

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

JUL 18 2017

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
The Hon. J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2017-000599  
Case No. 2015-CP-10-1901

David Engelman, Betty S. Engelman, and Robert E. Welch, Jr., on behalf of  
themselves and others similarly situated, and Charleston County.....Respondents,

v.

Town of James Island, South Carolina.....Appellant.

**MOTION TO WITHDRAW APPEAL BECAUSE  
THE CHALLENGED RULING IS MOOT**

COMES NOW the Appellant, the Town of James Island, South Carolina (the "Town"),  
by and through its undersigned counsel of record, and, pursuant to Rule 260(c), SCACR, hereby  
moves to withdraw the above-stated appeal on the basis that the ruling from which the appeal was  
taken is now moot. In support of this Motion, the Town shows as follows:

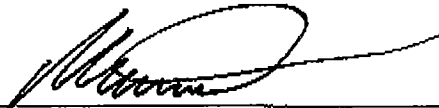
1. The Town appealed certain Orders issued by the trial court imposing a *sua sponte* Temporary Injunction. (See Exhibit A, Notice of Appeal).
2. While this appeal was pending, the trial court informed the parties at a hearing held on April 24, 2017, that it intended to issue an Order vacating the *sua sponte* Temporary Injunction in its entirety.
3. Thereafter, on July 5, 2017, the trial court entered the contemplated Order, vacating the *sua sponte* Temporary Injunction as described. (See Exhibit B, Order Vacating Temporary

Injunction). This Order renders the Town's appeal moot, because it grants the relief the Town sought through its appeal relative to the *sua sponte* Temporary Injunction. The Town therefore moves to withdraw its appeal.

4. The Town communicated all counsel of record prior to the filing of this motion.

**WHEREFORE**, The Town respectfully requests that this Court issue an Order dismissing the appeal without condition of the Court.

Respectfully submitted,

By:   
Michael A. Timbes, Esquire  
THURMOND KIRCHNER & TIMBES, PA  
15 Mid-Atlantic Wharf  
Charleston, SC 29401  
[michael@tktlawyers.com](mailto:michael@tktlawyers.com)

AND

WILSON & HEYWARD, LLC  
Bonum S. Wilson, III, Esquire  
Post Office Box 13177  
Charleston, SC  
[bwilson@wilsonheyward.com](mailto:bwilson@wilsonheyward.com)

AND

Danny C. Crowe, Esquire  
CROWE LAFAYE, LLC  
Post Office Box 1149  
Columbia, SC 29202  
[danny@crowelafave.com](mailto:danny@crowelafave.com)

*Attorneys for Town of James Island*

July 17, 2017  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
The Hon. J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case. No. 2017-000599  
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David Engelman, Betty S. Engelman, and Robert E. Welch, Jr., on behalf of  
themselves and others similarly situated, and Charleston County.....Respondents,

v.

Town of James Island, South Carolina.....Appellant.

**AFFIDAVIT OF SERVICE**

I, Moira W. Kerrigan, an employee of Thurmond Kirchner & Timbes, P.A., attorneys for  
Appellant, do hereby certify that I have on this date that I mailed a true and correct copy of the  
Appellant's Motion to Withdraw the Appeal to the following counsel of record:

Trent M. Kernodle, Esquire  
Kernodle Root + Coleman  
Post Office Box 13897  
Charleston, SC 29422  
[tkernodle@kernodlelaw.com](mailto:tkernodle@kernodlelaw.com)


Joseph Dawson, Esquire  
Charleston County Attorney's Office  
4045 Bridge View Dr.  
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1022 Carolina Blvd., Ste. 300  
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*Attorney for Charleston County*

Angus M. Lawton  
Lawton Law Firm  
496 Bramson Court, Suite 100  
Mt. Pleasant, SC 29464  
[angus@lawtonlawfirm.com](mailto:angus@lawtonlawfirm.com)

*Attorneys for Plaintiffs*

  
\_\_\_\_\_  
Moira Kerrigan  
Paralegal to Michael A. Timbes

July 17, 2017  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Hon. J.C. Nicholson, Jr., Circuit Court Judge

BY WV

JULIE J. ARMSTRONG  
CLERK OF COURT

2017 MAR 13 PM 4:43

FILED

Case No. 2015-CP-10-1901

DAVID ENGELMAN, BETTY S. ENGELMAN, AND ROBERT E. WELCH, JR. on behalf of  
themselves and others similarly situated.....Plaintiff/Respondent.

v.

