

**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

RECORD ON APPEAL Volume 2

Willie Singleton Pro –Se
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Georgetown South Carolina 29440
843-359-6363

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Attorney for Respondent

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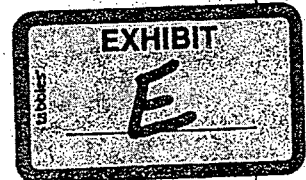
Memorandum in support of defense Motion for summary judgment June 1, 2016

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Ex. H – S. C. Court of Appeals Opinion, 2015 – UP, 009 Filed Jan 2015

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		UNIFORM ORDINANCE SUMMONS City of Georgetown		001295	
VERSUS					
Last Name <u>Singleton</u>		First Name <u>Willie</u>		Middle Initial <u>L</u>	
Address <u>501 N. Congdon Street</u>					
City <u>Georgetown</u>		State/Zip <u>S.C.</u>		Social Security	
YOU ARE SUMMONED TO APPEAR BEFORE THE MUNICIPAL JUDGE AT City of Georgetown Municipal Court 2222B Highmarket Street, Georgetown, SC 29440					
ON Trial Date <u>10-21-2010</u>		AT Trial Time <u>9:30</u>		☒ AM ☐ PM	
FOR TRIAL FOR VIOLATION OF CITY ORDINANCE:					
Ordinance Section # <u>Article II Public Nuisance</u> <u>Sec. 11-26</u>		Date Issued <u>9-17-2010</u>		Bond Amount <u>1,092.50</u>	
Description Of Ordinance <u>Excessive overgrown lot with dilapidated structure</u>					
Description Of Violation					
Date Of Violation <u>9-16-2010</u>		Time Of Violation <u>—</u>		AM PM	
Location Of Violation <u>South Merriam Rd</u>					
Name Of Issuing Officer <u>Tanet Grant</u>		Title <u>Code Enforcement</u>			
Failure to appear in court without first posting bond or obtaining a continuance is a misdemeanor punishable by a fine up to \$ 500.00 plus costs and/or imprisonment for up to 30 days. Post Bond Prior To Trial Date The issuing officer cannot accept the bond. Bond must be posted by cash or money order (not personal check) delivered or mailed (do not mail cash) to the above address of the court, or to: Requested Disposition. Indicate the disposition you desire and return this summons or a copy with the bond payment: ☐ Forfeit Bond—No Court Appearance ☐ Bond Posted—Trial by the Municipal Judge ☐ Bond Posted—Trial by Jury					
Signature of Defendant		Date			
Maximum penalty which may be imposed by court for this offense is \$ 500.00 plus costs and/or imprisonment for 30 days.					
DEFENDANT COPY					



