings and then they inserted that address into their database associated with Plaintiff.
40. On information Plaintiff believes Defendants did knowingly and intentionally falsify their records so that they could claim that Plaintiff received notice of their actions and so Defendants could accomplish all their future illegal and unlawful actions against **Plaintiff's allodial land** in Plaintiff's name as the "*true owner*".
41. On information Plaintiff believes since Defendants have resorted to committing fraud this brazen they have effectively admitted that their previous actions in this matter were done illegally and unlawfully and they are now actively engaged in a

cover-up of those crimes and torts and attempting to make their future crimes and torts appear to be legal and lawful - at least on the face of the record.

42. Plaintiff suffered money damages as the direct and proximate result of Defendants' fraud.

WHEREFORE Plaintiff demands this Court enter an order adjudging the Defendants liable to the Plaintiff in the amount of $200,000.00 dollars for the actual and punitive damages caused by their fraud.

Count Three - Trespass *quare clausum fregit*

Each of the above allegations is incorporated into this cause of action by reference.

43. From December 20, 2012 to September 17, 2013 Plaintiff was in peaceable exclusive possession of private land that he legally and lawfully owns.
44. There is no evidence that could show that Plaintiff has ever given Defendants a *license to break his close*.
45. On September 18, 2013 Defendant **Tax Collector** with force and arms broke and entered the close of **Plaintiff's allodial land** (or caused his delegate to do so) to post his illegal "Notice of Levy" onto Plaintiff's house.
46. Defendant **Tax Collectors'** "Notice of Levy" states on it, *inter alia*, that Defendants have "*seized and taken exclusive possession*" of **Plaintiff's allodial land**.
47. Defendant **Tax Collector's** unlawful and illegal possession of **Plaintiff's allodial land** ceased on or about November 18, 2013 when Plaintiff paid the taxes, under threat, duress, coercion, and protest, that the previous owner allegedly owed.
48. Plaintiff suffered money damages as the direct and proximate result of Defendants' trespass on **Plaintiff's allodial land**.

WHEREFORE Plaintiff demands this Court enter an order adjudging the Defendants actions caused Plaintiff nominal damages in the amount of $50,000.00 dollars for Defendants' Trespass *qcf*.

Count Four - Money Had and Received

Each of the above allegations is incorporated into this cause of action by reference.

49. Defendant **Tax Collector's** "Notice of Levy" stated on it that anyone who removed his Notice from **Plaintiff's allodial land** before the previous owners' taxes were paid would be prosecuted.
50. On November 18, 2013 Plaintiff did attend Defendant **Tax Collector**'s delinquent tax property auction and saw evidence that Defendant **Tax Collector** was indeed going to auction off **Plaintiff's allodial land** in the name of the previous owner.
51. During Defendant **Tax Collector's** auction Plaintiff did witness many bidders bidding in excess of $130,000.00 for valuable properties.
52. **Plaintiff's allodial land** is valuable with a market value over $225,000.00.
53. Plaintiff determined during Defendant **Tax Collector's** auction that should this Court fail to give Plaintiff his remedy during **SJH'** one year redemption period, Plaintiff would have to pay in excess of $25,000.00 to keep his land from being illegally and unlawfully stolen by Defendants; Plaintiff could not take that risk.
54. On information Plaintiff believes that his position in this matter is 100% legally correct and should be so upheld by any court of law but Plaintiff fears that he will be tricked, deceived, or forced into a civil law or admiralty jurisdiction and then he will be subjected to "*equity*", "*public policy*", and/or "*judicial discretion*" where an executive administrator [i.e., judge] has the authority to "*make the law*". Plaintiff could not afford to risk losing his valuable private land because he is denied his right to a court of common law.
55. Under duress and direct extortion on November 18, 2013 Plaintiff did pay to Defendant **Tax Collector,** through one of his delegates, the debt allegedly owed by the previous owner.
56. The teller accepting Plaintiff's payment on November 18, 2013 was instructed by Plaintiff to put into her records a note that stated that the "*taxes were paid by Ryan Powell, the true owner of the property <u>under protest</u> because he never received any notice of any debt he owed*". The teller did indeed put similar words into the record associated with Plaintiff's payment. The teller also told Plaintiff at that time that "*no one has ever paid someone else's tax bill before*".
57. Plaintiff suffered money damages as the direct and proximate result of Defendants threats and duress used to extort monies from Plaintiff that he did not owe.

15

WHEREFORE Plaintiff demands this Court enter an order adjudging Defendant actions caused Plaintiff actual damages of $5,118.00 dollars plus punitive damagesto be determined and interest at the rate of 1% per month from the date it was paid by Plaintiff until it is returned to him by Defendants.

Count Five - Slander of Title

Each of the above allegations is incorporated into this cause of action by reference.

58. Defendant **Tax Collector's** "Notice of Levy" that he caused to be attached to Plaintiff's house, was neon colored and highly visible from the public right of way. It caused Plaintiff embarrassment and loss of reputation among his neighbors, friends, and potential business associates, as well as causing Plaintiff intense mental and emotional stress.
59. Plaintiff did attempt to hire a roofing contractor during the fall of 2013 and could not find a contractor who would willingly involve themselves in a contract where the house that needed their services was under a levy for failure to pay taxes.
60. Plaintiff's house needed a new roof and he had to wait until the spring of 2014 to have the work done which cost him more money to get the work done than it would have cost at that time.
61. Plaintiff's house has also suffered water damage from leaks that appeared after September 18, 2013 but before he could get the unlawful levy released and then the roofing work done.
62. Plaintiff suffered money damages as the direct and proximate result of Defendants' slander of his title.

WHEREFORE Plaintiff demands this Court enter an order adjudging Defendant actions caused Plaintiff actual and punitive damages of $20,000.00 dollars for Defendant's slander of Plaintiff's title.

Count Six – False Light Invasion of Privacy/ Libel

Each of the above allegations is incorporated into this cause of action by reference.

63. Plaintiff has an inherent right "*to be let alone*".
64. Before November 18, 2013 Defendant **Tax Collector** with express, reckless, and wanton disregard of Plaintiff's inherent right to privacy did cause **Plaintiff's**

allodial land to be advertised to the general public as being up for auction for the previous owner's debt at least three times in a public newspaper. That said publicity has unreasonably placed Plaintiff in a false light in the publics' eye.

65. Although the newspaper advertisement stated that **Plaintiff's allodial land** was owned by **SJH**, that advertisement listed a tax/parcel number that specifically pointed to **Plaintiff's allodial land** by including its street location.
66. Plaintiff did personally witness many people looking at his house, into his windows, walking on his land, and taking pictures and video recordings of his land during the few weeks prior to Defendant **Tax Collector's** auction.
67. Plaintiff, as any reasonable person, finds it highly offensive that anyone would accuse him of owing an unpaid debt to anyone.
68. Plaintiff suffered loss of reputation and embarrassment among his community, friends, and neighbors.
69. Even though the SC Supreme Court has not yet ruled on the availability of the common law tort of false light invasion of privacy in the state, this common law tort is recognized and available in many other common law states therefore such tort is available to Plaintiff.
70. Plaintiff suffered money damages as the direct and proximate result of Defendants' invading Plaintiff's privacy and putting Plaintiff in a false light.

WHEREFORE Plaintiff demands this Court enter an order adjudging Defendants libel caused actual and punitive damages to Plaintiff in the amount of $200,000 dollars.

Count Seven - Breach of Contract

Each of the above allegations is incorporated into this cause of action by reference.

71. Each Defendant signed an oath of office agreeing to uphold both the Constitutions of the State of South Carolina and of the United States before legally entering into public office.
72. Each Defendant receives wages, benefits, and pensions as quid pro quo for the privilege of being a public officer.
73. Each Defendant posted a bond before legally entering into public office.

74. On or about September 25, 2013 Defendants each received a written communication from Plaintiff, which *inter alia* accepted their oaths of office thereby contractually binding each of them to their contract offers. See **Exhibit B** pgs 1 & 6 of that communication attached hereto and incorporated fully herein by reference.
75. A contract is considered valid and enforceable when there is an offer, consideration, and acceptance. In this matter all three requirements have been met.
76. Defendants never denied or attempted to terminate their contract with Plaintiff after he accepted their contract offers on or about September 24, 2013 and the common law doctrine of "*estoppel, by acquiescence*" prevents Defendants from doing so now.
77. Defendants did knowingly and intentionally breach their contractual duties to Plaintiff by violating the following rights they each agreed to support and uphold:
    a) Plaintiff's right to due process of law before his property is taken;
    b) Plaintiff's right to not be subject to an unreasonable seizure of his house; and
    c) Plaintiff's right to not have his property taken for private use without his consent or for public use without just compensation being first paid.
78. The Defendants acted with recklessness, callous indifference to, or disregard for, the rights of Plaintiffs which they contractually agreed to support and uphold.
79. Plaintiff suffered money damages as the direct and proximate result of Defendants' breaching their contract with Plaintiff.

WHEREFORE Plaintiff demands this Court enter an order adjudging Defendants actions caused Plaintiff actual and punitive damages in the amount of $150,000.00 dollars for their breach of contract.

Count Eight – Negligence per se

Each of the above allegations is incorporated into this cause of action by reference.

80. Defendants are public officers and as such owe a duty of care to the public at large.

81. On or about October 11, 2013 Defendants each received a second written communication from Plaintiff. Plaintiff included in that communication a certified copy of **the Notice**.
82. On or about October 31, 2013 Defendants each received a third written communication from Plaintiff asserting the multiple crimes and torts that Defendants appeared to be committing in this matter.
83. The essential purpose of S.C. Code Ann. § 12-39-250 (A) is to give Defendant **Auditor** the means and authority necessary to prevent or mitigate actual damage that Defendants actions may cause to those who are NOT **a person liable** during Defendants attempts to collect taxes from those who are **a person liable**.
84. After having received three written communications from Plaintiff, Defendant **Auditor** knew she had a "*special duty of care*" owed to Plaintiff as he belongs to the class of people who have not recorded their deeds with **a private company**, for whom S.C. Code Ann. § 12-39-250 (A) is clearly designed to protect.
85. Defendants acted with total indifference to the consequences on Plaintiff of their conduct so as to not give the slightest care or concern for what they were doing or how their actions were affecting Plaintiff.
86. Plaintiff suffered money damages as the direct and proximate result of Defendants' negligence per se.

WHEREFORE Plaintiff demands this Court enter an order adjudging Defendants actions caused Plaintiff actual and punitive damage of $175,000.00 dollars for Defendant Negligence per se.

Count Nine – Civil Conspiracy

Each of the above allegations is incorporated into this cause of action by reference.

87. Defendants each played an essential roll in the unlawful actions that culminated in the attempt to illegally and unlawfully take **Plaintiff's allodial land** for the previous owner's debt.
88. Defendant **Tax Collector** during a phone conversation on or about December 2, 2013 with Plaintiff stated "*you are not exempt from property taxes, everyone has to pay them*".

89. Defendants benefited from their conspiratorial acts because every dollar they collect goes toward paying their wages, benefits, and their pensions. Their acts in this matter also help them to alleviate the suffering they were experiencing from "*cognitive dissonance*" arising from the new information Plaintiff was presenting to them, i.e., only owners who record their deeds with **a private company** have to pay property taxes. Defendants' fraudulent acts to insert Plaintiff's name into their records giving the appearance that Plaintiff is **a person liable** also gives all three Defendants "legal cover" for their future crimes and torts in this matter.
90. Plaintiff suffered money damages as the direct and proximate result of Defendants' conspiracy to illegally and unlawfully take Plaintiff's land.

WHEREFORE Plaintiff demands this Court enter an order adjudging Defendant actions caused Plaintiff actual and punitive damage of $150,000.00 dollars for Defendant's conspiracy.

Count Ten - Intentional Infliction of Emotional Distress

Each of the above allegations is incorporated into this cause of action by reference.

91. Defendants knew or should have known their acts would foreseeable cause Plaintiff severe emotional distress when they threaten that he would be prosecuted for removing their unlawful "*Notice of Levy*" from his private property and from their on-going attempts to illegally and unlawfully take **Plaintiff's allodial land**.
92. This entire situation has been enormously demoralizing, mentally abusive and has taken a psychological toll on Plaintiff leaving him with difficulty sleeping at night and concentrating during the day. It has shattered his sense of security which he had enjoyed previous to Defendant's actions in this matter.
93. Defendants' actions in this matter have been atrocious, uncivilized, and intolerable especially considering it happened within a society that expects public officers to act within the rule of law.
94. Plaintiff suffered money damages as the direct and proximate result of Defendants' actions to intentionally inflict emotional distress onto Plaintiff.

WHEREFORE Plaintiff demands this Court enter an order adjudging Defendant actions caused Plaintiff actual and punitive damages of $85,000.00 dollars for their intentional infliction of emotional distress.

Respectfully submitted,

Ryan Powell, a private person of full capacity
c/o 25056 Timberlake Drive
Fort Mill, South Carolina [Non-domestic]

April 30 2014

919-400-6339

VERIFICATION

I, Ryan Powell, the Plaintiff in this action, being competent to testify, at least 21 years of age, and with first hand knowledge, do hereby verify, under penalty of perjury, that the above stated allegations are true and correct to the best of my knowledge and belief.

4/30/2014

Date

Ryan Powell, private person of full capacity

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Before me, the undersigned, a Notary Public in and for said County and State on the 30th day of April, 2014, personally appeared Ryan Powell to me known to be the private person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free will act and deed.

Given under my hand and seal the day and year last above written.

Notary Public

My commission expires April 27, 2017

JOY UTER NOTARY PUBLIC My Comm. Exp. April 27, 2017 YORK SC

Joy M. Uter
NOTARY PUBLIC
State of South Carolina
My Commission Expires
April 27, 2017.

21

Exhibit A

201200198786
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
12-26-2012 At 02:40 pm.
NOTICE 10.00
OR Vol 13103 Page 241 - 242

STATE OF SOUTH CAROLINA)
) Notice of Sale, Transfer or Exchange
COUNTY OF YORK)

WHEREAS, SAN JUAN HOLDINGS is a private contractual trust (hereinafter Trust); and

WHEREAS, Trust is the owner of record of the property recorded on June 28, 2000 in vol: 3173 page: 343 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, Brett Osborne is trustee of Trust with power to convey title to the aforesaid property; said power recorded on June 28, 2000 in Vol 3173, page 344 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, aforesaid recorded property of Trust has been assigned the tax map number of 643-10-01-023 by the York County Tax Assessor; and

WHEREAS, On December 20, 2012 Trust, by and through Brett Osborne trustee, in a private transaction did grant, bargain, sell, release, and convey the aforesaid private property to an unenfranchised living man; and

WHEREAS, the proceeds of the aforesaid transaction have been distributed as required by the law of the Trusts' indenture terminating the Trust; and

WHEREAS, giving this notice is the final duty of Brett Osborne trustee for Trust;

THEREFORE, YOU ARE TO TAKE NOTICE THAT: SAN JUAN HOLDINGS no longer owns the property in the records of the Office of the Clerk of the Court for York County, South Carolina and those records should be updated accordingly; that SAN JUAN HOLDINGS has been terminated and no longer exists by the aforesaid actions according to the law of the trusts' indenture; and that Brett Osborn has completed his duties as trustee for SAN JUAN HOLDINGS.

After Recording return this Notice to:
Brett Osborne
c/o 9127 Dalmeny House Lane
Charlotte, North Carolina

WITNESS our Hand and Seal this 20th day of December, 2012.

SAN JUAN HOLDINGS

By: Trustee
Brett Osborne trustee

Signed and Sealed in the presence of:

Brenda K Cornwell

Exhibit B

September 24, 2013

To: Amy Boheler, York County Auditor,
Beth Latham, York County Treasurer, and
Robert Kiser, York County Tax Collector

Re: Unlawful actions taken to steal my private property, your alleged tax map# 643-10-01-023

CONTRACT and LEGAL NOTICE- ignore this document at your own peril!

I Accept Your Oaths of Office

Since you are required by your private corporations' rules to swear an oath to your Constitutions prior to assuming your office [See **SECTION 8-3-10.** Oath and commission prerequisite to assumption of duties.], I now voluntarily enter into a contract with all three of you personally by accepting your offers to contract - oaths of office (see page 6 for more details).

I Require Copies of Your Bonds

Pursuant to the duties of your office and now our contract I require that each of you provide me a copy of your bonds by October 4, 2013. [See **SECTION 8-3-210.** State officers and employees shall advise interested persons as to bonds and furnish copies thereof.]

The Unlawful Actions You Have Taken IN THIS MATTER

I will now enumerate the results of your unlawful actions that you three, your delegates, and/or your co-conspirators are responsible for:

> I returned home on September 18, 2013 to find that someone under Robert Kiser's control or delegation had trespassed on my private property in an attempt to defraud me of my private property for your private company's[1] gain to supposedly satisfy the debt of the previous owner[2] by posting on my private property a NOTICE OF LEVY listing my property as being in the name of SAN JUAN HOLDINGS, which you knew does not own said property and all the while having never given to me the actual owner any notice or any demand for payment at any time to provide me with any due process of law before taking my private property or giving me an opportunity to prevent you from ***slandering my title*** .

All Real Property Must be "in this State" to be Taxable

Pursuant to your private corporations' statutes **[SECTION 12-37-210]** *Property which is taxable... is All real and personal property in this State*". Through logic we can deduce that property that is NOT "in this State"[3] is NOT taxable. Knowing that "this State" is legally defined to mean the corporation named STATE OF SOUTH CAROLINA[4] one could ask if that

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[1] See exhibits A-E attached which are copies of pages from the Manta business listings for the following **private companies**– STATE OF SOUTH CAROLINA, COUNTY OF YORK, YORK COUNTY AUDITOR, YORK COUNTY TREASURER, and YORK COUNTY TAX COLLECTOR

[2] See Actual Notice recorded in the private company's books REGISTER OF DEEDS which gave you notice on or about December 21, 2012 and can be found at book 13103 pages 241-242

[3] If you mistakenly believe "this State" mentioned in your statutes to be the landmass commonly known as South Carolina find such "legal" definition or the meets and bounds of any physical landmass defined anywhere in any of your statues that would support that erroneous belief. It isn't there.

[4] See exhibit A for evidence that your STATE OF SOUTH CAROLINA is a private company.

is true then how does "real property" get "in" a corporation? There is only one way that can happen and it happens when the owner of real land and buildings **voluntarily** files/ records/ registers his deed ("real property") with your private corporation thereby putting his title to his land "in" your corporation's ("this State") books and records. Once said property has been designated by its owner as commercial - as your corporation ONLY records commercial property and residential is a category of commercial property - and puts it into your corporation's books and records you have every legal right to regulate it, require permits for it, tax it, take it, etc. Bottom line - until the owner of land and buildings takes that voluntary action to put **his/her/their** title ("real property") into your corporation's books and records then the "real property" is not "in this State" and therefore not taxable, not regulate-able, and not levy-able! Just because you have never heard this before or don't believe it does not make it untrue.

Admiralty Jurisdiction is Reserved for Commercial Property

"Ad valorum" taxation is an Admiralty term and the process you use to "take full possession and seize" real property is an Admiralty procedure. Both these facts evidence that you are using the Admiralty jurisdiction with its attendant "law of necessity/ piracy/ conquest" to steal/ pirate my private property. However, as you know Admiralty jurisdiction is a voluntary jurisdiction that deals only with commerce further evidencing that you have no right to take private property that has not been **voluntarily designated by its owner as being involved in commerce** ["residential"]. Who other than the owner would know how the property was being used, i.e., whether it is or is not involved in commerce?

If your position is that "recording/ registering" private property is required of private parties by your private corporate rules then find such rule or statute. Your search will be unsuccessful which should then convince you that recording property is and must always be a totally voluntary act **by its owner** otherwise the taking of private property by your private corporation would amount to theft whether you understand that or not. Nevertheless, now that we are in a contract with you being bound to follow your Constitution you can **only** use your constitutionally authorized Admiralty jurisdiction against my private property if you can **prove** that you have seized a ship sitting on the water in a port of entry!

What Governments Really Are and What Are Their Lawful Limits

Since the United States government went bankrupt in the 1930s all "governments" - state, county, municipal, and federal where changed from real Constitutional governments under common law using real money of substance (gold and silver coins) into fictional private corporations[5] under the laws of commerce, notes, and force (Maritime, Admiralty. Military) using fictional paper money without substance (Federal Reserve Notes and their equivalent). "Governments" **as they now exist can only** control and regulate other fictional entities that they create [e.g., "individual", "person"] and then only within the commercial relationships that those corporations have willingly agreed to [e.g., "driver", "taxpayer", "resident", "owner of record"].

Your fictitious corporation deals only in fictitious money of no substance - Federal Reserve Notes or their equivalent instead of real Constitutional money of substance gold and silver coin. This is more evidence that your STATE OF SOUTH CAROLINA Corporation (an employment agency[6]) a.k.a. "this State" is not the same entity as the Constitutional State named South

[5] See exhibits A-E for evidence all "governments" are nothing more than private companies.
[6] See exhibit A for business listing of the STATE OF SOUTH CAROLINA private business

Carolina as it would amount to **treason** for any of you to demand payment from anyone dominated in any Thing but gold or silver coin. See Article 1 section 10 of your Constitution that you took an oath to uphold - "No State shall ... make any Thing but gold and silver Coin a Tender in Payment of Debts". However, now that we are in a Constitutional – common law contract, **you are required by that contract** to denominate any Debt that I may legally owe your corporation in Constitutional monies only – gold and silver Coin.

The following facts cannot be altered or affected by any court, administrator, plaintiff, or defendant for they are well recognized natural law: the Created (governments) can never be greater in power or authority than their Creators (the people); corporations (always and only ever created by governments) CAN only exert authority over THEIR CREATIONS other corporations (e.g., "person", "individual"); and all corporations can act only within contracts or agreements made with other corporations or fictions. So it follows from these **indisputable facts** that you did not have any jurisdiction over the "taxpayer" SAN JUAN HOLDINGS in this matter as it was private (not created by any of your corporations) to have created your "execution" in the first instance. More importantly these **indisputable facts** prove that you can never have jurisdiction over private land that has not been volunteered into being "in this State" a corporation by its owner. Just because you don't understand or believe this does not make it untrue.

Amy Boheler's Errors, Crimes, and Torts in this Matter

On or about December 21, 2012 Amy Boheler received Actual Notice that the property you have illegally levied had been sold. Amy Boheler's office is tasked with the daily scrutiny of all documents filed with the "register of deeds" and thusly she got her notice of the sale. It was her job to "*keep a record of all sales or conveyances of real property made in the county*" [see **SECTION 12-39-260].** Nowhere in the specification of any of her duties does it state that such "*record of all sales or conveyances*" MUST **only** be in the form of a deed or that it cannot be in the form of an Affidavit filed in your corporations' records. If it is her position that an Affidavit evidencing that the levied property was sold does NOT constitute sufficient evidence for her to update her records, then how could a deed that is signed only by the seller carry any higher evidential weight in law? It does not and can never for the reasons cited above in this notice.

Amy Boheler now has actual notice again for the third time of the sale of the levied property, so with this Actual Notice and her common law contract with me she is required to amend her errors and stop her damage to me.

Beth Latham's Errors, Crimes, and Torts in this Matter

Beth Latham's duties include those described in **[SECTION 12-51-40.]** "After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction...mail a notice ...to the defaulting taxpayer and to a grantee of record.... In the case of real property, exclusive possession is taken by mailing a notice to ...and any grantee of record of the property ..."

Beth Latham disregarded all of her duties required of her in **[SECTION 12-51-40.]** to legally take possession of any property to be levied and sold. Even though it appears SAN JUAN HOLDINGS had volunteered their property into your jurisdiction, it appears, from the evidence[7] that you did not have jurisdiction over that private entity required for you to do a lawful

[7] REGISTER OF DEEDS book 13103 pages 241-242

execution in this matter "*execution against a defaulting taxpayer in his jurisdiction*". The fact that you were required to ALSO send a notice to the grantee of record since you knew the property had been sold and there was no grantee of record should have clued you in that you had no authority to proceed to take possession of the real property in this matter.

Beth Latham was informed multiple times when sending notices to SAN JUAN HOLDINGS that they were no longer the owner of the property and that they no longer existed. So how is it that you, Beth Latham, believe that you can create a legal execution against a fictional entity that you KNOW no longer owns the property without a "grantee of record" to provide the **necessary due process before the taking of any property** under any legal theory?

Evidence of Beth Latham's ***knowing and intentional fraud*** is that she sent certified mail – **restricted delivery** - to SAN JUAN HOLDINGS which method is reserved in her statutes **[12-51-40]** for giving notice to "*individuals*" but not to "*entities*". She knew she couldn't send certified mail to that "entity" as she knew that "entity" no longer existed! Nonetheless, you may have been able to get away with all your fraud, conspiracy, failure of due process, extortion, mail fraud, and theft under the Admiralty "law of necessity/ piracy" jurisdiction, but now that we have a Constitutional common law contract – your crimes and torts are punishable!

Beth Latham now has actual notice again for at least the second time of the sale of the levied property to a private party, so with this Actual Notice and her common law contract with me she is required to amend her errors and stop her damage to me.

Robert Kiser's Errors, Crimes, and Torts in this Matter

I was recently informed that on or about May 13, 2013 Robert (Neal) Kiser received a letter from SAN JUAN HOLDINGS' former protector informing him that SAN JUAN HOLDINGS no longer owned that property that Robert Kiser has levied in their name. Therefore Robert Kiser knows the "delinquent taxpayer" had already sold and transferred its rights, title and interests to the levied property and he knows, or should know, that there is no "grantee of record" for that property. Without a known "grantee of record" how could Robert Kiser have the ability to issue a legal or binding tax deed to the "successful bidder" at his auction? It is impossible. See **[SECTION 12-51-130].** Execution and delivery of tax title. "*The tax title **must** include, among other things, the name of the defaulting taxpayer, the name of any grantee of record of the property*]. The ONLY way that Robert Kiser can issue a legal tax deed is for him to **PRETEND** that the owner of the property his is quitting the claim of is an entity that he knows does not own the property! That is **FRAUD**, knowing, intentional, and premeditated **FRAUD**!

Robert Kiser's preparation and placement of a brightly colored and fraudulent NOTICE OF LEVY prominently on the front of my private home by ***trespassing*** also amounts to the tort ***slander of title***. Even though his NOTICE OF LEVY is illegal I will not remove it from my private home only because the **ongoing damage** it is inflicting on me, hourly, is accruing in my favor! Should he unwisely proceed to advertising my property for sale he will exasperate his damages and be personally held liable for those damages to me for his continuing **slander of my title**. Please take **NOTICE** that any further **trespass** on my private property by any of you, your subordinates, or delegates will not be tolerated by me and the trespassers will be prosecuted to the fullest extent of the common law!

Nonetheless, now that we are in a contract with you being bound to follow your Constitution you must prove you gave me substantial due process before you take any of my property for any reason. Your unlawful levy must therefore be released as there was no due process provided to me before you unlawfully levied [took] my private property. Further I highly recommend Robert Kiser seriously contemplate how the eventual "tax deed" is going to be written to skirt (jump over, ignore, pretend) my ownership of this land!. Just because you ignored the legal and lawful private sale of the property to me doesn't make that fact any less true.

Does a Title have to be Recorded To Be Valid?

Even though this is not a Torrens registration state, if your position is that my title is not valid, legal, or lawful because it has not been recorded with your private corporation, then you believe that your private corporation has the ability to interfere with the voluntary private contracts of consenting private parties anywhere in the world. Such a position is the antitheses of the basis that gives ALL governments their only authority to do anything to anyone as ALL LAW IS CONTRACT, CONTRACT IS THE LAW. Further my signed, sealed, witnessed, and delivered title to my private property is **allodial.** I, the owner of this private property, am an assignee of the original land grant with a clear chain of title back to that land grant which gives me my unalienable property rights in my land. My title from SAN JUAN HOLDINGS is dated late December of 2012 before you did your unlawful execution, levy, and before you produce your *colorable title* that PRETENDS that SAN JUAN HOLDINGS still owns that property! Never in a million years in any court in any land would your *color of title* quitting the claim of the previous owner SAN JUAN HOLDINGS trump my superior title that predates yours and is an actual assignment FROM SAN JUAN HOLDINGS!

I can Show your Means, Motive, and Opportunity to Commit Your Crimes in this Matter

Actually you have set up quite the diabolical plan to steal my private property - nice house, nice neighborhood, no encumbrances – bring you top dollar! By your actions you have made it an easy target since you are going after property pretending the owner is SAN JUAN HOLDINGS that you know doesn't exist so it can't defend itself against your attacks! You think that with assistance of each of you listed above (conspiracy), all working in the same building, you can use the resources and power of your private company (opportunity) to levy and sell this valuable property (means). All you had to do is ignore the evidence of the sale and **pretend** this property belongs to an owner that can't defend its' interests making this property easy pickings for you. Your company really could use the money to help fund your pension plans (motive). All three elements necessary to have you convicted of your crimes against me and my property!

You are Now Required To Create and Send Me a "Release of Levy"

You have been assuming that since there is no "grantee of record" that you could just ignore those requirements. But in reality such facts prove that you didn't have the authority to do what you did, are doing, and may continue to do. Further, there is no evidence that my private property can be taken for SAN JUAN HOLDINGS' supposed debt. Therefore, you have no other alternative then to prepare and send me your **"Release of Levy"** on my private property. **If you fail to do your corporate duties, fail to uphold your contractual obligations to me, and fail to cease this unlawful Admiralty process against my private non-commercial property** I will have no other choice but to take all available legal actions against each of you personally, your bonds, and your private employers. Such legal action may include any or all of the following: suit for the torts of *Slander of Title*, *Breach of Contract*, *Conspiracy to Deprive Rights Under Color of Law*, etc., and charge you each with the criminal felony charges of Theft,

Trespassing, issuing fraudulent process, Treason, Sedition, Mail Fraud, Extortion, and Conspiracy. Should your future actions/inactions in this matter force me to bring an action against your please take notice I will bring that action in the only common law court in this country which happens to be located in Washington DC. In that court you won't have a legal leg to stand on nor will your SOUTH CAROLINA ATTORNEY GENERAL be allowed to defend you; you will left to your own resources to defend yourselves.

Ignorance of the Law Is No Excuse

If any of the concepts I have written about herein are unknown to you or you do not understand them, I would highly recommend you hire a **good** Admiralty Attorney who might be able to explain to you how your actions IN THIS MATTER have been outside your authority and therefore make each of you and your bonds liable to legal attack. I would also highly recommend you hire a **good** Constitutional Attorney who may be able to guide you forward in your contractual duties to me and my private property.

