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There were no witnesses.

There were no exhibits.

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Certificate of Reporter 31

1 THE COURT: Okay, let's see. The first case I
2 have up is case of Firriolo vs. The City of
3 Greenville. And that is case number 2016-CP-23-4998.
4 It appears that it is a motion for judgment on the
5 pleadings. And an additional motion for actual
6 fraud. It looks like there's another motion for
7 dismissal. So, ladies and gentlemen, I'll be happy
8 to hear from you in whatever order you think is
9 appropriate.

10 MR. BACH: Thank you, Your Honor, Adam Bach on
11 behalf of the City of Greenville. My motion appeared
12 first on the docket, I think.

13 THE COURT: Yes, sir.

14 MR. BACH: So, I thought I would proceed first.

15 THE COURT: Okay, I'll be happy to hear from
16 you.

17 MR. BACH: I believe -- we actually also filed a
18 motion for a TRO and I'll address that in a second,
19 so. And we also filed a brief. I hope it has made
20 its way to the court's file. Filed it last month.
21 So, I'll try to be -- I'll try to be brief.

22 THE COURT: Okay.

23 MR. BACH: And not rehash a bunch of the
24 memorandum.

25 THE COURT: Yes, sir.

1 MR. BACH: But essentially, what we have here,
2 Your Honor, Mr. Firriolo -- I may be saying his name
3 wrong, but the Plaintiff. We learned that in
4 February 2016, the Plaintiff actually called the City
5 of Greenville, informed us that he had a contractor
6 out at his property working, who was unlicensed. A
7 fella by the name of Tyron Sanders. And he was doing
8 construction at the Plaintiff's residence. He
9 claimed -- the Plaintiff claimed that he begun doing
10 brick work at Mr. Sanders home -- I'm sorry, his own
11 home and hired Mr. Sanders to finish the work.

12 We informed the Plaintiff at that time that he
13 needed a building permit. And we also informed him
14 that if he was planning on acting as a general
15 contractor at the property, he needed to file a
16 document with the Register of Deeds. And that's a
17 process that is standard, it's gone through every
18 single day at the City. There's nothing on there
19 complicated to it. A few days later, a city
20 employee, Brad Rice -- we personally came out to the
21 Plaintiff's residence and delivered him an
22 application for a building permit. We brought it to
23 him so that he could fill it out and so he would be
24 aware of what was required of him.

25 While Mr. Rice was at the Plaintiff's property,

1 he saw that there was a lot of work going on out
2 there. There was a lot of work going out there
3 besides just the brick work. And so, he took a
4 number of photographs and we've submitted his
5 affidavit showing some of the work. You can see
6 the -- it's clearly torn up in the photographs. He's
7 got expansions coming off the back, brick work's
8 coming off the wall. It looks like some electrical
9 work's being done.

10 And so, while we're out there we inform him,
11 again, you know, Mr. Plaintiff, you are going to need
12 additional -- you're going to need additional
13 permits. This is the permit process that you have to
14 go through in order to do this kind of work on your
15 property. We left and shortly thereafter, we got
16 another call from the Plaintiff. And this time the
17 Plaintiff is now calling to report a second
18 unlicensed contractor who he has hired to work on his
19 property. A fella by the name of Cecil Golden.

20 Golden tells us that The Plaintiff is doing an
21 extensive amount of electrical work inside the home.
22 And that there are renovations going on in the
23 interior of the home. And The Plaintiff has no
24 permits for any of it. Not for what's going on in
25 the upstairs, not for what's going on in the

1 interior. Okay.

2 At that point, we still have not even received a
3 building permit application from The Plaintiff.
4 There's some allegation in the Plaintiff's complaint
5 that he's been denied access to City Hall. While we
6 vigorously dispute that, you can mail building permit
7 applications in, there's no requirement that you hand
8 deliver them. We certainly would have allowed him to
9 come in and deliver a building permit. But
10 regardless, because his work was ongoing and we
11 learned from Mr. Golden that he's doing this
12 electrical work, the City issues a summons regarding
13 the Plaintiff's failure to obtain a building permit
14 for the construction and the additions. The work
15 continued. We continued to go by the property,
16 despite our ordinance and summons, the Plaintiff felt
17 like he was not subject, I guess, to the permit
18 requirements and he continued to do this work on his
19 home.

20 On March 16th, 2016, we issued a motion for
21 Order and Rule to Show Cause for his failure to
22 obtain a permit and his failure to stop work after
23 being cited for doing unpermitted work at his
24 property. There was a hearing held in Municipal
25 Court on March 31st, 2016 in front of Judge Hawley.

1 And prior to that hearing, the Plaintiff requested a
2 jury trial. He also, through some mechanism, he
3 states in his complaint, he asked court personnel to
4 have certain witnesses there. I'm not exactly sure I
5 understand the allegation. But when he showed up on
6 the 31st of March, none of the witnesses that he had
7 requested that were present. He spoke to
8 Mr. Hawley -- or Judge Hawley about the troubles that
9 he was having obtaining a building permit.

10 We all know Judge Hawley. I love Judge Hawley.
11 Judge Hawley is an extremely nice guy. And Judge
12 Hawley decided that he was going to help the
13 Plaintiff obtain a building permit. So, on
14 April 11th, 2016, Judge Hawley himself personally
15 escorted the Plaintiff down to City Hall, got him the
16 building permit application papers that he needed in
17 order to do the project. I believe, actually -- my
18 understanding is and I just say it with hesitation,
19 Judge Hawley actually helped to draw part of what was
20 going to go in the permit application.

21 And the Plaintiff actually, at that time, did
22 submit an application but he failed to include the
23 new brick work that was happening at the house, the
24 two additions at both ends of the house, enclosing
25 the rear porch and a new roof structure. A roof

1 structure and new building and he failed to include
2 any interior renovations which we knew were going on.
3 All things we knew were going on, unpermitted work at
4 the house.

5 We tell -- we say, Look, we cannot except your
6 application because there's a lot of unpermitted work
7 going on here, you need to put all this in a permit
8 and in your application. Let us come out and make
9 sure it's being done properly.

10 The Plaintiff doesn't do that. Instead, he goes
11 back to Judge Hawley. And on May 25th, 2016, Judge
12 Hawley issues an Order requiring the City to approve
13 the Plaintiff's building permit. The City took the
14 application that Judge Hawley had helped the
15 Plaintiff submit, submits it through the process and
16 we get a response back almost immediately from our
17 zoning -- from the zoning board that says, Look,
18 you're encroaching on the neighbor's property, we
19 can't agree to this permit, we can't agree to this
20 construction because you're encroaching on the
21 neighboring property rights.

22 We inform Judge Hawley at that time that we
23 cannot issue the permit, that there are still
24 deficiencies in the permit application.

25 And Judge Hawley basically says, Okay, well, let

1 me -- he doesn't really do anything. That's the end
2 of it with regard to Municipal Court.

3 On August 25th, 2016, the Plaintiff files a suit
4 against the City. He includes in that suit dozen of
5 City officials. He names basically every single
6 person in the permitting offices. He names
7 Greenville Cares, he names the Clerk of the
8 Greenville Municipal Court, he names every single
9 member of city council. And while his complaint
10 contains a lot of sort of declaratory statements, it
11 seems like the thrust to his allegations or what he
12 actually has in his cause of action is a cause of
13 action for contempt for the City's failure to issue
14 him his building permits pursuant to Judge Hawley's
15 Order.

16 And so, Your Honor, that's sort of a brief
17 background. And it's little bit of a strange story
18 but that's where we are. The Plaintiff filed this
19 complaint. As we read the complaint, basically what
20 he's saying is the City -- he actually says Judge
21 Hawley's in contempt for failing to comply with his
22 own Order. And that the City of Greenville is in
23 contempt for failing to comply with Judge Hawley's
24 Order that the permit be issued.

25 Since this a motion for judgment on the

1 pleadings, I'm going to more or less confine myself
2 to what's in the pleadings and not talk about all the
3 factual issues with this complaint. Just talk about
4 the legal reasons why this complaint should be
5 dismissed.

6 THE COURT: Okay.

7 MR. BACH: First, under the Tort Claims Act, all
8 of the individual Defendants must be dismissed
9 pursuant to SC Code 15-78-70. Under the Tort Claims
10 Act, when there's a claim filed against a
11 governmental entity or an employee of a governmental
12 entity who is acting in their official capacity, that
13 that statute requires that the governmental entity be
14 substituted for an individual employee. I would also
15 say that there are no allegations contained
16 whatsoever against any individual defendant in the
17 complaint. He has all these names in the caption and
18 all these people have been sued. But there's not
19 under any actual allegation against Knox Haynesworth.
20 There's no allegation against Amy Ryberg Doyle.
21 There's no allegation -- Brad Rice is mentioned in
22 the complaint but there's no allegation against him
23 that he did anything wrong. But even if there were,
24 the law commands that all of these individual
25 Defendants be dismissed. The City of Greenville and

1 is the only Defendant in an action against a
2 municipality.

3 Second, the cause of action that he alleges that
4 we failed to comply with the Order should be
5 dismissed for three reasons. First, there is no
6 independent cause of action for civil contempt. And
7 we've cited some Fourth Circuit case law in our
8 brief. We weren't able to find anything in South
9 Carolina but basically the Fourth Circuit has said in
10 Finn vs. Schiller, Fourth Circuit -- I'm sorry, 72
11 Fd 1182, there is no such thing as a independent
12 cause of action for civil contempt. And the reason
13 for that is civil contempt proceedings are considered
14 part of the action from which they stem.

15 And our court has -- our Supreme Court on
16 numerous occasions has stated that the only way to
17 initiate cause of action for civil contempt for
18 failure to comply with an order, is by filing a
19 verified affidavit, verified petition or affidavit
20 showing the noncompliance and a rule to show cause.
21 And civil contempt proceedings are a part of the
22 proceeding from which the order issued. So, to the
23 extent that Mr. Firriolo wants to hold the City in
24 contempt for failing to issue a building permit, he
25 needs to address that request to Judge Hawley not to

1 another court.