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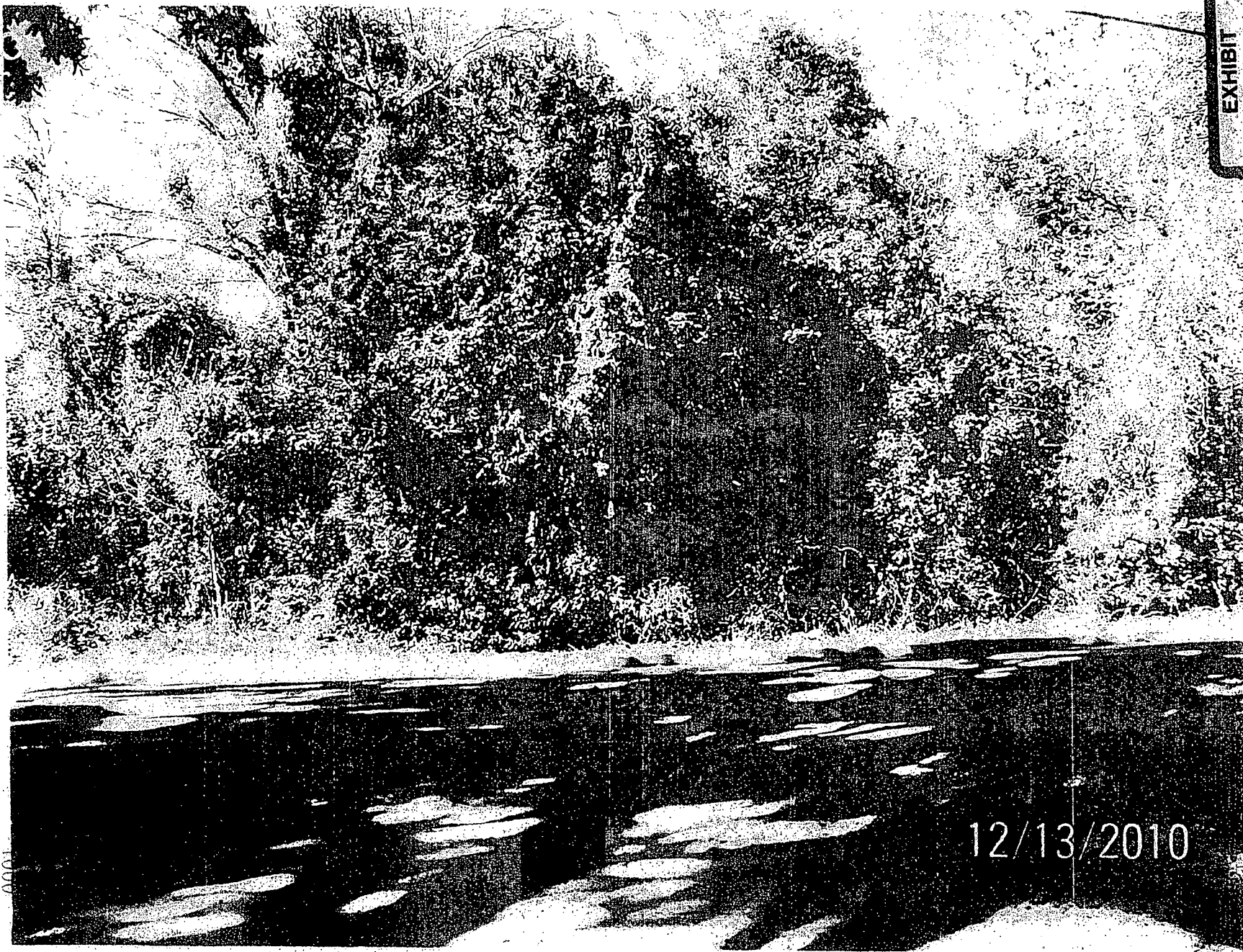