TOWN OF JAMES ISLAND, SOUTH CAROLINA .....Defendant/Appellant.

NOTICE OF APPEAL

Please take notice that the above-named Defendant/Appellant does hereby appeal the Order of the Honorable J.C. Nicholson, Jr., Circuit Court Judge *sua sponte* granting Temporary Injunction, **(Exhibit A)** filed on July 7, 2016, and as subsequently modified, by Orders on August 18, 2016 **(Exhibit B)** and February 8, 2017. **(Exhibit C)**.

Appellant's received written notice of the final Order **(Exhibit C)** on February 8, 2017. This final February 8, 2017 Order issued in response to Appellant's Motion to Reconsider, Alter or Amend the Order Entered July 7, 2016. This Notice of Appeal is timely pursuant to Rule 203(b), SCACR. This appeal is properly taken in the Supreme Court of South Carolina pursuant to Rule 203(d)(A)(iii).

[signature on following page]

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



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Crowe LaFave, LLC  
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*Attorneys for Appellant/Defendant the Town of  
James Island, South Carolina*

March 9<sup>th</sup>, 2017.

Charleston, South Carolina

**EXHIBIT A**

July 7, 2016 Order (including *sua sponte* injunction)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 David Engelman, Betty S. Engelman, and )  
 Robert E. Welch, Jr., on behalf of )  
 themselves and others similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 Town of James Island )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 C/A NO. 2015-CP-10-1901

ORDER

FILED  
 2016 JUL -7 PM 12:49  
 JULIE J. ARISTARONG  
 CLERK OF COURT  
 BY

This matter came before the Court on December 9, 2015 on Plaintiffs' and Defendant's  
 Motions for Summary Judgment and Plaintiffs' Motion for Class Certification. Present for  
 Plaintiffs' was Trent M. Kernodle, Esq. and present for Defendant was Bonum "Bo" Sams  
 Wilson, Esq. The Court took the motions under advisement.

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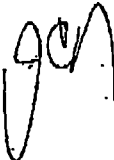
**BACKGROUND**

This case arises under S.C. Code Ann. § 4-10-10, *et seq.*, which provides for enactment  
 of a Local Option Sales Tax, known as the "LOST" statute. LOST allows South Carolina  
 counties to hold referenda to determine if those counties desire to undertake the duties and  
 obtain the benefits of LOST. If passed by a county referendum, LOST imposes a one percent  
 (1%) sales tax on a broad category of goods sold. Per the LOST statute, the South Carolina  
 Department of Revenue administers and collects LOST revenues and the revenues collected are  
 distributed back to the county and municipalities within the county based on a mathematical  
 formula contained in the statute. Specifically, the LOST statute mandates that LOST revenues  
 be divided into two separate funds to be returned to the county and municipalities: (1) the

County/Municipal Revenue Fund and (2) the Property Tax Credit Fund.

The amount of LOST revenues that are allocated to each fund is set forth in the LOST statute, with a larger amount of revenues being allocated to the Property Tax Credit Fund. The LOST statute provides a mathematical formula to determine how much each eligible county and municipality receives in LOST revenues. The revenues allocated to the County/Municipal Revenue Fund that are returned to the county and municipalities may be used for any public purpose. In contrast, the revenues allocated to the Property Tax Credit Fund that are returned to the county and municipalities are mandated to be used for only one purpose, property tax relief:

**§ 4-10-40 Distribution of Revenue Allocated to Property Tax Credit Fund**

 (A) The revenue allocated to the Property Tax Credit Fund, as provided in Section 4-10-90, must be distributed to the county and the municipalities in the county area as follows:

(1) sixty-seven percent to the county;  
(2) thirty-three percent to the municipalities in the county area so that each municipality receives an amount equal to what its percentage of population bears to the total population in all the municipalities in the county area.