Warning - Your Bonds Will Be Liquidated

If your bonds have never been legally attacked before you may not know that your bonds are just insurance policies that can be liquidated by a bona fide claimant [me] without any court action. I know this from first hand experience. Without your bonds and your ability to get a bond in the future you will be out of a government career!

Our Constitutional, common law Contract

You three made the **offer to contract** by your voluntary written act of swearing your oaths to uphold the Constitutions under the common law, **fully intending to enter into a legally binding contract**, and posting your bonds as **consideration** for your contract offers. I now **accept** your offers: "I accept the offers to contract with Amy Boheler, Beth Latham, and Robert Kiser as well as all of their supervisors, subordinates, and delegates and bind them to their oaths. I remind you of your legal/contractual duty to me and also remind you that should any of you breach your duty to me, you, your personal and real property, and your bonds will be held liable by me"

_____(Seal)
owner of private property, a living child of God

9/14/2013 Date Of Contract

Mail a copy of your bonds with your Release of Levy by October 4, 2013 to:

Private Property Owner
c/o 25056 Timberlake Drive
Tega Cay, South Carolina
[Non-residential, without the United States]*

*As part of our contract I require that any mail sent to me by you is to be addressed exactly as above. Under our common law contract you cannot intentionally do any more damage me.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Ryan Powell, a private person of full capacity,	)	C/A No. 2014-CP-46-1425
Plaintiff,	)	MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION
v.	)	MOTION TO SUBSTITUTE DEFENDANT AND TO DISMISS IN WHOLE OR IN PART
Amy Bohler d/b/a York County Auditor, Beth Latham d/b/a York County Treasurer, Robert Kiser d/b/a York County Delinquent Tax Collector, Each in their personal and official capacities,	)	
Defendants.	)	

Motion to Dismiss - Rule 12(b)(1)

Defendants first move to dismiss this action for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) S.C. R. Civ. P. In support of this motion, Defendants would allege and show unto the court:

1. This action arises from the defendants' alleged "illegal or wrongful collection of taxes, or attempt to collect taxes" from Plaintiff.

2. Pursuant to the provisions of South Carolina's Revenue Procedures Act (the Act), "there is no remedy other than those provided in this chapter in any case involving the alleged illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80 (Law. Co-op. 2014).

29

3. The Act allows only "a declaratory judgment whether a statute is unconstitutional"[1] to be brought in the circuit court. Id. Otherwise, the Act provides a specific administrative procedure that must be followed by a person alleging the "illegal or wrongful collection of taxes, or attempt to collect taxes." The Act also provides a "contested case" hearing procedure, and gives the Administrative Law Court exclusive jurisdiction over such proceedings. S.C. Code Ann. § 12-60-2130 (Law. Co-op. 2014).

4. The Administrative Law Court "is an agency of the executive branch of the government of this State,"[2] while the circuit court is part of the judicial department. *See* S.C. Const., Art. V § 1.

5. The circuit court does not have subject matter jurisdiction to decide this case.

Motion to Dismiss - Rule 12(b)(6) & S.C. Code Ann. § 15-78-70(c)

In the event this court determines that it has subject matter jurisdiction over this action, Defendants move to substitute York County as the proper defendant in this action, pursuant to the provisions of S.C. Code Ann. §15-78-70(c)(Law. Co-op. 1986), and to dismiss Plaintiff's complaint, in whole or in part, pursuant to Rule 12(b)(6) S.C. R. Civ. P. In support of this motion, Defendants would show unto the court as follows:

1. Plaintiff's entire complaint is barred by the doctrine of sovereign immunity and one or more of the exceptions to the waiver of immunity under South Carolina's Tort Claims Act. S.C. Code Ann. § 15-78-60 (Law. Co-op. 1986).

2. Plaintiff's entire complaint is barred by the public duty doctrine. Arthurs v. Aiken County, 338 S.C. 253, 264, 525 S.E.2d 542, 548 (Ct. App. 1999).

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[1] Plaintiff's complaint does not include any claim for declaratory judgment as to the constitutionality of a statute.

[2] S.C. Code Ann. § 1-23-500 (Law. Co-op. 2005).

3. Plaintiff's entire complaint is barred by the exclusive remedy provisions of S.C. Code Ann. § 12-60-80 (Law. Co-op. 2014) and by Plaintiff's failure to avail himself of those remedies.

4. Plaintiff's claims for "sham legal processes," and "false light invasion of privacy" are not valid civil causes of action under South Carolina law. S.C. Code Ann. § 16-17-735 (person engaged in sham legal process "is guilty of misdemeanor"); Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997)("As to Appellants' claim of 'false light,' no South Carolina case has recognized this tort.").

5. Plaintiff has failed to allege sufficient facts to state a cause of action for money had and received.

6. Plaintiff has failed to allege sufficient facts to state a cause of action for breach of contract.

7. Plaintiff has failed to allege the essential elements of a cause of action for fraud under South Carolina law, and Plaintiff could not establish fraud based upon the factual allegations of his complaint.

8. Plaintiff has failed to allege the essential elements of a cause of action for conspiracy under South Carolina law, and has also failed to allege that he suffered special damages. Furthermore, Because York County is the proper defendant[3] in any action to be maintained by Plaintiff, Plaintiff's cause of action for conspiracy fails as a matter of law. It is well settled that an entity cannot conspire with itself. *See, e.g.,* McClain v. Pactiv Corp., 360 S.C. 480, 486, 602 S.E.2d 87, 90 (Ct. App. 2004).

9. Plaintiff has failed to allege facts supporting a cause of action for trespass.

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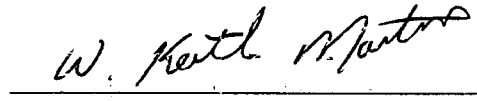
[3] S.C. Code Ann. § 15-78-70 (Law. Co-op. 1986).

10. Plaintiff's entire complaint is premised upon his erroneous interpretation of the laws of this state. Plaintiff contends that he is the owner of "allodial property" which is allegedly free of York County's and South Carolina's taxing authority. However, South Carolina does not recognize Plaintiff's theory of "allodial property," free of taxation. Instead, South Carolina law expressly provides that "*all* real and personal property in [South Carolina] . . . shall be subject to taxation." S.C. Code Ann. § 12-37-210 (Law. Co-op. 2014). Consequently, Plaintiff's entire complaint fails as a matter of law and must be dismissed.

11. Even if Plaintiff had stated any valid cause of action, he is not entitled to recover punitive damages or prejudgment interest. S.C. Code Ann. § 15-78-120(b)(Law. Co-op. 1986).

These motions will be based upon the South Carolina Rules of Civil Procedure, the South Carolina Constitution, the pleadings of record and the appropriate statutory and case law. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P., that he had no obligation to consult with Plaintiff prior to filing this motion.

May 20, 2014.



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ATTORNEYS FOR DEFENDANTS

State of South Carolina

County of York

Case No. 2014-CP-46-1425

Ryan Powell, a private person of full capacity,
Plaintiff,

v.

AMY BOLHER d/b/a York County Auditor,
BETH LATHAM d/b/a York County Treasurer,
ROBERT KISER d/b/a York County Delinquent Tax Collector,
Each in their individual and official capacities,
Defendants.

In the Circuit Court,
Court of Common Pleas

In the Common Law

Response to Defendants' Motions to Dismiss and to Substitute Defendants

Plaintiff submits this response to Defendants two pending motions to dismiss Plaintiff's complaint pursuant to Rules 12(b)(1) and 12(b)(6) and motion to substitute Defendant under S.C. Code Ann. § 15-78-70(c). This response is based on the verified allegations made in Plaintiff's Complaint and in his verified motion for a writ of mandamus which are both incorporated herein by reference.

QUESTIONS PRESENTED

1. Should Defendants' commission of fraud on this court be considered evidence of their "unclean hands" and used to dismiss Defendants motions?
2. Does the South Carolina Revenue Procedures Act divest this court of subject matter jurisdiction in this action?
3. Are "Sham Legal Processes" and "False Light Invasion of Privacy" valid causes of action?
4. Are Defendants five (5) motions to dismiss for failure to state sufficient facts property demonstrated to give notice to Plaintiff of the alleged deficiencies?
5. Assuming Defendants are not required to give Plaintiff any notice of the alleged deficiencies in his complaint does justice require this court to allow Plaintiff to amend his complaint as is his right under SCRCP Rule 15(a)?

6. Is it premature at the pre-answer stage of litigation to hear and decide five of Defendants motions to dismiss?
7. Assuming it is not premature to hear a motion to dismiss under the SC Tort Claims Act is that Act even applicable in this action?
8. Assuming it is not premature to hear a motion to Substitute "York County" for the named Defendants, is "York County" the proper party defendant?
9. Assuming it is not premature to hear a motion to dismiss based on sovereign immunity, is such immunity available to the named defendants in their individual capacity?
10. Assuming it is not premature to hear a motion to dismiss based on the Public Duty Doctrine, is that doctrine applicable in this case?
11. Assuming it is not premature to hear a motion to dismiss based on Plaintiffs alleged "*erroneous interpretation of the laws*" does Defendants' alternative interpretation of the laws raise serious legal and constitutional issues?

SHORT ANSWERS

1. Yes. Fraud on the court is by definition a deception perpetrated to gain an unfair advantage and is the essence of "unclean hands". One who looks for equity is required to bring equity with him.
2. No. The South Carolina Revenue Procedures Act is not applicable to this action and therefore it cannot divest this court of subject matter jurisdiction.
3. Yes. "Sham Legal Process" is a valid civil cause of action as specified in S.C. Code Ann. § 15-75-60 and "False Light Invasion of Privacy" is a valid common law tort recognized in many other common law states. The issue of whether it is available in South Carolina has yet to be ruled on by the SC Supreme Court. So since they have NOT ruled that it is NOT available, this cause of action can not be dismissed at the pre-answer stage especially unless and until Defendants prove that Plaintiffs allegations do not raise a claim under any theory of law like for instance, libel or invasion of privacy.
4. No. Defendants made five (5) conclusions of law not supported by any allegations of missing facts, or showing any essential elements that are required to be alleged

but are missing for those five causes of action. Plaintiff's right to notice requires that Defendants do more than just conclude that five (5) of his cause of action are insufficiently plead.

5. Yes. At the pre-answer stage of litigation all 12(b) motions are to be based strictly on the allegations made in the complaint as the record is devoid of any evidence. Therefore, only those defenses articulated in 12(b) are allowed to be raised and decided at this early stage. The only issues that Defendants have raised that are valid at this state of litigation are dismissal for lack of subject matter jurisdiction, and their five (5) motions to dismiss for failure to state a cause of action. All the other various and sundry motions are not recognized as valid 12(b) motions that can be decided pre-answer.

6. Yes. Justice requires that this court allow Plaintiff to amend his complaint under Rule 15(a) if it is found that he has failed to state sufficient facts to constitute any particular cause of action. Dismissing a cause of action is a drastic step and should never be used when there are better more effective alternatives. The rules of civil procedure were written to give substantial justice to both parties not to punish a party, especially one not represented by an attorney, for his alleged lack of pleading skills.

7. No. The SC Tort Claims Act is not applicable in this action because Plaintiff did not bring his action under that Act, nor did he bring it against any person who has immunity. Plaintiff brought his action against the named Defendants in their individual capacities for their acts done outside of their "official duties".

8. No. Since this motion at this stage of litigation must be based on the complaint and the complaint alleges that the named Defendants work as agents for the "County of York" if any person is to be substituted for the named Defendants in their individual capacities (which cannot be done) "County of York" and not "York County" would be the proper party defendant.

9. No. The defense of sovereign immunity is an affirmative one which must be plead in the answer and proved at trial in front of the fact finder which is in this case a jury. Defendants must prove at trial that they were executing their "official duties" which Plaintiff has alleged they were not doing, so an issue of material fact will be

raised by pleading this affirmative defense. Any issue of material fact must be put to the jury for a determination of the truth of the matter.

10. No. The defense of Public Duty Doctrine is negative one which must be plead in the answer and proved at trial in front of the fact finder which is in this case a jury. Plaintiff must prove at trial that Defendants have a "special duty of care" owed to him, so an issue of material fact will be raised by pleading this negative defense. Any issue of material fact must be put to the jury for a determination of the truth of the matter.

11. Yes. Defendants have refused to address or oppose the actual facts and law asserted by Plaintiff's verified complaint and verified motion for writ of mandamus and they have instead resorted to frivolous straw man arguments. Worse yet, Defendants made findings of facts without any allegations or evidence to support their findings and then they made conclusions of law from their unsupported findings of facts that are bizarre and violate long established principles of property law and multiple mandates in the Constitution of the State of South Carolina. Since the General Assembly would never be so ill-advised to intend such a law, Defendants' "*interpretation of the laws*" must be erroneous.

ARUGMENT

1. **Should Defendants' commission of fraud on this court be considered evidence of their "unclean hands" and be used to dismiss Defendants motions?**

In Defendants motion to dismiss ("**DMTD**" hereinafter) they state: '*1. This action arises from the Defendants' alleged "illegal or wrongful collection of taxes, or attempt to collect taxes"* ***from Plaintiff*** [emphasis added]. This is a FALSE statement of the facts of this case because Plaintiff's verified Complaint never alleges that **Defendants have EVER attempted to collect any tax from Plaintiff**. No, the actual issue raised by Plaintiff is do the Defendants have the authority to seize and sell private land that belongs to someone who they have NEVER attempted to collect any taxes from.

Defendants have clearly **misrepresented the facts** in this case in order to get this court to dismiss this action and erroneously force Plaintiff into an administrative procedure that will eliminate all liability to Defendants. Under the South Carolina

Revenue Procedures Act[1] ("**SCRPA**" hereinafter) there could never be any damages assessed against Defendants as only persons who are liable can use the **SCRPA** procedure and if one is liable then one does not have any standing to claim damages. The **SCRPA** does not authorize any action other than disputing the amount of tax assessed as obviously one who is liable has no other valid issue to raise other than the amount that he owes. Any other argument within that administrative procedure by a person liable would truly be a "tax protester" argument.

It certainly appears that Defendants have committed intentional bad faith and fraud on this court and therefore come to this court with "unclean hands" seeking equity in order to eliminate being liable for damages sought by Plaintiff. Defendants have a huge motive to get Plaintiff's action dismissed or at the very least get it out of the circuit court and into the administrative procedure where the damages will no longer be an issue for them.

Fraud is defined in Blacks Law, 2nd ed pg 521:

> "**FRAUD**. Fraud consists of **some deceitful practice**, willful device, resorted to **with intent to deprive another of his right, or in some manner to do him an injury**"

Bad Faith is defined in Blacks Law, 2nd ed pg 112:

> **Bad faith**.. The opposite of "good faith," generally implying or involving actual or constructive **fraud**, or a design to **mislead or deceive another**..."

BLACK'S LAW DICTIONARY 268 (8th ed. 2004): "one cannot seek equitable relief ... if that party has violated an equitable principle, such as good faith."

"Any willful conduct that is iniquitous, unfair, dishonest, fraudulent, unconscionable, or performed in bad faith may constitute "unclean hands". See Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co., 324 U.S. 806, 815 (1945); N.Y. Football Giants, Inc. v. L.A. Chargers Football Club, Inc., 291 F.2d 471, 473 (5th Cir. 1961); DOBBS, LAW OF REMEDIES: DAMAGES, EQUITY, RESTITUTION 68 (2d ed. 1993) note 1, at 68; 27A AM.JUR.2D Equity § 100 (1996).

Therefore as it is clear Defendants are attempting to mislead this court to inappropriately dismiss this action by using deception and misrepresentation of the actual facts of the

[1] The issue about the applicability or availability of the SCRPA in this case will be more thoroughly discussed below in #2.

case, they are therefore coming to this court in bad faith and with "unclean hands"; their motions **must all be dismissed**.

2. **Does the South Carolina Revenue Procedures Act divest this court of subject matter jurisdiction in this action?**

Defendants have requested in **DMTD** that this Court dismiss this action for want of subject matter jurisdiction stating that Plaintiff's only remedy is found in the **SCRPA**. Then Defendants attempt to dismiss this action a second time in their second motion to dismiss based on the **SCRPA**. See Defendants Motion to Dismiss under Rule 12(b)(1) (**DMTD** pgs 1-2) and then again under 12(b)(6) (**DMTD** first para, pg 3).

However, both motions are wholly without any merit as the **SCRPA** is clearly not applicable to Plaintiff or to his action. As Defendants' attorney is well aware, the **SCRPA** is applicable **only** to a "*property taxpayer*" which is defined in the **SCRPA** as:

> "*Property taxpayer" means a person who is liable for, or whose property or interest in property, is subject to, or liable for, a property tax imposed by this title*", S.C. Code Ann. § 12-60-30 (22).

As evidence that the **SCRPA** only provides a remedy to those persons liable for property tax (i.e., a "*property taxpayer*") see the following small sample of applicable statutes:

I. S.C. Code Ann. § 12-60-1730: "*A **property taxpayer** may appeal any property tax assessment ...*";

II. S.C. Code Ann. § 12-60-2130: "*A **property taxpayer** or the local governing body who disagrees with the department determination may ...*"

III. S.C. Code Ann. § 12-60-2150(A): "*a **property taxpayer** may seek a refund of property taxes paid and assessed by ...*"

BUT DEFENDANTS HAVE NEVER ATTEMPTED TO COLLECT A TAX FROM PLAINTIFF! The record is totally devoid of any allegations or evidence that could show: that Defendants have ever issued a notice, bill, assessment, execution, levy, or notice of levy against Plaintiff; that Defendants have ever attempted to collect a tax

from Plaintiff; or that Plaintiff, his private land, or his rights to his land are liable for or subject to any tax to Defendants.

Until evidence showing Plaintiff or his land is liable for or subject to a tax this Court cannot make a finding that Plaintiff is a "*property taxpayer*" which would be required to grant Defendants motion to dismiss for want of subject matter jurisdiction or their motion to dismiss because of the "exclusive remedy" found in the **SCRPA**. Therefore, Defendants' motions to dismiss for want of subject matter jurisdiction and to dismiss for the "exclusive remedy" found in the **SCRPA** **must both be denied**.

3. **Are "Sham Legal Processes" and "False Light Invasion of Privacy" valid causes of action?**

Defendants attempt to further deceive this court when they state in their **DMTD**: "*4. Plaintiff's claim for "sham legal processes" and "false light invasion of privacy" are not valid civil causes of action....*", (**DMTD** second para, pg 3).

First, Defendants claim that "*sham legal processes*" is not a valid civil cause of action is a frivolous claim when clearly S.C. Code Ann. § 15-75-60 provides for civil remedies against those who have committed such crimes –

> S.C. Code Ann. § 15-75-60 "*A person who is injured by a sham legal process involving a violation of Section 16-17-735 has the following civil remedies against the person who committed the violation or who caused the violation to be committed...*"

Second, although availability in South Carolina of the common law tort of "*false light invasion of privacy*" has not yet been ruled on by the SC Supreme Court, this common law tort is available in many other common law states. Further the SC Supreme Court has NOT determined that such tort is NOT available in the state so there can be no pre-answer bar on the theory that the SC Supreme Court may eventually determine that such tort is not available in South Carolina. Maybe this case will be the test case for the tort.

Further, to dismiss *false light invasion of privacy* cause of action Defendants would have to show that Plaintiff is not entitled to relief under any theory of law that can be drawn from those facts alleged. Plaintiff clearly stated sufficient facts and the

"alternative theories" of both *invasion of privacy* and *libel*, so unless Defendants can show that Plaintiff has not stated facts sufficient to support either of those alternative causes of action, that count cannot be dismissed -

> See Nelson v. QHG of South Carolina Inc., 580 SE 2d 171 (2003). "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief **on any theory of the case**." [emphasis added]

Therefore Defendants motion to dismiss Plaintiffs Count One- Sham Legal Processes and Count Six- False Light Invasion of Privacy/Libel **must be denied**.

4. **Are Defendants five (5) motions to dismiss for failure to state sufficient facts demonstrated to give notice to Plaintiff of the alleged deficiencies?**

Defendants' state in their **DMTD** in a bold conclusion of law without any supporting facts or law that five (5) of Plaintiff's ten (10) causes of action must be dismissed because Plaintiff has "*failed to state facts sufficient to support...*" [those five counts]. However, Plaintiff's due process rights to notice mandate that Defendants do more than just declare that legal conclusion. Defendants carry the burden to demonstrate how the allegations in Plaintiff's Complaint fail, as a matter of law, to allege sufficient facts **under any theory of law** and they cannot simply rest on a conclusory statement to that effect:

> See Nelson v. QHG of South Carolina Inc., 580 SE 2d 171 (2003) where the Appeals Court stated "the trial judge may dismiss the claim if the **defendant demonstrates** the plaintiff has failed "to state facts sufficient to constitute a cause of action" in the pleadings filed with the court";

> See Rule 7(b)(1) SCRCP which states: **(1)** An application to the court for an order shall be by motion which, ..., shall be made in writing, **shall state with particularity the grounds therefor**, and shall set forth the relief or order sought.

Further, Defendants state that "*These motions will be based upon the South Carolina Rules of Civil Procedure, the South Carolina Constitution, the pleadings of record and the appropriate statutory and case law.*" (**DMTD** pg 4, last para). Notwithstanding that the "*South Carolina Constitution*" has nothing to do with this action (although the Constitution of the State of South Carolina does apply to this action),

nowhere in that list do Defendants give any notice to Plaintiff that their motions are to be based on any "oral argument" made during the hearing scheduled to decide their motions. Even if Defendants noticed Plaintiff that their motions were to be based on "oral arguments" Plaintiff cannot be required to defend unspecified pleading defects in 5 counts on the spot during the short hearing of these motions without being given notice ahead of time of the particular grounds (alleged defects) for Defendants 12(b)(6) motions.

Accordingly, Defendants motion to dismiss five of Plaintiff's causes of action for failure to allege sufficient facts to state a cause of action **must be denied**.

5. **Assuming Defendants are not required to give Plaintiff any notice of the alleged deficiencies in his complaint, does justice require this court to allow Plaintiff to amend his complaint as is his right under SCRCP Rule 15(a)?**

See Rule 8 (f) SCRCP "All pleadings shall be so construed as to do substantial justice to all parties."

See Rule 15 (a) SCRCP "A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served ..."

See Spence v. Spence, 628 SE 2d 869 (2006) –

> "When a complaint is dismissed under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action, the dismissal generally is without prejudice. **The plaintiff in most cases should be given an opportunity to file and serve an amended complaint.** *See Foman v. Davis,* 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962) **(rules of civil procedure should be liberally construed to do substantial justice** and lower court erred in denying motion to amend complaint where amendment would have stated alternative theory of recovery); ... *Dockside Assn., Inc. v. Detyens, Simmons & Carlisle,* 297 S.C. 91, 374 S.E.2d 907 (Ct.App. 1988) (citing Rule 15(a), SCRCP, **that plaintiff generally is allowed to amend a complaint to correct deficiencies which resulted in dismissal under provisions of Rule 12(b)**); ... *Thacker v. Bartlett,* 785 N.E.2d 621, 624 (Ind.App. 2003) (dismissal for failure to state a claim is without prejudice because the complaining party may either file an amended complaint or stand upon complaint and appeal); James F. Flanagan, *South Carolina Civil Procedure* 95 (2d ed. 1996) (**party who loses a motion to dismiss normally is given the right to amend the complaint to cure the defect**)." [emphasis added]

As shown in Spence v. Spence supra and many other holdings of the higher courts a Rule 12(b)(6) motion is to be used for the purpose of limiting the factual issues of a

case so that the Defendant has notice of the factual issues involved and discovery can be limited to the actual facts alleged. A Rule 12(b)(6) is not to be used to punish a Plaintiff, especially one proceeding without an attorney, for his alleged lack of pleading skills nor is it to punish the Plaintiff if the court believes the Plaintiff will not succeed in his action. Additionally in this case at bar, the ultimate facts of the case are few and mostly irrefutable.

Therefore, and according to Spence v. Spence supra, should this Court refuse to deny Defendants' motions to dismiss 5 of Plaintiff's 10 causes of actions justice requires this court allow Plaintiff to exercise his RIGHT to amend his complaint since he has **that right under rule 15(a)** especially when Defendants have altogether failed to give notice to Plaintiff of the alleged "defects" in his complaint.

6. **Is it premature at the pre-answer stage of litigation to hear and decide five of Defendants motions to dismiss?**

SCRCP Rule 12(b) How Presented

"Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required**, except that the following defenses may at the option of the pleader be made by motion**: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim." [emphasis added]

See also Gentry v. Yonce, 522 SE 2d 137(1999) -

"Appellants contend the circuit court erred in considering any of the grounds for respondents' pre-answer motions that were based upon a defense not listed in Rule 12(b), SCRCP. **We agree**. In *Glenn v. School Dist. No. Five*, 294 S.C. 530, 366 S.E.2d 47 (Ct.App.1988), the Court of Appeals held the statute of limitations is not a defense listed under Rule 12(b) that may be raised by pre-answer motion. **Similarly, here, respondents cannot raise any defense or objection that is not permitted to be raised pre-answer in a Rule 12(b) motion, for example lack of standing.**" [emphasis added]

The Defendants have made seven motions to dismiss that are wholly premature to decide at the pre-answer stage of litigation because the record is devoid of any evidence

needed to determine any of those seven motions and the defenses they have raised are not available to them under Rule 12(b) so all of those pre-answer motions made by Defendants must be found to be premature and inapplicable under Rule 12(b) and **must be dismissed**. The following will discuss with particularity each of the inappropriate motions that are premature to decide pre-answer.

7. **Assuming it is not premature to hear a motion to dismiss under the SC Tort Claims Act is that act even applicable in this action?**

Defendants' attorney makes multiple knowingly false statements to this court in **DMTD** stating that Plaintiff's action is barred or limited by the South Carolina Tort Claims Act (**SCTCA** hereinafter). However, as Defendants' attorney is well aware, Plaintiff's action was not brought under that Act and Plaintiff's action was brought against Defendants in their individual capacity for their *ultra virus* and criminal actions that were NOT "*within the scope of the employee's official duty*". So the **SCTCA** is not applicable to this action nor is it binding on Plaintiff.

> See S.C. Code Ann. § 15-78-200 "*Notwithstanding any provision of law, this chapter, the "South Carolina Tort Claims Act", is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty*" [emphasis added].

Also since Plaintiff brought his action under the authority of the common law and the contract he has with Defendants the **SCTCA** is not applicable. See S.C. Code Ann. § 15-78-20 (d) "*Nothing in this chapter affects liability based on contract*".

Further determining if the **SCTCA** is applicable necessitates determining whether Defendants were or were not "*acting within the scope of [their] official duty*" which will require both full discovery and a trier of fact - a jury in this case to determine the truth of the matter.

> See Wade v. Berkeley County, 529 SE 2d 743 (2000) "[B]ecause a genuine issue of material fact exists regarding whether Pierce was acting within the scope of his employment when the accident occurred, the law does not support the trial court's grant of summary judgment to County... We hold § 15-78-70(d) does not bar Wade's action against the County under the Tort Claims Act. ... **Wade's claim against Pierce was not under the Tort Claims Act. It was an action against Pierce as an individual facing personal liability** ..." [emphasis added]

Also Defendants requested that this court dismiss (strike?) the relief requested for punitive damages and prejudgment interest under the SC Tort Claims Act. See Defendants (**DMTD** second para, pg 4): "*11. ...he is not entitled to recover punitive damages or prejudgment interest S.C. Code Ann. § 15-78-120(b)*". As already shown the **SCTCA** does not apply to this action so there can be no restrictions placed on pre-judgment interest or punitive damages based on the **SCTCA** which doesn't apply.

Therefore Defendants motion to dismiss based on the **SCTCA** **must be denied** and their request to dismiss (strike?) punitive damages and pre-judgment interest **must also be denied**.

8. **Assuming it is not premature to hear a motion to substitute "York County" for the named Defendants, is "York County" the proper party defendant?**

Defendants make a wholly unsupported motion to Substitute "York County" for the named Defendants in their individual capacity. Defendants never support their motion other than to state "*Defendants move to substitute York County as the proper defendant in this action, pursuant to the provisions of S.C. Code Ann. § 15-78-70(c)*", (**DMTD** fourth para pg 2).

Since Plaintiff did not bring his action under the **SCTCA** nor did he name as a party defendant any governmental entity, S.C. Code Ann. § 15-78-70 (c) is inapplicable.

> See S.C. Code Ann. § 15-78-70 (c) "... *On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter*...." [emphasis added].

See also Wade v. Berkeley County, supra wherein the SC Appeals Court held that the **SCTCA** is not applicable when an action is brought against an employee in their individual capacity for their actions outside of their "*official duties*".

Further, assuming arguendo that Defendants are correct and S.C. Code Ann. § 15-78-70 (c) is applicable in this action, "York County" is not the proper party defendant to be substituted since Defendants in their official capacity act as agents for the "County of York" company and NOT "York County". See Plaintiff's Complaint #3 Pg 1 which clearly alleges that Defendants act as agents for "County of York". Defendants have not

denied that allegation nor have they provided any evidence that could support that they act as agents for "York County". Further, Plaintiff can find no evidence of the legal existence of any entity named "York County" in the public records.

Therefore and accordingly, if Defendants motion to substitute had any merit and could be made at the pre-answer stage of litigation, "County of York" would be the proper party defendant but since Defendants' motion is frivolous their motion to substitute **must be denied**.

9. **Assuming it is not premature to hear a motion to dismiss based on sovereign immunity, is such affirmative defense available to the named defendants in their individual capacity?**

Defendants attempt to further deceive this court when they state in their **DMTD** "*1. Plaintiff's entire complaint is barred by the doctrine of sovereign immunity...*", (**DMTD** fifth para pg 2) The sovereign immunity doctrine specified in the **SCTCA** that Defendants allege as controlling provides "exceptions" to such alleged immunity as follows:

> See S.C. Code Ann. § 15-78-20 (b) "*The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15-78-70(b);*
>
> See S.C. Code Ann. § 15-78-70. (b) "*Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.*".
>
> See S.C. Code Ann. § 15-78-20 (d) "*Nothing in this chapter affects liability based on contract*".

As the Complaint alleges, all actions that Defendants took in this matter were *ultra virus*, and most of their actions constitute "*actual fraud, actual malice, intent to harm, or a crime involving moral turpitude*". Plaintiffs action was brought against Defendants in their individual capacity, so it falls under the exception of S.C. Code Ann. § 15-78-70.

(b) and/or the exception by way of their contract with Plaintiff under S.C. Code Ann. § 15-78-20 (d).

Nonetheless, as Defendants' attorney is well aware, even if Defendants have immunity in this action such defense is an affirmative defense that Defendants are required to raise in their answer and then they are required to prove their alleged immunity **at trial where the facts can be determined by the fact finder which in this case will be a jury**. That means Defendants cannot have this action dismissed at the pre-answer phase based on "*sovereign immunity*".