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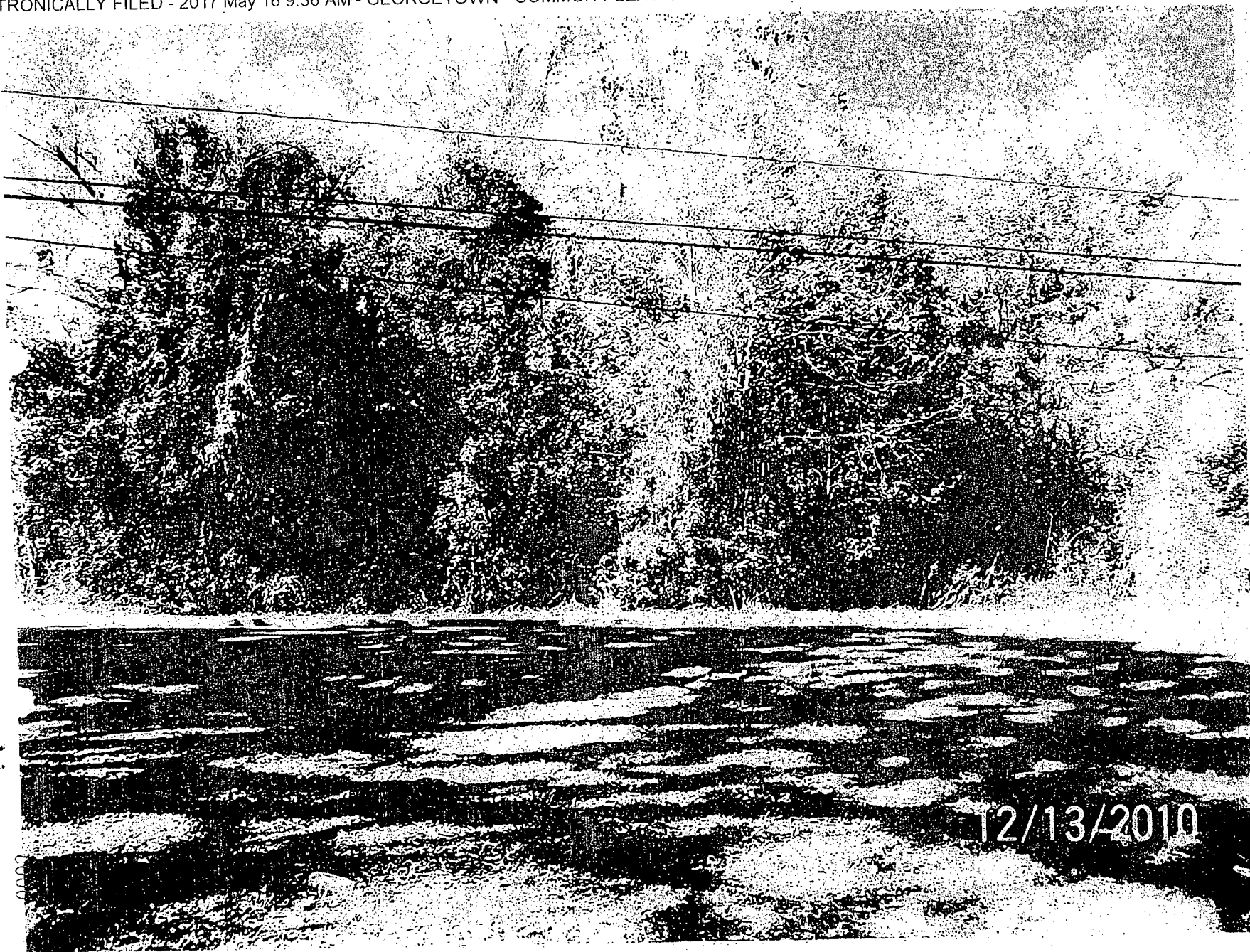
City of Georgetown



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City of Georgetown 0002

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2015-CP-22-00483

Willie Singleton,)

Plaintiff,)

vs.)

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,)

Defendants.)

**MEMORANDUM IN SUPPORT
OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Defendants have moved for an Order pursuant to S.C.R.C.P. 56, granting summary judgment in their favor, upon the grounds that there are no disputed issues of material fact that would entitle the Plaintiff to any relief against the Defendants. Pursuant to the arguments and legal authority as set forth below, Defendants respectfully submit that they are entitled to the entry of judgment in their favor as a matter of law.

FACTUAL BACKGROUND

On January 15, 1993, the Plaintiff entered into a five-year lease for two pieces of property at a rate of \$250 a month from Mr. Alex Alford. These properties were Georgetown tax parcels No. 5-22-26 and 5-22-27. In 1995, the Plaintiff entered into a contract wherein he would buy the properties over a period of time for \$40,000. The Plaintiff made a down payment of \$8,000 for these properties with a provision that he would pay \$250 a month until the remaining balance of \$32,000 had been paid. The Plaintiff testified that Mr. Alford retained Defendant O'Donnell to prepare the contract. (Exhibit A, Plaintiff's depo., p. 7, l. 8- p. 10, l. 12)

