THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Georgetown County
Court of Common Pleas

Steven H. John, Presiding Circuit Court Judge

Case No. 2015 – CP – 22 -00483

Willie Singleton — Appellant

V

CITY OF GEORGETOWN JANET GRANT, INDIVIDUALLY AND AS AN EMPLOYEE OF THE CITY,RICKY MARTIN,INDIVIDUALLY,AND AS AN EMPLOYEE OF THE CITY,ROBERT O'DONNELL , INDIVIDUALLY AND AS MAGISTRATE FOR THE CITY OF GEORGETOWN — **RESPONDENT**

INITIAL REPLY BRIEF OF APPELLANT

Willie Singleton, Pro Se
501 North Congdon Street
Georgetown, SC 29440

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Hawkins v. City of Greenville,
358 S.C. 280,21, 594 S.E.2d 557, 563 {Ct. App. 2004).

STATUTES

ARGUMENT

I. Appellant cannot revive on appeal his claims for wrongful taking, condemnation, due process, and equal protection for which (1) the federal district court previously granted summary judgment in Respondents' favor; favor; and (2) Appellant conceded before the circuit court were no longer pending clams in the case.

The case was originally filed in federal court and the federal court granted in part and denying in part the Respondent claim. There is no process of condemnation under federal law. This is clearly a state process. State law has a clearly define law and process to condemnation. That was not uses. A city ordinance was used in violation of state law. The only court that can address wrongful taking, condemnation, due process and equal protection of state law is state court. The Respondent position is not that the things alleged did not happen, but that there is no court to redress wrongful taking, condemnation, due process and equal protection.

The federal court order on page 20 reads as follows "Given that the federal claims in this case have been dismissed, the court exercises its discretion to refrain from deciding the remaining state law claims and remands the state law claims to the Court of Common Pleas for Georgetown County." The wrongful taking, condemnation, due process, equal protection, procedural due process, and substantive due process claims were turned back over to the state.

II. The Trial Court properly granted summary judgment to Responds Appellant's sole remaining claim of gross negligence because Respondents are immune from liability pursuant to the exception to waiver of governmental immunity under the South Carolina Tort Claims Act.

The immunity provided by the Act is an affirmative defense. Frazier v. Badger, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004). Generally, an affirmative defense may not be asserted in a motion to dismiss unless the allegations of the complaint demonstrate the existence of the affirmative defense. Spence v. Spence, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006). However, [m]ost courts allow such defenses to be raised in a motion to dismiss when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on

the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense.

"A trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." McEachern v. Black, 329 S.C. 642, 647, 496 S.E.2d 659, 661 (Ct. App. 1998). Doe v. Marion, 361 S.C. 463, 470, 605 S.E.2d 556, 560 (Ct. App. 2004), cert. granted, Apr. 19, 2006.

The facts are disputed and the individual named defendants did not established its entitlement to immunity as a matter of law.

The circuit court judge erred in finding as a matter of law that the Respondent's actions are "protected by the shields of legislative and common law immunities." Because immunity under the TCA is an affirmative defense, and as a matter of law that the Respondents failed to prove as a matter of law that it was entitled to this immunity.

State law 15-78-60 grant a per se immunity to legislative actions. Thus, there is an irrefutable presumption of the exercise of discretion.

The TCA "is the exclusive civil remedy available for any tort committed

The Respondent argues that they are immune from tort actions stemming from conduct within the scope of his official duties pursuant to South Carolina Code Ann. section 15-78-70 (Supp. 2005), but that section specifically provides that government employees may be liable in tort actions:

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

Immunity under the statute is an affirmative defense that must be proved by the defendant at trial. Tanner v. Florence City-County Bldg. Comm'n, 333 S.C. 549, 552, 511 S.E.2d 369, 371 (Ct. App. 1999).