> See Frazier v. Badger, 603 SE 2d 587, "Immunity under the statute is an affirmative defense that **must be proved by the defendant at trial**. *Tanner v. Florence City-County Bldg. Comm'n*, 333 S.C. 549, 552, 511 S.E.2d 369, 371 (Ct.App.1999)." [emphasis added].
>
> See also Wells v. City of Lynchburg, 501 SE 2d 746, "Immunity is an affirmative defense which must be pleaded and can be waived. **One who pleads immunity conditionally admits the plaintiffs case**, but asserts immunity as a bar to liability."

Therefore and accordingly, Defendants' motion to dismiss based on Defendants' alleged "*sovereign immunity*" **must be denied** and by Defendants' raising sovereign immunity as shown in Wells supra this Court must find that **Defendants have admitted Plaintiff's case**.

10. **Assuming it is not premature to hear a motion to dismiss based on the Public Duty Doctrine, is that doctrine applicable in this case?**

Defendants attempt to further deceive this court when they state in **DMTD** "*2. Plaintiff's entire complaint is barred by the public duty doctrine...*", (**DMTD** last para, pg 2). The public duty doctrine is a negative defense that Defendants are required to raise in their answer and Plaintiff is required to prove during the trial where the facts can be determined by the trier of fact, in this case a jury. For this reason, it is inappropriate to dismiss Plaintiff's entire complaint at the pre-answer stage.

Further, since Plaintiff alleged in his verified Complaint in "Count Eight - Negligence per se" that Defendants owed a "*special duty of care*" to Plaintiff which if found as fact by the jury during the trial will fulfill the exception to the "*public duty doctrine*".

See Wells v. City of Lynchburg, 501 SE 2d 746 "Thus, where the duty is owed to the public in general, the official is not liable to an individual ... An exception to the general rule of non-liability exists when the duty is owing to specific individuals rather than the public".... An affirmative legal duty, however, may be created by statute, contract relationship, status, property interest, or some other special circumstance. **Many statutes impose a duty on public officials to perform certain acts.**" [emphasis added]

Therefore Defendants motion to dismiss based on Defendants' alleged "*Public Duty Doctrine*" **must be denied**.

11. **Assuming it is not premature to hear a motion to dismiss based on Plaintiffs alleged "*erroneous interpretation of the laws*" does Defendants' alternative interpretation of the laws raise serious legal and constitutional issues?**

Defendants attempt to further deceive this court when they state in **DMTD**: "*10. Plaintiff's entire complaint is premised upon his erroneous interpretation of the laws of this state. ... Instead, South Carolina law expressly provides that "all real and personal property in [South Carolina]... shall be subject to taxation"*, (**DMTD** first para, pg 4). This is a baseless and frivolous argument as it does not in anyway dispute the actual facts or Plaintiff's actual "interpretation of the laws" actually raised in his Complaint or his motion for writ of mandamus.

Defendants have purposely misstated the actual statute (fraud) to make it appear the Plaintiff's land is "*subject to taxation*" by writing: "*All real and personal property in [South Carolina]...shall be subject to taxation*" which is NOT equivalent to what the actual statutes reads -"*All real and personal property* ***in this State*** *shall be subject to taxation*". The two different legal terms and their respective jurisdictions would be legally equivalent ONLY if the term "*this State*" is legally defined to mean "*South Carolina*", which is not the case. Defendants have not produced any statute that shows otherwise. Title 12 (where this statute is found) does not even define the legal meaning of the term "*this State*", or "*State*" which is very odd since "*State*" is defined in many other titles and sometimes it even means the "*State of South Carolina*". The **one exception** where the term "*State*" is defined to mean "*South Carolina*" is in Title 27 Chapter 16 dealing with the Catawba Indian Claim Settlement Act which concerns contracts that "*South Carolina*" entered into with that tribe of Indians back in 1763 before

the formation of the entity named "*State of South Carolina*". Nonetheless, no statute ever defines "*this State*" nor does any case ever interpret that term as used in any Title, much less Title 12. Maybe this is the case that will put this issue in front of the SC Supreme Court for its interpretation of the legal meaning of the term "*in this State*" as used in Title 12.

Nonetheless, Plaintiff's actual legal premise of his action is based on the incontrovertible FACT that he has never contracted with the private company named "York County Register of Deeds" by recording his deed with them which is REQUIRED for Defendants to have any power, right, or control over Plaintiff's deed to his private land. Defendants have failed to address the actual premise of Plaintiff's action and they have instead resorted to frivolous straw man arguments, distractions, and fraud on this court as a way to deal with their inability to meet the actual merits alleged and legal premise head on.

Most importantly, if Defendants alternative "interpretation of the laws" in this case is correct then Plaintiff's property is "*subject to taxation*" without Plaintiff or anyone else ever being made liable for the payment of such tax! As the only statute making anyone liable for any property tax is S.C. Code Ann. § 12-37-610 and that statute shows the owner who records their deed becomes liable. However, Defendants have failed to show any law that compels an owner to record their deed, so there must not be any such law. Defendants "interpretation" would give them the legal authority to violate long established principles of property law and the Constitution of the State of South Carolina in at least the following **six** ways:

i. Because Defendants could not know the land owners name or address, without the landowner recording their deeds, Defendants could seize and sell private land from its owner without ever giving that owner any bill, assessment, notice, etc. in direct violation of the due process clause found in S.C. Const. art. I § 3;

ii. Defendants could seize private homes without the owner even being made liable for payment of any tax amounting to an unreasonable seizure of the owners' private home in violation of S.C. Const. art. I § 10;

iii. Defendants could seize and sell private land away from its owner without the owner's consent in violation of S.C. Const. art. I § 13(a);

iv. Defendants could seize and sell private land away from its owner without giving the owner just compensation before such taking in violation of S.C. Const. art. I § 13(a);

v. Defendants could seize, sell, and convey private land without holding any title to that land (legal or equitable) violating basic principles of property law that holds one cannot convey land unless one has a title to that land; and

vi. Defendants could seize and sell private land at any geographic location they chose without any factual declaration from the owner of that land declaring his land to be "*in this State*" or "*in the County of X*".

Clearly the General Assembly has no such authority to pass a law that violates long established principles of property law and the Constitution of the State of South Carolina and they are not that ill-advised to have done so to such a spectacular extent. No, defendants have obviously "misinterpreted" (i.e., misrepresented) the law in this case.

Further, and most importantly, the record is totally devoid of any allegations or evidence that could support a finding of any of the following facts: that Plaintiff's private land is in "*this State*"; that Plaintiff's private land is in the "*County of York*" that Plaintiff has recorded his deed; that Plaintiff has ever given his consent for Defendants to take his land; that Defendants have ever given Plaintiff just compensation before they took his private land; that Plaintiff is a "*property taxpayer*"; that Defendants have ever attempted to collect a tax from Plaintiff; or that Defendants hold title to Plaintiff's land. Even if this motion was a valid motion it cannot be made at the pre-answer stage of litigation so this motion to dismiss this action because of Plaintiff's "*erroneous interpretation of the laws*" **must be denied.**

RELEVANT FACTS

The pertinent ultimate and procedural facts pertaining to this reply are as follows:

Ryan Powell bought for valuable consideration from a private trust named San Juan Holdings all rights, title, and interests in land they owned having the commonly known street location of 25056 Timberlake Drive. In the legal description of the land on Ryan's deed it states that his land is on South Carolina (not in the "State of South Carolina").

On December 20, 2012, the trustee for San Juan Holdings as the grantor signed, sealed, and executed the deed that had been prepared to transfer their land to Ryan. Ryan signed, sealed, and executed the deed as the grantee. Then two other people, who are unrelated to Ryan or the trustee, witnessed the execution of the deed and then all signatures/seals were notarized. Ryan never recorded his deed because he did not want to give away any rights or title to his land to any other person and since his land is both private and non-commercial he had no indication whatsoever that he was required by any law or any contract to record his deed with the private company named "York County Register of Deeds".

On December 20, 2012 Ryan saw the trustee sign a prepared notice stating that the trustee had sold and transferred the trust's land, and then had taken all contractually necessary steps to dissolve and terminate the trust since it not longer held any property. A week or so later, Ryan received through the mail the original notice executed by the trustee showing that the notice had been recorded in the public land records of the "York County Register of Deeds".

Ryan has never received any mail from any person attempting to collect a property tax from Ryan.

Ryan has been in peaceful possession and living on private land that he owns without any issue whatsoever until September 18, 2013 when he returned to his home that day and found a brightly colored "Notice of Levy" taped with blue tape to the front of his house. The "Notice of Levy" is signed by defendant Robert Neal Kiser; it states on it that Mr. Kiser is authorized to act for the "County of York, State of South Carolina", and that he is seizing and taking "exclusive possession" of property belonging to "SAN JUAN HOLDINGS, BRETT OSBORNE, trustee" and then lists a Charlotte NC address for that person.

After finding the "Notice of Levy" taped to his house, Ryan prepared and sent three communications to the named defendants on September 24, 2013; October 10, 2013, and October 31, 2013 entering into a contract with them, alerting their superiors of the liability that the named defendants were creating for themselves and possibly for their employers and showing the torts and federal crimes that the named defendants were

possibly committing by seizing and taking exclusive possession of Ryan's private land for someone else's debt.

The named defendants did not stop their actions against Ryan's private land and instead published Ryan's land as being up for auction in a public newspaper and attempted to auction Ryan's land on November 18, 2013. On November 18, 2013 Ryan attended Mr. Kiser's auction and saw that Ryan's land was listed as being up for auction that day but it was listed as belonging to "SAN JUAN HOLDINGS". Fearing that his land was going to be irreparably taken from him, Ryan reluctantly and unwillingly paid the taxes that "SAN JUAN HOLDINGS" allegedly owed to stop Robert Kiser from selling Ryan's land.

Ryan believes that S.C. Code Ann. § 12-39-250 (A) was created for Defendant Amy Bolher to give her the means and authority necessary to prevent or mitigate actual damage that the named defendants actions may cause to those who are NOT liable for a tax during defendants attempts to collect taxes from those who are liable. However, Amy Bolher did not attempt to stop or mitigate the damage being done to Ryan and she refused to stop or mitigate the damages that defendants continue to do to Ryan to this day.

Ryan did originally file his action against the Defendants on or about December 31, 2013 into the original jurisdiction of the Supreme Court of South Carolina; the Supreme Court of South Carolina refused to hear Ryan's action. A couple months after that time, Ryan found in his mailbox a correspondence addressed to "SAN JUAN HOLDNGS, C/O RYAN POWELL" and presumably sent by the Defendants. Ryan returned the unopened correspondence back to its sender "**refusing it for fraud"** because he has never contracted with the "York County Register of Deeds" to make himself liable for any taxes to Defendants nor has he ever contracted with SAN JUAN HOLDINGS to handle any of their business (assuming that entity still even existed). Ryan believes that the named defendants took his name off of his SC Supreme Court filing and put it into their database as **a person liable or somehow responsible for some tax to Defendants without his consent and without any contract with the company they work as agents for in order to cover up the crimes and torts they were and are continuing to commit against Ryan**.

CONCLUSION

For the reasons shown herein, this court is required to dismiss and/or deny Defendants' fraudulent and frivolous motions to dismiss and substitute defendants in this action. The South Carolina Revenue Procedures Act does not divest this court of subject matter jurisdiction because that act is not applicable in this case. Defendant's motions to dismiss for failure to state sufficient facts do not give Plaintiff proper notice of the alleged deficiencies and even if it did the just solution would be to allow Plaintiff to amend his complaint as is his right under Rule 15(a). All the other various and sundry motions are inappropriate at the pre-answer stage of litigation. Finally, this court should consider sanctioning Defendants' attorney for his blatant violation of SCRCP Rule 11.

Respectfully submitted,

Ryan Powell, a private person of full capacity
c/o 25056 Timberlake Drive
Fort Mill, South Carolina
[Non-domestic]

919-400-6339

June 5 2014

State of South Carolina

County of York

Ryan Powell, a private person of full capacity,
Plaintiff,

v.

AMY BOLHER d/b/a York County Auditor,
BETH LATHAM d/b/a York County Treasurer,
ROBERT KISER d/b/a York County Delinquent Tax Collector,

Each in their individual and official capacities,
Defendants.

Case No. 2014-CP-46-1425

In the Circuit Court,
Court of Common Pleas

In the Common Law

Rule 59 SCRCP Motions for Reconsideration of a Judgment, and Motion to Recuse

Judicial Notice of Disqualification

To Judge Stonewall Jackson Kimball: you are hereby directed to take mandatory judicial notice of the following facts which you have first hand knowledge of:

a) **NONE** of your statement of facts or findings of facts in the order dismissing this action are supported by the record - See Canon 3B (1) of the Code of Judicial Conduct, Rule 501, SCACR. "A judge's impartiality might reasonably be questioned when his factual findings are not supported by the record";

b) Your salary, benefits, and staff are all paid for by the York County governing body (York County Council) which gets the majority of its' revenue from the collection of *ad valorum* taxes. Since this case involves the legal authority of the Defendants to seize and sell property belonging to a specific class of land owners, those who do not record their deeds, your pay, job, and staff could all be affected by the outcome of this case;

c) You corrected the spelling and pronunciation of Defendant Amy Boheler's name on the record giving the appearance that you know her better than her own defense attorney;

d) You usurped the Supreme Court of South Carolina's exclusive jurisdiction to determine, without any evidence in support, that Plaintiff's mother was engaged in the "unauthorized practice of law" and then removed her from being Plaintiff's legal counsel prejudicing Plaintiff during the hearing;

e) You made disparaging remarks on the record about Plaintiff personally saying that since he is young (age discrimination) he "must have been misled" insinuating that Plaintiff is too obtuse to read the actual written laws and determine their meaning by himself;

f) Defendants' attorney argued his motions for 20 minutes uninterrupted by you but when it was Plaintiff turn you interrupted Plaintiff multiple times and told him "I've heard enough" and "sit down and be quiet" every time he interfered with your agenda to dismiss by citing holdings of the SC Supreme Court showing his position is correct;

g) You made many disparaging remarks during the hearing before you announced your decision showing your prejudgment of Plaintiff's challenging the authority of "York County to assess or collect a tax from him" (even thought that is a misstatement of the actual facts of the case).

h) Your order dismissing this action is littered with references to the effrontery of Plaintiff to dispute the authority of the county to collect a tax from him (again a misstatement of the facts of the case) insinuating that Plaintiff is depraved for expecting Defendants to obey the written laws of the State to which they have sworn an oath to uphold.

The above listed samples of your prejudice, partiality, and prejudgment clearly show you denied Plaintiff both his due process right to an impartial tribunal and his due process right to be heard. You prejudged this case without even considering the facts or law citied by Plaintiff. A judge's oath of office and his code of judicial conduct require him to not only rule impartially but he must also appear to rule impartially, neither has happened in this case. Therefore, you are obligated to void your order and disqualify yourself "*sua sponte*" from hearing anything associated with this case under Rule 501, Cannon 3, subparagraph E(1)(a), (c), & (d)(iii) which states, *inter alia*, that a judge is obligated to disqualify himself if he knows that he has an economic interest in the subject matter of the action.

Rule 59(a) SCRCP Motions for a New Hearing and to Recuse

1. If Judge Kimball refuses to do his duty to void his order and disqualify himself, *sua sponte*, Plaintiff moves the court to recuse Judge Kimball from any further actions in this case based on the above stated facts and then to schedule the rehearing of defendants' motions to dismiss and Plaintiff's motion for mandamus to a circuit court judge whose salary, benefits, and staff are not dependant on the *ad valorum* taxes at issue in this action.

2. *Ad valorum* is an admiralty term and applies only to commercial activities where a contract is in force. Plaintiff's Complaint invoked the circuit court's fundamental **in law** jurisdiction but Judge Kimball erroneously decided defendants' motion to dismiss as if it was a **suit in equity**. That is a fatal jurisdictional error. Plaintiff moves the court under Rule 59(a) SCRCP to rehear Defendants' motions to dismiss under the correct jurisdiction of the action - **in the common law**. This will allow Defendants the opportunity to counterclaim and show that Plaintiff is subject to the Admiralty jurisdiction by producing a copy of the commercial contract that would subject him to that jurisdiction (i.e., Plaintiff's recorded deed).

Rule 59(e) SCRCP Motions to Alter or Amend

Should the court refuse to grant the above motions to rehear, Plaintiff makes the following motions to alter or amend the June 24, 2014 motion to dismiss Plaintiff's action.

3. Plaintiff objects to every single statement of fact and finding of fact in the court's June 24, 2014 order as none of them are based on the Complaint. Without any affidavits or testimony entered into the record the Complaint is the only thing the trial court can rely upon for making its factual findings. Further all facts alleged in the Complaint must be presumed to be true at this stage of the proceedings so the judge wants discretion to dispute the veracity of any of them. It's obvious the judge predetermined what conclusions and decrees he wanted to make and then manufactured the "facts" he needed to support those conclusions and decrees. Plaintiff moves the court to alter **ALL** of statements of facts and findings of facts to make them comport to the Complaint and then alter the conclusions of law and decrees of the court to agree with the actual facts of the case decided under the laws of the state.
4. Plaintiff raised a constitutional and legal challenge in his memo in opposition to Defendants motions to dismiss (pgs 15-17) to S.C. Code of Laws § 12-37-210 which Defendants cited as the statute that makes Plaintiff's land liable for *ad valorum* taxes. Plaintiff moves the court to make its ruling on that challenge and amend its order accordingly.
5. The trial court cannot both find that it does not have subject matter jurisdiction over the action AND THEN turn around and have jurisdiction to substitute the Defendants and to grant a Rule 12(b)(6) motions to dismiss as those are mutually exclusive options. Plaintiff moves the court to alter these conclusions and decrees by either removing the dismissal for

lack of subject matter jurisdiction or removing the substituting of the defendants and the dismissal under Rule 12(b)(6) to make the decrees at least legally consistent with each other.

6. For the trial court to find that the action can be dismissed under the affirmative defenses of the Tort Claims Act or the Revenue Procedures Act the court must find that the "4 corners of the Complaint" shows those affirmative defenses are available for a Rule 12(b)(6) motion. Plaintiff moves the court to amend its order to show which allegations in the Complaint, if any, the court relied upon to find that those two affirmative defenses are even available to Defendants on a rule 12(b)(6) motion and then amend or adjust the conclusions of law and decision of the court accordingly.
7. The caption of the case as created by the Complaint lists the capacities each party is either suing or being sue in. However in the order the capacities have been removed. Showing the capacities on the order would make it ***void on its face*** and open it to collateral attack so intentionally removing that vital information is prejudicial to Plaintiff. Plaintiff moves the court to amend the caption on the order to return the parties capacities and the jurisdiction of the action (in the common law) so that the caption on the order comports to the Complaint.
8. There is no indication in the order that shows which statute(s), if any, the court relied upon to conclude Plaintiff's action is frivolous, i.e., the court found that Plaintiff has not recorded his deed but then somehow he is still legally liable for *ad valorum* taxes despite S.C. Code of Laws § 12-37-610 showing that a real property owner must record his deed to become liable. Plaintiff moves the court to amend its order to state which law(s), if any, it relied upon to find that Plaintiff's action is frivolous.
9. There is no mention in the order of the judicial determination of Plaintiff's motion for writ of mandamus which was on the docket to be heard during the June 19, 2014 hearing. Plaintiff moves the court to execute its ministerial duty to determine Plaintiff's motion for writ of mandamus and then amend the order to show the court's determination.

Ryan Powell, a private person of full capacity
c/o 25056 Timberlake Drive
Fort Mill, South Carolina [Non-domestic]
919-400-6339

July 1 2014

1 **P R O C E E D I N G S**

2 THE COURT: What I have remaining is Ryan Powell
3 versus Amy Bohler and others. You're Mr. Powell?
4 MR. POWELL: Yes, sir.
5 THE COURT: Mr. Powell is present and representing
6 himself. The defendants are represented by Mr. Keith
7 Martens and Mr. Michael Kendree. This is the defendants'
8 motion to dismiss.
9 MR. MARTENS: May it please the Court. I'm Keith
10 Martens here on behalf of the defendants, and this is a
11 motion to dismiss plaintiff's complaint in its entirety --
12 or actually in whole or in part.
13 Your Honor, the facts that are alleged by the
14 plaintiff are as follows: Plaintiff alleges that he is
15 the owner of a piece of real property that's located in
16 Fort Mill, South Carolina. He alleges that the property
17 was conveyed to him in December of 2012 by a non -- by a
18 now-dissolved trust. Plaintiff alleges he intentionally
19 did not record his deed in York County property records,
20 although the trust did file a document called a notice of
21 sale, transfer, or conveyance. That notice of sale,
22 transfer, or conveyance says that the trust transferred
23 the property to an emancipated male, although it doesn't
24 say -- doesn't identify to whom it was transferred. And
25 the document also states that the trust no longer needs to

1 exist and therefore it is dissolved.

2 Plaintiff alleges that the York County tax assessor

3 then generated and sent a tax bill to the dissolved trust.

4 The trust did not pay the tax bill. The delinquent tax

5 collector then came onto plaintiff's property without his

6 permission, posted a notice of levy, and listed the

7 plaintiff's property for sale on the York County

8 delinquent tax sale. The plaintiff became convinced that

9 his property was going to be sold for delinquent taxes.

10 He paid the taxes under protest.

11 Plaintiff now brought this action against --

12 THE COURT: And complied with the statute with

13 respect to paying under protest?

14 MR. MARTENS: It's not alleged. It just says he --

15 THE COURT: I'm sorry. Okay.

16 MR. MARTENS: Plaintiff has brought this action

17 against Amy Bohler doing business as the York County

18 auditor; Beth Latham, doing business as the York County

19 treasurer; and Robert Kiser doing business as the York

20 County delinquent tax collector. These alleged ten

21 separate causes of actions: Sham legal process, fraud,

22 trespass, a trespass quare clausum fregit. He's alleged

23 money hadn't received. He's alleged slander of title.

24 He's alleged false light, invasion of privacy, and libel.

25 He's alleged breach of contract. He's alleged negligence

1 per se. He's alleged civil conspiracy, and he's also
2 alleged intentional infliction of emotional distress.
3 The plaintiff also has requested a writ of mandamus
4 requiring the defendants to return the taxes that he paid
5 under protest, to avoid any attempts by York County to
6 collect taxes against his so-called allodial land and
7 requiring the defendant to collect any taxes owed from the
8 now-dissolved San Juan holding trust.
9 The case, Your Honor, is pretty clearly an attempt by
10 plaintiff to avoid paying taxes on his real property. The
11 entire case is premised on the notion the plaintiff's
12 property is not subject to tax or is no longer subject to
13 taxation because the plaintiff chose not to record his
14 deed with the York County register of deeds. The
15 plaintiff contends therefore the defendant acted
16 wrongfully when they attempted and then successfully
17 collected property taxes from him.
18 As an initial matter, we believe the court lacks
19 subject matter jurisdiction to hear plaintiff's case.
20 South Carolina Revenue Procedures Act unequivocally says
21 unless the cause of action is a claim challenging the
22 constitutionality of a statute that quote, "There is no
23 remedy other than those provided in this chapter in any
24 case involving the illegal or wrongful collection of taxes
25 or attempt to collect taxes." That's South Carolina code

1 section 12-60-80, the Revenue Procedures Act.
2 THE COURT: Right.
3 MR. MARTENS: The Revenue Procedures Act then
4 provides a contested case procedure where by a quote,
5 Property taxpayer, end quote, may contest the county's
6 collection or attempted collection of taxes. There's a
7 specific procedure outlined in that statute, and the end
8 venue -- the end forum for that contested case procedure
9 is for the taxpayer to file a contested case under
10 contested case procedures of the statute. That case must
11 be brought before the administrative law court. And
12 that's the exclusive remedy, and the statute is clear
13 about that.
14 THE COURT: That's the remedy for an illegal or
15 wrongful collection of taxes or an attempt?
16 MR. MARTENS: Or attempt to collect taxes, and that's
17 exactly what he's alleged is there was a wrongful attempt
18 to collect taxes from him. There's a lot of allegations
19 in here about constitutional rights and statutory rights
20 versus what the constitution allows. The constitution is
21 clear that the administrative law court is a part of the
22 legislative branch of this government. This court, of
23 course, is part of the judicial branch. This court is not
24 the proper court for this case to have been brought.
25 Now, in opposition to our motion, plaintiff has filed

1 a memorandum asking that I be sanctioned for filing this
2 motion, by the way.
3 THE COURT: I don't have that, I don't think.
4 MR. MARTENS: But he also alleges the statute is not
5 applicable to him because he says he's not a quote,
6 property taxpayer. The Revenue Procedures Act defines a
7 property taxpayer as a person who is liable for or whose
8 property or interest in property is subject to or liable
9 for a property tax imposed by statute. The plaintiff
10 falls squarely within the definition of property taxpayer,
11 and if he believes his property was wrongly subject to or
12 liable for a tax that was imposed, his only remedy is
13 under the Revenue Procedures Act. His only remedy is in
14 the administrative law court. This court does not have
15 subject matter jurisdiction, and the entire case should be
16 dismissed for that ground alone.
17 Now, we also have argued under Rule 12(b)6, failure
18 to state a claim upon which relief could be granted.
19 Plaintiff's claims are barred entirely by the doctrine of
20 sovereign immunity. The plaintiff has carefully
21 alleged -- carefully named individual employees of York
22 County rather than York County as his defendant. And it's
23 an attempt to void the sovereign immunity claim --
24 sovereign immunity right that the county government has.
25 The section 15-78-70 of the Tort Claims Act clearly says

1 that in a case against a government or governmental
2 entity, the proper defendant is the municipality, not the
3 individuals, and that when a claim has been brought
4 against an individual employee of the municipality, the
5 governmental entity must be substituted.
6 His defendant is York County, not these individuals.
7 And as the Court knows under traditional concepts of
8 sovereign immunity, there was no right to sue the
9 sovereign. The Tort Claims Act, which was passed in 1986,
10 waived sovereign immunity in certain specific events. It
11 didn't create any new causes of action. It simply pulled
12 back the veil of sovereign immunity that the state
13 otherwise enjoyed in any case.
14 THE COURT: In limited cases.
15 MR. MARTENS: In limited cases. That's exactly
16 right. And the Court has said that the waiver of
17 sovereign immunity must be strictly construed in favor of
18 limiting the sovereign's exposure.
19 Now, if you look at the Tort Claims Act, 15-78-60 --
20 and I also want to point out, Your Honor, in response to
21 the motion, plaintiff has argued, Well, I didn't bring my
22 claim under the Tort Claims Act. I'm not subject to the
23 Tort Claims Act. Plaintiff can't opt in or out of the
24 Tort Claims Act. He's filed tort claims against these
25 governmental employees. His claims are subject to the

1 Act.

2 Section 15-78-60 of the Tort Claims Act states that a
3 governmental entity is not liable for a loss resulting
4 from certain acts. Among those: The execution,
5 enforcement, or implementation of any process; the
6 adoption, enforcement, or compliance of any law, whether
7 the law is valid or not; entry upon property where the
8 entry is expressly or impliedly authorized by law; or --
9 and this is important -- the assessment or collection or
10 taxes or enforcement of tax laws. Those types of
11 activities are clearly immune to suit. They're subject to
12 sovereign immunity. There's no question but that the
13 allegations of the plaintiff's complaint put what these
14 folks did, these individuals did within the scope and
15 course of their public duties. They were simply carrying
16 out the taxation laws of this county and of the state.

17 The Plaintiff has no claim against them regardless of
18 his theory of liability. So Your Honor, we believe the
19 complaint should be dismissed because this court doesn't
20 have subject matter jurisdiction. It's subject to the
21 Revenue Procedures Act. We also believe that the
22 plaintiff does not have a cause of action for the facts
23 that are alleged under his complaint.