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Plaintiff's depo. p. 26, l. 11- p. 27, l. 4; p. 30, l. 16- p. 31, l. 2) On September 16, 2010, Defendant Grant sent the Plaintiff an additional letter regarding "excessive overgrowth on property (rear, side and front areas) and a dilapidated structure." She extended the Plaintiff's deadline to remedy the property condition until October 16, 2010. Accompanying her letter was Uniform Ordinance Summons No. 1295. The Summons identified a violation of Article II of Public Nuisance Section 11-26 by way of "excessive overgrown lot with dilapidated structure." The bond amount issued was \$1092.50, which reflected a fine of \$500 and court fees. The Summons set a trial date of October 21, 2010. (Exhibit D, Grant September 16, 2010 letter; Exhibit E Summons; Exhibit B, Grant depo., p. 52, ll. 5-10) Defendant Grant testified that the Plaintiff had an opportunity to clean the property before trial and, if he had done so, she would have dropped the summons. (Exhibit B, Grant depo., p. 48, l. 19- p. 49, l. 5) Again, the Plaintiff acknowledged being aware of this letter and the summons. (Exhibit A, Plaintiff's depo., pg. 29, l. 2- p. 30, l. 10)

The Plaintiff appeared at the municipal court hearing and requested a jury trial. (Exhibit A, Plaintiff's depo., p. 31, ll. 7-14) The case was continued to accommodate his request. The Case was subsequently set for January 10, 2011 and then set again for April 4, 2011. During this time, the Plaintiff filed a complaint with the South Carolina Department of Labor and Licensing (LLR) against Defendant Grant. The Plaintiff requested the case be continued until the resolution of his LLR complaint. (Exhibit A, Plaintiff's depo., p. 33, l. 14- p. 34, l. 7) The Plaintiff's LLR complaint against Defendant Grant was determined by LLR to be unfounded. (Exhibit B, Grant's depo., p. 60, l. 19- p. 61, l. 2) The trial went forward on July 13, 2011. The Plaintiff did not appear and was tried in his absence. He was found guilty and assessed the fine

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of \$1,092.00 dollars. (Exhibit A, Plaintiff's depo., p. 36, ll. 1-11; Exhibit F, Municipal Trial Transcript; Exhibit G, 12/13/10 pictures of Plaintiff's property)

Following his conviction, the Plaintiff served his notice of appeal on July 29, 2011. The South Carolina circuit court held a hearing on his appeal on April 12, 2013. Following the hearing, the circuit court affirmed his conviction. The Plaintiff subsequently appealed to the South Carolina Court of Appeals. The Court of Appeals found that the Plaintiff had failed to appeal his municipal ruling within the allotted ten days. The Court of Appeals further held that because the Plaintiff's original appeal to the circuit court was untimely, the circuit court lacked appellate jurisdiction over the appeal. As a result, the circuit court's order was vacated for lack of appellate jurisdiction due to the untimely service of the initial appeal and the conviction was reinstated (Exhibit H, South Carolina Court of Appeals Opinion).

PROCEDURAL HISTORY

Plaintiff filed a Complaint with this Court on May 14, 2015, and included eight causes of action, including: wrongful takings, condemnation, due process, §42 U.S.C. 1983, and selective enforcement claims. As the Complaint included a claim pursuant to §42 U.S.C. 1983 and alleged violations of Plaintiff's constitutional rights, Defendants filed a Notice of Removal to Federal District Court on July 6, 2015. Defendants filed a Motion for Summary Judgment on June 1, 2016. Thereafter, on February 13, 2017, the United States District Court granted Defendants' motion for summary judgment as to the §42 U.S.C. 1983, equal protection, procedural due process, and substantive due process claims. (Exhibit I, United States District Court Order).