(B)(1) All of the revenue received by a county and municipality from the Property Tax Credit Fund must be used to provide a credit against the property tax liability of taxpayers in the county and municipality in an amount determined by multiplying the appraised value of the taxpayer's taxable property by a fraction in which the numerator is the total estimated revenue received by the county or municipality from the Property Tax Credit Fund during the applicable fiscal year of the political subdivision and the denominator is the total of the appraised value of taxable property in the county or municipality as of January 1 of the applicable taxable year."

S.C. Code Ann. § 4-10-40.

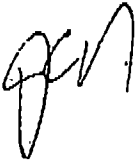
Currently, thirty-one (31) of the forty-six (46) counties in South Carolina have implemented LOST. Of the thirty-one (31) counties that have enacted LOST, sixteen (16) of them contained municipalities that lacked a property tax millage and were not listed as having a

property tax by the South Carolina Association of Counties at the time this lawsuit commenced. Charleston County voters opted to enact LOST, thus Charleston County and the municipalities within Charleston County have been receiving LOST revenues. Charleston County represents a little over six percent (6%) of the counties that have enacted LOST while containing municipalities lacking a property tax. Municipalities within Charleston County represented nearly twenty-five percent (25%) of the municipalities that did not have a property tax and were situated within counties that had enacted LOST at the time this lawsuit was filed. The Town of James Island was one of those municipalities. *See Court's Exhibit 1- Affidavit of W. William Woolsey; Court's Exhibit 2- Affidavit of Ashley Kellahan; and Court's Exhibit 3- Affidavit of Miriam O. Hair.* Defendant asserts that "In smaller municipalities like James Island, which historically lack a property tax, 100% of such municipalities use all LOST monies to fund or be available to fund municipal operations in conformity with the referendum, whether PTCR or CMRF." *See Defendant's Memorandum in Support of Its Motion for Summary Judgment and In Opposition to Plaintiffs' Motion for Summary Judgment and Class Certification pg. 10.*

However, zero percent (0%) of the LOST funds allocated to the Property Tax Credit Fund ("PTCR" above) used for municipal operations could possibly comply with the LOST statute, which mandates that the Property Tax Credit Fund, is to be used solely for property tax relief.

Due to the incorporation of the Town of James Island within Charleston County, and because Charleston County voted to enact LOST, the Town of James Island has received LOST revenues and held the funds without distribution. Over three million dollars (\$3,000,000) in LOST funds is currently being held, representing several years of Property Tax Credit funds collected- years in which no property tax existed on James Island to be relieved. The current Plaintiffs want a refund for a property tax they did not pay. They did, however, pay the one

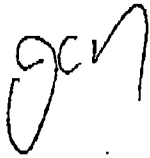
percent (1%) sales tax on certain goods, a tax in which the primary purpose of property tax relief could not possibly be served in a municipality that does not impose property taxes. Meanwhile, Charleston County provided the Town of James Island with many benefits paid for by Charleston County property tax funds when the Town of James Island was not paying property taxes. Therefore, Charleston County and its property taxpayers clearly have an interest related to the subject matter of this lawsuit.

 The Town of James Island has a dynamic history pertaining to its relationship with Charleston County and property taxes. There have been three previous incorporations of the Town of James Island. Before a property tax credit could occur, funds received from LOST held by the first incorporation of the Town were distributed to Charleston County and municipalities within Charleston County when the Town was terminated in 1997. *See Glaze v. Grooms*, 324 S.C. 248 (1996). Likewise, during the Town's second incorporation, no use of LOST fund credits occurred prior to the filing of the Town's unconstitutional formation. *See Kizer v. Clark*, 360 S.C. 86 (2004). During its third incorporation and prior to its dissolution, the Town in fact disbursed LOST funds to some real estate property owners, but not vehicle or boat owners. *See Cabiness v. Town of James Island*, 393 S.C. 176 (2011).