24 Now, I've also brought up alleged specific motions as
25 to individual causes of action. I don't know it would be

1 necessary for me to go into those at this time, but I'd be
2 happy to if the Court would like me to.
3 THE COURT: No, not yet. Let me ask you this about
4 the subject matter jurisdiction. I tried to -- I got a
5 copy of the statute, and I tried to plug it into the
6 allegations -- allegations of the complaint and the writ
7 of mandamus. It's not clear to me where the statute
8 12-60-80 says no remedy other than those provided in this
9 chapter for any case involving illegal or wrongful
10 collection of taxes or attempt to collect taxes. I had a
11 hard time drawing that line when you start applying that
12 to some typical common law causes of action. Let's just
13 say, for example -- forget about the operation of the Tort
14 Claims Act to the way in which he has alleged this, not
15 the substance, but the manner in which he has presented
16 these claims. Does the -- do the ALJs hear cases
17 involving intentional infliction of mental or emotional
18 distress? Because it's in the -- because it's in the --
19 because it allegedly happens in the process of trying to
20 collect taxes. I'm confused about that.
21 MR. MARTENS: To be honest with you, I don't know.
22 THE COURT: You see what I mean?
23 MR. MARTENS: Well, I do see, and that's the -- I
24 mean, that's the creative manner in which this has been
25 alleged. "I don't have to pay taxes because I didn't

1 record my deed, and when you made me, it caused me
2 emotional distress." Therefore --
3 THE COURT: For example.
4 MR. MARTENS: -- therefore I have a claim against you
5 for that.
6 THE COURT: Same question about trespass. Part of
7 the delinquent tax collection process, of course, is
8 posting the notice. And he's alleged that going on his
9 property and that and so on. Do you think it's intended
10 that the Revenue Procedures Act applies to that because
11 it's an -- because it's an attempt?
12 MR. MARTENS: I don't see how it -- can read that
13 statute any other way, Your Honor.
14 THE COURT: I just can't see the administrative law
15 court hearing trespass cases.
16 MR. MARTENS: There is no remedy other than those --
17 well, I think --
18 THE COURT: That's what it says.
19 MR. MARTENS: If you put that hand in hand with the
20 Tort Claims Act, it says there's no cause of action
21 related to collection of taxes. I think absolutely that's
22 what that statute means. You can't sue me for posting a
23 notice of levy on your tax for nonpayment of tax.
24 THE COURT: But you can go to the ALJ.
25 MR. MARTENS: You can go to the ALJ and say, "I

1 shouldn't have had to pay that. That wasn't my tax bill.
2 That was somebody's else tax bill."
3 THE COURT: What about they trespassed on my land?
4 MR. MARTENS: I don't think --
5 THE COURT: They're trying to collect my taxes
6 wrongfully and they trespassed on my land. Obviously, I
7 understand why the Tort Claims Act would deal with that,
8 or would propose to deal with that. Anyway, I guess you
9 don't know the answer either.
10 MR. MARTENS: All I can do is read the statute, and
11 the statute says --
12 THE COURT: I understand.
13 MR. MARTENS: -- there's no remedy other than what's
14 outlined in this statute.
15 THE COURT: For the illegal or wrongful collection of
16 taxes or attempt to collect taxes.
17 MR. MARTENS: Or attempt to collect taxes.
18 THE COURT: Suppose -- and this is attenuated, but
19 suppose the delinquent tax collector or the employees of
20 the county -- of the tax collector went out to the
21 house -- went out the house, the property, to post the
22 property. A fight ensues with the owner and they injure
23 the owner, personal injury and the owner brings a claim
24 against the --
25 MR. MARTENS: I don't see -- okay, I think --

1 THE COURT: Do you understand what I mean?
2 MR. MARTENS: Well, I do, but I don't think that
3 claim arises from the attempt to collect taxes. That
4 arises from an assault that occurred during that activity.
5 THE COURT: Okay.
6 MR. MARTENS: I don't think it's the same thing at
7 all.
8 THE COURT: All right.
9 MR. MARTENS: So our argument is that if Mr. Powell
10 wants to contest this issue, he has a remedy, and the
11 statute --
12 THE COURT: And this court can't hear it.
13 MR. MARTENS: And it's not in this court, and even if
14 this court did have subject matter jurisdiction, the Tort
15 Claims Act is clear that there's immunity for this.
16 There's not a tort claim. He can go to Columbia and
17 contest. He can argue his theory of why he doesn't owe
18 these taxes to any court that will hear him, but it's not
19 this one.
20 THE COURT: Mr. Powell?
21 MS. POWELL: Your Honor, I'm --
22 MR. MARTENS: Your Honor, I --
23 THE COURT: Have a seat.
24 MS. POWELL: I'm Ryan's mother, Karen Powell, and --
25 THE COURT: Ms. Powell, are you a licensed,

1 practicing attorney in South Carolina?
2 MS. POWELL: No, I'm not.
3 THE COURT: How old is Ryan?
4 MS. POWELL: Ryan is 21.
5 THE COURT: You cannot represent him and you cannot
6 speak on his behalf.
7 MS. POWELL: I believe, Your Honor --
8 THE COURT: You cannot speak on his behalf and I will
9 not permit it.
10 MR. POWELL: Okay. Can I just hand you an order --
11 THE COURT: No, ma'am. He can talk. He can say
12 anything he wants, present me with anything he wants, but
13 you can't.
14 MS. POWELL: Well, I object because the South
15 Carolina Supreme Court has said the unauthorized practice
16 of law is --
17 THE COURT: That's exactly what you're doing.
18 MS. POWELL: Exactly, and that that is their --
19 THE COURT: And do you know what penalties that
20 carries with it? It's a felony.
21 MS. POWELL: Right. Okay. Well, the Supreme Court
22 is the only court with jurisdiction to determine whether
23 somebody is or is not, and they have said In Re:
24 Unauthorized practice of law. Where the South Carolina
25 Supreme Court held any individual --

1 THE COURT: Give me your full name, please, ma'am.
2 MS. POWELL: Karen Powell.
3 THE COURT: Ms. Powell, I'm ordering you to sit down
4 and be quiet. I will not permit you to argue this case.
5 MS. POWELL: Okay. Okay. I object.
6 THE COURT: If you do, I will hold you in contempt of
7 court.
8 MS. POWELL: Okay. I object.
9 THE COURT: All right. Mr. Powell, I'll hear from
10 you.
11 MR. POWELL: Okay. Defendants said that they tried
12 to collect a tax from me and that their efforts were to
13 make -- or I was a property taxpayer and that that is --
14 my remedy is through that act. The defendants have misled
15 the Court. This is not an issue of subject matter
16 jurisdiction. This is an issue of exhaustion of
17 administrative remedies and therefore not a proper rule
18 12(b)1 motion. The South Carolina Supreme Court held in
19 McCullar v. Estate of Campbell 672 SE2d 784, quote, Tort
20 suits are within the circuit courts jurisdiction. Here on
21 its face, this complaint alleges a tort and therefore is
22 not subject to dismissal for lack of subject matter
23 jurisdiction, end quote. The South Carolina Supreme Court
24 held in Ward --
25 THE COURT: Do you know what subject matter

1 jurisdiction is, Mr. Powell?
2 MR. POWELL: Yes, sir, I do.
3 THE COURT: What? Tell me.
4 MR. POWELL: I don't know off the -- I know what it
5 means. I don't know how to define it.
6 THE COURT: What does it mean?
7 MR. POWELL: It's subject matter jurisdiction. I
8 don't know how to explain it, but it's basically the
9 authority to hear an action, sir, your Honor.
10 So as I was saying --
11 THE COURT: Is that there your mother's note?
12 MR. POWELL: It is from a piece of paper sitting
13 here.
14 THE COURT: Is it from the notes your mother just
15 wrote?
16 MR. POWELL: I could look it up in Black's Law
17 dictionary if you --
18 THE COURT: You could.
19 MR. POWELL: The South Carolina Supreme Court held in
20 Ward v. State 538 SC2d 245, quote, Thus the failure to
21 exhaust administrative remedies goes to the prematurity of
22 a case, not to subject matter jurisdiction. Therefore
23 defendants' Rule 12(b)1 must be denied.
24 THE COURT: Well, do you -- are you saying that you
25 failed to exhaust your administrative remedies and

1 therefore I can't hear it? Is that it?

2 MR. POWELL: I'm saying that they claim that I am a

3 property taxpayer...

4 THE COURT: Right. You've claimed that.

5 MR. POWELL: The Revenue Procedures Act specifically

6 applies only to property taxpayers, so one must be, in

7 fact, liable for property taxes to be required to exhaust

8 those remedies available only to those persons. This

9 Court cannot conclude that there is administrative remedy

10 available to plaintiff unless and until it finds that

11 plaintiff is liable for a property tax, which requires a

12 finding that plaintiff recorded his deed. Since plaintiff

13 has shown that South Carolina code section 12-37-610 is

14 the only statute that makes a landowner liable for

15 property taxes and defendants have failed to show

16 otherwise.

17 As further evidence that plaintiff is not a property

18 taxpayer, there are no allegations in the complaint

19 showing that defendants have ever attempted to collect a

20 tax from plaintiff, and defendants have failed to enter

21 any evidence disputing those allegations.

22 Finally, defendants' argument that plaintiff is

23 required to exhaust administrative remedies is just more

24 evidence that plaintiff's theory of this case is correct,

25 for how could the legislators force any person to abandon

1 his constitutionally protected rights for judicial court
2 for his remedy unless that person has already consented to
3 giving up that right? There is no action under -- other
4 than recording one's deed that a landowner could possibly
5 take to abandon his constitutionally protected right, and
6 without the landowner giving up that right, the
7 legislature mandating that the landowner has to exhaust
8 administrative remedy under the executive branch would be
9 unconstitutional.
10 So until defendant can show the plaintiff consented
11 to giving up his right to a judicial remedy protecting him
12 by the state constitution by recording his deed or
13 otherwise, this motion must be denied.
14 Shall I go on about --
15 THE COURT: Who owes the property taxes?
16 MR. POWELL: San Juan Holdings, Your Honor.
17 THE COURT: So would you agree with me that the
18 county may continue to pursue its process against San Juan
19 Holdings?
20 MR. POWELL: San Juan Holdings is no longer the
21 owner. However, if they wish to pursue to collect taxes
22 for unpaid debt in the past, that's absolutely their
23 right. However, San Juan Holdings has been dissolved. So
24 that's an issue that's not quite relevant to this case --
25 THE COURT: Well, then the question become whether

1 you want to lose your property or not.
2 MR. POWELL: The question is --
3 THE COURT: Because someone has got to pay the taxes.
4 MR. POWELL: I cannot be held liable for someone
5 else's taxes.
6 THE COURT: That's fine, but somebody is going to be
7 paying the taxes, or the property is going to be sold for
8 unpaid taxes.
9 MR. POWELL: That's unconstitutional, Your Honor.
10 THE COURT: No, it's not. That's been decided.
11 Someone is going to pay the taxes.
12 MR. POWELL: The taxes are levied against the owner,
13 not against the land.
14 THE COURT: But the taxes are a lien on the land,
15 hence the county can sell the land to pay the taxes, just
16 like a mortgage. It's a lien on the land by statute and
17 under the constitution. So somebody's got to pay the
18 property taxes. And unless somebody pays the property
19 taxes, the county has a statutory right to engage in the
20 delinquent tax collection process, and ultimately if --
21 unless somebody pays, sell the property to a third party.
22 MR. POWELL: Your Honor, the defendants are aware
23 that San Juan Holdings no longer owns the property and no
24 longer exists, yet they continue to try to deceptively
25 collect taxes from a nonexistent trust and refuse to issue

1 me any bill, notice, or levy in my name, even though they
2 know that San Juan Holdings doesn't exist.
3 THE COURT: They will now give you notice, I'm sure,
4 actual notice of the taxes being due when they're
5 delinquent.
6 MR. POWELL: Your Honor --
7 THE COURT: Because you have intervened and asked for
8 that notice. They'll give it you.
9 MR. POWELL: Your Honor, they can't doing without me
10 recording my deed.
11 THE COURT: Yes, they can.
12 MR. POWELL: How does -- how do I become liable for a
13 property tax if it's not --
14 THE COURT: I'm not assuming that you're liable for
15 it personally. What I'm just telling you is that the land
16 is subject to a lien for property taxes, and if the
17 property taxes aren't paid, the land will be sold at the
18 delinquent tax sale.
19 MR. POWELL: Do you know what statute says that?
20 THE COURT: Sure, I do.
21 MR. POWELL: Could you please cite it?
22 THE COURT: Well, you look it up. You're the one
23 that presented this. I deal with it all the time.
24 MR. POWELL: Okay. I think you said earlier that you
25 have not seen the response to defendants' motion to

1 dismiss and the response to defendants' memorandum in
2 opposition to plaintiff's petition for writ of mandamus?
3 THE COURT: Let me tell you what I do have. I have a
4 response to defendants' motion to dismiss and to
5 substitute defendants. That's from you. I read it. I
6 have a response to defendants' memorandum in opposition to
7 plaintiff's petition for writ of mandamus, and I read it.
8 I have the complaint, which I read, and then I have the
9 defendant's motion, which I read. That's what I've got.
10 Anything else I don't have that you have?
11 MR. POWELL: No, I think you have all the documents,
12 but I move to continue this hearing until I can amend my
13 complaint to add my mother as a co-plaintiff, where she
14 will then have the right to speak in this action. She
15 lives with me in my house and has been affected by this.
16 THE COURT: Yeah, but she doesn't own the property.
17 MS. POWELL: I possess it.
18 THE COURT: Possession doesn't have anything do with
19 it. I deny your motion. Anything else?
20 MR. POWELL: I would like to read from the motion for
21 mandamus.
22 THE COURT: All right.
23 MR. POWELL: The following four incontrovertible
24 principles of law clearly illustrate that Taylor's supra
25 must be controlling in this case at bar. First, if the

1 sale of plaintiff's allodial land has progressed the to
2 issuance of a tax title, how could defendant tax collector
3 transfer rights, title, and interest in property from San
4 Juan Holdings if San Juan Holdings has no right to title
5 or interest in the property to take? Second, since
6 failure to give notice of the expiration of the redemption
7 period is a jurisdictional failure, rendering any title --
8 any tax title void ab initio, how could defendants take
9 plaintiff's allodial land without giving him, at the very
10 least, notice of the expiration of the redemption period.
11 May I just stop in there, I did say plaintiff's
12 allodial land. It is referred in this as plaintiff's
13 allodial land, although I never claimed that it is, in
14 fact, allodial land. It is simply a handle to refer to my
15 land. I never...
16 THE COURT: Doesn't matter to me.
17 MR. POWELL: Okay. Could take plaintiff's land
18 without giving him at least -- at the very least, notice
19 of the expiration of the redemption period. I kind of
20 stopped in the middle of that sentence.
21 THE COURT: Well, I'm pretty sure that as a result of
22 all this, the county will most certainly -- the taxes have
23 been paid under protest for the year that's -- the only
24 year at issue so far, right?
25 MR. MARTENS: That's correct. They've been paid for

1 2012.
2 THE COURT: They're due --
3 MR. MARTENS: They're due for 2013.
4 THE COURT: And the delinquent tax process has begun?
5 MR. MARTENS: Mr. Powell, is that correct they have
6 not --
7 MR. POWELL: And the taxes are still in San Juan
8 Holdings' name.
9 MR. MARTENS: Mr. Powell, is it correct that taxes
10 have not been paid for 2013?
11 MR. POWELL: I am not aware. I have no idea.
12 THE COURT: Okay. Well, the county does.
13 MR. MARTENS: I think that's correct, Your Honor.
14 MR. POWELL: I've never received a bill for those
15 taxes.
16 THE COURT: I thought you didn't want to receive a
17 bill for the taxes. You say you don't owe them.
18 MR. POWELL: If they can me a bill, I'd love for them
19 to do it, but until they can send me a bill, I don't see
20 how I can be held liable. They've never sent me a bill.
21 THE COURT: You tell them you're not an owner.
22 MR. POWELL: Excuse me?
23 THE COURT: You tell them you don't own the property
24 because the deed isn't recorded.
25 MR. POWELL: That's not true.

1 THE COURT: That's what the pleadings you filed say.
2 MR. POWELL: No, just because I haven't recorded the
3 deed doesn't mean I don't own the property. I can own the
4 property and not record the deed. There is no law
5 requiring --
6 THE COURT: I agree with that.
7 MR. POWELL: -- to record my deed.
8 THE COURT: I agree with that. Well, then you are
9 the owner, right?
10 MR. POWELL: Yes, sir.
11 THE COURT: If you'll give the county your address,
12 I'll assure you they'll send you notice. And the
13 delinquent tax process, based on my experience, has
14 probably begun as to the 2013 taxes.
15 MR. POWELL: South Carolina code annotation 13-76-10
16 states the following: Each person is liable to take -- to
17 pay taxes and assessments on the real property that he
18 owns as recorded in the public records for deeds of that
19 county in which the property is located, end quote.
20 THE COURT: Right.
21 MR. POWELL: The deed is not recorded, thus the
22 person is not liable.
23 THE COURT: That's why they're not sending you a
24 notice. That's why they're not sending you a notice.
25 MR. POWELL: And I'm not liable. I don't owe --

1 THE COURT: I didn't say you were liable.
2 MR. POWELL: Then --
3 THE COURT: What I said is the property is going to
4 be sold for delinquent taxes if you don't pay it, or
5 somebody doesn't pay it. The fact the deed has not been
6 recorded is exactly the reason I suppose that the county
7 hasn't been sending you a bill. What the county will
8 likely do is publish notice in the paper to San Juan
9 Holdings to advise them of the delinquent tax collection
10 process. They will also post a notice on your -- on the
11 property that you own but for which you have not recorded
12 the deed, because they can't locate San Juan Holdings.
13 They have no good address for San Juan Holdings.
14 MR. POWELL: Your Honor --
15 THE COURT: And thereby, you will be notified.
16 MR. POWELL: Your Honor, Defendant Treasurer's
17 position that she can take my land for San Juan Holdings,
18 that is patently false. That would give the defendants
19 the authority to violate all inherent right of plaintiff,
20 or myself, discussed above. This is, again, from the
21 motion for mandamus. More specifically, the South
22 Carolina Supreme Court has steadfastly held that the tax
23 execution attaches to the defaulting taxpayer, not the
24 property. It is a common assumption that a tax execution
25 is issued against the property. Such is not the case. It

1 is issued against the defaulting taxpayer.
2 THE COURT: Well, it's curious to me the statute
3 permits the sale of the property for delinquent taxes if
4 that's the case.
5 MR. POWELL: As I continue reading, it says, "All
6 taxes, assessments, and penalties legally assessed shall
7 be considered and held as a debt payable to the state by a
8 party against whom the same shall be charged."
9 THE COURT: That's true.
10 MR. POWELL: And the taxes may be made out of the
11 property the taxpayer has. It has thus seen that the
12 execution must issue against the true owner of the
13 property.
14 THE COURT: All right. Mr. Powell, I've heard
15 enough. You may have a seat. It gives me concern to see
16 young people who obviously have a good mind misled into --
17 what am I trying to say? -- fallacies and theories which
18 have no basis in the law, and will ultimately only cause
19 you trouble. And you have been misled. There's no basis
20 in the law for what you say. The plaintiff is entitled to
21 judgment. Now --
22 MR. MARTENS: Your Honor, you said plaintiff is
23 entitled to judgment?
24 THE COURT: Defendant. Defendants. First of all, I
25 guess we need to substitute York County, because under the

1 Tort Claims Act, the individual defendants are entitled to
2 be dismissed and the county substituted as a defendant. I
3 order that.
4 I am not frankly not -- I'll do it this way. I'm
5 going to dismiss the plaintiff's case with prejudice under
6 your alternate theory, which would be characterized as
7 12(b)6, because he states no cause of action that he can
8 maintain against the county.
9 MR. POWELL: Your Honor --
10 THE COURT: With prejudice. And that's based upon
11 the application of the Tort Claims Act. Now -- and this
12 is counterintuitive or really counterproductive, but to
13 the extent that -- it does appear from the complaint that
14 all causes of actions alleged, while couched in terms of
15 common law remedies, arise out of acts intended to carry
16 out a tax collection process. To the extent that that
17 complaint is construed to involve the illegal or wrongful
18 collection of taxes or attempt to collect taxes, the Court
19 does lack subject matter jurisdiction. I'm not sure of
20 the breadth and scope of the statute in that regard when a
21 person alleges a common law cause of action, which, in
22 this instance, would be barred by the Tort Claims Act. I
23 would appreciate your comments on how on that would be
24 handled.
25 MR. POWELL: Your Honor --

1 THE COURT: Just a minute.
2 MR. MARTENS: I think to the -- as I said in my
3 argument, to the extent the plaintiff wants to argue he
4 can't be made to pay taxes on this property, I think he
5 can bring that claim under the Revenue Procedures Act.
6 THE COURT: Yes.
7 MR. MARTENS: He can go to Columbia and he can argue,
8 "I don't have to pay this because I didn't record my
9 deed."
10 THE COURT: Okay.
11 MR. MARTENS: But with regard to the acts that have
12 been the basis of this complaint, which is these people
13 trespassed, they hurt my feelings, they did all this bad
14 stuff because I had to pay this to avoid my property being
15 sold, I think there's no cause of action for that.
16 THE COURT: Under the Tort Claims Act?
17 MR. MARTENS: Under the Tort Claims Act.
18 THE COURT: I think that's a fair distinction, and
19 that's really what I intend to do.
20 Mr. Powell, to the extent that you allege that the --
21 just allege in general that the effort to collect taxes on
22 your property is illegal, this court lacks subject matter
23 jurisdiction. That is a matter that is entirely -- even
24 if it were a reappraisal and reassessment, right, of the
25 property, if you contested the value they assigned to the

1 property, your remedy is not in this court and this court
2 doesn't have jurisdiction. Other than that, it's entirely
3 a matter to be taken up in the administrative law court as
4 set out in section 12-60-80.
5 To the extent that the causes of action that you
6 allege are common law causes of actions for injury
7 resulting from acts of York County, those -- your
8 complaint fails to state a cause of action upon which
9 relief can be granted because they are barred by the Tort
10 Claims Act.
11 MR. POWELL: Your Honor, the Tort Claims Act doesn't
12 apply here. The South Carolina Supreme Court in Wade V.
13 Berkeley County, 529 SC 2d 743, held, quote, We hold
14 15-78-70 (d) does not bar Wade's action against the county
15 under the Tort Claims Act. Wade's claim against Pierce
16 was not under the Tort Claims Act. It was an action
17 against Pierce as an individual facing personal liability.
18 THE COURT: I understand.
19 MR. POWELL: And this is against an individual. It's
20 not the county.
21 THE COURT: It arises out of the effort to collect
22 taxes.
23 MR. POWELL: They haven't collected any taxes from
24 me, Your Honor.
25 THE COURT: I know that. Any response to that,

1 Mr. Martens?
2 MR. MARTENS: Your Honor, the fact is they did
3 collect taxes.
4 THE COURT: Well, he paid them under protest. They
5 didn't collect it from him. He paid them under protest.
6 MR. MARTENS: I understand.
7 THE COURT: Finally, Mr. Powell, the entirety of what
8 you have presented to the court here is nonsense. People
9 have an obligation to pay property taxes. If -- they
10 don't have to pay them, but they're subject to losing
11 their property if they don't. Your -- the position you've
12 asserted in your complaint and in this supposed writ of
13 mandamus -- petition for writ of mandamus is frivolous.
14 There is no basis upon which a reasonable lawyer or a
15 reasonable person under existing law or any extension of
16 it would make such a claim.
17 MR. POWELL: Your Honor, am I entitled to a fair
18 hearing on this action?
19 THE COURT: You just had it.
20 MR. POWELL: Are your salary, benefits, and pension
21 paid by the York County council?
22 THE COURT: That's none of your business. It's
23 public record.
24 MR. POWELL: South Carolina code section 14-11-30
25 says that compensation of master in equity, the governing

1 body of --

2 THE COURT: Let me correct you about something. I'm

3 appointed by the governor of South Carolina upon the

4 recommendation of the general assembly of South Carolina.

5 York County has nothing do with whether I do my job.

6 MR. POWELL: Right, but --

7 THE COURT: And if you don't believe that, ask York

8 County if I've ruled against them.

9 MR. POWELL: Section 14-11 --

10 THE COURT: That's the end of that. We're through.

11 You are excused.

12 MR. MARTENS: Would you like --

13 THE COURT: E-mail me an order. You get his e-mail

14 address so you can send him a copy.

15 (Whereupon, the proceedings were concluded.)

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1 THE COURT - Okay, next I have Ryan Powell against
2 Amy Bohler and others. Mr. Powell? Give me just a minute
3 please. (Brief pause) All right, I've received a number of
4 things in this matter, but what I have on the Clerk's
5 schedule is simply a motion under Rule 59 to reconsider my
6 prior Order. Is that right?
7 MR. POWELL - Yes.
8 THE COURT - Okay. It's your Motion, Mr. Powell.
9 MR. POWELL - Judge, I brought my claim in the
10 common law as a private person, which is the common law
11 term for a man who is not a corporate fiction created by
12 and subject to this State, so please do not address me
13 using any title like Mr., which is applicable only to
14 fictions.
15 THE COURT - I'll address you in the manner I
16 customarily address all people who appear in this Court.
17 MR. POWELL - I will presume that any further use
18 of Mr. to address me was done by you in error and that you
19 are addressing me as a man. I, a man, accept your oath of
20 office, that you swore as a man before you took office. I
21 remind you of your duties to me to first do no harm to me,
22 and second, protect my private property under the mandatory
23 provisions of the constitutions and the laws of this State
24 which you agreed to uphold. My ---

1 THE COURT - The first duty applies to doctors.
2 That's the hippocratic oath.
3 MR. POWELL - My action pivots in ---
4 THE COURT - My job is to do justice to you.
5 MR. POWELL - My action pivots entirely on one
6 question and only one question, and that is, am I liable to
7 pay any taxes on my private property or am I not. First,
8 during the hearing of the Defendant's Motion to Dismiss,
9 you found that I was not liable, because I did not record
10 my deed, but then you turned around and found that my land
11 was liable simply because it is within some imaginary
12 boundary line. However, the very definition of liable
13 means responsible to do something and likely to be harmed.
14 Since my land is an inanimate object, it can never be
15 responsible to do anything, so by the very definition of
16 liable, it is impossible for my land to be liable. More
17 importantly, since I am the one being harmed and by the
18 very definition of liable I am liable. So you determine
19 that I am not liable because I did not record my deed, but
20 at the same time I am liable, because I am likely to be
21 harmed. It is impossible to be both. Second, there is no
22 way my land can be liable for a tax, because that would
23 violate my natural rights to own property free of any
24 taxation. The Oregon Supreme Court unanimously held in
25 Redfield v. Fisher that "An individual, unlike a

1 corporation is not subject to tax for the mere privilege of
2 existing and owning property which are natural rights."
3 May I hand up the case?
4 THE COURT - Yes, sir.
5 (DOCUMENT HANDED UP TO THE COURT.)
6 THE COURT - Thank you.
7 MR. POWELL - If such natural rights existed in
8 Oregon in 1930, then they exists for me here today, for no
9 government can ever interfere with a man's natural rights.
10 Also, in an international document signed by the United
11 States in 1948 named the Universal Declaration of Human
12 Rights, the world declared that everyone has the right to
13 own property. Property is defined in Am.Jur.2d, part 2
14 section 1, definitions as "The unrestricted and exclusive
15 rights to a thing, the right to dispose of it in every
16 legal way, to possess it, to use it and to exclude everyone
17 else from interfering with it." So according to that
18 definition, if Defendants have the authority to interfere
19 with my exclusive use of my property by seizing it and
20 selling it, then by the very definition of property, my
21 land is not my property. So your decision that my land is
22 liable violates my human right to own property and my
23 natural right to own property free of any taxation. Third,
24 there is no way for me to be liable, because there is only
25 one statute that makes anyone liable, and that one statute

1 is 12-37-610. The title for that statute reads, "Persons
2 liable for taxes and assessments on real property." The
3 title alone leaves no room for any misunderstanding that
4 this is the statute that creates the liability. The
5 statute then goes on to read, "Each person is liable to pay
6 taxes and assessments on the real property that as of
7 December 31st of the year preceding the tax year, he owns in
8 fee for life, for as a trustee as recorded in the public
9 records for deeds of the County in which the property is
10 located." That statute could not be any clearer about who
11 the legislature made liable for taxes and assessments on
12 real property. Fourth, the following four published cases
13 decided by the higher Courts of this State prove that a
14 person must record their deed to become liable. "It is a
15 common assumption that a tax execution is issued against
16 the property. Such is not the case. It is issued against
17 the defaulting tax payer. It is thus seen that the
18 execution must issue against the true owner of the
19 property." Taylor v. Jennings. "Tax execution is not
20 issued against the property. It is issued against the
21 defaulting tax payer. Statute is explicit that land shall
22 be listed and accessed and levied on and sold in the name
23 of the true owner." Aldridge v. Rutledge. "Assessment,
24 levy and execution and sale must be made in the name of the
25 true owner." Osborne, et al. v. Valentine. "Tax sale

1 under and execution issued against one who is not the owner
2 of the land is void." Donahue v. Ward. These four cases
3 prove that the name on the recorded deed must match the
4 name of the actual owner of the property being seized and
5 sold. This requirement declared to be the law of the State
6 ensures that the property is being taken only from an owner
7 who has recorded his deed. Also Donahue v. Ward shows that
8 the only thing Defendants are achieving with their actions
9 by seizing and selling my land in the name of someone who
10 is not the true owner is to create a void tax sale, not
11 voidable, but void, annullity, non-existent as if it never
12 happened.
13 THE COURT - Let me ask you a question.
14 MR. POWELL - I'd ask you to ---
15 THE COURT - Would be your position that if nobody
16 recorded a deed since the King of England transferred this
17 land to individuals, that there would be nobody to pay
18 taxes?
19 MR. POWELL - I'd ask you to hold your questions
20 until I finish my opening.
21 THE COURT - I get to ask questions. Answer it.
22 MR. POWELL - Yes.
23 THE COURT - Okay. Go ahead.
24 MR. POWELL - So now to sum up, I have shown that
25 Defendant's theory that my land is liable, which you ruled

1 in favor of, violates my human and natural rights. It's
2 impossible by the very definition of liable, creates
3 absurd, illegal and unconstitutional results, violates
4 holdings of the higher Courts stating that any seizure and
5 sale must be made in the name of the true owner and
6 violates universal law. That is, if you deny my Motion to
7 Reconsider, you will have made a judicial determination
8 that I am a slave with no rights to own property. On the
9 other hand, Defendants have supported their absurd theory
10 with -- well, with nothing, except their desire to not be
11 held liable for their ---
12 THE COURT - I think it's an absurdity for you to
13 equate your status with that of slavery, which is an
14 entirely different matter. That's an offense.
15 MR. POWELL - The Defendants have supported their
16 theory with nothing, except their desire to not be held
17 liable for their wrongs done to me and your desire to help
18 them. You are required to reverse your Order dismissing my
19 action which is harming me, a man, and immediately grant my
20 Motion for Writ of Mandamas. Since my Writ probably cannot
21 be entered before the sale of my land on Monday, I move the
22 Court to enter an emergency temporary injunction enjoining
23 the Defendants from auctioning off my private property this
24 Monday, less than two business days from now.
25 THE COURT - Anything further?

1 (No response)

2 THE COURT - Mr. Martens?

3 MR. MARTENS - May it please the Court. Your
4 Honor, this is a Rule 59 Motion. Our Supreme Court has
5 said that there are basically two grounds for a Rule 59
6 Motion. One is, a party may file a motion I believe if the
7 Court's misunderstood or failed to consider an argument he
8 has made. The second ground is that a party must file a
9 motion where he has raised an argument the Court did not
10 rule upon. Rule 59 Motion is not an opportunity to raise a
11 new argument or some new theory and some novel theory that
12 was not asserted in the original complaint. This complaint
13 was essentially a tort action seeking damages from three
14 York County government officials who were carrying out
15 their duties in executing taxing procedures of this County
16 and of the State. Your Honor ruled that there is no civil
17 liability for that under the Tort Claims Act. Your Honor
18 also ruled that if Mr. Powell wishes to challenge the
19 authority of the County to execute or levy taxes against
20 his property, that there is a remedy provided him under the
21 Revenue Procedures Act, and that this not the proper Court
22 to raise that challenge. Mr. Powell has not made any
23 arguments today regarding the substantive issues in his
24 complaint, and we believe his motion should be denied in
25 its entirety.

1 THE COURT - It is denied. I will do an Order.
2 Thank you.
3 (END OF TRANSCRIPT)
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Stonewall Jackson Kimball, Special Circuit Court Judge

Case No. 2014-CP-46-1425
Appellate Case No. 2014-002578

Ryan Powell, ... Appellant,

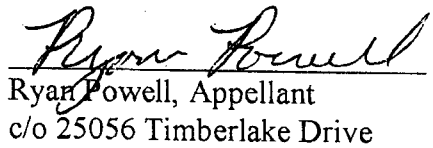
v.

Amy Boheler d/b/a York County Auditor,
Beth Latham d/b/a York County Treasurer, and
Robert Kiser d/b/a York County Delinquent Tax Collector,
each in their individual and official capacities, ... Respondents.