The Order noted that Plaintiff conceded that there was no viable takings claim and there had been no condemnation of the Plaintiff's structure. Id. Further, the Federal District Court found it "difficult to ascertain if Singleton alleg[ed] any state law causes of action in the

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complaint", and remanded the case back to state court. Id. Because the District Court granted summary judgment as to the §42 U.S.C. 1983, equal protection, procedural due process, and substantive due process claims, and Plaintiff conceded the takings and condemnation claims, it is Defendants' position that all causes of action were disposed of. However, if this Court finds there are any remaining state law claims, Defendants now move for summary judgment.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988).

Although the burden is on the party seeking summary judgment, the non-moving party must make a showing sufficient to establish the existence of an element on which it will bear the ultimate burden of proof at trial; otherwise, the failure of proof concerning an essential element of the case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (emphasis added). A party cannot rest on the mere allegations in his complaint. Nor can a party escape summary judgment on the mere hope that something will develop later at trial or by remaining silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977).

ARGUMENT

- I. If there are any remaining state law claims, these claims are governed by the South Carolina Tort Claims Act, and as such, Defendants cannot be held liable.

Though the Plaintiff's Complaint does not appear to raise any state law causes of action, in the even this Court interprets one of his allegations to be a state law cause of action, Defendants seek dismissal of the same under the South Carolina Tort Claims Act. The South Carolina Tort Claims Act prevents the Plaintiff from suing the Defendants in their individual capacity. The Tort Claims Act "is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." Wells v. City of Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998). The South Carolina Tort Claims Act § 15-78-70 says that an employee acting in the course of the scope of his employment cannot be held individually liable. As a result, Plaintiff's state law causes of action are governed by the South Carolina Tort Claims Act.

§ 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(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 therefore 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.

Code 1976 § 15-78-70.

Clearly, Defendants' interactions with the Plaintiff occurred during the scope of their employment and/or official positions with the City of Georgetown and consequently, they are protected from individual liability by § 15-78-70 (a). Further, § 15-78-60 (4) states that governmental entities are not liable for losses resulting from the execution, enforcement or implementation of an ordinance

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SECTION 15-78-60. Exceptions to waiver of immunity.

The governmental entity is not liable for a loss resulting from:

- (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;

In the case at hand, Plaintiff's claims stem from Defendants enforcement of the City of Georgetown Public Nuisance ordinance. As such, Defendants' actions fall within the enumerated exceptions to waiver of governmental immunity, and therefore, are not liable.

Moreover, where any state law claims have been brought against a governmental entity and its officers and employees, the action is governed by the South Carolina Tort Claims Act's two-year Statute of Limitations See, S.C. Code Ann. §15-78-10, *et. seq.* (1976 as amended). Pursuant to §15-78-110, any Action brought pursuant to or under the Tort Claims Act is forever barred unless the action is commenced within two years after the date the loss was or should have been discovered. Id. In the case at bar, the statute of limitations began to run when the Plaintiff received the Summons on September 17, 2010. This case was not filed until May 14, 2015, which was four and half years after the initial ticket and nearly four years after his July 13, 2011 conviction. As a result, this case should be dismissed for violating the statute of limitations.

II. Any state law claim based on the issuance of the Summons No. 1295 is barred by the doctrine of res judicata.

To the extent that any of Plaintiff's remaining causes of action are based on the issuance of the Summons, these claims are barred by res judicata because there has already been a final

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Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

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judgment regarding the Summons. The doctrine of res judicata is "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." Andrews v. Daw, 201 F.3d 521, 524 (4th Cir. 2000) (quoting Montana v. United States, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979)). In order to establish res judicata, a defendant must prove the following three elements: (1) identity of the parties must be the same; (2) the same subject matter as the prior litigation; and (3) adjudication of the issue in the former suit. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999).

Here, all of the elements establishing res judicata are present. The first element is met as the parties are the same in this litigation as they were in the municipal trial for the Summons. Secondly, the subject matter is the same, as any allegations regarding the issuance of the Summons both deal with the Summons, which was previously litigated in the municipal trial on July 13, 2011. Lastly, there was adjudication in the former litigation, as Plaintiff was found guilty in the municipal court and assessed the fine of \$1,092.00 dollars. Accordingly, although Defendants deny any outstanding causes of action, any claims related to the issuance of the Summons are barred by the doctrine of res judicata.