The circuit court judge erred in finding as a matter of law on page 4 of its order for summary judgment that "Defendants, Janet Grant, Rick Martin and Robert O'Donnell cannot be sued individually"'. The court did not make a finding that they were acting within the "scope of employment" because that is an affirmative defense that must be proved by the defendant at trial. Even the implication from the circumstances of a particular case. As set forth in Hamilton v. Miller, 301 S.C. 45, 48, 389 S.E.2d 652, 653 (1990); and Wade v. Berkeley County, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App.1998)., of the course of someone's employment requires some "act in furtherance of the employer's business." 304 S.C. at 246, 403 S.E.2d at 647., is an affirmative defense that must be proved by the defendant at trial. This issue was addressed by the appellant in appellants amend response to respondent response for summary judgment
A. South Carolina Torts Claims Act

The Defendants contend that the Plaintiff does not appear to have presented any State Causes of action but if he does so they are barred by the South Carolina Torts Claims Act. The Defendants' contention is in error. It is clear that the Plaintiff has presented a Taking of his property pursuant to State and Federal Law. In the Plaintiff's complaint, the Plaintiff presented the following as evidence of taking/inverse condemnation:

1. The City of Georgetown by and through its agents wrongfully interferred with the property of the Plaintiff under the color of law. The Defendants, all as listed above failed and refused to properly follow the procedures as set forth in the law in directing the Plaintiff to demolish the property.

2. The Defendants' actions individually and as a group have deprived the Plaintiff of the value ofhis property.

3. The Derfendants' actions individually and as a group have violated the Plaintiff's consitutional rights under State and Federal Law.

4. The Defendants' ordering the demolition of the property against the Plaintiff alone is selective prosecution ofthe Plaintiff and consitutes a wrongful taking ofhis property and an abuse of power

5. That Defendants failed to follow prescribed statutory procedures necessary to effectuate condemnation ofPlaintiff's property which is a prerequisite to the removal of any building on any such property after they were informed that their actions were against the law.

6. That Defendants' conduct in improperly ordering the demolishing of the house without adherence to such procedures was the proximate cause of Plaintiff's being deprived of the protection granted to him under the law entitle Plaintiff all consequential damages and punitive damages associated therewith, including, but not limited to, all cost associated with prosecution of this action including reasonable attorney's fees.

7. The Defendant, City of Georgetown's, conduct of taking the property of the Plaintiff is the taking of property without the proper authority or notification.

8. That the Defendant, City of Georgetown has converted the Plaintiff's property without proper compensation.

Inverse condemnation is the action by which a property owner can recover the value of property that has been taken by a governmental entity. The fact is that the government cannot take property from an owner without just compensation. The key in these circumstances is an owner. The Elements are clear: 1. An affirmative, positive aggressive act on the part of the

governmental entity, 2. A taking, 3. the taking if for public use, and 4. the taking has some permanence. In White v. County of Newberry, the Court set forth the following:

"Under South Carolina law, an affirmative, positive, and aggressive act by a municipality sufficient to establish a compensable taking must be an act, intentional or not, that overtly affects another's beneficial use and enjoyment of his land. The Whites cannot assert that a mere omission on the County's part satisfies the affirmative act test. See McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154, 160 (1986). The determination that an act is affirmative, positive, and aggressive, ,Horry County v. The Insurance Reserve Fund, 344 S.C. 493, 544 S.E.2nd 637 (Ct. Ap. 2001), Sea Cabins on the Ocean IV Homeowners Association 80 White v. County of Newberry 985 F.2d 168, 173 (41Cir 1993), depends on the facts and circumstances of the particular case; if the facts and circumstances do not establish an affirmative act, the case does not, as a matter of law, represent inverse condemnation. Focusing on the affinnative nature of circumstances involved, the South Carolina courts have upheld the following three acts as compensable takings. First, the City of Greenville laid a seventy-two inch valved, overflow pipe through an earthen dam to control the water level of the City's reservoir. As a result of heavy rains and rapidly rising reservoir levels, the City opened the pipe valve and discharged large amounts of waters on the plaintiff's bean crops destroying them. Lindsey v.City of Greenville,241S.C.232, 146 S.E.2d 863, 865-66 (1966). Second, the South Carolina Department of Highways and Public Transportation negligently diverted the groundwater supply away from the plaintiff's property when it laid pipe around highway construction to drain roadbeds. The pipe drew on plaintiff's groundwater and lowered his lake levels some inches. South Carolina Dep't of Highways & Pub. Transp. v. Balcome, 289 S.C. 243, 345 S.E.2d 762, 763-64 (1986). Lastly, the Town of Surfside Beach rebuilt washed-out portions of a roadway seventeen inches higher than the damaged road's original level. The rise in the road made plaintiff's property the lowest point on the roadway; therefore, any rains caused the plaintiff's property to flood. Newsome v. Town of Surfside Beach, 300 S.C. 14, 386 S.E.2d 274, 275 (1989).