Rule 211 (b) SCACR Certificate

I certify that the Final Brief of Appellant and the Final Reply Brief of Appellant are identical to the initial briefs Appellant previously served under Rule 208 except that the references to the documents have been changed to reference the Record On Appeal and a minor correction of typographical errors and misspellings.

April 11, 2015



Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina
(919) 400-6339

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FINAL BRIEF OF APPELLANT

Ryan Powell, Appellant
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

97

Statutes

Other Authorities

Rules

Constitutional Provisions

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err by finding Appellant is liable for taxes and assessments on his land under SC Code of Law § 12-37-210 and therefore his claims are *entirely frivolous*, when the correct liability statute is S.C. Code of Laws § 12-37-610 and according to it, Appellant is clearly NOT liable?

   i. Is S.C. Code of Laws § 12-37-610 the statute that lays the liability for taxes and assessments on real property?
   ii. OR is S.C. Code of Laws § 12-37-210 the statute that lays a liable for taxes and assessments on real property?
   iii. Is it even possible for S.C. Code of Laws § 12-37-210, or any other statute, to lay an *involuntary* liability for taxes and assessments on Appellant or his land, without him having to record his deed, without violating many laws, legal principles, and Constitutional prohibitions?

II. Did the trial court err by dismissing Appellant's action finding that the circuit court does not have subject matter jurisdiction over Appellant's tort claims?

   i. Does the Revenue Procedures Act affect the subject matter jurisdiction of the circuit court to hear or decide tort claims?
   ii. Does the Revenue Procedures Act even apply to Appellant or his case?

III. Did the trial court err by substituting "*York County*" for the named Respondents when Appellant's claims were not brought under the Tort Claims Act against a "*governmental entity*"?

IV. Did the trial court err by finding Respondents have sovereign immunity from Appellant's claims that he brought against them in their individual capacity for actions alleged to have been taken outside the scope of their official duties?

   i. Does the Tort Claims Act even apply to an action brought against agents of a governmental entity in their individual capacity for actions alleged to have been taken outside the scope of their official duty?
   ii. Was it premature to even consider whether the Respondents were acting within the scope of their official duties during a pre-answer motion hearing?

V. Did the trial court err by dismissing Appellant's claims with prejudice when Respondents failed to demonstrate Appellant did not allege facts sufficient to state a valid claim?

   i. Did Respondents demonstrate any defects in Appellant's "breach of contract" cause of action that could support its dismissal "as a matter of law"?

VI. Did the trial court err by making findings of fact that are not supported by the record and conclusions of law based on those unsupported findings?

VII. Did the trial court err by finding that Appellant's mother is engaged in the "unauthorized practice of law" or disallowing her from providing Appellant "assistance of counsel"?

i. Does the Supreme Court of South Carolina have the authority to create a rule that requires any person must first obtain "approval" in order to exercise a right guaranteed to them by the Constitution?

STATEMENT OF THE CASE

Nature of the Case

This case raises novel issues of first impression. The key issues in this case involve whether Appellant, Ryan Powell ("Ryan" hereinafter) is liable for any taxes on his land when he did not record a deed for his land and whether or not county tax collectors are authorized to non-judicially take property owned by one person to pay the debt owed by another person. Ryan has a right to demand the State do its duty to protect his property. Therefore, after Respondents ignored Ryan's three notices informing them that they were acting wrongly, outside their authority, and criminally, Ryan had no other choice but to pursue a legal remedy. Accordingly, Ryan brought a common law action against Respondents in their individual capacity for damages they caused while acting outside the scope of their official duties and also in their official capacity for the issuance of a writ of mandamus to compel Respondents to do their ministerial duty to correct their false and fraudulent records that are facilitating their continuing attempts to non-judicially take Ryan's property for someone else's debt.

Statement of Pertinent Facts

On December 20, 2012 San Juan Holdings, a private, unregistered trust (hereinafter "**SJH**"), sold and assigned all rights, title, and interest in their land to Ryan [R. pg 10, #11]. On that same day the trustee for **SJH** executed and recorded into the land records of York County Register of Deeds a Notice of Sale and Transfer evidencing the existence of an instrument transferring ownership of their property to a private unnamed man [R. pg 10, #12; R. pg 22 exhibit A]. Ryan intentionally did not record a deed with York County Register of Deeds for his land [R. pg 10, #18]. Respondents refused to do their official duties to update their records to show that **SJH's** property had changed ownership [R. pg 10, #11]. Instead Respondents created void and unenforceable executions, levies, notices of levy, and then attempted to auction off Ryan's property in the name of one that they knew was not the true owner of Ryan's property [R. pgs 10-13, #16-34]. Respondents took these actions in spite of the multiple notices they had received evidencing the change in ownership of Ryan's land and multiple notices showing their actions were both criminal and outside their jurisdiction and statutory authority [R. pg 10, #16; pg 11, #25; pg 12, #30; pg 18, #74; pg 19, #81-82].

Course of Proceedings

On April 30, 2014 Ryan filed his common law action into the 46th judicial circuit court. Before Respondents answered Ryan's claims, they filed motions to dismiss and to substitute the Defendants. On June 19, 2014 during the hearing of Respondents' motions the trial judge concluded that Ryan is liable to pay the tax debt of the previous owner of his property simply because his land is on the soil of the land mass commonly called South Carolina and that since Ryan is liable to pay the debt of the previous owner his claims are entirely frivolous. After finding Ryan's land can be taken for someone else's

debt, the trial judge found that the South Carolina Revenue Procedures Act divests the circuit court of subject matter jurisdiction to hear Ryan's common law claims. Notwithstanding those conclusions, the trial judge then proceeded (by his own determination without subject matter jurisdiction) to order that "York County" be substituted for the three named Respondents. Then the trial judge dismissed all of Ryan's claims with prejudice concluding the Tort Claims Act bars Ryan's claims.

None of the facts that Ryan alleged in his complaint, verified under penalty of perjury, were ever contested by Respondents; in fact, they raised the affirmative defense of "*sovereign immunity*" thereby admitting all facts alleged in Ryan's complaint.

Ryan timely filed and served a Rule 59 SCRCP motion to alter or amend the June 25, 2014 order dismissing his claims. Ryan's motions were heard on October 16, 2014. The trial judge denied Ryan's motions to alter or amend and that final order was entered on October 23, 2014. Ryan received written notice of its entry on October 25, 2014. The notice of appeal for this case was served on Respondents and filed in the trial court on November 21, 2014. The notice of appeal was filed into the appellate court on December 1, 2014. A transcript was timely ordered and received by Ryan on December 13, 2014.

STANDARDS OF REVIEW

Being this case involves many diverse errors, this court will be called upon to use the following three different standards of review depending on the issue raised:

1. In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000). The issue of interpretation of a statute is a question of law for the court. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). This Court undertakes a de novo review of all issues of law, and is free to decide matters of law with no particular deference to the trial court. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008). The question of

subject matter jurisdiction is a question of law. Bridges v. Wyandotte Worsted Co., 243 S.C. 1, 132 S.E.2d 18 (1963).

2. "In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.", Spence v. Spence, 628 SE 2d 869 (SC Sup Ct 2006) [internal citations omitted].

3. "[W]hen reviewing an action at law, ... the appellate court will not disturb the judge's findings of fact as long as they are reasonably supported by the evidence.", Moore v. Benson, 700 SE 2d 273 (2010).

ARGUMENT

I. **Because S.C. Code of Laws § 12-37-610 is the statute that lays the liability for taxes and assessments on real property, and not S.C. Code of Laws § 12-37-210, it was error for the trial judge to find that Ryan is liable for taxes and assessments on his land simply because his land is within the boundaries of South Carolina and conclude therefore that Ryan's case is *entirely frivolous*.**

Standards of Review #1 - Novel question of law – *de novo* review.

"[A]ny legislation which is in derogation of common law must be strictly construed and not extended in application beyond the clear legislative intent.", Smalls v. Weed, 293 S.C. 364, 360 S.E. (2d) 531 (Ct. App. 1987).

Whether or not Ryan is liable for taxes on his land is the key issue of his case. For if Ryan is liable then: he could not have been damaged by agents doing their jobs collecting a debt he owes; Ryan would be a taxpayer who is required to use the South Carolina Revenue Procedures Act ("**RPA**" hereinafter); and Ryan's case would indeed be frivolous. **But, on the other hand,** if Ryan is **NOT** liable then: Ryan would have been wronged by Respondents collecting a debt from a person who does **NOT** owe them a debt (i.e., a non-taxpayer); Ryan could **NOT** even use **RPA** if he wanted to as it can only

be used by *taxpayers*; and Ryan's case would be meritorious so he would be entitled to damages for Respondents wrongs.

Respondents argued in their motion to dismiss that S.C. Code of Laws § 12-37-210 is the statute that lays a liability for taxes and assessments on all land found within the geographic boundaries of South Carolina and therefore Ryan's land is liable for the taxes and assessments that Respondents are charged with collecting [R. pg 32, #10]. Ryan argued that it is S.C. Code of Laws § 12-37-610, and only that statute, that lays a liability on persons who record their deeds with the Register of Deeds in the county wherein their property is located [R. pgs 47-49, #11] and since Ryan has not recorded a deed [R. pg 10, #18] then clearly he is not liable so his property cannot be non-judicially taken by Respondents to satisfy someone else's debt.

Even though the trial judge agreed that Ryan is **not liable** for the taxes at issue [R. pgs 78 line 25 to pg 79 line 1] he then decided that Respondents can and will nonetheless **take Ryan's property** if Ryan doesn't pay the debt someone else owes the Respondents [R. pg 79, lines 3-13]. The trial judges' conclusions are impossible as liable means likely to be harmed[1]. **If** Ryan can lose his land for someone else's debt then he is "*likely to be affected or harmed*" so by the very definition of liable, the trial judge found Ryan is liable to pay someone else's debt! This proves the trial judge's conclusions are entirely erroneous as one cannot be simultaneously not liable and liable for a debt.

Nonetheless, since this is a novel issue of first impression that this Court must decide *de novo*, Ryan will show that Respondents' theory that S.C. Code of Laws § 12-37-210 is the statute that makes Ryan, or his land, liable is clearly erroneous and that

[1] Definition of liable from Merriam-Webster's dictionary :- "*legally responsible for something, likely to be affected or harmed by something, likely to do something*".

instead it is S.C. Code of Laws § 12-37-610 that lays the liability for taxes and assessments on *real property* and since Ryan did not record a deed for his land then he is not liable.

i. **S.C. Code of Laws § 12-37-610 is the statute that lays the liability for taxes and assessments on *real property* and since Ryan did not record a deed then he is not liable for any taxes or assessments on his land.**

The trial judge and Respondents' attorney outright denied that whether Ryan recorded a deed or not has **any** effect whatsoever on the issue of his liability [R. pg 79 lines 1-13]. Whether or not Ryan recorded a deed is not only important to the issue of his tax liability - it is the **ONLY** fact that matters when determining his tax liability. For how can Respondents administer Ryan's property (Ryan's recorded deed) if York County Register of Deeds is not holding Ryan's property (Ryan's recorded deed)? The mere pretense is absurd.

S.C. Code of Laws § 12-37-610 is the ONE and ONLY statute that makes any person liable for the payment of taxes and assessments on their *real property*:-

> S.C. Code of Laws § 12-37-610: "Persons liable for taxes and assessments on real property.
>
> Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located; or ... [a situation that is clearly not applicable]...".

The title of S.C. Code of Laws § 12-37-610 alone shows that this is **THE** statute that lays a liability for the taxes at issue in this case. S.C. Code of Laws § 12-37-610 clearly states that the only persons the legislature has made liable for the taxes and assessments on **their** *real property* are those persons who record **their** "*in fee, for life, or as trustee*" deeds in *the public records for deeds* (Register of Deeds) in the county wherein their

property is located. Under the cannon of statutory construction "*Inclusio unius est exclusio alterius*" since S.C. Code of Laws § 12-37-610 states it ONLY lays a tax liability onto owners who have recorded their deeds then that is the only situation where a person has been made liable and all other situations not listed are not included, see:-

> "*Inclusio unius est exclusio alterius*. The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others ... This doctrine decrees that where law expressly describes [a] particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded", Black's Law Dictionary, 6th ed.

The unopposed, verified under penalty of perjury, allegations in the complaint show Ryan is the "absolute owner" of his land [R. pg 8, #1] and that he did not record a deed [R. pg 10, #18] so when those facts are applied to the clear and unambiguous language of S.C. Code of Laws § 12-37-610 it leads to the undeniable and singular conclusion that Ryan is not liable for the payment of any taxes or assessments on his land.

ii. **S.C. Code of Laws § 12-37-210 does NOT lay a liable for taxes and assessments on land so it was error for the trial judge to find that Ryan's land is liable simply because it is within the boundaries of South Carolina.**

Everything about *this State* depends upon voluntary agreement. The very threshold entrée into *this State* is voluntary agreement, see Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936). Even becoming a "*property taxpayer*" is purely voluntary as there is no statutory requirement mandating one must record his deed.

In denial of the unquestionable voluntary nature of transacting business with *this State* and in denial of S.C. Code of Laws § 12-37-610 clearly professing to be **THE** liability statute, Respondents in their motion to dismiss frivolously raised S.C. Code of Laws § 12-37-210 as the statute that lays an *involuntary* tax on Ryan's **land** [R. pg 32, #10]. However to come to that interpretation Respondents first rewrote the actual

language of S.C. Code of Laws § 12-37-210 to make it comport to their idea of who (or under their interpretation WHAT) **should** be liable for the taxes at issue [R. pg 32, #10]:

> Pertinent part of actual Statute - "All real ... property in this State...shall be subject to taxation";
>
> As misinterpreted by Respondents - All land within the boundaries of South Carolina is liable for a tax.

The trial judge agreed with Respondents and accepted their interpretation [R. pg 74 lines 7-23].

> "Courts have no power to rewrite legislative enactments to give effect to their ideas of policy", Busse v. Commissioner of Internal Revenue, 479 F2d 1147 (7th circuit 1973).

While it is clear that a judge has no authority to rewrite a legislatively created statute to fit his "*ideas of policy*", the trial judge's rewriting S.C. Code of Laws § 12-37-210 is clearly error because as Bill Clinton, the former president of US Inc., famously stated during grand jury testimony pertaining to his affair with Monica Lewinski – "*It depends on what the meaning of the word 'is' is*"! While the public laughed at that remark, all those learned in the law knew that what Mr. Clinton was stating was absolutely correct. For being an attorney himself, Mr. Clinton knew quite well that every jot and tittle, comma, or word in the law has a very specific reason for being there, that reason being to create a very precise and very limited meaning.

In the statutory language of S.C. Code of Laws § 12-37-210, "land" does not mean the same thing as "real property", "in" does not mean the same thing as "within", "this State" does not mean the same thing as "the boundaries of South Carolina", and "subject to taxation" does not mean the same thing as "liable for a tax". Therefore, the meaning of S.C. Code of Laws § 12-37-210 had to have been **drastically** changed from what the

legislature's intention was in passing that statute to what the Respondents and the trial judge's conclusions were.

For example let's analyze just the substituting the terms "*in this State*" with "*within the borders of South Carolina*". There is never a need to define a term in a statute UNLESS the statute writers want the term to mean something other than what it would mean in ordinary language[2]. Since the term "*in this State*" (or "*this State*" or "*State*") has NOT been defined in Chapter 37 of Title 12 it's meaning must be found in ordinary language and **cannot mean** "*within the borders of South Carolina*" because if it did mean that, the statute writers would have had to include that specific definition to give that term that exact meaning as they **had to do** in S.C. Code of Laws § 12-28-110 (35).

> See S.C. Code of Laws § 12-28-110 : "Definitions. As used in this chapter: ...
>
> (35) "In this State" means the area within the borders of South Carolina including all territories within the borders owned by or added to the United States of America.".

As more evidence that "*in this State*" cannot mean "*within the borders of South Carolina*" one only needs to consider **all the words** in S.C. Code of Laws § 12-37-210, instead of ...leaving out ... all the non-applicable words.

> Actual language of S.C. Code of Laws § 12-37-210 [with **emphasis** added]:-
>
> "All real and personal property in **this State**, personal property of residents of **this State** which may be kept or used temporarily out of **the State**, with the intention of bringing it into **the State**, or which has been sent out of **the State** for sale and not yet sold, and all moneys, credits and investments in bonds, stocks, joint-stock companies or otherwise of persons resident in **this State** shall be subject to taxation.".

[2] "Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.", Berkeley County School District v. South Carolina Department Of Revenue, 679 SE 2d 913, 383 SC 334 (SC Sup Ct 2009).

Looking at the entire sentence of S.C. Code of Laws § 12-37-210 it becomes quite clear that "*this State*" and "*the State*" obviously refer to two different things. Notice in the actual language when it refers to an area of land the term "**the State**" [the territory] is used and when it refers to some body corporate the term "**this State**" [the corporation] is used. So when considering the language of the entire statute it is clear the "*this State*" is indeed a body corporate and not a territory or land mass. Therefore, according to S.C. Code of Laws § 12-37-210 the *real property* has to first be "in" the corporation (books and records) to become subject to taxation.

Next, if S.C. Code of Laws § 12-37-210 is the statute that lays a tax liability on all owners of land then the language of the statute itself is overbroad and void for vagueness as it does not state that any person is liable, who is liable, or when and how they become liable. All tax laws **MUST** lay the liability on some person as only a conscience being has the ability to read and execute the law, contract for debts, earn currency to pay their contractual debts, etc. and clearly S.C. Code of Laws § 12-37-210 does not create a liability on any person, see :-

> "Moreover, even the collection of taxes should be exacted only from persons upon whom a tax liability is imposed by some statute", Botta v. Scanlon, 288 F.2d 504, 506 (2nd circuit 1961).

> "Keep in mind the well settled rule that the citizen is exempt from taxation unless the same is imposed in clear and unequivocal language, and that where the construction of a law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid.", Spreckles Sugar Refining Co. v. McClain, 192 US 397 (1904).

Finally, and most importantly, if S.C. Code of Laws § 12-37-210 is the liability statute, there would need to be evidence in the record to support a finding that Ryan's land is *real property* and that it is *in this State*. But there is no evidence in the record that

could support either finding. Without any evidence in the record to support Respondents' creative theory it was clearly error for the trial judge to agree with that creative theory and find Ryan (or his land) is liable and therefore Ryan's claim are *entirely frivolous*.

iii. **It is not even possible for S.C. Code of Laws § 12-37-210 or ANY other statute to lay an *involuntary* liability for taxes and assessments on Ryan or his land, without him having to record his deed, without violating all the following laws, legal principles, and Constitutional prohibitions.**

It is beyond dispute that all law is contract and contract is the law; for if this was not true then men would become involuntary slaves to the government corporations that men created to protect their rights and property. Therefore, as clearly demonstrated below, there is absolutely no way that any statute lays an *involuntary* liability onto all land within the boundaries of South Carolina without the owner needing to enter into a contract with *this State* by recording his deed. If such theory was even possible it would violate many laws, legal principles, mandatory provisions of the Constitution of *this State*[3] and of the United States and holdings of the appellate courts of *this State* and the United States as proven by the following.

1. **It would be void for violating Article 1 Section 10 of the Constitution of the United States.**

Article 1 Section 10 of the Constitution of the United States restricts *this State* to demanding all **INVOLUNARY** contributions to it to be made **only** in gold and silver Coin. Despite ignorant supposition to the contrary, this constitutional restriction on *this State* is most definitely still binding and in effect today.

Many erroneous case law citations claiming that Federal Reserve Notes are legal tender for transactions with the States are based on cases between individuals or between

[3] "The State Constitution is a limitation upon and not a grant of power to the General Assembly", Unisys Corp. v. SC Budget & Control Bd., 551 SE 2d 263 (SC Sup Ct 2001).

111

the Federal Government and an individual where the US Supreme Court specifically ruled on the legal tender requirements for those situations in Julliard v. Greenman, 110 U.S. 421 (1884). However the Julliard v. Greenman decision did **NOT** address the issue of what a State may demand as legal tender for payment to it. That decision was made a few months later (and never overruled or reexamined) by the same court in the case of Hagar v. Reclamation District #108, 111 U.S. 701 (1884) in which the US Supreme Court ruled as follows:

> "The acts of Congress making the Notes of the United States Legal Tender **do not apply to involuntary contributions** in the nature of taxes or assessments exacted under State laws, **but only to debts** in the strict sense of the terms; that is, to **obligations founded on contracts**, express and implied, for the payment of money... ", [**emphasis** added].

Since the taxes and assessments on Ryan's land is, according to Respondents and the trial judge, an **INVOLUNTARY** contribution and not a contractual obligation, then under Hagar and Article 1 Section 10 of the Constitution of the United States, *this State* **MUST** demand its payment be made only in gold and silver Coin. But this has not been done and **cannot be done** as there is no gold or silver Coin in general circulation to pay such an involuntary contribution! Hagar **PROVES** that the taxes and assessments on *real property* in *this State* is a CONTRACTUAL **debt** and is not and can not be an **involuntary** contribution. Obviously it is the recording of the owner's deed (implied contract) that allows *this State* to demand payment of the resulting contractual **debt** be paid in a currency other than gold or silver Coin!

2. **It would violate the very definition of *debt.***

The taxes and assessments on *real property* at issue in this case has been declared by the legislature of *this State* to be a ***debt***, see:-

S.C. Code of Laws § 12-49-10: "All taxes, assessments and penalties legally assessed **shall be considered and held as a debt** payable to the State by the person against whom they shall be charged", [**emphasis** added].

However, there is no such legal concept as a non-contractual *debt* as all *debt* is, by **definition**, based on an agreement – expressed or implied! So where in the record is evidence of a contract - expressed or implied where Ryan agreed to be liable for any so called *debt* on his land?

DEBT:- "A debt is a sum of money **due by contract**. It is most frequently due by a certain and **express agreement**, which fixes the amount, independent of extrinsic circumstances. But it is not essential that the **contract** should be express, or that it should fix the precise amount to be paid. ... Ordinarily, it imports a sum of money arising **upon a contract, express or implied**... Under the legal-tender statutes, it seems to import **any obligation by contract, express or implied**, which may be discharged by money through the voluntary action of the party bound... The legal acceptation of debt **is a sum of money due by certain and express agreement**...", Blacks Law Dictionary, 2nd ed.

This **PROVES** that all taxes and assessments on *real property* in *this State* is a **CONTRACTUAL** debt and is not and can not be an **involuntary** contribution.

3. **It would be utterly impossible for the tax assessors and collectors to administer without requiring the recording of a deed.**

If liability for taxes and assessments on *real property* is NOT dependent on the recording of a deed, then how could the Respondents ever know the names and addresses of the actual/true owners of the *real property?* The actual/true owner's names and addresses are obviously needed for the Respondents to send them assessments, bills, and notices and to legally lien, levy, seize or sell their *real property*.

The appellate courts of *this State* have steadfastly held that the listing, assessment, execution, levy, and sale **MUST** be made in the name of the true owner. This requirement ensures that only the true owner, those who have recorded their deeds, can have **their** *real property* taken for **their** debt (i.e., contractual obligation) and the tax

collectors can only KNOW **their** name IF the true owners have recorded **their** deeds. This **proves** that the Respondents do **NOT** have the authority to take Ryan's property in someone else's name (for someone else's debt), despite the trial judge's erroneous conclusions to the contrary, and when Ryan attempted to bring these cases to the attention of the trial judge during the hearing of Respondents motion to dismiss, Ryan was shut down cold :-

> Ryan - "*...it is thus seen that the execution must issue against the true owner of the property*" [R. pg 80, lines 5-13].
>
> Trial judge - "*Alright. Mr. Powell, I've heard enough, you may have a seat*", [R. pg 80, lines 14-15].

The following four cases all declare that the law of *this State* mandates that the Respondents must list, assess, execute, levy, and sell property **ONLY** in the name of the true owner, which in this case has not been done and can not be done without Ryan recording a deed :-

> "It is a common assumption that a tax execution is issued against the property; such is not the case; it is issued against the defaulting taxpayer. ...'All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by a party against whom the same shall be charged.' "And the taxes may be made out of any property the taxpayer has. **It is thus seen that the execution must issue against the true owner of the property**", Taylor v. Jennings, 233 S.C. 600, 106 S.E.2d 391 (1958);
>
> "Tax execution is not issued against the property, it is issued against the defaulting taxpayer. **Statute is explicit** that land shall be listed and assessed and levied on and sold **in the name of the true owner**.", Aldridge v. Rutledge, 269 S.C. 475, 238 SE 2d 165;
>
> "Failure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void. **The requirement of that the levy, advertisement and sale must be made in the name of the true owner**.... Tax sale under an execution issued against one who is not the owner of the land is void", Donohue v. Ward, 298 S.C. 75, 378 S.E. 2d 261 (Ct.App.1989);
>
> "**Assessment, levy and execution and sale must be made in name of true owner**. Where owner of property dies after January 1, it is proper that assessment

was issued in name of decedent since lien attached at the beginning of the fiscal year. However, the levy, advertisement and sale should be made in the name of the devisees because they were the owners at the time thereof. ... Due process of law requires some sort of notice to a landowner before he is deprived of his property", Osborne et al v. Vallentine, 196 S.C. 90, 12 S.E. 2d 856 (1941).

Should the Respondents argue that this is the reason why every land owner is **required** to record their deeds then where is the statute that creates such a legal requirement? The only statute that speaks about the recording of deeds declares that it is a **privilege**[4]. So how can one statute declare it to be a **privilege** and then another, presumably S.C. Code of Laws § 12-37-210, require the recording of deeds but without stating that such is a requirement? If there is a requirement to record ones deed it MUST be stated in a statute in clear and unequivocal language. Further, since all contracts must be entered into voluntarily to be valid and enforceable, the actual/true owner must voluntarily record his deed or else the resulting contract/agreement would be null and void so the legislature can not create a statute that forces people to contract with *this State* by recording their deeds.

The mere pretense that a tax liability can be laid on a person *involuntarily*, without a contract and then administered without the liable person being legally required to supply their names and addresses to the tax administrators is utterly ridiculous and lacks any legal, logical, or historical support!

4. **It would force landowners into commerce.**

As shown above all dealings with *this State* is, and must be, voluntary. Thus any statute that would compel a person into commerce against his will is not only the *antithesis* of the very essence of *this State,* but it is also in violation of the US Supreme

[4] S.C. Code of Laws § 12-24-10 (a) "*...a recording fee is imposed for the* ***privilege*** *of recording a deed*".

115

Court's holding in Griswold v. Connecticut, 381 U.S. 479 (1965) where that court held that no State can compel any person into commerce.

The issues in Griswold involved the State of Connecticut forcing the commercial activity of creating babies onto married couples by making it "*a crime for any person to use any drug or article to prevent conception*". The US Supreme Court held that even married couples who have voluntarily entered into a marriage license agreement with the State cannot be **compelled** to create babies. Hence, criminalizing the use of contraceptives egregiously invades the right to **NOT** engage in commerce, even where there's a license to do so. In other words, to criminalize the use of contraceptives is to compel commercial activity (creating babies). What the US Supreme Court in Griswold teaches is that no State may compel anyone to engage in **ANY** type of commercial activity! Compelled commerce has another name, it's called tyranny.[5] Those who want to volunteer into a maritime law based contract and give away their property certainly have the free will to do so, but Ryan hasn't volunteered and he cannot be forced into the admiralty jurisdiction without a contract agreeing to such, nor can he be forced into commerce to pay a non-consensual, non-contractual, commercial debt.

5. **It would violate a man's rights to exist and own property free of any tax.**

"*All political power is vested in and derived from the people only*" – S.C. Const. art. I, 1. That means if a man doesn't have the political power to tax or take a fellow man's property, and he does not, then he could never delegate that nonexistent political power to his representative to do that which he himself cannot do. In other words, a

[5] Some of the gravest challenges facing this nation, which is teetering at the edge of the abyss into tyranny, have recently been decided. See Hamdan v. Rumsfeld, 548 U.S. 557 (2006); Boumediene v. Bush, __ U.S. __ (No. 06-1195, decided 12 June 2008); Munaf v. Geren, __ U.S. __ (No. 06-1666, decided 12 June 2008); Medellin v. Texas, __ U.S. __ (No. 06-984, decided 25 March 2008). In each case, tyranny has been the issue, and each time, tyranny has been overruled.

man's representative can never create a law to do anything that a man by himself could not do as all political power is derivative from the people and their inherent powers. However, a man **DOES** have the political power to tax and control his own creations so that derived power can be, and is, used by the legislature of *this State* to tax **its creations** (e.g., corporations). These concepts have been clearly upheld by the highest courts in the land:-

> Redfield v. Fisher, 292 P page 819 (OR Sup Ct 1930) – "an individual, unlike a corporation, is not subject to tax for the mere privilege of existing, and owning property, which are natural rights".
>
> Yick Wo v. Hopkins , 118 U.S. 356 (US Sup Ct 1886) - "Sovereignty itself is, of course, not subject to the law, for it is the author and source of law, but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts...For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable on any country where freedom prevails, as being the essence of slavery itself".

The following descriptions of property shows that property is the bundle of rights pertaining to a thing which includes "*the unrestricted right of use, enjoyment and disposal*" of the thing.

> PROPERTY : "The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of **any other individual in the universe**. ", Blacks Law Dictionary, 2nd ed. (1910).
>
> "The right to property...is not *ex gratia* from the legislature, but *ex debito* from the Constitution...It is sometimes characterized judicially **as a sacred right, the protection of which is one of the most important objects of government**.", 16 Am. Jur 2d, Sec 362.
>
> "Property in a thing consists not merely in its ownership or possession, but in the unrestricted right of use, enjoyment and disposal.", SC Dept. Hwys. & Pub. Trans. v. Balcome, 345 SE 2d 762 (SC Ct App 1986).

According to Respondents and the trial judge, Respondents have the right to, *inter alia*, trespass on Ryan's land, post threatening notices on his land, possess his land, seize his land, advertise his land for sale, sell his land, keep the proceeds of the sale, and kick Ryan off his land [R. pg 79, lines 3-13]. Or in other words, since Ryan allegedly does not have the right to exclude Respondents from interfering with his land then his land is, by definition, **NOT** his property! But if that is so, then how did Ryan's land become his property when he paid for it, completed the contract with the seller for it, took delivery of the title agreement on it, took possession of it, but then somehow, magically, without him recording a deed, his property is NO LONGER HIS PROPERTY?

In an international document signed by the United States in 1948, named the "*Universal Declaration of Human Rights*", the civilized world declared in Article 17 of that document that "**Everyone has the right to own property**". The trial judge's ruling declares to the contrary, "Everyone, **BUT** the people living on the soil within the boundaries of South Carolina, has the right to own property". The trial judge, by his ruling, rolled back 150 years of history in this nation and declared that Ryan is but a slave who cannot own property; for prior to the civil war **only** a slave could not own property, for a slave was property!