The current Town, no longer in litigation regarding its existence, did not levy a property tax in 2012, 2013, or 2014 and thus, provided no credit against municipal taxes. Since the inception of this lawsuit, the Town has implemented a new property tax at the municipal level, one that has never before existed on James Island. The Town levied a 20 mill *ad valorem* property tax in 2015. This tax, even if properly implemented, clearly cannot be used to offset or credit the approximately three million dollars (\$3,000,000) in LOST funds currently held or that will be held by the Town.

Both Plaintiffs and Defendant have made extensive arguments to the Court, offering conflicting meanings of the plain language of the LOST statute. "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The Court is of the opinion that the LOST statute is indeed clear and unambiguous. However, the Court is being asked by both Plaintiffs and Defendant to interpret a statute that is entirely silent on municipalities that have no property tax.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

 Upon thorough review of the Motions, oral arguments, memoranda, and relevant statutes, the Court finds that Charleston County must be joined as a Plaintiff for just adjudication in this case pursuant to Rule 19(a) of the South Carolina Rules of Civil Procedure (SCRCF):

"A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff."

The Court finds that Charleston County has standing and satisfies the requirements of persons to be joined in Rule 19.

THEREFORE, IT IS ORDERED that Charleston County be made a party to this lawsuit Pursuant to Rule 19 for the full resolution of this matter. Should Charleston County refuse to join as a plaintiff, Charleston County may be made an involuntary plaintiff because Charleston County's absence as a party in this matter deprives the existing parties of complete relief and because Charleston County has an interest in the subject of the action. Further, Charleston County is so situated that the disposition of the action in the County's absence may (i) as a practical matter impair or impede the County's ability to protect that interest or (ii) leave pre-existing parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the County's interest. The county in which the Town of James Island sits enacted LOST and collects and distributes the funds pertaining to LOST. Therefore, the issues before the Court cannot adequately be addressed if the proper parties are not involved in the lawsuit.

Rule 19(d) states that the Rule is subject to the provisions of Rule 23 in class actions. (SCRCP). The Court cannot adequately rule on the Motion for Class Certification until Charleston County has a chance to address its interest in the lawsuit. Therefore, the Court will hold this motion in abeyance to allow the parties time to address the joinder of Charleston County as a plaintiff and to allow Charleston County time to respond.

IT IS ALSO ORDERED that Plaintiffs' Motion for Partial Summary Judgment filed on September 4, 2015 is denied without prejudice, viewing the evidence in favor of the non-moving parties and finding a scintilla of evidence exists, giving rise to a genuine issue of material fact.

IT IS ALSO ORDERED that Defendant's Motion for Summary Judgment filed on September 21, 2015 is denied without prejudice, viewing the evidence in favor of the non-

moving parties and finding a scintilla of evidence exists, giving rise to a genuine issue of material fact.

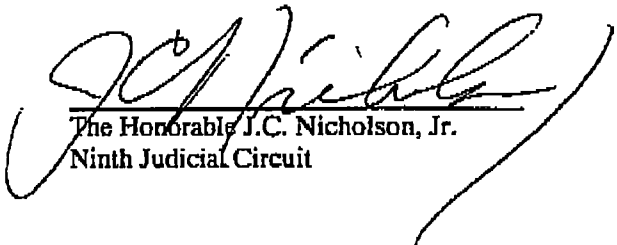
Plaintiffs' Motion for Temporary Injunction was denied by The Honorable Markley Dennis on September 2, 2015. However, Charleston County, a necessary party, was not present or joined in the lawsuit at that time.

THEREFORE IT IS ALSO ORDERED that a Temporary Injunction is hereby issued *sua sponte* to prevent spending, crediting, dissipating, or otherwise obligating for expenditures of Local Option Sales Tax (LOST) funds yet to be acquired or currently held until final resolution of this action.

IT IS ALSO ORDERED that because Charleston County is now a party for the full resolution of this lawsuit, the Clerk of Court shall serve the County of Charleston with a copy of this Order.

AND IT IS SO ORDERED.

July 7, 2016  
Charleston, South Carolina

  
The Honorable J.C. Nicholson, Jr.  
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE CIRCUIT COURT FOR THE  
) NINTH JUDICIAL CIRCUIT

) CASE NO: 2015-CP-10-1901

David Engelman, Betty S. Engelman  
and Robert E. Welch, Jr. on behalf of  
themselves and others similarly situated.