2 Second, the City's immune from suit from failing
3 to issue a building permit under the Tort Claims Act
4 unless it exercise its discretion in a grossly
5 negligent manner. Under 15-78-60(12), the City may
6 not -- a governmental entity may not be liable for
7 a -- issue or deny a permit unless they exercise
8 their discretion in a grossly negligent manner.
9 There are no allegations of gross negligence here in
10 the failure to issue a building permit. The decision
11 that we made was unquestionably a discretionary
12 decision. We have immunity from discretionary
13 decision. You can't just argue with a municipality
14 about, you know, if we don't feel like you are up to
15 code, if you fail to comply with the ordinances or in
16 this case, you haven't simply submitted the building
17 permits that are required by the ordinances, that is
18 a discretionary decision. And we are immuned
19 [verbatim] from liability unless we're exercising our
20 discretion in a grossly negligent manner. And
21 there's no allegation of gross negligence, here.

22 Third, the Municipal Court and Judge Hawley, it
23 overstepped its power when it issued the Order.
24 Issuing an Order to a governmental entity to perform
25 a ministerial act, which permitting is a ministerial

1 act, is a writ of mandamus. It's essentially
2 commanding a governmental entity or person to perform
3 an act that normally rests within their discretion.
4 A writ of mandamus can only be issued under our
5 State's Constitution by a court of record. And our
6 Supreme Court has said repeatedly that Municipal
7 Courts are not courts of record. So, that's the
8 first issue with the writ of mandamus.

9 The second issue with the writ of mandamus is
10 that a writ of mandamus is unquestionably civil in
11 nature. And I'm looking at Plum Creek Development
12 vs. City of Conway, 334 S.C. 30, cited in my brief.
13 The writ of mandamus is civil in nature and but the
14 South Carolina code that establishes municipal
15 courts, SC Code 14-25-45 states, Municipal courts
16 shall have no jurisdiction in civil matters.

17 So, the court -- the Court lacked jurisdiction
18 for two reasons. First, a writ of mandamus under our
19 law is -- is contained in Article 5 -- the power
20 of -- is contained in Article 5 of the South Carolina
21 State Constitution which states that The justices of
22 the Supreme Court, judges of the Court of Appeals,
23 the circuit court and all other courts of record
24 shall have the power to issue writs of mandamus.
25 That's Article 5 of our Constitution. However, as

1 our Supreme Court has said on repeated occasions, A
2 municipal court is quote A summary court in nature
3 and is not a court of record. And that's State vs.
4 Duncan, 269 S.C. 510. Additionally, as I said, a
5 writ of mandamus is a civil action. And the
6 municipal court has no jurisdiction in civil
7 proceedings.

8 Our Supreme Court has made very clear that an
9 order or a judgment that is issued by the Court
10 without jurisdiction is void. And is subject to
11 collateral attack. Coon vs. Coon, 364 S.C. 563, A
12 judgment of a Court without subject matter
13 jurisdiction is void. Subject matter jurisdiction is
14 the power to hear and determine cases of a class of
15 proceedings in which the question belongs. The
16 Court -- and I -- you know, I say this hesitantly
17 because I love Judge Hawley, we all know him, I've
18 been in front of him before, he's a fantastic judge.
19 But in this instance, you know -- and I understand
20 and I believe he's trying to help the Plaintiff, he
21 doesn't have the power to command the Court -- the
22 city of Greenville to issue--

23 THE COURT: Just staying away from Judge
24 Hawley's decision and his conduct, I mean, this court
25 would have to have jurisdiction in an appellate

1 context to override or supercede his decision, would
2 it not? And this case isn't in the Circuit Court on
3 appeal is it?

4 MR. BACH: Your Honor--

5 MR. FIRRIOLO: Not yet, Your Honor, if may say
6 so.

7 THE COURT: Yes, sir.

8 MR. BACH: I agree, Your Honor. But I think the
9 distinction is this. I'm pointing out all the
10 reasons why the Plaintiff's complaint for contempt
11 against us for failure to adhere to the Order has to
12 be dismissed by this Court. I am not attacking Judge
13 Hawley's Order --

14 THE COURT: No --

15 MR. BACH: We're just asking to set it aside.
16 If the Plaintiff walks from here to municipal court
17 and files a rule to show cause in the appropriate
18 jurisdiction, and I have a final subject matter
19 jurisdiction that actually kind of gets to your
20 point, this Court actually lacks subject matter
21 jurisdiction to consider the Plaintiff's claim for
22 civil contempt.

23 THE COURT: Yes, sir.

24 MR. BACH: So, if he wants to bring a claim for
25 contempt against the City for failure to adhere to

1 Judge Hawley's order, he's got to do that in the
2 court from which it issued, the municipal court. And
3 then we can go down to municipal court and I can go
4 through all the reasons why I don't think the order
5 should have been issued. But for our purposes here
6 today and the purpose of my motion to dismiss, this
7 court certainly is not the appropriate place for the
8 Plaintiff to proceed on a claim against the City for
9 civil contempt for failure to adhere to this Order.
10 For all the reasons I've mentioned.

11 THE COURT: I agree with that. I think the
12 threshold issue is whether there is a justiciable
13 cause of action in circuit court and whether this
14 court has subject matter jurisdiction to entertain a
15 question of contempt from municipal court.

16 MR. BACH: Correct.

17 THE COURT: By or from municipal court, I don't
18 know. I think that's the threshold issue. And I'd
19 like to hear from Mr. Firriolo on the jurisdictional
20 issue.

21 MR. FIRRIOLO: Yes, sir, please. Thank you,
22 good afternoon.

23 THE COURT: Yes, sir, good afternoon.

24 MR. FIRRIOLO: My concern here is that from the
25 beginning, this court had no jurisdiction according

1 to the attorneys at bar here. We have two very
2 prominent lawyers. One is representing the City of
3 Greenville, the other is representing the Department
4 of SLED. Since this first motion or whatever you
5 call what they have submitted -- for example, I just
6 got something today in the mail to be prepared. I
7 can't be prepared today with something I got in the
8 mail. Just hours ago. But anyway, my point is that
9 all the documentation that was provided by the
10 lawyers of record have been noted to the Plaintiff
11 untimely. Zero notice to the Plaintiff.

12 And if the Court would look into the time
13 stamped dates of motions, whatever they file and
14 issue of dismissing this case because this court has
15 no jurisdiction in this case, according to them,
16 you'll find that each and everyone of the honorable
17 judges in this court have continued -- continuance of
18 a trial because I was involved with surgery and so
19 forth. And justice was served the Plaintiff in that
20 case. But at each time the dates was set, the
21 attorneys made it a point to deliver the things the
22 day of those meetings. And that's something that
23 should be noted on the record.

24 Before we get into other matters, we first have
25 to address the notice to the Plaintiff. Timely

1 notice to the Plaintiff. And so therefore, based on
2 the notice of the Plaintiff -- here's an example,
3 today is the 19th, it's postmarked the 17th. You
4 know, you get it the next day. So, that's been a
5 problem.

6 THE COURT: Mr. Firriolo, I stopped Mr. Bach
7 because I had some questions for him so I'm going to
8 stop you because I'm going to have some questions for
9 you too. And for both of you, I don't mean to be
10 intemperant or lack patience, but I told you that I
11 believe there's a threshold issue as to whether there
12 is a justiciable cause of action in this court and
13 whether there is jurisdiction. So, I just don't want
14 you to waste your time and energy talking about
15 things that aren't relevant to what we're doing here
16 today. Do you think this Court has jurisdiction over
17 this case?

18 MR. FIRRIOLO: Well, I thought the court had
19 jurisdiction because it's a Court of Common Pleas.
20 But I learned from the attorneys of record that this
21 court had no jurisdiction.

22 THE COURT: Do you believe that to be true?

23 MR. FIRRIOLO: I believe that to be true. Yes,
24 now I do. I didn't at first but now I do, yes.

25 THE COURT: Okay. Well then, we don't need to

1 discuss it any further. Because if I don't have
2 jurisdiction to hear it, then I don't have the
3 authority to do anything about it. So, we would just
4 be having a conversation among friends, essentially.
5 And I don't mind having a conversation among friends
6 but I'd rather do it downtown at one of our fine
7 local coffee establishments rather than in this
8 courtroom--

9 MR. FIRRIOLO: Well, I might join you for that.

10 THE COURT: Yeah. Well, but here's --

11 MR. FIRRIOLO: He's on the record now, this
12 is -- concerns the Plaintiff. He's on the record
13 with his testimony. And I haven't had a chance to be
14 on the record with my testimony.

15 THE COURT: You are the Plaintiff, aren't you,
16 sir?

17 MR. FIRRIOLO: I'm sorry, the Defendant.

18 THE COURT: Okay. Okay. Well, nobody -- as far
19 as I know, this is the first time that anybody's been
20 on record in any capacity in circuit court.

21 MR. FIRRIOLO: That's correct.

22 THE COURT: Because we're here to address the
23 threshold issue of whether it's appropriate in
24 circuit court. I reviewed the summons and complaint.
25 And when I walked in here the question I was

1 interested in, again, is is there a justiciable cause
2 of action? Well, if the only stated cause of action
3 in the complaint is contempt, then that contempt
4 jurisdiction rests with City Court. And if what
5 you're saying is, and I'm just paraphrasing, I'm not
6 trying to be exact about it, but that Judge Hawley
7 issued an Order and told them to issue a permit and
8 they failed to do it.

9 MR. FIRRIOLO: Absolutely.

10 THE COURT: Then --

11 MR. FIRRIOLO: Absolutely. The Judge's Order is
12 the command.

13 THE COURT: That's right. So, it's up to Judge
14 Hawley to enforce the provisions of his Order through
15 the contempt powers of the court. And I don't have
16 any jurisdiction or authority to do that. So again,
17 I don't mean to cut y'all off, but it seems clear to
18 me by agreement between the parties, that this Court
19 doesn't have jurisdiction.

20 MR. FIRRIOLO: Yes, sir.

21 THE COURT: Right?

22 MR. FIRRIOLO: Yes, sir.

23 THE COURT: Okay. So, this is what I'm going to
24 do. This is what I'm going to do. I'm going to
25 dismiss this suit in Circuit Court without prejudice,

1 without prejudice. To a request for a contempt
2 and/or an Order and Rule to Show Cause in Municipal
3 Court.