The Defendants are attempting the taking of the Plaintiff's property through improper procedure and are not entitled to summary judgment through the Torts Claims Act. The South Carolina

Supreme Court has analyzed the Tort Claims Act and its application to certain circumstances in Procter. In Proctor the Court set forth the following: "The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees."Not withstanding any provision of law, this chapter, the "South Carolina Tort Claims Act', is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann.§ 15-78-200 (2005); see also Olson v. Faculty House of Carolina, Inc., 344 S.C. White v. County of Newberry, 985 F.2d 168, 173-174 (4th Cir. 1993) Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 280, 607 S.E.2d 711, 714 (2005) (citing Plateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998)); Hawkins v. City of Greenville,358 S.C. 280,21, 594 S.E.2d 557, 563 (Ct. App. 2004). 194, 544 S.E.2d 38 (2001) (observing the Tort Claims Act is the exclusive remedy for tort claims against governmental entities), afl'd, 354 S.C. 161, 580 S.E.2d 440 (2003). "The Act does not create a new substantive cause of action against a governmental entity." Hawkins, 358 S.C. at 292, 594 S.E.2d at 563 (citing Moore v. Florence Sch. Dist.No. I, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994)). "The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense."83 The Defendant contends that the Defendant acted within the scope of their position and are therefore protected from individual liability. However, the defendants overstepped the bounds of their positions when they selectively enforced the law and discriminated against the Plaintiff based on his race. Therefore, the Defendants are not entitled to summary judgment based on the South Carolina Torts Claims Act. The Plaintiff was required by law to exhaust administrative remedies prior to filing the case for selective/vindictive prosecution which he did so therefore the Statute of Limitations argument does not apply. The Plaintiff's remaining causes of action are negligence and malicious prosecution. The Defendant also makes an immunity argument and in an abundance of caution the Plaintiff presents his Immunity argument that was presented in Federal Court. The overall purpose of qualified immunity is to ensure that government officials "reasonably can anticipate when their conduct may give rise to liability by attaching liability only if 'the contours of the right [violated are] sufficiently clear that a reasonable official would

Steinke, 336 S.C. at 393, 520 S.E.2d at 152; accord Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994); Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002) ("The governmental entity claiming an exception to the waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability.") (citation omitted). Proctor v. Dept. Health and Environmental Control, _ S.E.2d, 4098 (2006).understand that what his doing violates that right[.]' It is clear that the actions of each and every defendant knew that their actions would violate the Plaintiff's rights to own property without interference from the Government or the actions of the government to force the Plaintiff to commit certain acts. The Ordinance used by Grant is regarding grass over 18 inches high. The Plaintiff's lot has no grass it is overgrown with bushes and trees. The Defendants attempted to intimidate the Plaintiff into tearing down the structure on the property as it had done to other residents. The Defendants have deprived the Plaintiff of an actual right as determined. "The fact is that the ordinance applied to the Plaintiff was an attempt to have him demolish the structure without using the condemnation process which the City had already been found guilty of in a case brought by the Plaintiff.

On another note when considering immunities "[T]he only immunities available to the defendant in an official- capacity action are those that the governmental entity possesses. The doctrine of qualified immunity shields police officers acting in their official capacity from suits for damages under 42 U.S.C.§ 1983, unless their actions violate clearly-established rights of which an objectively reasonable official would have known. In this circumstance it is clear that the Defendants violated the rights of the Plaintiff through their actions. Qualified immunity is an affirmative defense which the defendant bears the burden of proving the challenged act was objectively reasonable in light of the existing law. Varrone v.Solis v. Prince George's County, 153 F.Supp. 793, 800 (D.Md. 2001)) quoting United States v. Lanier, 520 U.S. 259, 270(1997))

Exhibit 13 to Plaintiffs Response in Opposition to Defendant's Motion for Summary Judgment. Conn v. Gabbert, 526 U.S. 286, 290, 119 S.Ct. 1292, 1295, 143 L.Ed2d 399, 405 (1999). Haferv. Melo, 502 U.S. 21, 25, 112 S.Ct. 358,362, 116 L.Ed2d 301,309 (1991). Rogers v. City of Amsterdam, 303 F.3d 155, 158 (2d Cir. 2002) (quoting Thomas v. Roach, 165 F.3d 137, 142 (2d Cir. 1999)); accord Williams v. Gourd, 142 F.Supp.2d 416, 428 (2001). Bilotti, 123 F.3d 75,