CONCLUSION

Based on the foregoing, Defendants request that the Court grant summary judgment as to all causes of action and that this action be dismissed with prejudice.

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The Plaintiff claims he paid Mr. Alford under the contract terms until Mr. Alford's death, at which time he began to pay Mr. Alford's widow, Cleo Alford. The Plaintiff believed that Ms. Alford was paying taxes on both properties. In 2003, tax parcel No. 5-22-27 was sold at a tax delinquency sale. The Plaintiff alleged that this tax parcel was not in Ms. Alford's name, but in her son's name, and she inadvertently failed to pay the taxes on it. The Plaintiff did not realize Ms. Alford no longer owned the property and continued to pay her until 2005 when he had paid off the remaining balance due. After he made the last payment, Ms. Alford conveyed lot No. 5-22-26 to him. However, the Plaintiff later discovered that the deed inaccurately described the lot as smaller than originally negotiated. In 2007, the Appellate had Ms. Alford execute a quitclaim deed for the remaining portion of the lot, so that the Plaintiff owned all of 5-22-26, though the tax records continue to show the property as two parcels. The Plaintiff was never given the deed to lot 5-22-27. (Exhibit A, Plaintiff's depo., p. 10, l. 24- p. 20, l. 25)

Defendant Grant testified she sent the Plaintiff a series of letters regarding the overgrowth on his lot beginning on April 24, 2009. (Exhibit B, Grant's depo., p. 48, ll. 19-25) The Plaintiff acknowledges receiving some of these letters, specifically the letters dated July 28, 2010 and September 16, 2010, but indicates he does not know if he received them all. (Exhibit A, Plaintiff's depo., p. 26, ll. 1-8- p. 28, ll. 8-13)

The Plaintiff specifically acknowledges receiving Defendant Grant's July 28, 2010 letter indicating that he had an overgrown lot, stating "grass need cutting from front property line to rear property line and a dilapidated structure need to be removed." She requested that he clean the lot of debris and litter by August 20, 2010. (Exhibit C, Grant July 28, 2010 letter)

At some point prior to the final letter on September 16, 2010, the Plaintiff had a conversation with the City and informed them that he did not intend to clear his lot. (Exhibit A, Plaintiff's depo. p.

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26, l. 11- p. 27, l. 4; p. 30, l. 16- p. 31, l. 2) On September 16, 2010, Defendant Grant sent the Plaintiff an additional letter regarding "excessive overgrowth on property (rear, side and front areas) and a dilapidated structure." She extended the Plaintiff's deadline to remedy the property condition until October 16, 2010. Accompanying her letter was Uniform Ordinance Summons No. 1295. The Summons identified a violation of Article II of Public Nuisance Section 11-26 by way of "excessive overgrown lot with dilapidated structure." The bond amount issued was \$1092.50, which reflected a fine of \$500 and court fees. The Summons set a trial date of October 21, 2010. (Exhibit D, Grant September 16, 2010 letter; Exhibit E Summons; Exhibit B, Grant depo., p. 52, ll. 5-10) Defendant Grant testified that the Plaintiff had an opportunity to clean the property before trial and, if he had done so, she would have dropped the summons. (Exhibit B, Grant depo., p. 48, l. 19- p. 49, l. 5) Again, the Plaintiff acknowledged being aware of this letter and the summons. (Exhibit A, Plaintiff's depo., pg. 29, l. 2- p. 30, l. 10)