) **AFFIDAVIT OF DR. W. WILLIAM  
) WOOLSEY**

) Plaintiffs,

) vs.

) Town of James Island, South Carolina

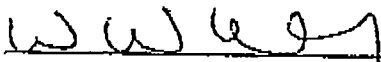
) Defendant.  
)

**PERSONALLY APPEARED BEFORE ME, Dr. W. William Woolsey, who, after being first duly sworn, deposes and says:**

1. That he is a resident of Charleston County, South Carolina and over the age of eighteen.
2. That he is the Mayor of the Town of James Island, South Carolina.
3. That he has held such elected office from 2010-2011 and 2012-present.
4. That he has spoken with representatives from the following municipalities: Due West, Kline, Govan, Rockville, Meggett, Hollywood, Seabrook Island, Ravenel, Kiawah Island, Richburg, Cottageville, Lodge, Smoaks, Edgefield, Coward, Quinby, Scranton, Furman, Luray, Bethune, Elgin, Heath Springs, Irmo, Parksville, Plum Branch, Arcadia Lakes and Blythewood, and Stuckey, South Carolina.
5. That such municipalities represent 28 of the 44 municipalities within counties in the State of South Carolina that have adopted the Local Option Sales Tax.
6. That none of those 28 municipalities have property tax millage nor are they listed as having a property tax by the South Carolina Association of Counties.



7. That all of those 28 municipalities receive LOST property tax credit funds.
8. That none of those 28 municipalities provide tax refunds or rebates to taxpayers within the municipal limits.
9. That all of those 28 municipalities spend all LOST funds received for general municipal purposes.

  
\_\_\_\_\_  
Dr. W. William Woolsey

SWORN TO AND SUBSCRIBED BEFORE ME

This 31 day of August, 2015

James W. Simmons

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 04-19-2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 David Engelman, Betty S. Engelman )  
 and Robert E. Welch, Jr. on behalf of )  
 themselves and others similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 Town of James Island, South Carolina )  
 )  
 Defendant. )

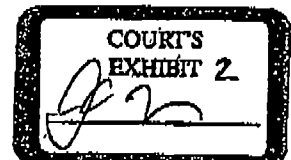
IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-10-1901

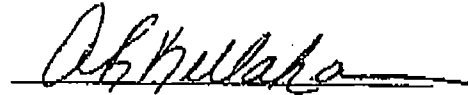
AFFIDAVIT OF ASHLEY KELLAHAN

PERSONALLY APPEARED BEFORE ME, Ashley Kellahan, who, after being first duly sworn, deposes and says:

1. That she is a resident of Charleston County, South Carolina and over the age of eighteen.
2. That she is the Town Administrator for the Town of James Island, South Carolina.
3. That she has spoken with representatives from Sycamore and Ulmer , South Carolina. She has also spoken with the Auditor for Barnwell County, who spoke on behalf of the municipalities of Elko, Hilda, and Kline, South Carolina.
4. That such municipalities represent5 of the 44 municipalities within counties in the State of South Carolina that have adopted the Local Option Sales Tax.
5. That none of those 5 municipalities have property tax millage nor are they listed as having a property tax by the South Carolina Association of Counties.
6. That all of those 5 municipalities receive LOST property tax credit funds.
7. That none of those 5 municipalities provide tax refunds or rebates to taxpayers within the municipal limits.



- 8. That all of those 5 municipalities spend all IOST funds received for general municipal purposes.



Ashley Kellahan

SWORN TO AND SUBSCRIBED BEFORE ME

This 31 day of August, 2015

Francis W. Dimmons

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 04-19-2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
David Engelman, Betty S. Engelman and	)	CIVIL ACTION NO. 2015-CP-10-1901
Robert E. Welch, Jr., on behalf of themselves	)	
and others similarly situated,	)	
	)	
Plaintiffs,	)	
vs.	)	AFFIDAVIT OF MIRIAM HAIR
	)	
Town of James Island, South Carolina,	)	
	)	
Defendant.	)	

PERSONALLY APPEARED before me, a Notary Public in and for the State of South Carolina, Miriam O. Hair, who, being first duly sworn, deposes and states:

1. I am the Executive Director of the Municipal Association of South Carolina, have served in that capacity since October 2008, and have been employed by the Municipal Association of South Carolina since October 1985.
2. The Municipal Association of South Carolina ("MASC") is a nonpartisan, not-for-profit association representing the approximately 270 municipalities in this State. Among other things, the MASC, through various communication vehicles, provides elected and appointed municipal officials with information, educational opportunities, and technical and legal assistance on issues involving local government powers, duties, responsibilities and operations.
3. Among those issues is the appropriate use under State law of revenues provided to municipalities by distribution of the Property Tax Credit Fund allocation of Local Option Sales Tax ("LOST") proceeds under S.C. Code section 4-10-40 (B)(1). Although that subsection provides for "a credit against the property tax liability of taxpayers in the county and



municipality", many municipalities in this State that receive these LOST proceeds do not levy a municipal property tax. In that circumstance, the position of the MASC, in providing education and training to municipal officials, is that the Property Tax Credit Fund allocations can be treated by the municipality as a surplus of revenues in excess of municipal taxes that can be used for any valid public purpose by appropriate legislative action of the municipal council. The understanding of the MASC is that this position is in accord with the law, including Opinions of the State Attorney General.

[Remainder of page intentionally blank.][Signature page follows.]

FURTHER AFFIANT SAYETH NOT.

Miriam O. Hair  
Miriam O. Hair

SWORN TO AND SUBSCRIBED before me  
this 31 day of August 2015

Elizabeth L. Capeland  
My Commission Expires: 1/22/2018

**EXHIBIT B**

August 18, 2016 Order suspending the *sua sponte* injunction for tax year 2016 only

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 David Engelman, Betty S. Engelman, and )  
 Robert E. Welch, Jr., on behalf of )  
 themselves and others similarly situated, )  
 and Charleston County )  
 )  
 Plaintiffs, )  
 v. )  
 Town of James Island )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 C/A NO. 2015-CP-10-1901

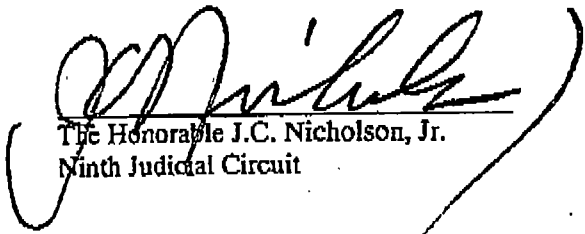
ORDER

FILED  
 2016 AUG 18 PM 2:49  
 JULIE L. ANTONIUS LONG  
 CLERK OF COURT

On July 18, 2016, Defendant Town of James Island filed a Motion to Reconsider, Alter, or Amend this Court's Order filed on July 7, 2016. On August 10, 2016, Plaintiff Charleston County also filed a Motion to Reconsider, Alter, or Amend the same Order.

This Order Amends the July 7, 2016 Order to vacate the Temporary Injunction as it applies to the 2016 tax year. The Court will continue its consideration of other issues raised in the Motions to Reconsider and will further modify the Order of July 7, 2016 if necessary.

AND IT IS SO ORDERED.

  
 The Honorable J.C. Nicholson, Jr.  
 Ninth Judicial Circuit

August 17, 2016  
 Charleston, South Carolina

**EXHIBIT C**

February 8, 2017 Order in response to Appellant/Defendant's Motion to  
Reconsider and Modifying the July 7, 2016 Order.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
C/A NO. 2015-CP-10-1901

David Engelman, Betty S. Engelman, and  
Robert E. Welch, Jr., on behalf of  
themselves and others similarly situated,  
and Charleston County

**SUPPLEMENTAL ORDER**

Plaintiffs,

v.

Town of James Island

Defendant.