78 (2d Cr. 1997). The act was not objectively reasonable. The Defendant makes an argument that the Defendants are not liable because the cases Harlow, Anderson, and their progeny of cases entitled them to qualified immunity because there is no competent evidence that they engage in unlawful conduct and violated any established statutory or constitutional right. However, when viewing the facts in a light most favorable to the Plaintiff this argument is not valid. It is clear that the Plaintiff due process rights were violated, the Plaintiff was selective/vindictively prosecuted and required to pay a fine. The City contends that all he was required to do was clean his lot in compliance with the ordinance. However, the Defendants have narrowed a long and complicated history down to one alleged act which is an impossible task. When reviewing the Plaintiff's case one must look at the actions of the Defendants holistically not atomistically. The Plaintiff would contend that he has a gross negligence claim against the City for itsegregious acts. "Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.It is the failure to exercise even the slightest care.Gross negligence ... means the absence of care that is necessary under the circumstances." Etheredge v. Richland Sch. Dist. One,341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000);accord Hicks v. McCandlish,221 S.C. 410, 70 S.E.2d 629 (1952);see also Jinks,355 S.C. at 344, 585 S.E.2d 283 ("Gross negligence has also been defined as a relative term and means the absence of care that is necessary under the circumstances.") Clyburn v. Sumter County Sch. Dist. No.11,311 S.C. 50, 53, 451 S.E.2d 885, 887 (1994);accord Jinks v. Richland County,355 S.C. 341, 344, 585 S.E.2d 281, 283 (2003); Worsley Cos., Inc. v. Town of Mount Pleasant,339 S.C. 51, 57,528 S.E.2d 657,661 (2000);Marietta Garage, Inc. v. S.C. Dep't of Public Safety,331 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999) 90 Faile v. South Carolina Dep't of Juvenile Justice,350 S.C. 315, 331-32, 566 S.E.2d 536, 44 (2002); Rakestraw v. S.C. Dep't of Highways and Public Transp.,323 S.C. 227, 473 S.E.2d 890 (Ct. App. 1996),(citing Hollins v. Richland County &hool Dist. 1, 310 S.C. 486, 427 S.E.2d 654 (1993)),

"Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." Clyburn, 317 S.C. at 53, 451 S.E.2d at 887. Gross negligence is ordinarily a mixed question of law and fact.Clyburn,311 S.C. at 53, 451 S.E.2d at 881;Pack v. Associated Marine Institutes, lnc.,362 S.C. 239, 245, 608 S.E.2d 134, 138 (Ct. App. 2004);Faile,350 S.C. at 332,

566 S.E.2d at 545. "In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury."Faile, 350 S.C. at 332, 566 S.E.2d at 545. "[W]hile gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court."Etheredge,341 S.C. at 310, 534 S.E.2d at 217;see also Staubes v. City of Folly Beach,331S.C. 192, 205, 500 S.E.2d 160, 168 (Ct. App. 1998) ("Gross negligence is a mixed question of law and fact and should be presented to the jury unless the evidence supports only one reasonable inference."), aff'd,339 S.C. 406, 529 S.E.2d 543 (2000).

Essentially it is incumbent upon the Plaintiffs that the Defendant acted without care in their actions against the Plaintiffs. As defined Gross Negligence can be the doing of something that one ought not to do. The fact is that the Defendant, City of Georgetown. Takes it upon itself to issue a ticket then to intentionally hold a trial without the Plaintiff being present to harm the Plaintiff. The facts firmly establish a genuine issue of material fact and causes of action. The issue of gross negligence is best determined by a jury. The case should be presented to a jury because there is not only one reasonable inference.