6. **It would be void for violating multiple provisions of the Constitutions of the State of South Carolina and of the United States.**

> "It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgment in our constitutional jurisprudence. No higher duty rests upon this Court than to **exert its full authority to prevent all violations of the principles of the Constitution**", Downs v. Bidwell, 182 U.S. 244 (US Sup Ct 1901).

> "The individual may stand upon his constitutional Rights... His Rights are such as existed by the law of the land long antecedent to the organization of the State, and

can only be taken from him by due process of law, and in accordance with the Constitution.", Hale v. Henkel, 201 U.S. 43 at 47 (US Supreme Court 1905).

"The Constitution is a written instrument. As such, its meaning does not alter. That which it meant when it was adopted, it means now", State of South Carolina v. United States, 199 U.S. 437, 448 (1905).

"It is clear, of course, that no act of Congress can authorize a violation of the Constitution", Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

If S.C. Code of Laws § 12-37-210 (or any other statute) creates an *involuntary* liability for taxes and assessments on Ryan or his land then it would violate six (6) of Ryan's unalienable rights that are specifically protected to him by the Constitutions of the State of South Carolina and of the United States. The legislature, a creation of the State Constitution, has no authority to pass any statute that violates any provision of the Constitution that created it, and no judicial officer who has sworn an oath to uphold those Constitutions has the authority to interpret any statute in such a way as to render any of them unconstitutional[6].

The decision of the trial judge finding that Ryan is liable simply because his land can be found on the soil in some geographical area violates the following six (6) natural rights of Ryan that are specifically protected to him by the State and federal Constitutions.

a) Ryan's Right to not be involuntarily enslaved (Amendment XIII of the Bill of Rights).

b) Ryan's Right to due process of law before taking his property (S.C. Const. art. I, 3 and Amendment V of the Bill of Rights).

[6] "More importantly, we will not construe a statute to do that which is unconstitutional. Mitchell v. Owens, 304 S.C. 23, 402 S.E.2d 888 (1991) (statutes are presumed to be constitutional and will be construed so as to render them valid)", Ward v. State, 538 SE 2d 245 (2000).

c) Ryan's Right to not have his private property taken for private use without his consent[7] (S.C. Const. art. I, 13(a)).

d) Ryan's Right to not have his private property taken for public use without just compensation being first paid to him[8] (S.C. Const. art. I, 13(a) and Amendment V of the Bill of Rights).

e) Ryan's Right to not have his house unreasonably seized (S.C. Const. art. I, 10 and Amendment IV of the Bill of Rights).

f) Ryan's Right to a trial by jury of his common law claims (Amendment VII of the Bill of Rights).

Clearly all the taxing statutes pertaining to *real property* that allows all these violations to occur are either unconstitutional and therefore void **OR** when the landowner records his deed he agrees to be bound by the taxing statutes in lieu of his constitutional protected rights. Of course it is the latter as no man's constitutional protected rights can be **taken** from him, without due process of law, but since everyone has freedom to contract they absolutely have the right and ability to contract away any right they have.

As Ryan has not entered into any contract or agreement waiving any of his unalienable rights specifically protected to him by the State and federal Constitutions and since all statutes must be construed so as to render them valid under the mandatory provisions of the constitutions as stated in Ward v. State supra, then clearly the Respondents theories and the trial judge's conclusions are erroneous.

II. Because the Revenue Procedures Act does not divest the circuit court of subject matter jurisdiction it was error for the trial judge to dismiss Ryan's claims finding that the circuit court is without subject matter jurisdiction.

Standards of Review #1 - Subject Matter Jurisdiction is an issue of law, *de novo* review required.

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[7] It would be impossible to determine what the use of Ryan's stolen land would be put to until a particular *successful bidder* buys it and then puts it to some use, which could be either public or private.

[8] See fn #7.

"[S]ubject 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, 314 S.C. 235, 442 S.E.2d 598 (1994).

"Tort suits are within the circuit court's jurisdiction. Here, on its face, this complaint alleges a tort and therefore is not subject to dismissal for lack of subject matter jurisdiction.", McCullar v. Estate of Campbell, 672 SE 2d 784 (SC Sup Ct 2009).

Respondents made two similar motions for dismissal of Ryan's claims alleging that the **RPA** somehow prohibits the circuit court from hearing Ryan's claims. Respondents first dismissal motion was under Rule 12 (b)(1) SCRCP because allegedly the **RPA** is the "exclusive remedy" that Ryan has available to him so therefore the **RPA** divests the circuit court of subject matter jurisdiction to hear Ryan's claims [R. pgs 29-30, #1-#5]. Respondents second dismissal motion was under Rule 12 (b)(6) SCRCP because allegedly Ryan's "*entire complaint is barred by the exclusive provisions of S.C. Code of Laws § 12-60-80*" which allegedly gives the circuit court the authority to dismiss Ryan's claims *with prejudice* [R. pg 31, #3]. Ryan disagreed with these two motions in his Response to Respondents Motion to Dismiss [R. pgs 38-39, #2].

i. **The RPA does not divest the circuit court of subject matter jurisdiction to hear tort claims.**

As utterly redundant, intermingled, and frivolous as those two motions are, it seems Respondents were really trying to disguise the issue of "*failure to exhaust administrative remedies*" as the two above mentioned motions hoping Ryan would fall for their deception (fraud) and pursue an inapplicable administrative process while his statute of limitations ran out as the **RPA** clearly has nothing at all to do with subject matter jurisdiction :-

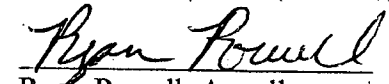
"If a **taxpayer** brings a circuit court action when she should have pursued administrative remedies under the Act, the circuit court "shall dismiss the case

CONCLUSION

For the reasons stated herein, this Court must reverse both orders of the circuit court appealed and issue instructions to the lower court that upon remand Ryan is to be permitted to utilize his mother as his "assistance of counsel" if he so chooses.

Respectfully submitted,

April 11, 2015



Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2014-002578

Ryan Powell,

Appellant,

v.

Amy Boheler d/b/a York County Auditor,
Beth Latham d/b/a York County Treasurer, and
Robert Kiser d/b/a York County Delinquent Tax Collector,
each in their official capacities .,

Respondents.

Respondents' ~~Initial~~ Final Brief

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

4828-1474-9986, v. 1

STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court properly dismiss a lawsuit challenging the authority of York County to assess and collect taxes on a parcel of real property, where the Revenue Procedures Act vests South Carolina's Administrative Law Court with the exclusive jurisdiction to decide such cases and where the Revenue Procedures Act provides the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes?"

II. Did the circuit court properly dismiss an individual's lawsuit against three York County employees where the lawsuit was based entirely upon the employees' efforts to assess and collect delinquent property taxes, and where the Tort Claims Act has expressly preserved the government's immunity from liability and suit in such cases?

III. Did the circuit court properly dismiss an individual's claim for breach of contract where the facts alleged in the plaintiff's complaint failed to establish the existence of any valid or enforceable contract?

IV. Should this court consider Appellant's arguments related to his mother's desire to provide him with legal assistance where the circuit court's written order did not even mention the issue, much less rule upon it, and where Appellant did not properly preserve the issue for appellate review?

STATEMENT OF THE CASE

The procedural history of this case[1] is relatively short, but quite involved. Appellant Ryan Powell ("Powell") filed this action in the Court of Common Pleas on May 1, 2014, asserting multiple causes of action against York County's auditor, treasurer and delinquent tax collector (the "County Employees") – all related to the County's efforts to assess and collect taxes on a piece of real property that Powell claims to own.[2] (R. p. 8). Powell's complaint included ten causes of action: sham legal process; fraud; trespass *quare clausum fregit*; money had and received; slander of title; false light invasion of privacy/libel; breach of contract; negligence per se; civil conspiracy; and intentional infliction of emotional distress. Id. Powell's complaint also included a motion for writ of mandamus, seeking an order compelling the County Employees to perform various tasks, including: return money allegedly "extorted from Powell" (i.e. – the money Powell paid to avoid sale of his property at the York County delinquent tax sale); and update York County's records to "remove all reference to [Powell's] allodial land." Id. at 11-12.

Rather than answer Powell's complaint, York County appeared on behalf of the County Employees, asserting that York County should be substituted as defendant in Powell's lawsuit.

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[1] This case is but one salvo in an ongoing barrage of litigation that Powell and his mother have launched against York County in the past several months concerning the same issues that are at the heart of Powell's complaint. In December 2013, Powell filed suit in the original jurisdiction of the South Carolina Supreme Court. *See* Kendree Aff. and Exhibit F thereto (designated for inclusion in Record on Appeal, but mitted from Record prepared by Appellant). The Supreme Court dismissed that case on February 20, 2014 and then denied Powell's petition for rehearing. Exhibits G and I to Kendree Aff. In May 2014, Powell filed this case in York County's Court of Common Pleas. In August 2014, Powell and his mother attempted to file a second action in the original jurisdiction of the South Carolina Supreme Court. Exhibit J to Kendree Aff. The Supreme Court dismissed that case on September 25, 2014. Exhibit K to Kendree Aff. Finally, in October 2014 Powell and his mother filed a petition for writ of error in the original jurisdiction of the South Carolina Supreme Court. The Supreme Court dismissed that petition on November 21, 2014 and threatened Powell with sanctions "should he continue to file frivolous petitions which are not proper for this Court it its original jurisdiction." Supreme Court Order of Dismissal, dated Nov. 21, 2014.

[2] Powell has not filed any deed to evidence his ownership. According to publicly-filed property records maintained by the York County Clerk of Court, the most recent owner of record is a private trust called San Juan Holdings.

R. p. 29 (hereafter "Motion to Dismiss"). York County also moved to have Powell's complaint dismissed pursuant to Rules 12(b)(1) and 12(b)(6) S.C.R. Civ. P. Id.

On June 19, 2014, Special Circuit Court Judge S. Jackson Kimball, III heard York County's Motion to Dismiss. During that hearing, Powell's mother attempted to argue in opposition to the county's motions. After determining that Powell's mother was not a licensed South Carolina attorney, Judge Kimball refused to let the woman argue her son's case (R. pp. 67-68). Powell then argued his own case. Powell also orally moved to continue the hearing so that he could amend his complaint and add Powell's mother as a plaintiff. Id. at 75. Judge Kimball denied Powell's motion. Id.

On June 25, 2014, Judge Kimball issued a written order granting each of York County's motions and dismissing Powell's complaint pursuant to Rules 12(b)(1) and 12(b)(6) S.C. R. Civ. P. (R. p. 2). Judge Kimball's written order did not address Ms. Powell's attempts to argue her son's case, or the court's refusal to allow her to do so.

On July 1, 2014, Powell moved to have Judge Kimball recuse himself and also moved for reconsideration of the court's order of dismissal. (R. p. 6). Powell also included in that motion a "Judicial Notice of Disqualification," notifying Judge Kimball that the judge was "obligated to void [the court's] order and disqualify [himself] *sua sponte* from hearing anything associated with [Powell's] case." *See* Id.

On October 16, 2014, the parties appeared before Judge Kimball for a hearing on Powell's pending motions. Powell argued his motions for reconsideration, but did not pursue his motion to have Judge Kimball recused or disqualified. Nor did Powell seek reconsideration of the court's refusal to allow Powell's mother to argue Powell's case (R. p. 86). Judge Kimball denied Powell's motion for reconsideration. (R. p. 6). On October 28, 2014, York County filed a

motion for sanctions, pursuant to South Carolina's Frivolous Civil Proceedings Act. Motion for Sanctions, filed Oct. 28, 2014 (designated for inclusion for the Record on Appeal, but omitted from Record prepared by Appellant). That motion is pending, but has been stayed by this appeal.

On October 21, 2014, before Judge Kimball's order denying rehearing was even filed, Powell filed a Petition for Writ of Error in the original jurisdiction of the South Carolina Supreme Court. Petition for Writ of Error, filed Oct. 21, 2014. That petition was dismissed by the Supreme Court on November 21, 2014. *See* S.C. Supreme Court Order, dated November 21, 2014.

Powell filed this appeal on November 21, 2014. *See* Notice of Appeal.

STATEMENT OF FACTS

Assuming that the factual allegations of Powell's complaint are true, Powell is "one of the people of South Carolina" and the owner of a piece of land, which he describes as "allodial land,"[3] located within the geographic boundaries of York County, South Carolina (the "Property")[4] (R. p. 8, ¶ 1). Powell acquired the Property on or about December 20, 2012 from a private unregistered trust, San Juan Holdings. Id. at 10, ¶ 11

Powell intentionally did not record his deed to the Property in York County's public records. Instead, Powell required San Juan Holdings to record a document captioned a "Notice of Sale, Transfer or Exchange." Id. at 8, ¶ 12. That document purports to evidence transfer of the Property from San Juan Holdings to an unidentified "unenfranchised living man"

[3] Powell initially alleged that he held "absolute" allodial title to his land. (R. p. 8, ¶ 1) Powell now seems to have abandoned his claim to "allodial" title, asserting that "allodial land" is "simply a handle to refer to my land." (R. p. 76).

[4] York County will use the handle "Property" to refer to Powell's land.

(presumably Powell) and also purports to give notice of San Juan Holdings' immediate dissolution. (R. p. 22).

York County did not update its tax records to reflect San Juan Holdings' transfer of the Property. (R. p. 11, ¶ 20). Nor did York County receive payment of 2012 property taxes that were owed on the Property. In September 2013, the County's delinquent tax collector posted a Notice of Levy on the Property, and the Property was listed for sale at the York County delinquent tax sale. (R. p. 12, ¶ 31). On the day of that sale, Powell paid 2012 property taxes, fees and penalties under protest. (R. p. 15, ¶¶ 55-56).

ARGUMENT

This appeal – indeed, this entire dispute – is part of Powell's orchestrated and contrived attempt to circumvent and frustrate the authority of York County to assess and collect taxes on real property that Powell claims to own. Powell's entire case is based upon his erroneous belief that he has somehow removed his land from the "private company" of York County by not recording his deed, so that his land can no longer be taxed by the County. (R. p. 10, ¶ 17). To advance his case, Powell relies upon misunderstood or misapplied principles of law, archaic or non-existent concepts of property ownership, absurd word choice and placement,[5] and slanderous attacks on any person opposing or questioning his position.[6,7]

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[5] For example, Powell refuses to refer to his land as "real property," asserting that there is a legal distinction between "land" and "real property." Appellant's Brief at 9-11. Powell also stresses that his land is "on" South Carolina, not "in" South Carolina. Id. Powell has compared himself to a "slave," both in filings and in argument before the circuit court. Appellant's Brief at 19; R. p. 91 at 9. Finally, Powell instructed the circuit court not to refer to him as "*Mister* Powell," asserting that he is "not a corporate fiction created by and subject to the state" so the courtesy title "Mister" does not apply to him (R. p. 86. at 4).

[6] *See* Judicial Notice of Disqualification, filed by Appellant July 1, 2014 (accusing circuit court judge of "prejudice, partiality and prejudgment"); *see also* Appellant's Return to Respondent's Motion for Extension of Time, filed January 27, 2015 in this court (accusing York County's attorney of incompetence and misrepresentations).

The circuit court quickly saw through Powell's game, and summarily dismissed his entire case. In doing so, the circuit court concluded that Powell's claims for damages are barred by the doctrine of sovereign immunity, so that the allegations of Powell's complaint did not state an actionable claim. The circuit court also concluded that, to the extent Powell's complaint was a challenge to the taxing authority of York County, the circuit court lacked subject matter jurisdiction to consider that challenge. The circuit court's rulings were correct, and dismissal of Powell's complaint was entirely appropriate and proper. The circuit court's order of dismissal must be affirmed on appeal.

I. The circuit court properly dismissed Powell's lawsuit challenging the authority of York County to assess and collect taxes on a parcel of real property, because the Revenue Procedures Act vests South Carolina's Administrative Law Court with the exclusive jurisdiction to decide such cases and provides the exclusive remedy[8] "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.".

As Powell's appellate brief makes abundantly clear, his lawsuit has more to do with challenging the validity, enforceability and applicability of South Carolina's tax laws than it does with attempting to recover damages. Indeed, a significant portion of Powell's brief is essentially a "doctrinal manifesto,"[9] espousing legal arguments in an effort to support Powell's philosophical belief that York County has no power or right to issue a tax bill for Powell's Property. *See* Appellant's Brief at 5-21. However, those arguments were never substantively

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[7] Like the circuit court, York County sees Powell's principal theory as a "rambling presentation of twisted, disconnected and inapplicable legal theories that contradicts all statutory and case law governing the issues presented." (R. p. 2). York County believes that it is unnecessary to address Powell's principal argument in substantive detail, since that argument was not addressed by the circuit court and is not properly on appeal. York County's silence should not be construed as acquiescence or tacit acceptance of Powell's arguments.

[8] The Revenue Procedures Act vests the circuit court with jurisdiction to hear "an action for a declaratory judgment where the sole issue is whether a statute is constitutional." S.C. Code § 12-60-80 (Law. Co-op. 2014). As the circuit court noted, that provision of the Revenue Procedures Act is inapplicable to this case. (R. p. 4).

[9] *See* R. p. 2. "Plaintiff's complaint and legal memoranda read like a doctrinal manifesto."

addressed by the circuit court, because the circuit court determined that it did not have subject matter jurisdiction to hear Powell's arguments. (R. p. 4).

On appeal, this court cannot review rulings that the circuit court *never made*. The circuit court did not rule that Powell was liable for taxes; nor did the circuit court rule that Powell's Property could be "taken" by the County. *Compare* Appellant's Brief at 6 to R. pp. 2-5. Those issues were never taken up by the circuit court, and they certainly were not "findings" or "conclusions" of the court's order. "The written order is the trial judge's final order and as such constitutes the final judgment of the court." Ford v. State Ethics Comm'n, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001). Appeal may be taken from a "final judgment," not from comments made by the court during argument. Rule 201(a) S.C. App. Ct. R.

Powell has yet to present his substantive challenge to York County's taxing procedures and authority to South Carolina's Administrative Law Court, the *only* trial court with jurisdiction to consider the merits of his challenge. *See* S.C. Code Ann. § 12-60-80(A)(Law. Co-op. 2014). As the circuit court recognized, the Revenue Procedures Act ("RPA") provides the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80(A)(Law. Co-op. 2014). The RPA contains a "contested case" procedure whereby a "property taxpayer" may challenge a county's property tax assessment, and it vests South Carolina's Administrative Law Court with the exclusive jurisdiction[10] to decide contested cases. Id. §§ 12-60-2520 – 2540; *see also* Brackenbrook N. Charleston, LP v. Cnty. of Charleston, 360 S.C. 390, 398, 602 S.E.2d 39, 44 (2004)("[R]elief under the [RPA] is not limited to [property tax assessment disputes]."). If Powell truly believes that York County is wrongly assessing taxes against his Property or wrongly attempting to

[10] See note 8, *infra*.

collect taxes from him, then Powell's remedy is under the RPA. The circuit court properly ruled that it did not have jurisdiction to hear Powell's tax protest, and dismissed that portion of his complaint without prejudice. S.C. Code Ann. § 12-60-3390 (Law. Co-op. 2014)("If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.").

Powell strenuously disputes that the RPA applies to him, asserting that he is not a "property taxpayer" within the meaning of the RPA. Appellant's Brief at 24. However, the RPA defines "property taxpayer" as "a person who is liable for, *or whose property or interest in property is subject to, or liable for,* a property tax imposed by this title." S.C. Code Ann. §12-60-30(22)(Law. Co-op. 2014)(emphasis added). Thus, while Powell clearly disputes that he is a "person who is liable for . . . a property tax," he cannot credibly dispute that his "property or interest in property is subject to,[11] or liable[12] for, a property tax." Indeed, that is the very crux of Powell's case – he claims that his property was, and is, wrongfully exposed to liability for a tax debt owed by another. Appellant's Brief at 2, 6. Powell, therefore, squarely meets the RPA's definition of "property taxpayer," and the RPA provides his exclusive avenue to challenge York County's taxing authority. The circuit court properly refused to decide Powell's challenge, because it did not have the requisite subject matter jurisdiction to consider that issue. S.C. Code Ann. § 12-60-3390 (Law. Co-op. 2014).

On appeal, this court should consider only whether the circuit court properly decided that it lacked subject matter jurisdiction to consider Powell's tax challenge. Rule 201(a) S.C. App.

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[11] "subject to – Liable, subordinate, subservient, inferior, obedient to; **governed or affected by**; provided that; provided; **answerable for**." Black's Law Dictionary (6th ed. 1991); "subject – **suffering a particular liability or exposure (to)**." Webster's Collegiate Dictionary (10th ed. 1994).

[12] "Definition of liable from Merriam-Webster's dictionary: – legally responsible for something, likely to be affected or harmed by something, likely to do something." Appellant's Brief at 6 n. 1.

Ct. R.; S.C. Code Ann. § 14-8-200 (Law. Co-op. 2014). If the answer to that question is yes, then the circuit court's order of dismissal must be affirmed. If the answer is no, then this court should still affirm if it determines that the circuit court properly dismissed Powell's damage claims pursuant to Rule 12(b)(6). Even if this court answers both questions "no," Powell's remedy is for remand of his case to the circuit court for further proceedings. Powell is not entitled to litigate his substantive tax challenge in the appellate courts of this state. S.C. Code Ann. § 14-8-200(a)(Law. Co-op. 1976)("Jurisdiction of [South Carolina Court of Appeals] is appellate only. . . ."); Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991)("In Rule 229, SCACR, [South Carolina Supreme] Court has indicated it will not entertain matters in its original jurisdiction where the matter can be entertained in the trial courts of this State."). As tempting as it may be, this court should not take that bait.

II. The circuit court properly dismissed Powell's lawsuit against three York County employees because his lawsuit was based entirely upon the employees' efforts to assess and collect delinquent property taxes owed to the County, and the Tort Claims Act has expressly preserved the government's immunity from liability and suit in such cases.

The circuit court had subject matter jurisdiction to consider Powell's claims for damages, and correctly concluded that each of those claims is barred by the doctrine of sovereign immunity. (R. pp. 4-5). By its express terms, South Carolina's Tort Claims Act grants "the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit from any tort *except as waived* by this chapter" and "expressly preserve[s]""*all other immunities* applicable to a governmental entity, its employees and agents." S.C. Code Ann. § 15-78-20(b)(Law. Co-op. 2005). As the circuit court recognized, the state has not waived, and has therefore preserved, its immunity from "liability and suit" for, among other things, "any loss resulting from . . . (3) execution, enforcement or lawful implementation of any

process; (4) adoption, enforcement or compliance with any law . . . whether valid or invalid . . .; (9) entry upon any property where the entry is expressly or impliedly authorized by law; [and] (11) assessment or collection of taxes or special assessments or enforcement of tax laws." S.C. Code Ann. § 15-78-60 (Law. Co-op. 2005). The Tort Claims Act also makes clear that it is to be "liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20 (Law. Co-op. 2005).

"The provisions of Section 15-78-60 (4) [and the other sections cited by the trial court] are clear and unambiguous on their face, and are not subject to judicial interpretation." Adkins v. Varn, 312 S.C. 188, 192, 439 S.E.2d 822, 824 (1993). York County and its employees are plainly immune from both liability and suit, where the only claims asserted against them arise from the County's efforts to assess and collect delinquent taxes.

Powell argues that his claims are not barred by the doctrine of sovereign immunity for three reasons. First, Powell argues that the Tort Claims Act does not apply because he brought a "common law" action against the County Employees in their "individual capacities," rather than a suit under the Tort Claims Act. Appellant's Brief at 28-31. Next, Powell argues that the trial court should not have considered whether the County Employees were entitled to immunity because immunity is an affirmative defense that must be "proven at trial." Id. at 31-32. Finally, Powell argues that, because his complaint included a claim for breach of contract, the Tort Claims Act could not bar that cause of action. Each of these arguments is flawed and erroneous.

A. The circuit court properly applied the doctrine of sovereign immunity, as "expressly preserved" by the South Carolina Tort Claims Act, because the Act applies to all claims against a governmental entity or its employees.

Contrary to Powell's contention,[13] litigants who seek to sue the state, its political subdivisions, or governmental employees are not at liberty to choose whether their claims are governed by the Tort Claims Act. The "Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." Flateau v. Harrelson, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct. App. 2003)(citing Murphy v. Richland Mem'l Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998)). Furthermore, the Act provides that "[i]n the event [an] employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant." S.C. Code Ann. § 15-78-70 (Law. Co-op. 2005). The circuit court properly applied the Tort Claims Act, and properly ordered that York County must be substituted for the County Employees as Powell's defendant. (R. pp. 3-4).

While Powell contends that he somehow "opted out" of the Tort Claims Act by bringing his claims under the common law, South Carolina's Supreme Court has rejected the notion that a plaintiff may avoid the Tort Claims Act through artful pleading. *See, e.g.,* Adkins v. Varn, 312 S.C. 188, 192, 439 S.E.2d 822, 824 (1993). In Adkins, a plaintiff tried to avoid the bar of sovereign immunity by alleging that his claim was based on Greenville County's failure to "respond to citizens' complaints" about vicious dogs, rather than the county's failure to enforce its leash law.[14] Describing the plaintiff's argument as an attempt to draw "distinction without a difference," South Carolina's Supreme Court held that the plaintiff's complaint failed to state an actionable claim, and that the complaint had been properly dismissed pursuant to the doctrine of

[13] "Ryan did not bring his action under the TCA. . . ." Appellant's Brief at 30.

[14] The Tort Claims Act "clearly exempts from liability any loss resulting from the failure to enforce an ordinance." Adkins, 312 S.C. at 192, 439 S.E.2d at 824; S.C. Code Ann. § 15-78-60(4)(Law. Co-op. 2005).

sovereign immunity. Id. Like the plaintiff in Adkins, Powell cannot avoid the Tort Claims Act by characterizing his lawsuit as a "common law" action, or by including non-tort claims in his complaint.

The real issue, and one Powell either overlooks or ignores, is that the Tort Claims Act is merely a limited waiver of the state's sovereign immunity. Moore v. Florence School Dist. No. 1, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994). The Act makes clear the Legislature's intent to grant government officials immunity "*except as waived*" by the Act. S.C. Code § 15-78-20(b)(Law. Co-op. 2005)(emphasis added). The Act also "expressly preserves""*all other immunities* applicable to a governmental entity, its employees and agents." Id. (emphasis added). Thus, the relevant inquiry is not whether Powell labeled his claims "tort" claims or "common law" claims. The relevant inquiry is whether Powell seeks to impose liability where the County and its employees are entitled to immunity. If so, his claims are barred – irrespective of his theories of liability or the labels placed on his causes of action. The circuit court properly analyzed that issue, and properly dismissed Powell's damages claims with prejudice. (R. pp. 4-5; *see also* S.C. Code Ann. §§ 15-78-60(3),(4), (9) and (11)(Law. Co-op. 2005).

Powell also asserts that, because he has alleged that the County Employees acted "individually, and not in their official capacity," he has pled his way around the Tort Claims Act and its immunity provisions. Appellant's Brief at 30. After all - Powell argues - the Tort Claims Act only grants immunity to governmental officials "acting within the scope of their official duty" and he has alleged that the County Employees acted outside of their "official duty" to cause him harm. Id. Powell also contends that the circuit court was bound to accept the allegations of his complaint as true, at least when considering whether to dismiss his complaint under Rule 12(b)(6). Id. While Powell accurately states the standard for the circuit's

consideration of a Rule 12(b)(6) motion, he misses the mark in applying that standard to his complaint.

As an initial matter, Powell's complaint does not contain any allegation that the County Employees acted outside of their "official duty" to cause Powell harm. (R. p.8, ¶ 2) ("Defendant[s] . . . are all public officers") and ¶ 3 ("Defendants act in their official capacity as taxing and collection agents for the private company named 'County of York.'"). More importantly, whether the County Employees acted "within" the scope of their "official duty" or "in excess" of that duty is a legal conclusion, not a factual allegation. The United States Supreme Court has made clear that, when a court is considering whether a complaint is sufficient to avoid dismissal pursuant to Rule 12(b)(6), only the *factual* allegations of the complaint are entitled to a presumption of truth. Papasan v. Allain, 478 U.S. 265, 286 (1986). A "legal conclusion couched as a factual allegation" is entitled to no such presumption. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Papasan, 478 U.S. at 286. Powell's contention that the County Employees acted outside their official duty is not a factual allegation – it is an unsupported legal conclusion. Therefore, even if that allegation were contained in Powell's complaint, which it is not, the allegation would be entitled to no presumption of truth. Id. The *facts*, as alleged in Powell's complaint, plainly demonstrate that the County Employees were merely carrying out their official duties to assess and collect taxes. For that reason, the circuit court correctly concluded that the Tort Claims Act and its grant of sovereign immunity applies.

B. The circuit court properly dismissed Powell's lawsuit because the Tort Claims Act preserves York County's immunity from liability and trial, effectively granting York County and its employees an entitlement "not to stand trial or face the other burdens of litigation."

Powell next argues that, even if Respondents are entitled to immunity, it was premature for the trial court to decide that issue on a motion to dismiss, because immunity is an affirmative defense "that must be proved by the defendant at trial." Appellant's Brief at 31. Again, Powell's argument misses its mark.

The Tort Claims Act clearly states that its purpose is "to grant . . . immunity from *liability and suit* for any tort except as waived" by the Act. S.C. Code Ann. § 15-78-20(b)(Law. Co-op. 2005). "Where a statute contains terms that are clear and unambiguous, a court must apply those terms according to their literal meaning." Adkins v. Varn, 312 S.C. 188, 191, 439 S.E.2d 822, 824 (1993). By its express terms, the Act preserves the government's right to immunity - not only from liability, but also from suit. Powell's reading of the Act, as one that requires a defendant to prove its entitlement to immunity by evidence presented at trial, would provide no immunity from suit and would frustrate a clearly stated objective of the statute. Powell's interpretation of the Tort Claims Act cannot be reconciled with the Act's plain language.