4 MR. FIRRIOLO: Well, I can't do the Municipal
5 Court because there's corruption in the Municipal
6 Court.

7 THE COURT: Well, then here's the problem. If
8 there's corruption in the Municipal Court, then
9 you're going to have to seek other redress other than
10 an overturning of his Order in the City Court. And I
11 can't tell you exactly how to do that because I'm
12 ethically--

13 MR. FIRRIOLO: I -- Your Honor, please, just for
14 a second.

15 THE COURT: Sure.

16 MR. FIRRIOLO: I filed a change of venue in
17 August in 2016. The purpose of the change of venue
18 was because the Plaintiff was not going to be treated
19 fairly in Greenville County dealing with Greenville
20 city politics and that type of thing. So, every one
21 of my motions since day one and up to this date,
22 because I filed one this morning. I filed a motion
23 this morning.

24 THE COURT: Yeah.

25 MR. FIRRIOLO: And the Court should know that.

1 As long as I'm on record here because I -- let me
2 just find -- just bear with me a second here because
3 I have new eyes and they're battling to get
4 acquainted with me.

5 THE COURT: Yeah, I'm with you.

6 MR. FIRRIOLO: And I haven't bought my glasses
7 yet because I can't afford to get them. So, I use
8 this but just bear with me a second because I need
9 to -- okay. Motion murder homicide in police
10 custody. I filed this today because I thought this
11 court would have jurisdiction.

12 THE COURT: Yes, sir.

13 MR. FIRRIOLO: Because law enforcement
14 throughout the State of South Carolina has denied me
15 access through law enforcement procedures or
16 investigations. So, I filed this because it's part
17 of this case. The case addresses the Department of
18 SLED. It addresses inappropriate behavior or
19 violation of law in the case. So, I filed this today
20 and the Municipal Court -- I can go tomorrow to get a
21 writ of mandamus in the Columbia office of the
22 Supreme Court.

23 And so, the City Court -- the City Court Judge
24 is the subject of this whole procedure. And the
25 whole procedure is -- in my complaint that the

1 Judge's Order was the command. And I was under his
2 command to proceed accordingly. And so, witnesses
3 weren't -- weren't noted because the Judge didn't
4 want it noted. He wanted me -- he did an
5 investigation, the Court did an investigation. They
6 had found that there was -- things had happened with
7 the City were violations of state and federal law.
8 And that was deprived of getting into -- in 2014 I
9 was deprived of access to city buildings. Mr. Adam
10 Bach has destroyed the very fabric of my case. And I
11 want this on the record.

12 THE COURT: Sure.

13 MR. FIRRIOLO: They say that, improperly, that
14 the Defendant, the City of Greenville, who properly
15 identified as Municipal Court Clerk of Court. The
16 Plaintiff was very clear that it was the clerk of
17 court that was a witness. And he properly identified
18 the clerk of court -- clerk -- of clerk of court and
19 employees. And he specified here that the defendants
20 are defendants and plaintiffs are plaintiffs and
21 witnesses are witnesses. But Mr. Bach, deliberately
22 and intentionally said that I didn't do the things
23 properly and I did.

24 So, I'd like this to be submitted as evidence in
25 this court. As long as he submitted his evidence to

1 this court.

2 THE COURT: I wouldn't -- Mr. Firriolo, I
3 wouldn't be too gosh awful offended by that. I don't
4 know many attorneys in a adversarial position who
5 don't claim that what the other one has done doesn't
6 comply with the rules of court. He's not treating
7 you any differently than he would treat any other
8 person on the other side of the case. That's kind of
9 part of the dodge and parry of advocacy in
10 litigation.

11 MR. FIRRIOLO: With your expertise as a
12 honorable judge, an honorable man in the service, we
13 thank for your contribution to our country and
14 Greenville, do you think that Thomas Firriolo would
15 be treated properly in municipal court when he wasn't
16 treated properly to being in the municipal court?
17 The records were destroyed.

18 THE COURT: Yeah, I really do. And I can tell
19 you honestly as an officer of the court, on the
20 record right now, I think that you will receive a
21 fair hearing in municipal court. I believe very
22 strongly in the honor and the integrity of Judge
23 Hawley. It appears to me that he did attempt to help
24 you at some point. Now, whether that attempt was
25 misguided or not, I don't know. I suspect it wasn't.

1 I suspect he was just trying to help you out. But I
2 can tell you that--

3 MR. FIRRIOLO: He did more than that, he did an
4 investigation.

5 THE COURT: And I'm -- but I feel certainty that
6 the municipal court will treat you fairly. I will
7 tell you if, in fact, the municipal court doesn't
8 treat you fairly, then your recourse is the appeal
9 that decision. Appeal that decision for an abuse of
10 discretion or for an error of law. But we just
11 haven't gotten there yet, we haven't gotten there
12 yet. So, as we sit here right now my hands are tied
13 because I just don't have jurisdiction to do anything
14 about it.

15 MR. FIRRIOLO: I appreciate your patience with
16 me.

17 THE COURT: No problem, Mr. Firriolo. I
18 appreciate your being here and I'm happy to have the
19 opportunity to meet you.

20 I will direct Mr. Bach to prepare an Order, a
21 fairly simple Order that just says that as couched,
22 there's no justiciable cause of action and this Court
23 doesn't have subject matter jurisdiction for this
24 case. All right.

25 MR. BACH: Your Honor, just briefly, to clarify,

1 we filed some counterclaims relating to the ongoing
2 work at the property. You know, I don't know if
3 there's any sort of motion at this time so just the
4 Order would be as to Plaintiff's complaint, not as to
5 entire case, is that satisfactory?

6 THE COURT: Well, I think that if it is -- if it
7 lacks subject matter jurisdiction ab initio, then any
8 additional filings within that same case is dismissed
9 as well. I think it's just a complete do over.

10 MR. BACH: Okay.

11 THE COURT: I mean, you're welcome to look at
12 the law and tell me whether that's right or not but I
13 think that if it's initiated inappropriately in this
14 court, then ab initio you can't continue to litigate
15 a case in which the case -- this court has no subject
16 matter jurisdiction. I recognize there are
17 counterclaims but I think those counterclaims are
18 just to brought as additional suits. Okay.

19 MR. BACH: Yes, sir.

20 MR. FIRRIOLO: One more question, Your Honor.

21 THE COURT: Yes, sir.

22 MR. FIRRIOLO: So, do you have jurisdiction on
23 court that just recently submitted to this court
24 cases involving two Defendants in the Plaintiff's
25 case?

1 THE COURT: No, I don't think I do for a number
2 of reasons. Because first of all, there hasn't been
3 an initial filing or motion which would confer upon
4 the court --

5 MR. FIRRIOLO: It was filed.

6 THE COURT: -- and the other thing is, I don't
7 think that that motion was noticed for today's date
8 and time. Okay. So, it got to be a combination of
9 the two, all right?

10 MR. FIRRIOLO: Well said.

11 THE COURT: All right. Thank you, sir.

12 MR. FIRRIOLO: Have a good day.

13 THE COURT: Have a great day.

14 MS. BROWN: Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. BROWN: Just for the record, I'm Kate Brown
17 on behalf of SLED and Lieutenant Elizabeth Corley and
18 improperly identified LLR employee. So--

19 MR. FIRRIOLO: That's not so. Excuse me for
20 interrupting but that is not so.

21 THE COURT: That's okay, let me hear her.

22 Yes, ma'am.

23 MS. BROWN: I'm not trying to be a -- his name
24 was just incorrect in the complaint, that's all I'm
25 saying with regard to that. But we filed motions to

1 dismiss. So, you're saying that there's not subject
2 matter jurisdiction and we're not going forward on
3 anything today?

4 THE COURT: No, ma'am. That's exactly right.

5 MS. BROWN: Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 Okay, thank you, good luck.

8 MR. BACH: Thank you, Your Honor.

9 MR. FIRRIOLO: Will have the complaint in the
10 script? It's only two pages, Your Honor.

11 THE COURT: I'm sorry, sir?

12 MR. FIRRIOLO: May I read answer to his
13 [verbatim] statement now that I improperly address
14 the people. The Plaintiff's here say now that the
15 record will reflect that he properly -- he properly
16 did the right thing here and named the proper people.
17 And so, they miscrued that intentionally. And
18 they -- they destroyed and tampered with evidence of
19 a filing. And they interpreted words differently.
20 And I know that you said this before but they put it
21 in documentation.

22 THE COURT: Yeah, I understand. I don't know.
23 I just don't know whether that's right or wrong. But
24 I got to be honest with you it, it's not irrelevant
25 if the case -- if the Court doesn't have

1 jurisdiction--

2 MR. FIRRIOLO: But it's relevant what I say to
3 him on the record.

4 THE COURT: I don't know that she put anything
5 that was--

6 MR. FIRRIOLO: The Court Reporter just typed in,
7 I'm sure.

8 THE COURT: Y'all have a good faith disagreement
9 about whether the names were right or wrong, that's
10 neither here nor there. And I think that's why you
11 quit addressing the Court because it's neither here
12 nor there. It's a personal point of contention
13 between you. It's not a legal point of contention
14 that concerns the Court. Okay. All right, good luck
15 to y'all.

16 MR. BACH: Thank you, Your Honor.

17 MR. FIRRIOLO: Thank you, Your Honor.

18 MS. BROWN: Thank you, Your Honor.

19 MR. BACH: Just email -- do we email or
20 electronically file?

21 THE COURT: What I would appreciate you doing,
22 please, is emailing it directly to me. Because then
23 I can maintain control of it, upload it and execute
24 it. Also, before you email it to me, I want you to
25 deliver a copy of a proposed Order to Mr. Firriolo so

1 he'll know what's being delivered to the Court.

2 MR. BACH: Yes, sir.

3 THE COURT: Okay, thank you.

4 MR. BACH: Thank you.

5 (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

3

4

5 STATE OF SOUTH CAROLINA)

6 COUNTY OF GREENVILLE)

7

8

9

I, APRIL P. HERRON, Official Court Reporter for
10 the Thirteenth Judicial Circuit of the State of South
11 Carolina, do hereby certify that the foregoing is a true,
12 accurate and complete Transcript of Record of the
13 proceedings had and evidence introduced in the trial of
14 the captioned case, relative to appeal, in the Court of
15 Common Pleas for Greenville County, South Carolina, on the
16 19th day of January, 2017.

17

18

I do further certify that I am neither of kin,
19 counsel nor interest to any party hereto.

20

21

April 19, 2017

22

23

24

25


APRIL P. HERRON, Court Reporter

The South Carolina Court of Appeals **RECEIVED**

P.O. BOX 11629 Columbia South Carolina 29211 MAY 09 2017

SC Court of Appeals

Thomas Raymond Piniols v. The City of Greenville

appellate case no 2017-000560

Request permission not to include original signatures
Important for Law Enforcement to Investigate
all doors in Law Enforcement in South Carolina have been shut,
all Law Enforcement doors closed.