The South Carolina Supreme Court has analyzed the Tort Claims Act and its application to certain circumstances in Procter. In Proctor the Court set forth the following: "The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees."91 "Notwithstanding any provision of law, this chapter, the "South Carolina Tort Claims Act', is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200 (2005); see also Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (2001) (observing the Tort Claims Act is the exclusive remedy for tort claims against governmental entities), aff'd, 354 S.C. 161, 580 S.E.2d 440 (2003). "The Act does not create a new substantive cause of action against a governmental entity." Hawkins,358 S.C. at 292, 594 S.E.2d at 563 (citing Moore v. Florence Sch. Dist. No. 1, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994)). "The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. When one takes all facts in a

light most favorable to the Plaintiff the acts by the Defendants were not reasonable and clearly were violating the Plaintiff's rights to due process and the right to be free of selective prosecution/vindictive prosecution. The Defendant is not entitled to Qualified immunity for their actions against the Plaintiff and the Plaintiff has a right to a jury trial on the issues in this case. Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct. App. 2005) (citing Flateau v. Harrelelson, 355 S.C. 197, 584 S.E.2d 413 {Ct. App. 2003); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998)); Hawkins v. City of Greenville, 358 S.C. 280,21, 594 S.E.2d 557, 563 {Ct. App. 2004). Steinke, 336 S.C. at 393, 520 S.E.2d at 152; accord Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994); Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315,324, 566 S.E.2d 536, 540 {2002) ("The governmental entity claiming an exception to the waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability.") {citation omitted). Proctor v. Dept. Health and Environmental Control, _ S.E.2d _, 4098 {2006).

III. The doctrine of res judicata bars the Appellant's gross negligence claim against Respondent because the issue raised by the gross negligence claim could have been litigated in the previous municipal court proceeding relating to Appellant's conviction for maintaining a public nuisance...

Res Judicata

The Defendant attempted the dismissal of the Plaintiffs claims under the Rooker-Feldman doctrine attempting to have the Plaintiff's claims dismissed. The motion was denied by the Court. The Defendant now attempts the same arguments pursuant to Res Judicata. The Defendant's Motion for Summary Judgment should be denied.

The Plaintiff causes of action are not related to a previous lawsuit initiated previously. The Defendant contends that Res Judicata prevents this action. Res Judicata precludes the assertion of a claim after a judgment on the merits a prior suit by the parties or their privies based on the same cause of action. In Grose v. Cohen the Court determined that 'when traditional concepts of res

judicata do not work well, they should be relaxed or qualified to prevent injustice. For the doctrine of res judicata to be applicable, there must be: (1) a final judgment on the merits ina prior suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits." ld.

"In determining the validity of a plea of res judicata three questions are pertinent: Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? * * *In the present case, therefore, the defendant is not precluded by lack of privity or of mutuality of estoppel from asserting the plea of res judicata against the plaintiff.' 122 P.2d at 894-895. The final' udgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever. Pueschel v. United States, 369 F.3d 345, 354-55 (4th Cir.2004). Grose v. Cohen, 406 F.2d 823, 825 (4 Cir. 1969). Graves v. Associated Transport, Inc., 344 F.2d 894,899 (4th Cir. 1965). Guinness PLC v. Ward, 955 F.2d 875, 894 (4th Cir. 1992) quoting Commissioner v. Sunnen, 333 U.S. 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898 (1948). See Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 375,378, 60 S.Ct. 317, 319,320, 84 L.Ed. 329 (1940). The prior action was not related to the actions as set forth in this cause of action. Even though the parties are the same. The Second element of the test is whether or not the causes of action are the same. The test for deciding "whether the causes of action are identical for claim preclusion purposes is whether the claim presented in the new litigation 'arises out of the same transaction or series of transactions as the claim resolved by the prior judgment.'" Pittston Co. v. United States, 199 F.3d 694, 704 (4th Cir. 1999)(quoting Harnett v. Billman, 800 F.2d 1308, 1313 (4th Cir. 1986)). According the Restatement of Judgment they are the same claims if the new claim arises out of the same transaction or series of transactions as the claim resolved by the prior judgment. See Restatement (Second) of Judgment Sec. 24(1) (1982). For purposes of res judicata, it is not necessary to ask if the plaintiff knew of his present claim at the time of the former judgment, for it is the existence of the present claim, not party awareness of it, that controls. This principle distinguishes from this case those cases where the challenged claim did not exist at the time of the prior litigation.