Furthermore, the United States Supreme Court has recognized that sovereign immunity provides two important protections to government officials. First, it "shields government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights.'" Ashcroft v. Iqbal, 556 U.S. 662, 672 (2009)(quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Second, it provides a "limited 'entitlement not to stand trial or face the other burdens of litigation.'" Id. (quoting Mitchell v. Forsyth, 472 U.S. 511, 530 (1985)). For this reason, "unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery." Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

An immunity which could be enforced only through litigation or invoked only after discovery would give the government little or no relief from the "burdens of litigation." Id. ("The entitlement is an *immunity from suit* rather than a mere defense to liability; . . . it is effectively lost if a case is erroneously permitted to go to trial.")(emphasis is the Court's). Where, as here, the undisputed factual allegations of a plaintiff's complaint do not allege that the government or its employees violated a "clearly established law," the complaint is subject to dismissal upon the pleadings. *See, e.g.,* Mitchell, 472 U.S. at 526 (denial of motion to dismiss under doctrine of immunity effects substantial right of defendants and is immediately appealable); Stewart v. North Carolina, 393 F.3d 484 (4th Cir. 2005) (involving motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) where state asserted immunity to plaintiff's claims); *see also* S.C. Code Ann. §15-78-60(11)("The governmental entity is not liable for loss resulting from . . . assessment or collection of taxes . . . or enforcement of tax laws."). The circuit court did not prematurely decide that York County was entitled to immunity from Powell's suit. The circuit court properly granted the county's motion to dismiss before the county and its employees were subjected to unnecessary and disruptive "burdens of litigation." *See* Mitchell 472 U.S. at 526 ("even such pretrial matters as discovery are to be avoided if possible, as '[i]nquiries of this kind can be peculiarly disruptive of effective government.'")(quoting Hartlow v. Fitzgerald, 457 U.S. 800, 817 (1982)).

III. The circuit court properly dismissed Powell's claim for breach of contract because the facts alleged in Powell's complaint failed to establish the existence of any valid or enforceable contract between Powell and York County's employees.

Powell's final challenge to the County's sovereign immunity is based upon his inclusion of a breach of contract claim in his complaint. Appellant's Brief at 30-31. As Powell recognizes, the Tort Claims Act does not affect "the government's liability based on contract."

S.C. Code Ann. § 15-78-20(d)(Law. Co-op. 2005). What Powell overlooks, however, is that the circuit court did not rule that Powell's contract claim was barred by the doctrine of sovereign immunity. Instead, the circuit court ruled that Powell had failed to allege sufficient facts to support his claim (R. p. 5, n.1). The circuit court's conclusion is sound, and should be affirmed on appeal.

Powell's alleged contract is based upon his contention that each of the County Employees "signed an oath of office agreeing to uphold the Constitutions of the State of South Carolina and of the United States before legally entering public office." (presumably, their offer to Powell). (R. p. 17 ¶ 71). Powell then alleges that he wrote each of the County Employees to "accept their oaths of office thereby contractually binding each of them to their contract offers." (R. p. 18. ¶ 74). Finally, Powell's complaint includes a "legal conclusion couched as a factual allegation" that his letters formed a binding and enforceable contract between him and the County Employees. Id. ¶ 75. The trial court saw Powell's breach of contract claim as an attempt to circumvent the Tort Claims Act, and found that Powell had failed to allege any facts by which "this court could conclude or infer that he entered into an enforceable contract with York County, or with any of the individuals named as defendants in Plaintiff's lawsuit." (R. p. 5, n.1). The trial court properly dismissed Powell's contract claim pursuant to Rule 12(b)(6), and its dismissal of that cause of action should be affirmed on appeal.

IV. This court should refuse to consider whether Powell's mother was entitled to assist Powell in prosecuting his case because the circuit court's written order did not even mention the issue, much less rule upon it, and because Powell did not properly preserve that issue for appellate review.

Powell's brief devotes significant argument to whether his mother should have been permitted to assist him in opposing York County's motions to dismiss. However, that issue was not even addressed by the circuit court's order. Nor did Powell seek a definitive ruling on that

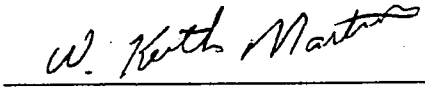
issue through his motion for reconsideration. Therefore, that issue is not preserved for appellate review, and should not be considered by this court. Elam v. South Carolina Dep't. of Trans., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004); *see also* Ford v. State Ethics Comm'n, 344 S.C. 642, 646 (2001)("The written order is the trial judge's final order and as such constitutes the final judgment of the court.); *Cf.* Kitchen v. Upshaw, 286 F.3d 179, 187 (4th Cir. 2002) ("It is well established that . . . trial courts speak only through their written orders.")(Virginia law).

CONCLUSION

The circuit court properly dismissed Powell's complaint in its entirety. Powell's complaint did not allege any cause of action that would entitle him to recover monetary damages from York County or from the County Employees. The circuit court properly substituted York County for the County Employees and properly dismissed Powell's damages claims with prejudice. The circuit court also properly determined that it did not have subject matter jurisdiction to consider Powell's challenge to the authority of York County to assess and collect taxes, and dismissed Powell's "tax challenge" without prejudice. If Powell wishes to pursue that case, he must bring it in the Administrative Law Court. However, he has no right to pursue damages against York County or against the County Employees based upon the facts alleged in his complaint. On appeal, this court should affirm the circuit court's order of dismissal in its entirety.

Respectfully Submitted,

April 24, 2015



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ATTORNEYS FOR RESPONDENT

4826-5170-0771, v. 1

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Stonewall Jackson Kimball, Special Circuit Court Judge

Case No. 2014-CP-46-1425
Appellate Case No. 2014-002578

Ryan Powell,. . . . . Appellant,

v.

Amy Boheler d/b/a York County Auditor,
Beth Latham d/b/a York County Treasurer, and
Robert Kiser d/b/a York County Delinquent Tax Collector,
each in their individual and official capacities, ... Respondents.

REPLY BRIEF OF APPELLANT

Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina
(919) 400-6339

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

INTRODUCTION

Unfortunately for Appellant, ("Ryan" hereinafter) almost everyone holds the untenable position that "*everyone has to pay property taxes*". They hold this position because that is what they have heard their entire lives. However, this position is incorrect and based on their failure to study the principles of law, taxation, and history. For anyone who has so studied, learns that property taxes (like all other taxation) are and must be based on **contracts and agreements**, otherwise they would be unconstitutional. Respondents and their attorney fall into this camp of "believers" who refuse to accept the truth found in the actual **written laws** because their cognitive dissonance blinds them. The theory of Ryan's case can be summarized as follows-> since Ryan did not record a deed for his land (i.e., did not enter into a contract/agreement with County of York) then according to the **written laws** he does not have any liability for the payment of taxes on his land and Respondents have no legal authority to interfere with his property.

Respondents failed to brief their opposition to most of the issues that Ryan raised and argued in his opening brief, effectively conceding all those unopposed issues. In fact, Respondents choose to stay totally silent on the CRUCIAL issues of this entire appeal, the legal basis of Ryan's case. Ryan devoted almost half of his opening brief to these issues as they touch every allegation in his complaint, every claim for damages, every legal argument put forth by the parties, and every finding and conclusion of law made by the trial judge, yet Respondents decided not to even address these issues!

Respondents then state in their brief that their failure to address the legal merits of Ryan's case should not be construed as their agreement with Ryan's positions (Respondents' Brief, pg 6, footnote #7). But how can Respondents silence and refusal to

address the legal merits of Ryan's case (especially since Respondents carried the burden of proof since they raised this matter as an issue) be construed as anything BUT Respondent's tacit agreement with Ryan's positions? It cannot.

STATEMENT OF THE CASE

Respondents' counterstatement of the facts and the procedural history of this case fails to comply with the requirements for an accurate, unbiased and supported recitation. The following are but a few examples of Respondents false, biased and unsupported statements they included in their statement of the case and procedural history of the case.

First, Respondents state that "*York County appeared on behalf of the County Employees*" (Respondents' brief pg 2, second para). That statement, and many others like it found throughout Respondents' brief, gives the impression that York County is a party to this action or involved in this case. However, the record shows this is not the case. The reason Respondents are making these statements seems to be their desire to convince this Court that Respondents have sovereign immunity to Ryan's action because Ryan's action somehow involves York County, a "governmental entity", but it does not.

Second, Respondents go into a discussion of remedies Ryan sought from this Court in its original jurisdiction during his unsuccessful attempts to stop the Respondents from their continuing attempts to steal his property (Respondents brief page 2, footnote #1 and pg 4 second para). These facts were never raised to or ruled upon by the lower court and are wholly immaterial to Ryan's action or to this appeal.

Third, in Respondents statement of facts they refer to their motion for sanctions and supporting affidavit[1] that they filed into the case **after** the case had been **finally decided**

[1] The affidavit is from the county attorney "Kendree" and contains over **100 pages** of hodgepodge, dubious, and wholly irrelevant exhibits

and totally disposed of and was never heard by the trial court, so it is immaterial to this appeal (Respondents' brief, pg 2; fn #1). Respondents also included that motion for sanctions and supporting affidavit in their "Designation of Matter to be included in the Record on Appeal" (see #6 and #7 of that document) even though they admit in their brief that their motion was never heard by the trial court - "*That motion is pending, but has been stayed by this appeal*" (Respondents' Brief page 4). Therefore, it cannot be included in the record, yet they designated it in violation of the rules and their attorneys certification.

If Respondent's statement of the facts and procedural history of the case do not comply with the rules and their attorney's certification is clearly a **false certification**, can any other part of their brief be trusted?

STANDARD OF REVIEW

Respondents raised no objection to any of the standards of review proposed by Ryan, so Respondents must agree with them all.

ARGUMENT

I. **Because S.C. Code of Laws § 12-37-610 is the statute that lays the liability for taxes and assessments on real property, and not S.C. Code of Laws § 12-37-210, it was error for the trial judge to find that Ryan is liable for taxes and assessments on his land simply because his land is within the boundaries of South Carolina and therefore conclude that Ryan's case is *entirely frivolous*.**

Ryan demonstrated in his opening brief pgs 1-21 that the following issues he briefed are correct and applicable to this case and Respondents briefed no opposition, so they must agree:

1. That according to S.C. Code of Laws § 12-37-610 taxes and assessments on real property are assessed and collected ONLY from owners of property who have recorded their deeds with the register of deeds in the County wherein their real property is located.

2. That contrary to Respondents' position, which the trial judge erroneously accepted, all land found within the boundaries of South Carolina is not liable for taxes and assessments under S.C. Code of Laws § 12-37-210 simply because it can be found within those geographic boundaries. In other words, it is the recorded owner of the land who is made liable to pay a tax (per S.C. Code of Laws § 12-37-610) and not the land that is liable by virtue of its location.

3. That all taxes and assessments on real property are contractual obligations of the owner of the recorded property (the contract is created by the recordation of the deed).

4. That there is no law that mandates Ryan must record his deed.

5. That since the record shows that Ryan did NOT record a deed for his land then Ryan is NOT liable for any taxes (i.e., contractual obligation) to Respondents.

6. That Respondents' have no legal authority to interfere with the property of a man who is not liable for the payment of any tax to them which means Respondents lack any legal authority to list, lien, levy, advertise for sale, possess, trespass on, post threatening notices on, take, or sell Ryan's property.

7. That Respondents' have violated Ryan's natural, constitutional, and property rights and in doing so are liable in their individual capacity to Ryan for their wrongs.

Respondents state their reason for not addressing any of these above listed issues, i.e., the legal basis of Ryan's case, is that "*those arguments were never* ***substantively addressed*** *by the circuit court, because the circuit court determined that it did not have subject matter jurisdiction to hear Powell's arguments... On Appeal, this court cannot review rulings the circuit court never made.*" [**emphasis** added] (Respondents Brief, pg 7 sec I, para 1).

First, a dismissal on a Rule 12 (b)(1) SCRCP motion for want of subject matter jurisdiction is done by a court without reaching the merits of the case, so had the case ended after the trial judge found he was wanting subject matter jurisdiction, the Respondents would be absolutely correct. See "Normally, Rule 12(b)(6) judgments are dismissals on the merits and Rule 12(b)(1) dismissals are not.", Wilkins v. Jakeway, 183

F. 3d 528 (6th Circuit 1999). However, in this case the trial judge determined that he **retained** just enough subject matter jurisdiction after his dismissal for want of subject matter jurisdiction to be able to hear the merits of the case in order to decide Respondents' other Rule 12 (b)(6) SCRCP motions to dismiss and to substitute the defendants. In deciding those Rule 12 (b)(6) SCRCP motions, the trial judge both heard and determined the merits of Ryan's case including the legal basis of Ryan's claims.

Second, to preserve an issue for review the issue only needs to be raised to and ruled upon by the trial judge. See "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.", Herron v. CENTURY BMW, 719 SE 2d 640 (SC Sup Ct 2011). Respondents are the ones who raised these issues in their Rule 12(b)(6) SCRCP motion to dismiss Ryan's case on the grounds that Ryan allegedly "misinterpreted the laws" that Ryan's claims are entirely based upon, alleging that Ryan's claims are therefore "frivolous" [R. pg 32, #10]. Respondents argued that motion to the trial judge [R. pgs 57-67]. Ryan presented his opposition to that motion in his written response [R. pgs 47-49] and his oral arguments [R. pgs 69-85]. The trial judge granted Respondents motion to dismiss, concluding that Ryan's case is "*entirely frivolous*" [R. pg 5, Rule 12(b)(6) S.C.R.P., last para, last sentence]. Then Ryan addressed these issues again, since they are so crucial to and touch every aspect of his case, in his motion to alter or amend [R. pgs 55-56] and argued these issues exclusively during the hearing of that motion [R. pgs 86-91]. The trial judge's conclusions that he reached after considering all the arguments and law raised by the parties was that Ryan's claims are *entirely frivolous* because, as argued by the Respondents, Ryan's **land** is liable for the tax by the fact it is within the boundaries of South Carolina and therefore Respondents were just doing their

jobs collecting a tax that Ryan's land owes. These conclusions were clearly the basis for not only the trial judge's decision to dismiss Ryan's claims as "*entirely frivolous*", but also his decision that the Respondents were just "*acting within the scope of their official duties*", and his decision that Ryan is a *taxpayer* who must pursue his remedy within the Revenue Procedures Act ("RPA" hereinafter). The trial judge's ruling to dismiss Ryan's case as "*entirely frivolous*" alone preserves this issue for appellate review as frivolous means "without any legal merit" so the legal merit of Ryan's case is absolutely open to appellate review.

Third, the issue of Ryan's liability for the payment of any taxes on his land and the Respondents legal authority to interfere with Ryan's property are ALL based on the construction of the real property taxing statutes. And the standard of review pertaining to the construction of any statute is - "de novo". "The issue of interpretation of a statute is a question of law for the court. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). This Court undertakes a de novo review of all issues of law, and is free to decide matters of law with no particular deference to the trial court. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008). As mentioned above, Respondents raised no objection or opposition to the de novo standard of review that Ryan proposed in his brief.

In summary, Respondents are the ones who raised the issue that this case is frivolous to the trial court, argued this issue to the trial court, and got a favorable ruling. Now their position is that the legal merits of Ryan's case weren't **substantively** addressed by the trial court nor were the trial judge's specific findings documented in his order that support his conclusions, *inter alia*, that Ryan's case is *entirely frivolous*, so that decision

can't be reviewed by this Court. That position is nonsensical. This Court should see Respondents silence on this issue for what it is - Respondents' **inability** to disprove Ryan's well supported legal position showing he is not liable to Respondents so they have no legal authority to interfere with his property and no immunity for their wrongs done to him.

II. Because the Revenue Procedures Act does not divest the circuit court of subject matter jurisdiction it was error for the trial judge to dismiss Ryan's claims finding that the circuit court is without subject matter jurisdiction.

Ryan demonstrated in pages 21-24 of his opening brief that the following issues are correct and applicable to this case and Respondents briefed no opposition so they must agree:

1. The Revenue Procedures Act is not an impediment to the circuit court's jurisdiction over tort claims, so it was error for the trial judge to dismiss Ryan's tort claims under Rule 12 (b)(1) SCRCP for want of subject matter jurisdiction.
2. A trial court can not both be wanting subject matter jurisdiction to hear a tort claim but at the same time have the authority to order the substitution of the parties or hear and decide the case on its merits.

Notwithstanding Respondents' apparent agreement with Ryan's above stated positions, Respondents did make many frivolous arguments, mostly based on false recitation of facts which the record does not support, including this one - "*if Powell truly believes that York County is wrongly assessing taxes against his property or wrongly attempting to collect taxes from him, then Powell's remedy is under the RPA*" (Respondents brief, pg 8, para 1). Respondents continually and intentionally misstate the facts of the case in order to hide the truth. Ryan's complaint clearly alleges that Respondents have NEVER assessed a tax against Ryan or his property[2], nor have they

[2] Ryan made abundantly clear in his brief that taxes are not assessed against land they are assessed against the person of the recorded owner of recorded property.

ever attempted to collect a tax from Ryan as he is not liable for any taxes [R. pgs 8-28]. Ryan quoted at length in his opening brief from Economy Plumbing & Heating Co., Inc. v. United States, 470 F. 2d 585 (Court of Claims 1972) which conclusively demonstrates that the administrative tax procedures like the RPA were created for the **benefit** of *taxpayers* so it can **ONLY BE USED** by taxpayers and cannot be used by non-taxpayers[3]. Ryan conclusively demonstrated that he is a non-taxpayer (Appellant's Brief pg 1-24) and Respondents remained silent and refused to even address that issue much less disproved it, so they must agree.

Respondents then made another frivolous, nonsensical argument when they wrote "*The circuit court properly ruled that it did not have jurisdiction to hear Powell's tax protest, and dismissed* ***that portion of his complaint*** *without prejudice*" (Respondents' brief, pg 8. para 1). Ryan's case is not a "*tax protest*" as he is not liable for the payment of any tax!. Also since Ryan's **entire case** is premised on Respondents' lack of legal authority to interfere with or take Ryan's property for a debt he does not owe, it is impossible to dismiss the legal basis of Ryan's **entire case** which touches **every single allegation** in the complaint without dismissing the entire complaint. So what portion of the complaint did the trial judge dismiss? Which causes of action? Which allegations? What "portion of the complaint" did the trial judge **retain** so that he had just enough subject matter jurisdiction to rule on the merits of Ryan's case? Absolute, utter nonsense.

Respondents then made another frivolous, nonsensical argument quoting Key v. Curry 305 S.C. 115, 116, 406 S.E.2d 356, 357 and stating - "*as tempting as it may be, this*

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[3] The RPA doesn't even contemplate the possibility of hearing or deciding issues of liability of the person bringing the claim because one has to be liable in order to invoke the ALJ's jurisdiction nor does it contemplate the possibility of hearing or deciding issues of tort damages because a *taxpayer* can NEVER be damaged by the collection of their contractual debt that they agreed to pay.

court should not take that bait" to hear Ryan's appeal in the court's original jurisdiction (Respondents' Brief, pg 9 last sentence to pg 10, first sentence). That statement is utterly nonsensical, as this Court is well aware appellate jurisdiction and original jurisdiction are two entirely separate and distinct jurisdictions that cannot be mixed nor has Ryan requested this Court hear his appeal in its original jurisdiction.

Respondents then frivolously argued that S.C. Code of Laws § 12-60-3390 is the authority that allowed the trial judge to dismiss Ryan's case, for lack of subject matter jurisdiction (Respondents' brief, pg 8, end of para 1). However, Respondents relied upon an entirely different statute in their Rule 12 (b)(1) motion that allegedly gave the authority to the trial court to dismiss for want of jurisdiction [R. pg 31, #3] but now they have changed their position. Nonetheless, S.C. Code of Laws § 12-60-3390 clearly states that a "***taxpayer's***" [4] action can be dismissed [5] for failure to first **exhaust his administrative remedies** if he brings his claims to a circuit court BEFORE taking them to the Administrative Law Court. Ryan showed in his brief that he is not a taxpayer and that S.C. Code of Laws § 12-60-3390 has nothing to do with subject matter jurisdiction.

Respondents then made another false and frivolous argument when they wrote "*Powell strenuously disputes that the RPA applies to him, asserting that he is not a* ***"property taxpayer"*** (see Respondents' brief, pg 8, last para, first sentence). Ryan never argued that he is not a "*property taxpayer*" mostly because to even get to the definition of that term in the RPA one has to first be a *taxpayer* and because that definition of *property*

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[4] S.C. Code of Laws § 12-60-30(29) - "*'Taxpayer' means a person who is liable for a tax*".

[5] S.C. Code of Laws § 12-60-3390 - "if a **taxpayer** brings an action *covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.*".

taxpayer[6] can be confusing to people who don't understand the property tax laws, and Ryan didn't want to unnecessarily confuse Respondents' attorney. Nonetheless, Ryan did show definitively that he is not a person liable, i.e., a *taxpayer*, and that land is not and cannot be liable for, or subject to any tax **unless** the owner records his deed (Appellant's Brief pgs 1-21), Respondents agreed by their silence.

Respondents then continued on with their frivolous arguments by writing "*he cannot credibly dispute that his 'property or interest in property is subject to, or liable for, a property tax'*" (Respondents' brief, pg 9, first para). First, not only **CAN** Ryan credibly dispute that contention, but Ryan has already credibly disputed it many times, including in his brief (Appellant's Brief pgs 1-21). However, Respondents refuse to even brief a position in opposition to Ryan's credible dispute! Second, a **definition** in a statute does not create a liability, it only defines one, so where is any tax liability ever laid against land in any statute? There is none. Third, as shown in footnote #6 the definition of *property taxpayer* is overly complicated to handle a situation that does not apply to Ryan because he is not a *taxpayer*. Fourth, the statutes are clear that a tax **debt** (contractual obligation) is due by the person that it is charged to (i.e., the owner who has recorded his deed). See S.C. Code of Laws § 12-49-10 :- "All taxes, assessments and penalties legally assessed shall be considered and held as a **debt** payable to the State **by the person**

[6] The definition of "*property taxpayer*" found in S.C. Code of Laws § 12-60-30(22) can create the potential for confusion because there exists a situation that can arise when a person buys property (which has a lien against it by virtue of an assessment against the previous owner for that tax year) and that person then records his deed (entering into a contract with the County of XX). In that situation the recorded new owner will not become liable for any taxes on his recorded property under S.C. Code of Laws § 12-37-610 until the December 31 following his purchase. During that short time period (always less than a year) the recorded new owner is not YET liable under S.C. Code of Laws § 12-37-610 but because he has contracted with the "County of XX" by recording his deed he has contractually obligated himself to pay the **lien** against the land created by the assessment against the previous owner (i.e., his interests in his land are liable during that short time period before he himself becomes liable under S.C. Code of Laws § 12-37-610) so the legislature has ensured that those persons, in that rare situation, still have access to the remedies provided to all other *taxpayers* in the RPA.

against whom they shall be charged". S.C. Code of Laws § 12-49-10 clearly proves that taxes are assessed against "the person" that the taxes are charged to and are not assessed against the land, which Respondents frivolously argued to the trial judge. This statute alone proves that Respondents have no authority to interfere with or take Ryan's property since he has never been assessed, or charged, with any taxes, assessments, or penalties!

Respondents then request this Court **only** consider "*whether the circuit court properly decided that it lacked subject matter jurisdiction to consider Powell's tax challenge.*" (Respondents' Brief, pg 9, second para). First, Ryan's action is NOT a "*tax challenge*" nor does it contain any "*tax challenge*"; it is a tort case based on Ryan's verified allegations of Respondents violations of his rights and property (which Respondents refuse to cease committing, to this day) by interfering with and attempting to take Ryan's property without any lawful authority to do so. Second, as shown above and in Ryan's opening brief, the gravamen of his entire controversy revolves around whether Ryan is liable for any tax to Respondents which determines whether Respondents have any legal authority to interfere with or take Ryan's property.

In summary, Respondents would have this Court believe that the legal basis of the torts Ryan alleged can somehow be separated from the damages requested in those tort claims - ridiculous nonsense. Either the circuit court has subject matter jurisdiction to hear Ryan's tort case[7] or it does not it cannot be somewhere in the middle as Respondents now frivolously argue (originally they admitted it was all or nothing) [R. pgs 29-30].

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[7] The circuit court obviously does have subject matter jurisdiction, see "*Tort suits are within the circuit court's jurisdiction. Here, on its face, this complaint alleges a tort and therefore is not subject to dismissal for lack of subject matter jurisdiction.*", McCullar v. Estate of Campbell, 672 SE 2d 784 (SC Sup Ct 2009).

III. **Because Ryan did not bring his claims under the Tort Claims Act against any *governmental entity* it was error for the trial judge to substitute "*York County*" for the Defendants/Respondents.**

Ryan demonstrated in his opening brief that the trial judge erred when he interpreted S.C. Code of Laws § 15-78-70 (c) to mean that any time a plaintiff brings an action against any agent or employee of any governmental entity, some governmental entity must be substituted for the named agent or employee, even if the action is brought against them in their individual capacity (Appellant's Brief pgs 26 -28). Respondents spent an entire one sentence in their brief to rebut Ryan's well supported position. Their opposition consists of a restatement of the one sentence that they cherry picked out of context from S.C. Code of Laws § 15-78-70 (c) while adding no additional authority or discussion to demonstrate that their cherry picked sentence applies to the facts of this case (Respondents Brief, pg 11 last sentence). Respondents' would like this Court to believe that no agent or employee of any governmental entity could ever be individually sued after 1989. However, that is a preposterous position, and this Court is well aware that there have been innumerable cases brought against agents and employees of governmental entities in the State of South Carolina since 1989.

IV. **Because Ryan brought his claims against the Respondents in their individual capacity for actions alleged to have been taken outside the scope of their official duties it was error for the trial judge to dismiss all of Ryan's claims with prejudice based on his finding that Respondents have *sovereign immunity.***

Ryan demonstrated in his opening brief on pgs 28-32 that the following positions are correct and applicable to this case and Respondents briefed no opposition so they must agree:

1. The Tort Claims Act does NOT apply to an action that is brought against agents of a governmental entity in their individual capacity for actions alleged to have been taken outside the scope of their official duties.

Respondents frivolously argue for the majority of their brief that Respondents have absolute, unqualified, sovereign immunity for their actions in this case **no matter how they may have harmed Ryan**[8] or no matter what capacity they are being sued in. They also argue that they cannot even be required to go through discovery or stand trial to determine if they were acting within the scope of their official duties for that would defeat the purpose of their unqualified, absolute immunity. But to reach these conclusions Respondents totally and completely ignored the actual facts of the case; those being that Ryan brought his tort claims against them under the common law (not the Tort Claims Act) in their "**individual capacity**" with personal liability for actions alleged to have been taken **outside the scope of their official duties**. The following are but a few examples of how the Respondents have failed to actually dispute the actual facts and actual issues raised by Ryan pertaining to the trial judge's erroneous dismissal of Ryan's case based on his conclusions that Respondents have immunity to his action:

1. Respondents actually support Ryan's position during most of their "opposition" because they often rely upon cases and statutes that admit that the immunity provided by the Tort Claims Act only covers actions of governmental employees while they are "acting within the scope of their official duties". For example, Respondents cite Ashcroft v. Iqbal, 556 U.S. 662, 672 (2009) and include this quote from that case - "First, it 'shields government officials' from liability for civil damages **insofar as their conduct does not violate clearly established statutory or constitutional rights**.", [emphasis added] (Respondents brief, pg 15, 2nd para). Respondent also rely upon Mitch v. Forsyth,

[8] "*The relevant inquiry is whether Powell seeks to impose liability where the County and its employees are entitled to immunity. If so, his claims are barred - **irrespective of his theories of liability** or the labels placed on his causes of action*", (Respondents Brief, pg 13, 1st para).

472 U.S. 511, 530 (1985) to support their premise that they don't even have the obligation to prove they were acting within the scope of their official duties because to do so would negate their absolute immunity. They quote from Mitch v. Forsyth supra "unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery". First, as Ryan demonstrated in his opening brief, Respondents have not even answered yet, so they have not plead anything nor have they entered any evidence denying Ryan's allegations. Second, it should be clear to this Court that a government agent taking someone's property who is not liable for a debt without first providing that person with "*due process of law*" would violate both the 5th Amendment of the Constitution of the United States and also Article 1, § 3 of the Constitution of the State of South Carolina! Ryan's complaint alleges Respondents violated many established laws and his rights including rights specifically protected to him by the State and federal Constitutions and, therefore, according to the cases the Respondents themselves rely upon, Respondents do not have any immunity for their wrongs.

2. Respondents obfuscate the truth by ignoring language in some of their case and statutory citations that show there are exceptions to the immunity given in the Tort Claims Act. For example, Respondents cite Flateau v. Harrelson, 584 SE 2d 413 in their brief (Respondents brief, pg 11, para A) but they failed to show the language that demonstrates that there are exceptions to the general rule of immunity.

> Respondents cited from Flateau v. Harrelson :- "Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees"
>
> Immediately below the above cite in Flateau v. Harrelson is:- "The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available *for any tort*

committed by a governmental entity, its employees, or its agents **except as provided in § 15-78-70(b)**. S.C. Code Ann. § 15-78-70(b) (Supp.2002)" **[emphasis** added].

The exceptions to immunity discussed in S.C. Code of Laws § 15-78-70(b) includes those in this case. See S.C. Code of Laws § 15-78-70(b) - "Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.".

3. Respondents rely upon cases and statutes that are factually dissimilar to this case, i.e., all the cases and statutes they rely upon pertain to an action against a governmental entity and not against an agent in his individual capacity.

4. Respondents displayed a list of exceptions to the State's waiver of immunity from S.C. Code of Laws § 15-78-60 that they argue apply to this case BUT those exceptions to waiver of immunity **APPLY ONLY** to actions brought against "governmental entities", see S.C. Code of Laws § 15-78-60 - "Exceptions to waiver of immunity. The **governmental entity**[9] is not liable for a loss resulting from: ...". Respondents also rely on Adkins v. Varn, 439 SE 2d 822 (1993) to prove Respondents fall under this waiver stated in S.C. Code of Laws § 15-78-60 and also to prove their position that Ryan has to bring his claims under the Tort Claims Act however in Adkins v. Varn supra the plaintiff in that case was suing **Greenville County,** which clearly is a governmental entity covered by the exception to waiver listed in S.C. Code of Laws § 15-78-60. Again, Ryan has not sued any *governmental entity* no matter how much Respondents want this Court to believe otherwise.

[9] S.C. Code of Laws § 15-78-60 30(d) " 'Governmental entity' means the State and its political subdivisions."

In summary, Respondents entire brief pertaining to immunity totally ignores the crux of the issue - that is - do agents of governmental entities have immunity to an action brought against them in their **individual capacity** for actions alleged to have been taken **outside the scope of their official duties**, which actions violated both well established laws and Ryan's property, natural, and constitutionally protected rights! Respondents remain totally silent on this, the actual issue.

V. Because Respondents failed to demonstrate any defects in the individual causes of action in their Rule 12 (b)(6) motions it was error for the trial judge to find that Ryan failed to allege facts sufficient to state a valid claim.