Request permission at this time temporarily not to
include original documents' signatures of Parties
involved in the affidavits' - City of Greenville
Building Dept. officials' - Building Dept. Employees -
Building Dept Permits that began April 12th 2016,

There has been a continued pattern of no Law
Enforcement - No Law Enforcement, in the State
of South Carolina to do their jobs, which is to
investigate crimes - that South Carolina Law
Enforcement is instructed to do - Investigate Crime

The crimes which seemed to have grown in size
within itself, remains unsolved crimes.

misconduct in office of Public Trust:

page one.

your appellee requests permission to note: Three (3) Judges orders by two (2) Judges during commission of crimes has affected seven (7) Courts of Law in Beaufort South Carolina.

Feb 6th 2017 your appellee filed assignment of Error.

Due Process was not there.

False testimony was allowed to continue - No Law Enforcement to investigate.

(F.O.I.A.) requests for information under the Freedom of information act was denied Plaintiff.

Plaintiff in case no 2016-CP-23-04998 filed complaints of Clerks of Court to City Police - County police and to the 911 call center and to whom ever else and including the South Carolina Court administration.

The Plaintiff's case supports (20) twenty City of Beaufort defendants and among them, Mr Cecil Golden Specialty Contractor who is the Plaintiff's Defendant, Mr Adam C Berk Esquire clearly knows that Cecil Golden is Plaintiff's Defendant in the case 2016-CP-23-04998.

Mr Bark Eguero became involved with Cecil Galdon Sept 2016 knowing that this man, who is Plaintiff's Defendant, is involved as Plaintiff's Defendant in three (3) Serrano Magistrate Courts - South Magistrate's Court - (number West Magistrate's Court and is Presently Plaintiff's Defendant in West Serrano Magistrate Court.

Mr Cecil Galdon on Sept 16th 2016 entered this case with an incomplete, altered, Court entry into this case and with copies of City of Serrano permit which was issued after this contractor did contractor's. This elected contractor removed Duke Power meters and power Box before his permit and with out Duke Power knowledge, or the City of Serrano knowledge.

Mr Bark Eguero clearly knows this.

Mr Adam C. Bark Eguero Temporal with Plaintiff's witness Mr Cecil Galdon and accuse Mr Bark Eguero of witness Temporal -

I also accuse Mr Adam C. Bark Eguero of violation of appellate Court Rules Rule 8.4, misconduct.

appellate Court Rules 8.4 Professional Misconduct. The Supreme Court of South Carolina amendment Rule 402 SCACR Lays Oath Oct. 22nd 2003 Mr. Adam C. Beck Esq. took his Oath as a South Carolina BAR member in 2006 and was provided his South Carolina BAR # 74885 and remains in good standing.

copies enclosed: Defendants' City of Greenville and City Employees' motion for judgment on the Pleadings and for temporary Restraining order and Preliminary injunction and Defendants' City of Greenville and City Employees' answers and counterclaims are enclosed,

Mr. Adam C. Beck Esq. accused and charged the honorable Judge Matthew Raymond Healy Jr. with abuse of Discretion in issuing his Order for the City of Greenville to comply to his order see copy of Judges Order.

The Judge's order is clear - That City Lawyers who also took their oath amendment Rule 402 SCACR and governed by appellate court rule 8.4 examined and re-view and inspect my home files along with the Judge and supported

this Judge who has been in Law Enforcement over fifty (50) years and is well respected and mentor to many Judges.

The Core at Bar

City of Buenville Lawyers were not charged with abuse of Discretion (abusing the Powers of office) by Mr Adam C Beck Esquire - They were equally involved with the Judges Order and should be charged with abuse of Discretion because they have abused the powers of office.

Mr Adam C Beck Esquire again is in violation of Rule 8.4 mis conduct (c) engage in conduct that is prejudicial to the administration of Justice.

Judge Matthew Raymond Hewley Jr. Order
case at Bar.

Judge Hewley Jr. order again is clear

That Mr Perriolo accepted an offer of assistance by the Court to subpoena witness. The City Lawyer welcomed the Courts intercession, no witness was subpoenaed - no city homeownes permits were ever issued - see copy of CK enclosed.

no City Building Dept inspection ever took place

witness information list Part one and part two
are enclosed and what they were going to
testify to.
and again

witness Tompering took place.

(2) Twenty City of Brenwill witnesses' were to
be subpoenaed for jury trial. The witnesses
were City of Brenwill Employees, building,
Department officials, city lawyers, city ad-
-ministrator officials involved in Plaintiff
case.

case at Bar

Mr Adam C. Berk Esq. has interviewed these
witnesses and produced for them their affidavits
and corroborated them and brought them into
the limits of Court motions and they have
never been questioned.

Judge Hruby Jr. protected witnesses
Adam C. Berk Esq. protected witnesses and
both Tompering with witnesses.

There is no Law Enforcement to investigate.

your Appellee request Permission to file
Declaratory Judgement

he was denied (F.O.I.A.) requests for information
Under the Freedom of Information Act

your Appellee request Permission to file
mandatory injunction

your Appellee request permission to file
Prohibitory injunction

Due Process was not there because
of State Law Enforcement S.I.L.E.D. and their
enrollment being in Judge Huley Jr. Court
room, March 21st 2016 - There were there to in-
sure that witnesses were to be subpoenaed.

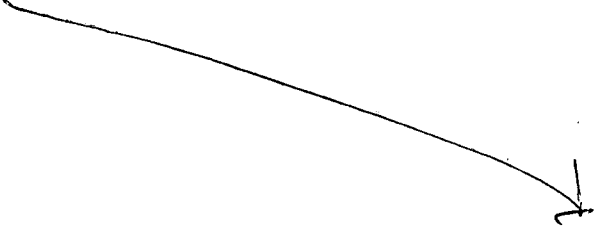
and

There just was no Law Enforcement to go to
in the best State of South Carolina

Thomas Raymond Perich, appellee

11 addie Court Demwill S.C. 29605

Page Seven end



FILED - CLERK OF COURT
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

2016 FEB 23 PM 12:47

COURT OF COMMON PLEAS

JUDICIAL CIRCUIT

CASE NO.

2016-CP-23-04998

Thomas Raymond Firriolo,
Plaintiff,

V.S.

City of Greenville, et al.,
Defendants,

COMPLAINT

(JURY TRIAL DEMANDED)

and City Employees et al. individual action)
and jointly and municipal Court Clerk of Court, and)
Employees et al. Individual action and jointly, and City)
of Defendants, Mr. Jeff Bowen, Mr. Gary Fanell, Court)
Certified Witnesses: Ms. Jodie Dudash, Ms. Cynthia)
Vilardo, Mr. Brad Rice, Mr. Bobbie Skinner, Ms.)
Tammy (Jane Doe) of Greenville Cares Center)
Attorneys denied requested information to provide her)
full legal name Under the Freedom of Information Act)
(F.O.I.A), and co-defendants, Mr. Dwayne Cooper, Ms.)
Kim Jones, Mr. Clint Link, Mr. Bryon Wood, Mr.)
Jason Gillespie, Engineers, City Planners and witness)
Mr. Steven Landrith, former Building Department)
Official. Co-defendants Tyron Sanders, Larry Johnson)
partners and Cecil Golden, Specialty Contractor, who)
together acquired city license/permits after the fact. Co-)
Defendants Knox White, Jil Littlejohn, Gaye Sprague,)
George Fletcher, Amy Doyle, Lillian Fleming, David)
Sudduth, The Department of S.L.E.D., State Law)
Enforcement Lieutenant Elisabeth Corley is a witness)
and present throughout the March 21st 2017 Court)
hearing. Judge Mastthaw Hawley Jr.'s City Court. And)
witnessed Fanell-Dudash-Vilardo-Rice-Skinner-Ms.)
Tammy of Greenville Cares And others to be)
subpoenaed March 28, 2016. March 28th, 2016 No)

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MAY 09 2017

SC Court of Appeals

Witnesses were subpoenaed. S.L.E.D. also witnessed)
 large photographs from different months, years about)
 my home and people and profiling and that Firriolo had)
 reason to believe other businesses, citizens being)
 profiled. Walt Witkins Solicitor referred me to)
 S.L.E.D. after review of court filed documents, witness)
 list Part I Part II. L.L.R. Deputy Director Dean Guys of)
 Labor Licensing and Regulation, witness who Will)
 testify to building standards in South Carolina. Others)
 will testify to Federal Building Codes and International
 Building Codes.

COMPLAINT

JURY TRIAL DEMANDED

JURISDICTION AND VENUE

Jurisdiction is properly within this District of Greenville City Local Rules of the South
 Carolina District Court as the events which rise to the litigation occurred in the District of South
 Carolina and supplemental Jurisdiction to hear claims arising under South Carolina, and Law
 against City of Greenville, at al. pursuant to South Carolinas Tort Claims Act. Code 1976 ~ 15-
 78-40 and the VIII Amendment United States Constitution.

CHANGE OF VENUE

Come now the Court's Plaintiff herein to request change of venue because he feels the
 interests of justice will not be best served in a Greenville Court. The nature of the case involves
 the municipal charter, the municipal city, the municipal city court, and the municipal city court

judge. These are unusual circumstances and because the community at large will be opposed to an investigation of its civil servant and plaintiff will not receive equal treatment under the law.

PRELUDE TO PREFACE

the Courts Plaintiff sought to obtain his homeowners permit for the protection of his home from further flood damage that occurred October 2015. Because this plaintiff was denied access to all city offices since 2014 and two date of this filing building officials refusal to inspect/examine damages to plaintiff's home at the time the damages occurred. Someone gave the order to Brad Rice, the supervisor, to other city badge-carrying man to deliver homeowners permit information for me to comply with, fill out and sign my homeowners permit and the next day they will pick up my homeowners permit and will come back.

The same day, February 9, 2016, Mr. Rice and his team came back to pick up the homeowners residential notarized or witnessed and filed County requirement form.(See EXHIBIT A copy enclosed). February 12, 2016, Mr. Rice and his team came back the third time to plaintiffs home and issued an ordinance summons for working on the structure without permit. The structure is plaintiff home and plaintiff was to appear in court March 1st, 2016, and they would see plaintiff at court.