FILED  
2017 FEB -8 PM 1:52  
CLERK OF COURT  
JAMES ISLAND

On July 18, 2016, Defendant Town of James Island filed a Motion to Reconsider, Alter, or Amend this Court's Order filed on July 7, 2016. On August 10, 2016, Plaintiff Charleston County also filed a Motion to Reconsider, Alter, or Amend the same Order. This Order supplements this Court's Order filed on August 18, 2016 to make the following modifications to the Court's July 7, 2016 Order:

1. The Court agrees the language of the July 7, 2016 Order improperly applies the Temporary Injunction to all LOST funds because it failed to distinguish the County/Municipal Revenue Fund (the "CMRF") from the Property Tax Credit Fund (the "PTCF"). Therefore, the Temporary Injunction is hereby lifted as to LOST funds in the CMRF. The Injunction only applies to the PTCF.

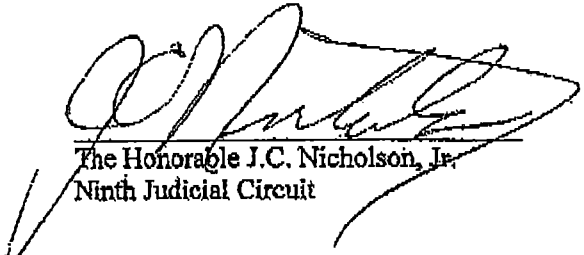
2. The July 7, 2016 Order referred to the amount of LOST funds being held as "approximately three million dollars (\$3,000,000)." The Court used this number based upon Plaintiffs' assertions (excluding Plaintiff Charleston County) where this amount was repeatedly

presented to the Court. The Town had no property tax in 2012, 2013, or 2014 and received a distribution of revenue from the South Carolina Treasurer from a PTCF revenue during fiscal years 2012-13, 2013-14, 2014-15. The total amount of PTCF revenue during that period was \$2,290,506, which is the specific amount the Court's July 7, 2016 Order should have used.

3. The Town of James Island's Motion to Reconsider asserts that the Court's statement that the "Town of James Island was not paying property taxes" is confusing and inapplicable. The Court and the parties to this lawsuit are well aware that the Town, as a municipality, does not pay taxes. For the sake of clarification, the meaning of that sentence is that Town of James Island *residents* were not paying property taxes.

AND IT IS SO ORDERED.

February 9, 2017  
Charleston, South Carolina



The Honorable J.C. Nicholson, Jr.  
Ninth Judicial Circuit

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Hon. J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-1901

FILED  
2017 MAR 13 PM 4:44  
JULIE J. ARMSTRONG  
CLERK OF COURT

DAVID ENGELMAN, BETTY S. ENGELMAN, AND ROBERT E. WELCH, JR. on behalf of  
themselves and others similarly situated.....Plaintiff/Respondent.

v.

TOWN OF JAMES ISLAND, SOUTH CAROLINA .....Defendant/Appellant.

AFFIDAVIT OF SERVICE

I certify that I have served the Appellant's Notice of Appeal on all counsel of record, in  
accordance with Rule 262(b), SCACR, by depositing a copy in the United States Mail, postage  
paid, to the following:

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*Attorney for Charleston County*

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



Moira W. Kerrigan  
Paralegal to Michael A. Timbes & Thomas J. Rode

March 9, 2017.  
Charleston, South Carolina

# Exhibit A

(Notice of Appeal)

# Exhibit B

(Order Vacating Temporary Injunction)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 David Engelman, Betty S. Engelman, and )  
 Robert E. Welch, Jr., on behalf of )  
 themselves and others similarly situated, )  
 and Charleston County )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 Town of James Island )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 C/A NO. 2015-CP-10-1901

**ORDER VACATING  
 TEMPORARY INJUNCTION**

2017 JUL -5 PM 4:06  
 CLERK OF COURT  
 STATE OF SOUTH CAROLINA

*gen*

This Court's Order dated July 7, 2016 imposed a Temporary Injunction in this action pertaining to Local Option Sales Tax (LOST) funds. The July 7, 2016 Order also added Charleston County as a necessary party to this action pursuant to Rule 19, SCRPC. The Town of James Island and Charleston County each filed motions to reconsider the July 7, 2106 Order. By way of separate Orders entered on August 18, 2016, and February 8, 2017, the Court modified the July 7, 2016 Order and the Temporary Injunction contained therein, with the intention of further supplementing the Orders as needed once the parties, including Charleston County, were given the opportunity to fully respond.