The Third and final element of res judicata is privity. To be in privity with a party to a former litigation, the non-party must be "so identified in interest with a party to former litigation that he represents precisely the same legal right in respect to the subject matter involved." Jones v. SEC, 115 F.3d 1173, 1180 (4th Cir. 1997) (citing Nash County Bd. of Educ. v. Biltmore Co.,

640 F.2d 484,493 (4th Cir. 1981)). However, an exact definition of privity is an elusive concept. See Nash, 640 F.2d at 493-494. As this court stated in Nash, privity "is merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include that other within the res judicata."£1Id. at 494. (internal quotation marks omitted). The Id. at 494. (internal quotation marks omitted). The person in privity is "so identified in interest with a party to former litigation that he represents precisely the same legal right in respect to the subject matter involved." Nash County Bd. of Educ. v. Biltmore Co., 640 F.2d 484, 493 (4th Cir.l981) (quoting Jefferson Sch. of Soc. Science v. Subversive Activities Control Bd., 331 F.2d 76, 83 (D.C.Cir.l963)). "[P]rivity attaches only tothose parties whose interests in a given lawsuit are deemed to be 'aligned.' The cause of action presented in this case could not have been brought in the previous action. The previous action was a criminal action. The Plaintiff is not seeking the reversal of the Municipal or the State Court decision but a determination that the City of Georgetown thru its actors treated the Plaintiff differently and attempted to have the Plaintiff change his property-inverse condemnation, takings, malicious prosecution.

The Plaintiff is not seeking a review of the writing of the fine but the malicious prosecution of the City based on selective vindictive prosecution/Malicious prosecution by Grant and the City for his actions. That the history that the Plaintiff has had with all the defendants in this action which many were not a party to in the Municipal matter shows discrimination, a history of discrimination and selective/vindictive prosecution. The mere fact that the Plaintiff had been present at every hearing prior to the trial and requested a continuance until such time as a decision had been made by the LLR as to Janet Grant's fault, the Court had granted the continuance and then held the trial without the Plaintiff present and never even bothered to check as to why the Plaintiff was not there but had been to every other hearing on the matter shows

evidence of selective/vindictive prosecution by the Defendants of the Plaintiff. The City's action of not

Martin v. Bancrop Retirement Plan, Exhibit 2 to Plaintiffs response to Defendant's Motion. Comite de Apoyo a los Trabajadores Agricolas v. U.S. Dep't. of Labor, 995 F.2d 510, 514 (4th (ir.1993). following the law is essentially a taking of the Plaintiff's property and a malicious prosecution of the plaintiff and therefore not a part of the action previously.

IV. As an additional sustaining ground, Appellant's gross negligence claim is barred by the two-year statute of limitation set forth under the under the South Carolina Tort Claims Act.....

The federal court has already ruled on the two-year statute of limitation set forth under the under the South Carolina Tort Claims Act. The doctrine of res judicata bars the Appellant's gross negligence claim against Respondent

Statute of limitations

Defendants next argue that Singleton had three years in which to file a § 1983 action in this court, which he did not do, and so the § 1983 claim is barred. Defs.'

Mot. 6. Defendants contend that the statute of limitations commenced when Singleton received the summons for the Section 11-26 violation on September 17, 2010, and Singleton did not file this case until May 14, 2015—four and a half years after the summons was served and almost four years after his July 13, 2011 conviction. Id. Singleton counters that the statute of limitations commenced on

January 7, 2015, when the final adjudication of his appeal was made by the South Carolina Court of Appeals. Pl.'s Resp. 27.

There is no statute of limitations for actions under § 1983, but it is well settled that the limitations period for § 1983 claims is determined by the analogous state law statute of limitations for a personal injury claim. Wallace v. Kato, 549 U.S. 384, 387

(2007). In South Carolina, the general statute of limitations for personal injury claims is codified in S.C. Code Ann. § 15–3–530(5), which provides that the statute of limitations is three years for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law." This three- year statute of limitations has been held to be the applicable limitations period for § 1983 claims in the United States District Court for the District of South Carolina in several cases. See Ward v. Parole, Probation, and Pardon Bd., 2007 WL 3377163
(D.S.C. 2007); see also Rowe v. Hill, 2007 WL 1232140 (D.S.C. 2007); Huffman v.

Tuten, 446 F. Supp. 2d 455 (D.S.C. 2006).

The accrual date of a § 1983 cause of action, on the other hand, is a question of federal law that is not resolved by reference to state law. Wallace, 549 U.S. at 388. The standard rule is that "[accrual occurs] when the plaintiff has 'a complete and present cause of action.'" Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., 522 U.S. 192, 201 (1997) (quoting Rawlings v. Ray, 312 U.S. 96, 98 (1941)). In other words, the accrual date is the date that a plaintiff could file suit and obtain relief. To determine the accrual date for a particular § 1983 claim, the court looks to the common-law tort that is most analogous to the § 1983 claim and determines the date on which the limitations period for this claim would begin to run under state law. Wallace, 549 U.S. at 388; see also Varnell v. Dora Consol. Sch. Dist., 756 F.3d 1208 (10th Cir. 2014) (noting that "[f]ollowing Wallace, we determine the accrual date of Plaintiff's claim by looking to the accrual date for the common-law tort most analogous to her § 1983 claim"). For most common-law torts, a plaintiff's cause of action accrues when the plaintiff knows or has reason to know of his injury. Wallace, 549 U.S. at 388.