The Enforcement Office issued to cease and desist on the renovations to plaintiffs home. Plaintiff requested a timely jury trial and accepted an offer of assistance by court personnel to subpoena witnesses. The City employees of Greenville, Witness List I and Witness List II (see Judge's Order) were Court certified March 15, 2016, and March 16, 2016. However, due to the actions of the Honorable Judge Matthew Raymond Hawley Jr. and the City of Greenville

Officials, no Witnesses were rightfully subpoenaed. The Court Plaintiff is yet another victim of lower court's injustice in South Carolina and now in the City of Greenville. Plaintiff is requesting that the State Delegations of Lower Courts and the Department of Law Enforcement (S.L.E.D.) and the United States Department of Justice investigate the handling of plaintiff's case. Not only has the City of Greenville infringed on plaintiff's rights, but Municipal records have also been deleted or destroyed. Including, but not limited to, documents that Judge Hawley had plaintiff sign as blank pages in advance for this building permit that were never copied and provided to plaintiff.

At no time was any effort made to sit down to talk about being denied access to City Offices and why our City Government Officials made no effort to resolve the issue of why plaintiff was denied access to City Hall for such a long time and to date. Because plaintiff was denied access to Greenville Municipal Offices for so long a time and apparently forever, he even was unable to walk to City Hall and simply request copies of all the Judges drawing-plans- layouts and designing the manufactured documents including approximately 28 pages of the required City permit forms, the judge also filled out. To date the plaintiff has no information of any of the dealings between the City and the City Court.

The plaintiff was wrongfully denied rightful access to City Offices and was never notified as to why proper witnesses were not subpoenaed for his jury trial. Because inducement occurred, this plaintiff accuses the Honorable Matthew Raymond Hawley Jr. of the Municipal Court of Greenville South Carolina of conspiracy and collusion in the administration of justice, misconduct in the office of public trust.

Further, plaintiff felt induced to not present a case in court and was deprived the opportunity to bring listed city employees, witnesses, each and every one of them, who were

Court certified witnesses, municipal government employees, to court and due to the destruction of evidence, the plaintiff accuses Judge Matthew Raymond Hawley Jr. with extrinsic fraud, fraudulent concealment, and actual fraud. Both the Judge's Order and the city officials response to the Judge's Order was filed in Greenville County records. This filing by city officials is the conspiracy the Municipal Court, municipal government conspired to manufacture together. March 28, 2016 meeting with the Hon. Matthew Raymond Hawley Junior in chambers to subpoena witnesses for jury trial change the then defendant's (Mr. Firriolo) lifestyle, further damaged plaintiffs home, and the fact that city administration denied access to city offices infringing on plaintiff's rights.

I understood the Judge to say, 'I know I said at trial back on this case is civil, but it could be criminal and you could not afford this. I know how things work. I have been a judge a long time and was with the United States Attorneys' Office. I can help you. I'm a judge. You don't need further problems.' Because I was denied access to City Hall, the judge was very concerned about that and we also talked about the possibility of city police escort. Ms. Tammy of Greenville Cares gave the order that all City doors were closed to plaintiff. Judge Hawley Jr. did not like the manner in which the plaintiff was being treated. In over twenty subsequent meetings in chambers with Judge Hawley Jr., the judge investigated which city official gave the order to deny the plaintiff access to City Hall. Judge Hawley determined that it was the Honorable Mayor Knox White Esquire. It was at that time I concluded that Judge Hawley was a whistle blower. That prompted the plaintiff to document on court records that the plaintiff requested at least three times that he wanted to have Judge Hawley Jr. to be his witness.

The Judge communicated with the city office that helps homeowners financially. Also Judge Hawley was aware of the rear brick wall, frame construction, roof, flooring, plumbing and

electrical, and steel that were removed from plaintiff's home and that the City will not pay for the loss to plaintiff but the Judge will assist plaintiff by directing plaintiff agencies who could provide assistance. (See Judge Hawley's Order attached as EXHIBIT A.)

Greenville Municipal Government does not have their champion to protect the law they are in trusted to uphold. The City of Greenville deserves better. Plaintiff cares for Greenville and remembers in the mid-50s enough to put his testimony in writing before the public.

More misconduct was taking place by some city officials and their complicity and destruction of records was taking place, and that the court should investigate. Either the city Council members at large don't know what has occurred or allowed to occur for so long a period of time, or they are all complicit. Plaintiff believes that Judge Hawley knows that hate crimes occurred meaning that plaintiff was being denied access to all City offices, and plaintiff was summoned by City Prosecutor and given only two days to appear in court for a jury trial. (See EXHIBIT B). Furthermore, Mr. Rice together with two others delivered papers to plaintiff to complete for his home repair permit but two days later served a Ordinance Summons on plaintiff as the homeowner. (See EXHIBIT C).

Plaintiff believes that this court judge should investigate. However Judge Hawley chose not to go that far.

Plaintiff does not believe that this court of law will deny plaintiff the right to require City of Greenville employees the right to testify.

Plaintiff experienced personal and property damages as a result of forgery, perjury, destruction of building department records by building department officials in a 2009 case that went to the South Carolina Supreme Court. Plaintiff cannot believe that in 2000 days the

distinguished members of the Green City Council members were not any time aware of the ongoing actions against the plaintiff which caused him extensive personal and property damage.

During the March 28, 2016 meeting in chambers with Judge Hawley, plaintiff and the judge discussed Mayor Knox White. Plaintiff filed complaints to I.I.R that the City was issuing specialty licenses to uncertified contractors knowingly and that Mayor Knox White had received copies of said court documents. The entire City Council members at large may or may not have been aware of the ongoing violations.

Judge Hawley was also interested in plaintiff's involvement in the homicide murder investigation under the control of Chief of Police Terry Wolfong.

Judge Hawley determined that plaintiff had been denied his right to access to City Hall and personally escorted plaintiff into the building of City Hall and up to the office of Building Department to file Judge Hawley's drawing, plans, and supporting documents that Judge Hawley had completed on behalf of plaintiff. However, said drawings, plans, and supporting documents did not comply with municipal, county, state or federal building codes.

PREFACE

FACTUAL ALLEGATIONS

CONTEMPT OF COURT

The Honorable Judge Matthew Raymond Hawley Jr. is in contempt of his own court, in contempt of his own order. The City of Greenville is in contempt of the Court's Order to comply with the municipal judges order. Judge Hawley's specification of the judges own drawings, building plans, his layout and design, set back plans to plaintiffs home do not meet and are in violation of municipal building codes, County building codes, state building codes, and federal

building codes. Even the numerous pages of homeowners building permits the judge with his own hand completed and turned in to City Hall is in contempt of court. Plaintiff does not and has not ever received copies of said documents, of what he signed as blank pages from the court or this City officials. The Court required plaintiff to sign homeowner permit requirements Judge Hawley manufactured everything except plaintiff's signature.

For many months and before February 12, 2016 when the City issued plaintiff a summons, damages to plaintiff's home and to plaintiff's person continues to mount.

FOUNDATIONS

The City administration and the City Court administration both denied the plaintiff herein the right to have witnesses for his jury trial.

Ms. Volordo since 2011 and to date has refused all requests to supply requested documents under the Freedom of Information Act. (F.O.I.R.). She also has knowledge of complaints ongoing.

The entire City Council ignored requests for internal affairs investigation to take place and these requests were via facsimile date and time stamped.

Mr. Bowen-Mr. Fennel-Mr. Rice having knowledge of plaintiff's permits, inspections of plaintiff's home, did knowingly aid and abet in the destruction of permits and inspection records.

The Judge's Order and the City's compliance to the Judge's Order documented and filed that the front porch and the rear porch of plaintiff's home was not permitted/inspected. That is why they are in contempt of Court.

Mr. Cooper- Mr. Lynch-Mr. Ward-City Engineers had no comment on their reports. There should be comments on their reports. These people addressed prior flooding to plaintiff's

home which helped some but not all flooding damage. Mr. Landrith, former building official, Mr. Skinner (present building official) have knowledge of timely permits issued and inspections conducted which were duly documented and filed but which have been knowingly destroyed.

PRAAYER

WHEREFORE, Plaintiff prays for judgment against the Defendants in the sum of Two Hundred Thousand Dollars for damages to Plaintiff's home resulting in need for total replacement of the structure. Further, Plaintiff prays for punitive damages set by the jury.

DATE Aug 24th 2016

By: Thomas Firriolo
Thomas Firriolo, Plaintiff

11 Addie Court
Greenville, SC 29605
(864) 235-6774



OK A



City of Greenville

GREENVILLE MUNICIPAL COURT

From the Desk of Matt Hawley

To: Mr. Thomas R. Firriolo
Re: 11 Addie Court
Date: May 27, 2016

Mr. Firriolo:

Please find enclosed a certified copy of an Order I issued this week after continued hemming and hawing about you permit being held up at City Hall. I am informed it is being sent pursuant to the Order and you should be able to complete your project in an unhampered fashion.

Best of Luck in Your Endeavors,

Judge, Municipal Court

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MAY 09 2017

SC Court of Appeals

EX B A

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
City of Greenville,)
v.)
Thomas R. Firriolo,)
.....)

IN THE MUNICIPAL COURT

RECEIVED

MAY 09 2017

SC Court of Appeals
Summons Ordinance
No. 16GMS02925
ORDER

2016 MAY 25 AM 11:33
GREENVILLE MUNICIPAL COURT

FILED

This matter is before the Court by way of motion for the City Attorney to clarify and finalize a ruling by the Court, dated May 12, 2016. Previously, the City Building Codes Enforcement Office filed the above Summons Ordinance with the Court, prior to the hearing date, the Homeowner, Thomas Firriolo, timely requested a jury trial and the case was separately docketed for that disposition.

Subsequently, the City Attorney issued an Order and Rule to Show Cause to the Homeowner to cease and desist continuing work on an addition. The Homeowner appeared *pro se*, requested more time to prepare; and, the matter was rescheduled. Mr. Firriolo accepted an offer of assistance by court personnel to subpoena witnesses and a pretrial was set. The City Attorney, who had previously attempted to mediate the matter welcomed the Court's intercession.

During the subsequent conference, Mr. Firriolo expressed concern for the ability to comply with the permitting process and an apparent denial of access to city facilities in the past. The court contacted the Codes office and was provided a permit application and again met with the Defendant to complete paperwork. This was reviewed by a Codes representative and the Defendant filed the application with a court escort on April 22, 2016. The City Attorney was notified and consented to a dismissal of the Summons Ordinance, which was entered by the Court on May 12, 2016.