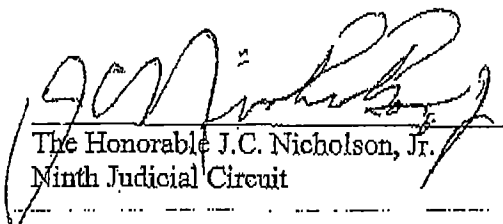
Thereafter, the Town of James Island appealed the issuance of the Temporary Injunction imposed by the foregoing Orders. During the pendency of the appeal, Charleston County again renewed its Motion to Reconsider the July 7, 2016 Order. A hearing on Charleston County's Motion was held on April 24, 2017. At the hearing the Court informed the parties that it intended to vacate the injunction in its entirety since Charleston County had been given ample

opportunity to respond to the lawsuit, which rendered the remaining issues moot. The Town of James Island and Charleston County agreed with the Court's decision.

The Court first issued the Temporary Injunction in conjunction with its Order directing that Charleston County be made a party to the action. It was the intent of the Court to preserve the status quo of the case until such time as Charleston County appeared in the action. Now that Charleston County has appeared and has chosen not to contest the expenditure of the Property Tax Credit Funds, it is now the opinion of the Court that the Temporary Injunction, as issued and later modified, has fulfilled its intended purpose and is no longer necessary. Charleston County has been given an opportunity to address the issues and merits of the action and a monetary remedy exists if the funds are wrongfully spent.

Now, therefore, IT IS ORDERED that the Temporary Injunction issued pursuant to the July 7, 2016 Order and later modified by the Orders entered August 18, 2016, and February 8, 2017, is hereby vacated in its entirety.

AND IT IS SO ORDERED.



The Honorable J.C. Nicholson, Jr.  
Ninth Judicial Circuit

July 5, 2017  
Charleston, South Carolina

THURMOND KIRCHNER & TIMBES, P.A. RECEIVED  
ATTORNEYS & COUNSELORS AT LAW

15 MIDDLE ATLANTIC WHARF  
CHARLESTON, SOUTH CAROLINA 29401

JUL 18 2017

SC Court of Appeals  
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Jesse A. Kirchner  
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Christopher P. Deters  
David L. Barnes, Jr.  
Thomas J. Rode  
Christopher C. Romeo \*\*  
Matthew S. Byzet  
T. Happel Scurry  
Johnny J. Evans, Jr.

\* Also admitted in Georgia

\*\* Also admitted in North Carolina

July 17, 2017

VIA FACSIMILE & U.S. MAIL

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211  
Fax to: 803-734-1839

Re: *Case Tracking No. 2017-000599*  
*Engleman v. Town of James Island, South Carolina*

Dear Ms. Kitchings:

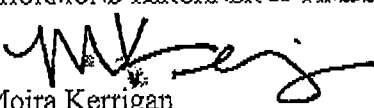
Enclosed for filing please find an original and seven (7) copies of Appellant's Motion to Dismiss and Affidavit of Service as well as this firm's check in the amount of \$25.00 in satisfaction of the filing fee in connection with the above-referenced appeal. Kindly file these papers with the Court and return a file-stamped copy to me in the self-addressed, stamped envelope provided for your convenience.

Your assistance with this matter is.

With kind regards, I am

Very truly yours,

THURMOND KIRCHNER & TIMBES, PA

  
Moira Kerrigan  
Paralegal to Michael A. Timbes

cc: All Counsel of Record

THURMOND KIRCHNER & TIMBES, P.A.  
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RECEIVED

JUL 18 2017

SC Court of Appeals

\* Also admitted in Georgia

\*\* Also admitted in North Carolina

FACSIMILE TRANSMITTAL

DATE: July 17, 2017

TO: South Carolina Court of Appeals, Attn: Jessica

FAX #: 855-668-0697

FROM: Moira Kerrigan, Paralegal to Michael A. Timbes

RE: *Appellate No. 2017-000599*  
*Engleman v. Town of James Island, South Carolina*

PAGES: 33 (including cover)

Please see the following.

Thank you,

Moira Kerrigan

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