Here, Singleton argues that Defendants engaged in selective prosecution by choosing to issue a summons to him for a violation of Section 11-26, but sending only warning letters to Frank Swinnie ("Swinnie"), a white property owner who owned an adjacent lot which also had excessive overgrowth. Pl.'s Resp. at 18. This selective prosecution, Singleton alleges, was based on his race and in retaliation for his history of "speaking out" against the City of Georgetown. Pl.'s Mot. 23. The state law claim most analogous to Singleton's § 1983 action is the tort of

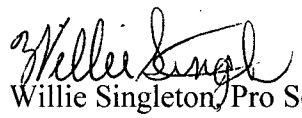
malicious prosecution, which redresses injuries a plaintiff sustains as a result of the defendant's improper initiation or maintenance of formal proceedings against him. Lambert v. Williams, 223 F.3d 257, 260 (4th Cir. 2000) (applying South Carolina law). The Fourth Circuit has held that the statute of limitations period for a malicious prosecution claim does not begin to run until a "truly final disposition" is achieved. Owens v. Baltimore City State's Attorne y Office, 767 F.3d 379, 390 (4th Cir. 2014); see also Heck v. Humphrey, 512 U.S. 477, 483–84 (1994) (finding legality of confinement claim analogous to the common law tort of malicious prosecution, and incorporating into the federal § 1983 claim the common law prerequisite of termination of the prior criminal proceeding in favor of the accused). The date of the "truly final disposition" in this case was on January 7, 2015, when the South Carolina Court of Appeals held that Singleton's original appeal of his conviction to the circuit court was untimely. S.C. Ct. App. Op. No. 2012-212102. Singleton filed this action on May 14, 2015, within three years of the South Carolina Court of Appeal's January 15, 2015 decision. Thus, the court finds that the statute of limitations does not bar Singleton's § 1983 action, and denies defendants' motion on this ground.

Conclusion

The circuit court judge erred in finding as a matter of law on page 4 of its order for summary judgment that "Defendants, Janet Grant, Rick Martin and Robert O'Donnell cannot be sued individually"'. The court did not make a finding that they were acting within the "scope of employment" because that is an affirmative defense that must be proved by the defendant at trial. Even the implication from the circumstances of a particular case. As set forth in Hamilton v. Miller, 301 S.C. 45, 48, 389 S.E.2d 652, 653 (1990); and Wade v. Berkeley County, 330 S.C. 311, 319, 498 S.E.2d 684, 688 (Ct. App.1998)., of the course of someone's employment requires' some "act in furtherance of the employer's business." 304 S.C. at 246, 403 S.E.2d at

647., is an affirmative defense that must be proved by the defendant at trial. I pray that the court also fines that the judge err in ruling because the Appellant did not present no evidence to support the claim of no condemnation and the taking of property and this court rule that the federal court did not dismiss all state charges. And rules that the Respondent is immune from the Tort Claim Act.

January 17, 2018



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PROOF OF SERVICE OF REPLY BRIEF OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Georgetown County
Court of Common Pleas

Steven H. John, Presiding Circuit Court Judge

Case No. 2015 – CP – 22 -00483

Willie Singleton Appellant.

V.

City of Georgetown Janet Grant, Individually and as an employee of the City, Ricky Martin, Individual, and as an Employee of the City, Robert O'Donnell, Individually and as Magistrate for the City Of Georgetown, Respondents

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PROOF OF SERVICE

I certify that I have served the Reply Brief on City of Georgetown Janet Grant Ricky Martin employee of the City Robert O Donnell Magistrate for the city of Georgetown by depositing a copy of it in the United States Mail, postage prepaid, on January 17, 2018, addressed to their attorney of record, Ms. Carmen Vaught Ganjehsani, Esquire 1900 Barnwell Street, Post Office Drawer 7788, Columbia SC 29202

January 17, 2018

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