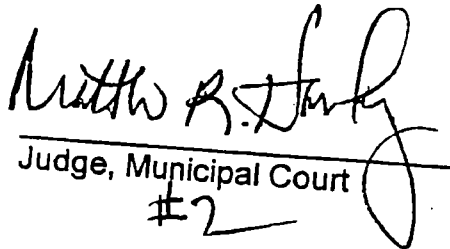
Codes personnel have stated concerns that other work was done by the Homeowner without permits and only came to their attention when Mr. Firriolo complained to Codes Enforcement about shoddy workmanship from an

unlicensed individual who preformed floor refinishing. As a result of the concerns expressed by the Codes personnel, both the Court and City Attorney have viewed the residence and determined that the prior work, performed at unknown dates and times appears to be cosmetic in nature (addition of exterior brick veneer) and/or the enclosure of existing front and rear porches that do not enlarge the residential footprint or add living space as an addition. No obvious defects that would affect the general safety and welfare of the Homeowner and the public.

The Homeowner's efforts appear to be an improvement of the appearance and utilization of his residence performed at previous intervals and unknown times as finances allowed. Further, the Court has been made aware of the financial straits of the Homeowner, the nature and condition of the surrounding properties, and the transitional nature of the neighborhood; from residential to commercial over time. Frankly, this property is located where the furious growth of the City and particularly the Augusta Road area will engulf most if not all of the neighborhood in total redevelopment within the next decade.

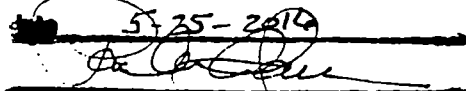
After a full review of the concerns expressed by both parties, City and Homeowner, and a review of Municipal and International Codes applicable to the case at bar, the Court finds and concludes that the permit application shall be granted and the permit issued forthwith. The Court further finds and concludes that prior cosmetic enhancements and porch enclosures, while not permitted, are not subject to *post facto* permitting and Building Codes Enforcement are relieved of liability for these items of concern.

IT IS SO ORDERED!


Matthew A. Jank
Judge, Municipal Court
#2

May 25, 2016
Greenville, SC

This is to certify that this is a true copy.


Clerk Of Court

EX-15-B

UNIFORM ORDINANCE SUMMONS NO. GMS 01925
CITY OF GREENVILLE, S.C. VERSUS

Last Name: Ferrile First Name: Thomas Middle Name: Raymond
 Street Address: 11 Addie Ct City: Greenville State: SC Zip: 29605
 Birth Date: 12-16-1976 Race: W Sex: M HT: 5'10" WT: Hair: Eyes:

YOU ARE SUMMONED TO APPEAR BEFORE THE COURT

Municipal Judge: 3-1-16 Trial Date
 Municipal Court: 11:00 Trial Time
 A.M. P.M.

Street Address: 426 North Main St. City: Greenville, S.C. Zip: 29602
 P.O. Box 488 City: Greenville, S.C. Zip: 29602
 Mailing Address: City: Zip:

FOR A TRIAL CONCERNING VIOLATION OF CITY OF GREENVILLE

Ordinance Sec. No.: 6-1111 Ordinance Description: working on structure - no permit
 Citation Date: 2-12-16 Citation Time: 9:45 A.M. P.M.
 Citation Location: 11 Addie Ct Greenville
 If different from citation date: A.M. P.M.
 Violation Date: 6-1-16 Violation Time: Violation Location: 11 Addie Ct
 Issuing Officer: R. Rice Title/Rank: Police Supervisor Bond Amount: \$ 10.00

Received by: [Signature] Date: 5/12/16
 Disposition: Dismissed

Defendant: [Signature] Did Not Appear Dismissed Not Prosecuted
 Forfeited Bond Jury Trial Bench Trial Guilty Not Guilty

Fine Imposed: \$ 10.00 Suspended: Jail Term: paid Total Collected: \$ 10.00

Certified Correct by: [Signature] Date:

COURT COPY

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 ALL RIGHTS RESERVED

RECEIVED
MAY 09 2017
SC Court of Appeals

This is to certify that this is a true copy.
Date: 6-01-16
[Signature]
Clerk Of Court

via fax on 467-6651

FILED

March 11th 2016

2016 MAR 15 AM 6:25

Greenville Municipal Court in the City of Greenville and in the State of South Carolina

GREENVILLE MUNICIPAL COURT

The Honorable Judge Matthew Holt
The Honorable Judge Pamela Fullbright

Defendants' Witness List

RECEIVED

MAY 09 2017

Defendants' Witness Part # one. SC Court of Appeals

Comes now into this honorable Court your defendant Thomas R. Ferris by motion and as request to submit his witness list

1 - Ms Cynthia Vilardo, Executive Assistant

2 - Mr Brad Reis Code Enforcement Supervisor

3 - Mr B. Skinner administrator

4 - Mr Robert Patricia Coler South Carolina BAR #11345 - Assistant City attorney, Prosecutor in this Court and more than that.

Part one I witness list contains

Ms Tanny in office of Seawill cases
last name revision unknown.

at approx 10:30 AM 3-14-16 attempted to
acquire the last name of Ms Tanny from
the City attorneys office - was not provided
the City employees name.

Your Court's defendant Thomas Funch was
not provided three (3) sets of witness's two
(2) times, these names who all come to my
home before/after the summons/ticket in
this case, before the Court -

The City attorneys office violated the (FOIA)
act. The Freedom of information act to
acquire witness information to appear in Court.

Please note: exhibit (A) 2-13-16 and
exhibit (B) 2-19-16 to request names of
City Employees via (F.O.I.A).

Judge Holly, Judge Fulbright your
honors, with all due respect, the City attys
office, etc man.

offices of our City of Greenville manage
this Municipal Court.

Mr. Ronald Mc Kenney is a South Carolina
lawyer. BAR # 3862.

Mr. Knox White Mayor of our City, South
Carolina lawyer. BAR # 5999

Mr. Robert Patrick Cole is a South Carolina
lawyer BAR # 11345 and Prosecutor.

and Mr. Michael Pitts, a South Carolina
lawyer BAR # 12130.

These South Carolina lawyer's manage
then manage this court.

Thomas Friebo's your court's defendant was
denied access to City Hall offices which
began in 2014.

Mr. Friebo will testify that he did not
violate any law - was not served any
papers or informed in any way that he would
be prohibited to vote - attend C.A. -
month 1)

City of Greenville South Carolina
Municipal officials

The City Government employees names
that were requested to be witnesses under
the Freedom of information act are
directly involved with the day, date
and time Fucillo was denied access
to Municipal officials.

No letter was received from this court
prosecutor to allow temporary access to
enter City Municipal officials.

again your court defendant is requesting
that he be provided City Employees names
who are and remain witness in this case
before this Court.

In the meantime, the City of Greenville
South Carolina Lawyers are violating
the Law they are entrusted to uphold as
officers of the Court.

Defendant Thomas P. Fucillo
11 addis Court Greenville SC 29605

via BC. email 467-6651

3-16-16

Greenville Municipal Court, In the City of Greenville and in the State of South Carolina.

The Honorable Judge Matthew Hall

The Honorable Judge Pamela Fulbright

RECEIVED

Defendants' Witness List

MAY 09 2017

SC Court of Appeals

Defendants' Witness List Part two II

Comes now again into this honorable Court your defendant Thomas R. Furish by motion and as request to submit his Witness List

A - Mr Jeff Bowen City Sargent

B - Mrs Jodie Dudash Revenue Administrator

C - Mrs Marcie Andino Executive Director of South Carolina elections Commission

D - Mr S. J. Andrighetti Esquire South Carolina Lawyer BAR # 72741

E - Mr John Stephen Henry Esquire South Carolina Lawyer BAR # 3053

2016 MAR 16 PM 2:14 GREENVILLE MUNICIPAL COURT

Part two (H) witness list continues

Mr Stan Bowen - Mr B. Sherines, other City of Greenville South Carolina Employees will testify;

That Mr Robert Patrick Cole Esquire South Carolina BAR # 11345 assistant City attorney Prosecutor -

that Mr Michael Pitts a South Carolina Lawyer BAR # 12130, City attorney Esquire

Mr Knox White Mayor of our City, South Carolina Lawyer BAR # 5999 Esquire

together and individually instructed City Employees within the scope of their Employment, to photograph the homes of Greenville residences, and to monitor, monitor who enters or leaves your private home.

In other words, surveillance, daily surveillance and photography on you or everyone who enters, leaves or visits your homestead. There is no telling how long a period in time surveillance, taking pictures until witness are questioned.

FILED
2016 MAR 16 PM 2:14
GREENVILLE MUNICIPAL COURT

Part two II witness List Continued

Mr Jeff Bowen City official
Mr B Sheriner City official and other City employees will testify that City employees; management; in the scope of their employment, photograph, monitor, record film and perhaps record voice record P. any one visiting, entering, leaving, or home stay.

This surveillance and photograph and monitoring and whatever else takes place takes place at City Hall in Greenville S.C.

and that at this Hall of Greenville S.C. is the necessary tools; equipment to photograph record and document resolutions, their addresses, where people may live, work and do business and any visitors who may come and leave, people, homes and documents and

at this same location is the City Lawyer's BAR# 11345 - BAR# 12130 BAR# 5999 and BAR# 3862 remains the South Carolina Lawyer, City of Greenville South Carolina.

REEMER
LITIGATION
CONTRACT
MAR 16 2016 PM 2:14

Ms Jodie Podesh will testify to the truth

Mr Andrew Egan will testify
infringement of rights and missing
court documents

Mr John Stephen Egan will testify
infringement of rights -

Mr Henry was also looking into an
incident to occur like being arrested,
entering City Municipal offices and
perhaps this court.

now comes again the courts defendant
Thomas R. Finiels the accuser, accusing
S.C. BAR # 11345 S.C. BAR # 12130
S.C. BAR # 5999 and S.C. BAR # 3862
of misconduct and Bad management
in office of Public trust.

FILED
2016 MAR 16 PM 2:11
GREENVILLE MUNICIPAL
COURT

and further state upon the record of
this court that he believes that Greenville City
business at large - and other residents of
Greenville South Carolina have been and
are under surveillance, photographs and
monitored by Greenville officials.
Thomas Finiels 11 addis n. f. ...