Ryan demonstrated in his opening brief on pages 32-35 that the following position is correct and applicable to this case and Respondents briefed no opposition so they must agree:

> 1. That the trial court did not find any defects in Ryan's compliant under Respondents Rule 12(b)(6) SCRCP failure to state a claim motions except in Ryan's "breach of contract" cause of action because the trial judge dismissed the entire complaint under Rule 12 (b)(6) SCRCP based on his finding that Respondents have absolute immunity to Ryan's action.

Respondents did however, dispute the assignment of error Ryan argued in his brief (Appellant's Brief, Pgs 33-35) showing the trial judge erred when he found that there is no allegations of a binding and enforceable contract in place, but Respondents opposition consisted of their restatement of that contention, and of the trial judge's conclusions, that Ryan did not alleged a binding and enforceable contract, without providing any additional authority or further argument to support that position.

VI. Because the facts found by the trial judge are not based on the record all the findings are unsupported and all the conclusions of law based on those unsupported findings are erroneous.

Ryan demonstrated in his opening brief on pages 35-38 that the following position is correct and applicable to this case and Respondents briefed no opposition so they must agree:

1. That all the factual findings by the trial judge are without any evidentiary support and therefore all the conclusions of law based on those unsupported findings are erroneous and must be reversed.

VII. **Because the trial judge does not have the authority to find that Ryan's mother is engaged in the "unauthorized practice of law" or interfere in the obligations of their contract it was error for him to disallow her from providing Ryan "assistance of counsel".**

Ryan showed in his opening brief on pgs 38-41 that not only was this issue raised to the trial judge but that the trial judge ruled on it. However, Respondents position is that because this ruling was not reduced to writing and put in the order that it is not preserved for appellate review. Not only did Respondents NOT support that position with any authority or argument, but clearly such position cannot be true. For there are hundreds of issues that can be raised and ruled upon during a hearing or trial that don't make it into the written order. Just because an issue is not reduced to writing and included in the order does not mean the issue is not preserved for review. See "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.", Herron v. CENTURY BMW, 719 SE 2d 640 (SC Sup Ct 2011).

Further there is what is known as the doctrine of **futility**. When Ryan's mother attempted to explain why she should be allowed to assist Ryan she was threatened by the trial judge with a felony charge and contempt [R. pgs 68-69]. Then the trial judge ordered Ryan's mother to sit down and be quiet while she was attempting to argue her objections [R. pg 68 line 14 - pg 69 line 5]. The appellate courts of this State have held that no one is required to undertake a futile act in order to preserve an issue for review.

See Staubes v. City of Folly Beach, 529 SE 2d 543 (SC Sup Ct 2000) - "This Court does not require parties to engage in futile actions in order to preserve issues for appellate review". See also State v. Pace, 447 SE 2d 186 (SC Sup Ct 1994) - "As to counsel's failure to raise an objection, the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have been futile. Accordingly, we find no waiver of this issue".

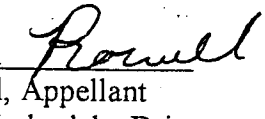
In this case, Ryan's mother DID specifically raise an objection to the trial judge's ruling that she could not assist Ryan or present Ryan's case but she was ordered to sit down and be quiet under a threat of contempt if she did not do so [R. pg 69, lines 6-7] therefore she was not given an opportunity to argue her objection of why she should be allowed to assist Ryan or present Ryan's case.

CONCLUSION

This Court must conclude that Respondents' silence on the key aspect of this case - the legal basis of Ryan's claims- and Respondents refusal to argue the actual issues of the case means Respondents' cannot oppose Ryan's well demonstrated positions. Accordingly, this Court must reverse both the orders appealed and the case must be remanded for a determination by a jury of the damages Respondents are liable to Ryan for, with instructions to the lower court that Ryan's mother may provide Ryan with assistance of counsel upon remand.

Respectfully submitted,

April 11, 2015



Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ryan Powell, Appellant,

v.

Amy Boheler d/b/a York County Auditor, Beth Latham d/b/a York County Treasurer, and Robert Kiser d/b/a York County Delinquent Tax Collector, each in their individual and official capacities, Respondents.

Appellate Case No. 2014-002578

Appeal From York County
S. Jackson Kimball, III, Special Circuit Court Judge

Unpublished Opinion No. 2016-UP-199
Submitted February 1, 2016 – Filed May 11, 2016

AFFIRMED

Ryan Powell, of Fort Mill, pro se.

Walter Keith Martens, of Hamilton Martens, LLC, of Rock Hill, for Respondents.

PER CURIAM: Ryan Powell argues the trial court erred in (1) dismissing his claim for lack of subject matter jurisdiction, (2) dismissing his tort claims as barred by the South Carolina Tort Claims Act, (3) dismissing his breach of contract claim,

165

and (4) prohibiting his mother from representing him and speaking on his behalf. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in dismissing Ryan Powell's claim for lack of subject matter jurisdiction: *Simmons v. Simmons*, 370 S.C. 109, 113, 634 S.E.2d 1, 3 (Ct. App. 2006) ("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.'" (quoting *Watson v. Watson*, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995))); S.C. Code Ann. § 12-60-80(A)-(B) (2014) (providing that except for a declaratory judgment action on the constitutionality of a statute, "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes"); S.C. Code Ann. § 12-60-3390 (2014) (stating the circuit court shall dismiss without prejudice an action covered by this chapter); S.C. Code Ann. § 12-60-30(22) (2014) (defining "property taxpayer" as "a person who is liable for, or whose property or interest in property, is subject to, or liable for, a property tax").

2. As to whether the trial court erred in dismissing his tort claims as barred by the South Carolina Tort Claims Act: *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) ("On appeal from the dismissal of a case pursuant to Rule 12(b)(6), [SCRCP,] an appellate court applies the same standard of review as the trial court."); *id.* ("That standard requires the [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" (quoting *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001))); S.C. Code Ann. § 15-78-20(b) (2005) (stating the South Carolina Tort Claims Act "grants the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived"); S.C. Code Ann. § 15-78-60(11) (2005) ("The governmental entity is not liable for a loss resulting from . . . assessment or collection of taxes or special assessments or enforcement of the tax laws . . . ."); S.C. Code Ann. § 15-78-30(d) (2005) (defining "governmental entity" to mean "the State and its political subdivisions"); S.C. Code Ann. § 15-78-30(c) (Supp. 2015) (defining employee as "any officer, employee, agent, or court appointed representative of the State or its political subdivisions").

3. As to whether the trial court erred in dismissing Powell's breach of contract claim: *Rydde*, 381 S.C. at 646, 675 S.E.2d at 433 ("On appeal from the dismissal

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

of a case pursuant to Rule 12(b)(6), [SCRCP,] an appellate court applies the same standard of review as the trial court."); *id.* ("That standard requires the [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" (quoting *Williams*, 347 S.C. at 233, 553 S.E.2d at 499)).

4. As to Powell's arguments that the trial court erred in prohibiting Powell's mother from arguing on his behalf and that the supreme court lacks the authority to require a person to obtain a license to practice law: S.C. Code Ann. § 40-5-310 (2011) (stating a person is prohibited from practicing law or soliciting the legal cause of another person unless he or she is a member of the South Carolina Bar); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (stating an issue cannot be raised for the first time on appeal but must be raised to and ruled upon by the trial court to be preserved).

AFFIRMED.

WILLIAMS, LOCKEMY, and MCDONALD, JJ., concur.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Stonewall Jackson Kimball, Special Circuit Court Judge

Case No. 2014-CP-46-1425
Appellate Case No. 2014-002578

Ryan Powell,. . . . . Appellant,

v.

Amy Boheler d/b/a York County Auditor,
Beth Latham d/b/a York County Treasurer, and
Robert Kiser d/b/a York County Delinquent Tax Collector,
each in their individual and official capacities, ... Respondents.

Motion to Rehear and to Seal Case,
Notice of Mandatory Duty to Protect Ryan's Human Rights and Freedoms

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This Court has obviously misunderstood that Ryan Powell ("Ryan" hereinafter) did **NOT** bring his action as a US created and owned Social Security grantor trust (i.e., an instrumentality of US Inc.) where this Court applies the law of trusts ("equity") and can rule, if needed, to protect its parent corporation, i.e., US Inc.. Ryan brought his action as a "private person" (i.e., a fiction alien to US Inc. that designates a man or woman) where both the lower Court and this Court are **REQUIRED** to uphold the rule of law and **protect Ryan's human rights and freedoms**. The Judges of this Court that "affirmed" the lower court's denial of Ryan's human rights can, and will, be held personally liable, without immunity, for their intentional violations of Ryan's human rights.

The governmental corporations that run the *this State* corporation have been documented to be quite corrupt[1]. The decision that this Court issued in this case evidences that more than four years after that integrity investigation took place, nothing has changed to rein in the corruption within the private, for-profit, commercial corporation named *"THE JUDICIARY COURTS OF THE STATE OF SOUTH CAROLINA"*.

It is no surprise that this Court's decision was issued unpublished, as it is contradictory on its face and violates, at least, all of the following: Rule 220 SCACR; six (6) mandatory provisions of the Constitutions of the State of South Carolina and of the United States that all Judges of this Court have contractually obligated themselves to uphold; the undisputed actual facts of the case found in the record; the statutes that give Respondents' their authority to act against corporations (e.g., Social Security grantor trusts) that have contracted with the private, for-profit, corporation named "County of York"; a multitude of binding case precedents issued by the Supreme Court of the United States; a multitude of binding case precedents issued by the Supreme Court of South Carolina; a multitude of binding case precedents issued by the Court of Appeals of South Carolina; the *International Covenant on Civil and Political Rights*, and Ryan's human rights and freedoms which, *inter alia*, includes his absolute right to own property and his absolute right to not be held in servitude!

Specific Issues that Necessitate a "Rehearing"

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1 "South Carolina gets F grade in 2012 State Integrity Investigation" found at https://www.publicintegrity.org/2012/03/19/18216/south-carolina-gets-f-grade-2012-state-integrity-investigation ". The article states, inter alia .."*In South Carolina, ... **politics trumps law**, and politicians often rule as lords, **as evidenced by documented accounts of clear abuses of power**. An undercurrent of fear and political interference bubbles throughout the state's civil service, one that is shot through with cronyism and patronage.*".

To request a rehearing would presume that there was, in fact, a hearing in the first place. It is obvious that this Court never heard Ryan's arguments or considered the actual record of the case and decided, instead, to avoid its duties to Ryan by just parroting the lower court Judge's clearly erroneous decisions that he took **verbatim** from the Respondents' Attorney's straw man arguments[2] that he created to save his clients from having to satisfy their legal OBLIGATIONS to an man that they intentionally wronged.

This Court is required to analyze the 60 pages of Ryan's briefs, 18 pages of the Respondents brief, and the 93 pages of the record and then apply legal and logical reasoning to make a competent, unbiased, judicial determination. However, this Court's required analysis of those 171 pages of facts and law has been documented in a less than two page decision that, in violation of Rule 220 SCACR(b)[3], does not even **attempt** to address twelve (12) of the sixteen (16) meritorious assignments of errors raised, supported by the record, and thoroughly argued by Ryan.

Under Rule 220 (b) SCACR "*...every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court* ***must*** *be stated in writing* " unless the Court determines that an issue is "*manifestly without merit*". Of the twelve (12) assignments of error that this Court **refused** to even address, not one of them was stated as being "*manifestly without merit*". For example, Ryan's entire case rests on the foundational issue of whether he is liable for any *ad*

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[2] A straw man argument is a form of argument and is an informal fallacy based on giving the impression of refuting an opponent's argument, while actually refuting an argument that was not advanced by that opponent to make it easier to attack.

[3] Rule 220 SCACP: *"(b) Decision by the Court. In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case. This rule does not apply to the following: ... (2) The Court of Appeals need not address a point which is manifestly without merit."*

valorem tax[4] (hereinafter "*ad valorem document tax*"), which the lower court erroneously determined he is. This issue is the basis of Ryan's entire case and this entire appeal; yet this Court intentionally refused to address this issue. The fact that this Court ignored this issue proves that this Court is putting "***politics above the law***" and ahead of its duty to Ryan to do a bona fide, unbiased, legal analysis of the issue of Ryan's liability. Further, had Ryan actually been found to be liable for an *ad valorem document tax,* Ryan's entire case would have been easily dispensed with; legally, logically, and without the need to resort to lies, pretenses, and straw man arguments.

This case also raises several novel issues of law where there are NO case precedents for the issues or the statutes that have been raised. This Court could have used this case to publish "new law". However, such "new law" would not be **politically beneficial** to the *this State* corporation, and that is why this Court issued its corrupt, unpublished opinion in order to **conceal** the actual issues of the case. This Court chose the easiest way out of having to admit that men and woman have both a right and a legal method (S.C. Code Ann. § 12-37-610) to actually own their property and not be held in servitude as free humans beings have an unquestionable right to do.

1. **Issues with the #1 paragraph of this Court's decision**

This Court's decision insinuates that the Revenue Procedures Act is the only remedy that Ryan has available to him by citing S.C. Code Ann. § 12-60-80(A)-(B). This determination simply parrots the lower court's absurd determination that Ryan, a man,

[4] "Thomson Dictionary of Banking" (1911) defines "*ad valorem*" (a.k.a. "stamp duties") as taxes on a **document** (e.g., a conveyance or a deed) not taxes on land, or even taxes on the person of the owner of the land but is a **tax on a document** which tax is assessed against the owner listed on the document! Where is the document that Ryan allegedly owes some *ad valoren document taxes* on?

possessing the absolute human rights to not be held in servitude[5] and to own property is somehow liable, without any statutory or contractual basis, to pay some **involuntary** contribution to a private, for-profit, commercial business! The legal errors just in that one paragraph are too numerous to fully articulate, but the most glaring errors are the following eight.

First, this Court's decision is self contradictory on its face, because it states that 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.* ". As this Court well knows Ryan's **case** is in the general class of **tort cases** which only the circuit court has the subject matter jurisdiction to hear. Then, defying all logic, common sense, and its own citation, this Court goes on to AFFIRM the lower court's HEARING AND DECISION of Ryan's tort case after deciding the circuit court didn't have the authority to hear and decide Ryan's tort case; absolutely amazing!

Second, this Court's opinion violates binding case precedents of the Supreme Court of South Carolina that has held that **tort cases** brought to the circuit court can **NOT** be dismissed for want of subject matter jurisdiction, see McCullar v. Estate of Campbell, 672 SE 2d 784 (SC Sup Ct 2009). This is an obvious point of law since the circuit court is the ONLY court that has ever been given subject matter jurisdiction to hear **tort cases**.

Third, this Court then quotes from the Revenue Procedures Act (§ 12-60-3390) which states "*the circuit court shall dismiss without prejudice **an action covered by this***

[5] Bouviers Law Dictionary (which the US Supreme Court relies upon) servitude is defined as - "The subjection of one person to another is a purely personal servitude; if it exists in the right of property which a person exercises over another, **it is slavery**. When the subjection of one person to another is not slavery, it consists simply in the right of requiring of another what he is bound to do, or not to do; **this right arises from all kinds of contracts or quasi contracts**."

chapter". So where are the statutes that give the ALC jurisdiction to hear a tort claim pertaining to an "*illegal or unlawful collection of taxes*"? This Court knows full well that the law does NOT differentiate between "kinds" of torts and that the ALC only has the jurisdiction to hear assessment disputes. Further, if this Court has determined that Ryan is a corporation that is liable for some involuntary *ad valorem document tax*[6] then the dismissal of his action **MUST BE under 12(b)(6) - failure to state a claim** as a corporation liable cannot claim damages (a tort) from tax employees collecting a tax liable that the corporation agreed to. That is why the ALC can never hear a tort as a tort can never arise pertaining to a taxpayer!

Fourth, the Revenue Procedures Act that this Court relies on is your corporation's by-laws that ONLY applies to those corporations that have contracted with your corporations[7] by recording their deeds. So how is it that Ryan, a man, who has NOT recorded his deed (i.e., not contracted with the County of York corporation) **is held in servitude** to follow your corporation's by-laws?

Fifth, if Ryan's only remedy is to follow your executive branch administrative procedure, then how could he even initiate that process when that process hinges on, and is initiate by, the taxpayer corporation disputing its *ad valorem document tax* assessment? The record clearly shows that Ryan has NEVER been assessed with any *ad valorem document tax* liability that he could dispute. **This Court has denied Ryan his judicial remedy** for the crimes and torts that Respondents have committed against him in clear

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[6] "involuntary" and "ad valorem" are oxymoron's as "ad valorem" taxes are, and have always been, based on a document so such tax can NEVER be an involuntary tax.

[7] Since a corporation is a fiction only found in the minds of men, under the law of parity they can only enter into contracts other corporations. See Penhallow v. Doane's Administrators, 3 U.S. 54; 1 L.Ed. 57

violation of Ryan's human rights and freedoms, as Ryan CLEARLY cannot take his **tort claims** to the ALC!

Sixth, without any analysis this Court quotes from a definition in the Revenue Procedures Act that ONLY applies to corporations liable insinuating, without stating, that somehow Ryan's "*property or interest in property, is subject to, or liable for, a property tax*". However, this Court has conveniently refused to determine how Ryan's land or his interest in his land can be liable for any *ad valorem* ***document*** *tax*! Further, where is the statute that lays any *ad valorem* ***document*** *tax* liability onto any property or interest in property? As this Court well knows, there isn't any!

Seventh, Respondents are REQUIRED by their official duties to send Ryan notices and demands for payment and they MUST create their execution in Ryan's name (as the owner of the property). Where is the evidence that Respondents have **EVER** created an execution in Ryan's name? This Court's determination is not only in clear violation of your corporation's by-laws, but it also violates the following three BINDING case holdings of the Supreme Court of South Carolina which all declare that a tax execution is **NOT issued against property** but is issued against the defaulting taxpayer and that it **MUST** be issued in the name of the actual owner. Further the South Carolina Supreme Court has consistently held that any execution made in the name of one who is not the actual owner (as in this case) the execution and the resulting tax sale are absolutely **VOID**[8]! See Taylor v. Jennings, 233 S.C. 600, 106 S.E.2d 391 (SC Supr Ct, 1958); Aldridge v. Rutledge, 269 S.C. 475, 238 SE 2d 165 (SC Supr Ct, 1977);; and Osborne et al v. Vallentine, 196 S.C. 90, 12 S.E. 2d 856 (SC Sup Ct, 1941).

[8] As this Court knows a void execution is one made without legal authority, i.e, outside the scope of Respondents official duties!!!!

Eighth, this Court's opinion then **contradicts itself** again by relying on S.C. Code Ann. § 12-60-3390 (2014) that declares a dismissal under that statute should be made "***without*** *prejudice*". This statute provides evidence that the dismissed case can be brought back into the circuit court after the administrative remedies have been exhausted. If the dismissal was for want of subject matter jurisdiction, it would have to be made "***with*** *prejudice*"!

2. Issues with the #2 paragraph of this Court's decision

Next, this Courts' decision makes another straw man argument by stating that the Respondents have immunity under the "*Tort Claims Act*" because "*governmental entities*" have immunity for "*...assessment or collection of taxes or special assessments or enforcement of the tax laws.*" First, how can any person, **with any integrity**, continually PRETEND that Ryan sued a "*governmental entity*" when the **title page** of his action clearly shows that he did not do so? Second, it is quite pathetic that in paragraph #1 this Court upheld the dismissal of Ryan's action **pretending** that Ryan's case is NOT a tort case but then three paragraphs later it states that Ryan's claims are **NOW tort claims disallowed under the Tort Claims Act**! Oh what a tangled web we weave when we practice to deceive! Third, this Court, by quoting from S.C. Code Ann. § 15-78-20(b), admits that governmental employees only have immunity when they are **acting within the scope of their official duties**. Where are the tax statutes that allow the Respondents to non-judicially take property from a man to allegedly satisfy an *ad valorem document tax* debt of a non-existent corporation that is not the owner of the property being taken? The Respondents obviously do not have any such statutory authority to take those actions and those actions are **theft**, not "*tax collections*" or even "*illegal tax collections*".... **theft**!

3. Issues with the #3 paragraph of this Court's decision

This Court then **pretends** to address the issue of the dismissal of Ryan's breach of contract cause of action by ONLY quoting the standard of review for dismissals under Rule 12(b)(6). That's all this Court stated about the issue - the standard of review! So where is the outcome from the court's review under that standard? Where is the analysis of that cause of action? Where are the case citations that show Ryan's cause of action is defective? Where are the defects that Ryan has a right to amend? Neither this Court, the Lower Court, nor the Respondents' Attorneys have ever articulated a SINGLE defect with that cause of action, because there are NO DEFECTS!

4. Issues with the #4 paragraph of this Court's decision

Next, this Court's decision fabricates another straw man argument by **pretending** that the issue raised and argued was whether the trial court erred by "*prohibiting Powell's mother from arguing on his behalf and that the supreme court lacks the authority to require a person to obtain a license to practice law*". Then this Court pretends to address that straw man argument by quoting from SC Code of Laws § 40-5-310. First, as shown above none of your corporation's by-laws has ever, or could ever, apply to a man or woman. Second, SC Code of Laws § 40-5-310 deals with attorneys who are conducting a trade or business holding themselves out for hire by soliciting business to represent corporate fictions before the courts of the *this State* corporation. Where is the evidence that Ryan's mother is a corporate fiction involved in the "profession or occupation", of being an "attorney-at-law" and "practicing law", or that she has ever "solicited" any business from her son, Ryan? No, as this Court very well knows, the ACTUAL issue raised was "does the lower court have the authority to prohibit Ryan's mother from

providing Ryan 'assistance of counsel'?" The fact that this Court relied upon a straw man argument shows that it is knowingly and intentionally **concealing** the actual issues raised. Again this Court is putting politics above the law. Then this Court's opinion insinuates (by quoting a case cite) that this issue was NOT raised to and ruled upon by the trial court when clearly the records shows that to be another lie!

Notice of Mandatory Duty to Protect Ryan's Human Rights and Freedoms

The employees of the JUDICAL COURTS OF THE STATE OF SOUTH CAROLINA corporation (i.e., ALL the Judges that have denied Ryan his human rights) are so used to ruling in cases brought, or defended, by US created and owned Social Security grantor trusts that they have either lost the memory, or never had the knowledge, of how to deal honestly, with integrity, and under the rule of law when deciding a case pertaining to a living man.

The ***International Covenant on Civil and Political Rights***[9] ("ICCPR" hereinafter) was created in the 1960s to address the problems associated with all the worlds' "*de jure*" (lawful) Constitutional governments being usurped by "*de facto*" (in fact) private, for-profit, commercial corporations. Since it is a universal law that corporations **MAY NOT EVER harm people**, the need for this treaty arose to provide the legal framework, recourse, and remedy to protect the people's human rights and freedoms from the commercial corporations taking over the world. By ratifying the ICCPR in 1992, US Inc. agreed to make the necessary arrangements to ENSURE and PROTECT the **fundamental rights and freedoms of all men and woman** within its borders. These

[9] ***The International Covenant on Civil and Political Rights***, G.A. Res. 2200 (XXI), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) became the supreme law of the land in April 1992.

duties were passed on to all of the 50 States through the Supremacy Clause[10] of the Constitution of the United States. The 50 States passed statutes, clarified some of their statutes, and took other measures as needed in order to ensure and protect the men and woman within their borders. The following is a direct quote from the ICCPR [*notes within blocks in italics are Ryan's*] which reads in part:

"Preamble

The States Parties to the present Covenant, [*which includes US Inc.*]

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [*they are not talking here about corporate fictions like Social Security grantor trusts*] is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights [*which document Ryan relied on in his case and in his brief*], the ideal of **free human beings** enjoying civil and political freedom and **freedom from fear and want** can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the **obligation of States** under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual [*that would include the Judges of this Court*], having **duties to other individuals** [*that would include Ryan*] and to the community to which he belongs, is under a **responsibility** to strive for the **promotion and observance** of the rights recognized in the present Covenant,

Agree upon the following articles:

Article 1...

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[10] Article 6 clause 2 of the Constitution of the United States - "*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;* ***and all Treaties made, or which shall be made,*** *under the Authority of the United States, shall be* ***the supreme Law of the Land; and the Judges in every State shall be bound thereby****, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*"

2. All **peoples** [*that would include Ryan*] may, for their own ends, **freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law**. [*that means no "peoples" can ever be forced to contribute their wealth or resources to ANY scheme of taxation*] **In no case may a people be deprived of its own means of subsistence.** [*Notice the words "in no case" that means never, not ever, can Ryan be deprived of his wealth/money/home as those are his means of subsistence. His wealth and property **MUST** be protected by this State, and as representatives of this State this Court must protect Ryan's means of subsistence from being stolen by Respondents!*].

Article 2

1. Each State Party to the present Covenant undertakes **to respect and to ensure to all individuals** within its territory and subject to its jurisdiction the rights recognized in the present Covenant,..

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, **to adopt such laws** [*Although the recording of ones deed has ALWAYS been the legal basis for the liability of ad valorem document taxes, such was not clearly stated in the statutes. Therefore after this Covenant was signed the legislature of this State clarified S.C. Code of Laws § 12-37-610 and S.C. Code of Laws § 12-24-10 (a) to make it clear that the recording of deeds is voluntary and that it is that voluntary act that creates the liability for ad valorem document taxes so that people who want to stand on their human rights had a method to do so*] **or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity [*That means Ryan's remedy has to be an EFFECTIVE REMEDY which includes that it must be a timely remedy and it cannot include having to produce tons of paper work under court rules that are written for attorneys or having to petition multiple courts when a single competent court has the ability to uphold and protect Ryan's human rights. This paragraph also makes **clear** that Ryan's effective remedy cannot be denied to him even if the person(s) who violated Ryan's rights was acting in an "official capacity" like the Judges of this Court, where they would have judicial immunity under your corporations' statutes that do not apply to men and woman!*]**;**

(b) To ensure that **any person claiming such a remedy** shall have his right thereto determined by **competent** judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the **competent authorities** shall enforce such remedies when granted.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person [*that would include the Judges of this Court*] **any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein** or at their limitation to a greater extent than is provided for in the present Covenant. [*that means that the Judges of this Court have no right to act in any way that destroys Ryan's human rights as they have already done in this case*]

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent. [*that means that ALL of Ryan's human rights must be recognized and protected, even those that are not specifically mentioned in this treaty*]

Article 8

2. No one shall be held in servitude. [*Servitude includes forcing Ryan to follow the dictates of any other person including the Respondents, the lower court, this Court, your administrative executive branch taxpayer refund process, your statutes, your court rules, or forcing Ryan to have to spend tremendous amounts of his time and resources to petition the Headquarters of your corporation (i.e. the Supreme Court of South Carolina) to do the job that this Court is required and is quite capable of doing. The Judges of this Court are not employed to assist or protect other members of your corporation in their efforts to violate Ryan's human rights and freedoms; your job is ordering other corporate persons - the Respondents - to stay within their legal authority so that they do NOT continue to violate Ryan's human rights and freedoms!*]

Article 17

1. No one shall be subjected to **arbitrary or unlawful interference with his privacy, family, home** or correspondence, nor to unlawful attacks on his honour and reputation. [*the Respondents, their Attorneys, the lower court Judge and now the Judges of this Court have all unlawfully interfered with Ryan's* ***privacy, family,***

***home**, and his honour and reputation. All things that he is not supposed to be subjected to!*]

2. Everyone has the right to the protection of the law against such interference or attacks. ["*Everyone" means people, not corporations. This paragraph means that this Court **MUST** use the law that has been created by the legislature of this State to protect Ryan from the unlawful attacks of the Respondents on his human rights, property, and freedoms.*]

Article 47

Nothing in the present Covenant shall be interpreted as impairing the **inherent right** of all **peoples** to enjoy and utilize **fully and freely** their natural wealth and resources. [*this means Ryan cannot be FORCED to contribute his resources - money or land - to ANY scheme of taxation. Clearly this treaty **strongly** emphasizes that taxation is entirely **voluntary** FOR PEOPLE, as it is the ONLY human right that is mentioned in two different and separate articles of the* ICCPR - *Article 2 & 47*]."

The Judges who issued the decision for Ryan's appeal have all violated the ICCPR treaty by violating Ryan's human rights and have made themselves PERSONALLY liable for all the damages that Ryan has already suffered and will continue to suffer from their knowing, intentional, and malicious acts denying Ryan his just remedy.

Even though the ICCPR in Article 2, paragraph 3(a) (shown above) states that Ryan must have an "**effective remedy**", even against persons acting in an "**official capacity**", the Supreme Court of the United States has also ruled that such is available, in a case that has become known as the "Clearfield Doctrine"[11]. In Clearfield the Supreme Court of the United States held that governmental corporations (like this Court) that enter into business by dealing in Federal Reserve Notes (as does this Court) descends to the

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[11] See CLEARFIELD TRUST CO. v. UNITED STATES, 318 U.S. 363 (1943). See also UNITED STATES PLAYING CARD COMPANY v. THE BICYCLE CLUB C-960265(Decided: May 21, 1997) where the US Supreme Court stated "When the United States enters into commercial business it abandons its **sovereign capacity** and is to be treated like any other corporation."

level of a **mere private corporation**. Private corporations and their employees do not have any sovereign immunity to any suit because they are not acting in any sovereign capacity. Therefore, neither the Respondents, their Attorneys, the Lower Court Judge, nor the Judges who issued this decision will EVER ENJOY ANY IMMUNITY for their knowing and malicious violations of Ryan's natural, fundamental, human rights and freedoms according to the ICCPR and the Supreme Court of the United States!

DEMAND

As shown above, this Court is clearly **OBLIGATED** to ensure and to protect Ryan's fundamental human rights and freedoms by giving Ryan an "effective remedy" which must include **stopping** the Respondents' **ON-GOING** crimes against Ryan, restoring to Ryan his property that the Respondents extorted from him, and compensating Ryan for all the damages he has suffered from the violations of his human rights and freedoms. If this Court is concerned about issuing a public decision ruling in Ryan's favor then seal the case! This Court has both the ability and the authority to do so and Ryan would prefer that his human right to privacy is also upheld. Further, sealing the case may be a far better resolution for all those persons involved in violating Ryan's human rights then for them to have to defend themselves in an international forum for their human rights violations - without any immunity!

MAKE IT HAPPEN!

5/23/2016

Date

Ryan Powell

Ryan Powell, a living man
(a.k.a. a "private person")

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The South Carolina Court of Appeals

Ryan Powell, Appellant,

v.

Amy Boheler d/b/a York County Auditor, Beth Latham d/b/a York County Treasurer, and Robert Kiser d/b/a York County Delinquent Tax Collector, each in their individual and official capacities, Respondents.

Appellate Case No. 2014-002578

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

C.J.

J.

J.

Columbia, South Carolina

cc:
Ryan Powell
Walter Keith Martens, Esquire
The Honorable S. Jackson Kimball, III

FILED
July 5, 2016

185