Clerk of Court filing

Transmission Log

1

Tuesday, 2017-01-03 06:10

2037834601

Date	Time	Type	Job #	Length	Speed	Station Name/Number	Pgs	Status
2017-01-03	06:09	SCAN	12121	0:22	26400	8644678598	1	OK -- V.34 AM31

SC Court of Appeals

MAY 09 2017

RECEIVED

467-4817

IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE
 Thomas Raymond Fittolo

vs.
 City of Greenville, et al

Plaintiff(s)
 Defendant(s)

CASE NO.: 2016CP2304998
 Judgment/Writting Under Rule 54
 Criminal - Miscellaneous civil proceedings

Plaintiff(s):
 (1) Plaintiff: City of Greenville
 (2) Plaintiff: City of Greenville
 (3) Plaintiff: City of Greenville
 (4) Plaintiff: City of Greenville
 (5) Plaintiff: City of Greenville
 (6) Plaintiff: City of Greenville
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 (97) Plaintiff: City of Greenville
 (98) Plaintiff: City of Greenville
 (99) Plaintiff: City of Greenville
 (100) Plaintiff: City of Greenville

att: Office Chief Vincent Miller - et/Robert Roberts & J. Franco.
 Please provide Under the Freedom of Information Act (FOIA) requests for information all copies of City Court have needs our - releases that took place before the honorable judge motion - Haverly Dr. and Thomas Fittolo.

The Court requested meeting with Judge Haverly Dr. took place 3-28-16 about prompt the review of approx. 100 hours in Court hours meetings on up to Court week in 4-30-16 - you may find to gain point the day and hour of meeting with Judge your necessary information seek me if the meeting what took place in lobby - lobby - entering / leaving judge chambers soon talking out side with judge then returning to the Court have approx 12-15 minutes later, you being given unrecorded Court Judge hour. The Court with my friends for a walk and talk as in Court they would remember and could recall the number on occasion the judge request records to meet in friends simply his pocket entering the Court house. As a before office transcription could come close to gain point the day - the hour and date the meeting the records concerning Judge meeting that took place in our Court house by our security, also meeting of our time Mr. Fittolo entered our Court house to employ his job. Fittolo is a part of our law enforcement, James Fittolo 11000 Court 79265 - Clerk of Court Robert Roberts

MOTION FOR JUDGMENT ON THE PLEADINGS

1. Plaintiff's action appears to seek to hold the City in contempt for its failure to issue a permit to Plaintiff following an order by the municipal court that a permit be issued. The municipal court, however, lacked subject matter jurisdiction to command the City to issue a permit. Additionally, this Court lacks subject matter jurisdiction to consider an action for contempt for its alleged failure to follow the municipal court's order.

2. Plaintiff has failed to state facts sufficient to constitute a cause of action.

3. Plaintiff has failed to bring this action within the applicable statute of limitations.

4. Pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10, Plaintiff's should be dismissed on the following grounds:

a. Plaintiff's claims relating to the City's lawful decision not to approve Plaintiff's application for a building permit are barred under §§ -60(1), (2), (3), (4), (5), (12), (13), (17), (20), and (23);

b. The City Employees are not proper defendants under § -70; and

c. Punitive damages may not be awarded against the City under § -120(b).

5. Plaintiff's claims are barred by the public duty rule under *Rayfield v. South Carolina Dept. of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988).

6. Pursuant to Rule 12(c), SCRCP, the City is entitled to judgment on the pleadings in its favor.

MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

7. Beginning on or about February 8, 2016, the City learned that Plaintiff had been performing or hired contractors to perform unpermitted construction work on his residence located at 11 Addie Court, Greenville, South Carolina 29605 (the "Property"). The City notified Plaintiff

that he was required to obtain the required permits and to file a disclosure statement with the Greenville County Register of Deeds.

8. After Plaintiff failed to file an application for a building permit, the City filed a uniform ordinance summons on or February 12, 2016 regarding Plaintiff's failure to obtain the necessary permits for construction work to the Property.

9. On or about April 11, 2016, Plaintiff was escorted to the City's code enforcement office and filed an application for a building permit. Subsequently, the City rightfully determined that the application did not comply with the applicable building codes and ordinances because it did not include the new brick never around the entire structure, two additions on both ends of the front porch, the enclosing of the rear porch, a new roof structure to the rear porch, and all interior renovations.

10. Pursuant to an order issued by Judge Matthew Hawley on or about May 25, 2016, the City issued a building permit to Plaintiff regarding certain areas of the structure.

11. On or about May 27, 2016, the City's zoning agency determined it could not issue the application for a building permit because a site plan was not provided and 15' rear setback was required.

12. Plaintiff has performed and continues to perform construction activity to the Property without the requisite building permits or licensed contractors. Such activities create a potentially dangerous environment which is detrimental to the health, safety, and welfare of the persons in the vicinity of the Property that is not subject to proper inspection and remediation by the City's code enforcement department.

13. The City asserts that it will likely succeed on the merits in this litigation and that there is no adequate remedy at law to protect it.

14. A temporary restraining order and preliminary injunction are needed to preserve the status quo to avoid possible immediate and irreparable injury, loss, and damage resulting to the City and the public at large from Plaintiff's unpermitted construction work to the Property.

15. Such immediate and irreparable harm will result because Plaintiff continues to perform unpermitted work which is not subject to inspections by the City and presents an existing hazard to the health, safety, and welfare of the public and the City.

16. Therefore, the City is entitled to a temporary restraining order and preliminary injunction: (i) enjoining and restraining Plaintiff from performing or hiring any individual to perform any current or future work on the Property until a valid permit has been issued to him for such work by the City; (ii) requiring Plaintiff to hire an engineer at his expense to inspect the Property and submit a report to the City concerning the suitability of all construction work to the Property performed by Plaintiff; (iii) requiring Plaintiff to submit an application to the City for a building permit detailing all construction work performed and to be performed to the Property; and (iv) requiring Plaintiff to comply with all inspections and/or requirements of any building permit issued to him by the City.

WHEREFORE, the City requests that the Court enter an order for judgment on the pleadings in its favor and issue a temporary restraining order and preliminary injunction (i) enjoining and restraining Plaintiff from performing or hiring any individual to perform any current or future work on the Property until a valid permit has been issued to him for such work by the City; (ii) requiring Plaintiff to hire an engineer at his expense to inspect the Property and submit a report to the City concerning the suitability of all construction work to the Property performed by Plaintiff; (iii) requiring Plaintiff to submit an application to the City for a building permit detailing all construction work performed and to be performed to the Property; and (iv) requiring Plaintiff

to comply with all inspections and/or requirements of any building permit issued to him by the City. This motion is based on the pleadings, the South Carolina Rules of Civil Procedure, the common and statutory law of the State of South Carolina, and on any forthcoming affidavits and/or memorandum of law in support of this motion.

Respectfully submitted,

s/Adam C. Bach

Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
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Greenville, SC 29605
Telephone: (864) 236-5013
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abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Defendants City of Greenville
and City Employees

October 14, 2016

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Thomas Raymond Firriolo,)
)
Plaintiff,)
)
vs.)
)
City of Greenville, et al.,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO. 2016-CP-23-04998

CERTIFICATE OF SERVICE

RECEIVED

MAY 09 2017

SC Court of Appeals

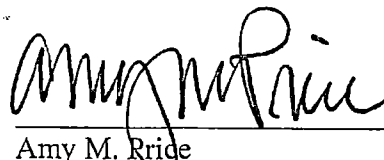
This is to certify that I, Amy M. Price, an employee of the law firm of Eller Tomnsen Bach, LLC have this day served a true and correct copy of the within and foregoing defendants City of Greenville and City Employees' answer and counterclaims and motions for judgment on the pleadings and for a temporary restraining order and preliminary injunction upon *pro se* plaintiff and *pro se* defendant Cecil Golden by depositing same in the United States mail with sufficient postage thereon to assure delivery as follows, to-wit:

Thomas Firriolo
11 Addie Court
Greenville, SC 29605

Cecil Golden
248 Cowan Street
Greenville, SC 29607

This 14th day of October, 2016.

By:



Amy M. Price
1306 S. Church Street
Greenville, SC 29605

2. The allegations contained in the section entitled "CHANGE OF VENUE" constitute a legal conclusion to which a response is not required. If a response is required, the allegations are denied.

3. In response to the allegations contained in the section entitled "PRELUDE TO PREFACE," the City admits that Brad Rice delivered a building permit application to Plaintiff at his residence on or about February 10, 2016 and received a copy of the disclosure statement that Plaintiff had previously filed with the County of Greenville; that the City filed a uniform ordinance summons on or about February 12, 2016 regarding Plaintiff's failure to obtain the necessary permits for construction work on his residence; that the City filed for an Order and Rule to Show Cause against Plaintiff on or about March 16, 2016; that the municipal court issued a subpoena to Plaintiff; that Plaintiff was escorted to the City's code enforcement office by Judge Matthew Hawley and filed an application for a building permit on or about April 11, 2016; and that the order of Judge Hawley attached to the complaint as Exhibit A was filed on or about May 25, 2015. The remaining allegations are unclear and unintelligible, and the City denies these allegations to the extent they are inconsistent with the facts as alleged in the City's counterclaim.

4. In response to the allegations contained in the section entitled "PREFACE – FACTUAL ALLEGATIONS – CONTEMPT OF COURT," the City admits that it did not approve the application for a building permit submitted by Plaintiff on or about April 11, 2016. The remaining allegations are unclear and unintelligible, and the City denies these allegations to the extent they are inconsistent with the facts as alleged in the City's counterclaim.

5. The City lacks sufficient information to form a belief as to the truth of the allegations contained in the section entitled "FOUNDATIONS" and, therefore, denies same.

6. The allegations contained in the section entitled "PRAYER" constitute a legal conclusion to which a response is not required. If a response is required, the allegations are denied.

7. The City denies each and every allegation of the complaint not admitted, modified, or explained hereinabove.

FOR A SECOND DEFENSE

8. The City adopts and realleges the allegations of its previous defense as if fully repeated herein.

9. Plaintiff has failed to state facts sufficient to constitute a cause of action, and the complaint should be dismissed.

FOR A THIRD DEFENSE

10. The City adopts and realleges the allegations of its previous defenses as if fully repeated herein.

11. This Court lacks subject matter jurisdiction, and the complaint should be dismissed.

FOR A FOURTH DEFENSE

12. The City adopts and realleges the allegations of its previous defenses as if fully repeated herein.

13. Plaintiff's claims are barred in whole or in part pursuant to the applicable statute of limitations.

FOR A FIFTH DEFENSE

14. The City adopts and realleges the allegations of its previous defenses as if fully repeated herein.

15. Pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10, *et seq.* (the "Act"), punitive damages may not be awarded against the City. *See* § 15-78-120(b).

16. The City Employees are not proper defendants pursuant to the Act. *See* § 15-78-70.

17. The City alleges that Plaintiff's complaint is barred by the Doctrine of Sovereign Immunity and pleads the terms and provisions of the South Carolina Tort Claims Act, including all immunities, limitations and defenses granted or preserved by the Act, including specifically, without limitations, sub-paragraphs (1), (2), (3), (4), (5), (12), (13), (17), (20), and (23) of § 15-78-60, pursuant to which it is not liable for a losing resulting from the following:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
- (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;
- (20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons; and
- (23) institution or prosecution of any judicial or administrative proceeding.

FOR A SIXTH DEFENSE

18. The City adopt and reallege the allegations of their previous defenses as if fully repeated herein.

19. Plaintiff's claims are barred by the public duty rule under *Rayfield v. South Carolina Dept. of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988).

**FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(DECLARATORY RELIEF)**

20. The City adopts and realleges the allegations of its previous defenses as if fully repeated herein.

21. On or about February 8, 2016, the City received a complaint from Plaintiff stating that an unlicensed contractor, Tyrone Sanders, had been doing work on Plaintiff's residence at 11 Addie Court, Greenville, South Carolina 29605 (the "Property"). Later that morning, Sanders paid for a business license to cover the work he had performed at the Property. Plaintiff claimed to City officials that brick work was necessary to prevent further water and settlement issues. Plaintiff stated that he personally performed work on the Property's footings and brick work, which he hired Sanders to complete. City officials informed Plaintiff that he needed to obtain the required permits and to file a disclosure statement with the Greenville County Register of Deeds, however Plaintiff claimed he was not allowed to enter City offices. Plaintiff was informed that he was not banned from City offices and could enter the building with an escort.

22. On or about February 10, 2016, Defendant Brad Rice delivered a building permit application and received a copy of the disclosure statement that Plaintiff had previously filed with the County of Greenville. Soon after, Plaintiff complained about work on the Property that Cecil Golden had performed. Golden informed City officials that Plaintiff had hired him to perform electrical work for an addition that Plaintiff had added to the Property and to replace an electrical

meter that had been removed due to brick work. Golden later obtained the appropriate permits to perform such work.

23. On or about February 11, 2016, City officials tried to contact Plaintiff multiple times to inform him that he could enter the building to obtain his permits.

24. After multiple attempts to contact Plaintiff to notify him that he could enter the building to obtain the necessary permits, the City filed a uniform ordinance summons on or about February 12, 2016 regarding Plaintiff's failure to obtain the necessary permits for the construction work to the Property.

25. Subsequently, the City learned of further unpermitted work on the Property performed by contractors hired by Plaintiff and filed a motion for an Order and Rule to Show Cause on or about March 16, 2016 requesting an order prohibiting further work on the Property.

26. On or about March 31, 2016, Judge Matthew Hawley continued the City's motion and subsequently escorted Plaintiff to file an application for a permit to perform work on the Property on or about April 11, 2016. Subsequently, City officials determined that the permit could not be issued because it failed to include construction work that had already been performed by Plaintiff.

27. On or about May 25, 2016, Judge Hawley issued an order requiring the City to approve Plaintiff's application for a building permit (the "Order").

28. On or about May 27, 2016, the City's zoning agency determined it could not issue the application for a building permit because a site plan was not provided and 15' rear setback was required.

29. Pursuant to S.C. Code Ann. §§ 5-25-310, *et. seq.*, and the City Code, the City is entitled to require certain property owners to submit an application for a building permit prior to

commencing construction work. Further, the City is entitled to grant or deny any application for a building permit within its discretion.

30. Prior to April 11, 2016, Plaintiff personally performed and hired contractors to perform unpermitted construction work on the Property.

31. After Plaintiff submitted an application for a building permit on April 11, 2016, the City rightfully determined that the application did not comply with the applicable building codes and ordinances because it did not include the new brick work around the entire structure, two additions on both ends of the front porch, the enclosing of the rear porch, a new roof structure to the rear porch, and all interior renovations.

32. Judge Hawley lacked the requisite legal authority to issue the Order because the Order acts as a writ of mandamus that improperly requires the City to perform a ministerial duty that normally rests within its discretion, namely the decision whether to approve or deny an application for a building permit.

33. Plaintiff has performed and continues to perform construction activity to the Property without the requisite building permits or licensed contractors. Such activities create a potentially dangerous environment which is detrimental to the health, safety, and welfare of the persons in the vicinity of the Property that is not subject to proper inspection and remediation by the City's code enforcement department.

34. The City asks this Court to make the following judicial declarations:

- i. Plaintiff has performed or hired individuals to perform unpermitted construction work to the Property in contravention of the City Code;

- ii. Plaintiff shall be enjoined and restrained from performing or hiring any individual to perform any current or future work on the Property until a valid permit has been issued to him for such work by the City;
- iii. Judge Hawley lacked subject matter jurisdiction to command the City to issue the permit; *see* S.C. Const. Art. V, § 20; S.C. Code Ann. § 14-25-45.
- iv. Plaintiff is required to hire an engineer at his expense to inspect the Property and submit a report to the City concerning the suitability of all construction work to the Property performed by Plaintiff;
- v. Plaintiff is required to submit an application to the City for a building permit detailing all construction work performed and to be performed to the Property; and
- vi. Plaintiff must comply with all inspections and/or requirements of any building permit issued to him by the City at its discretion.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(PRELIMINARY AND PERMANENT INJUNCTION)

35. The City adopts and realleges the allegations of its previous defenses as if fully repeated herein.

36. Pursuant to S.C. Code Ann. §§ 5-25-310, *et. seq.*, and Chapter 6 of the Greenville City Code (the “City Code”), Plaintiff is required to obtain a valid build permit to commence certain construction work on the Property.

37. Plaintiff has performed or hired contractors to perform unpermitted work on the Property in violation of the City Code. Such activities create a potentially dangerous environment which is detrimental to the health, safety, and welfare of the persons in the vicinity of the Property that is not subject to proper inspection and remediation by the City’s code enforcement department.

38. The City asserts that it will likely succeed on the merits in this litigation and that there is no adequate remedy at law to protect them.

39. A temporary restraining order and preliminary injunction are needed to preserve the status quo to avoid possible immediate and irreparable injury, loss, and damage resulting to the City and the public at large from Plaintiff's unpermitted construction work to the Property.

40. Such immediate and irreparable harm will result because Plaintiff continues to perform unpermitted work which is not subject to inspections by the City and presents an existing hazard to the health, safety, and welfare of the public and the City.

41. Therefore, the City is entitled to a preliminary and permanent injunction: (i) enjoining and restraining Plaintiff from performing or hiring any individual to perform any current or future work on the Property until a valid permit has been issued to him for such work by the City; (ii) requiring Plaintiff to hire an engineer at his expense to inspect the Property and submit a report to the City concerning the suitability of all construction work to the Property performed by Plaintiff; (iii) requiring Plaintiff to submit an application to the City for a building permit detailing all construction work performed and to be performed to the Property; and (iv) requiring Plaintiff to comply with all inspections and/or requirements of any building permit issued to him by the City.

WHEREFORE, having fully answered the complaint and counterclaiming herein, the City prays for the following relief:

1. That the complaint be dismissed with prejudice;
2. That the Court grant the City's request for a preliminary and permanent injunction:

- i. Enjoining and restraining Plaintiff from performing or hiring any individual to perform any current or future work on the Property until a valid permit has been issued to him for such work by the City;
 - ii. Requiring Plaintiff to hire an engineer at his expense to inspect the Property and submit a report to the City concerning the suitability of all construction work to the Property performed by Plaintiff;
 - iii. Requiring Plaintiff to submit an application to the City for a building permit detailing all construction work performed and to be performed to the Property; and
 - iv. Requiring Plaintiff, to comply with all inspections and/or requirements of any building permit issued to him by the City.
3. That the Court grant the City's prayers for declaratory relief and find that:
 - i. Plaintiff has performed or hired individuals to perform unpermitted construction work to the Property in contravention of the City Code;
 - ii. Plaintiff shall be enjoined and restrained from performing or hiring any individual to perform any current or future work on the Property until a valid permit has been issued to him for such work by the City;
 - iii. Judge Hawley abused his discretion in issuing the Order and the City is not required to comply with the Order;
 - iv. Plaintiff is required to hire an engineer at his expense to inspect the Property and submit a report to the City concerning the suitability of all construction work to the Property performed by Plaintiff;

- v. Plaintiff is required to submit an application to the City for a building permit detailing all construction work performed and to be performed to the Property; and
 - vi. Plaintiff must comply with all inspections and/or requirements of any building permit issued to him by the City at its discretion.
4. Costs and such further relief as the Court deems just and proper.

Respectfully submitted,

s/Adam C. Bach
Adam C. Bach (S.C. Bar #74885)
R. Hudson Smith (S.C. Bar #101369)
ELLER TONNSEN BACH, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864) 236-5013
Facsimile: (864) 312-4191
abach@etblawfirm.com
hsmith@etblawfirm.com

Attorneys for Defendants City of Greenville
and City Employees

October 14, 2016

Greenville, South Carolina

April 27, 2017
" " 28-2017

The South Carolina Court of Appeals

P.O. Box 11629 Columbia South Carolina 29211

Thomas Raymond Furels v. The City of Sreenwell

RECEIVED

appellate case no 2017-000566

MAY 09 2017

SC Court of Appeals

Request permission to submit Original Court transcript

Court reporter dated April 19th 2017 of the Jan. 19th 2017
Court hearing - Order from the Honorable Robin B. Stilwell
was to re-mand this case back to the City of Sreenwell
Municipal Court attention to the Honorable long term
Judge Nathan Raymond Havelly Jr. was received April 24th 2017

page 20 - page 21 - page 22 - page 23 - page 24 page 25
page 26 lines 1 to line 10 - Mr Back Esq.: OK

Thomas Raymond Furels appellee

11 addie Court Sreenwell South Carolina 29605

please file and Court stamps -

Thank you