The Plaintiff appeared at the municipal court hearing and requested a jury trial. (Exhibit A, Plaintiff's depo., p. 31, ll. 7-14) The case was continued to accommodate his request. The Case was subsequently set for January 10, 2011 and then set again for April 4, 2011. During this time, the Plaintiff filed a complaint with the South Carolina Department of Labor and Licensing (LLR) against Defendant Grant. The Plaintiff requested the case be continued until the resolution of his LLR complaint. (Exhibit A, Plaintiff's depo., p. 33, l. 14- p. 34, l. 7) The Plaintiff's LLR complaint against Defendant Grant was determined by LLR to be unfounded. (Exhibit B, Grant's depo., p. 60, l. 19- p. 61, l. 2) The trial went forward on July 13, 2011. The Plaintiff did not appear and was tried in his absence. He was found guilty and assessed the fine of \$1,092.00 dollars. (Exhibit A, Plaintiff's depo., p. 36, ll. 1-11; Exhibit F, Municipal Trial Transcript; Exhibit G, 12/13/10 pictures of Plaintiff's property)

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Following his conviction, the Plaintiff served his notice of appeal on July 29, 2011. The South Carolina circuit court held a hearing on his appeal on April 12, 2013. Following the hearing, the circuit court affirmed his conviction. The Plaintiff subsequently appealed to the South Carolina Court of Appeals. The Court of Appeals found that the Plaintiff had failed to appeal his municipal ruling within the allotted ten days. The Court of Appeals further held that because the Plaintiff's original appeal to the circuit court was untimely, the circuit court lacked appellate jurisdiction over the appeal. As a result, the circuit court's order was vacated for lack of appellate jurisdiction due to the untimely service of the initial appeal. (Exhibit H, South Carolina Court of Appeals Opinion)

This lawsuit was originally filed in circuit court in Georgetown, South Carolina on May 14, 2015. As the Complaint included Section 1983 allegations, Defendants removed the case to Federal District Court.

Summary Judgment Standard

To grant a motion for summary judgment, the court must find that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). The judge is not to weigh the evidence but rather must determine if there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). All evidence should be viewed in the light most favorable to the nonmoving party. Perini Corp. v. Perini Constr., Inc., 915 F.2d 121, 123-24 (4th Cir. 1990). "[W]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, disposition by summary judgment is appropriate." Teamsters Joint Council No. 83 v. Centra, Inc., 947 F.2d 115, 119 (4th Cir. 1991). "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322

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(1986). The “obligation of the nonmoving party ‘is particularly strong when the nonmoving party bears the burden of proof.’” Hughes v. Bedsole, 48 F.3d 1376, 1381 (4th Cir. 1995) (quoting Pachaly v. City of Lynchburg, 897 F.2d 723, 725 (4th Cir. 1990)). Summary judgment is not “a disfavored procedural shortcut,” but an important mechanism for weeding out “claims and defenses [that] have no factual basis.” Celotex, 477 U.S. at 327.

[I]t is the province of the jury to resolve conflicting inferences from circumstantial evidence. Permissible inferences must still be within the range of reasonable probability, however, and it is the duty of the court to withdraw the case from the jury when the necessary inference is so tenuous that it rests merely upon speculation and conjecture.

Ford Motor Co. v. McDavid, 259 F.2d 261, 266 (4th Cir. 1958).

Argument

Rooker-Feldman Doctrine

The Plaintiff's suit should be dismissed where he impermissibly seeks to obtain appellate review of a final judgment from a South Carolina state court. The Rooker-Feldman doctrine applies to cases arising from adverse judgments in the state court that seek a subsequent district court review of their decision. See Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362; District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206.

This lawsuit arises from the issuance of a City of Georgetown summons requiring the Plaintiff to clear the overgrowth from his lot. As noted in the procedural history, the Plaintiff did not appear at his trial regarding this summons and was convicted in his absence. The Plaintiff then appealed his conviction, which was affirmed by the circuit court. The circuit court's holding, however, was subsequently vacated by the South Carolina Court of Appeals for lack of appellate jurisdiction due to the Plaintiff's failure to timely serve his appeal from the municipal court's decision. As a result, the original municipal decision was held to be the final state court decision on the matter. As the Plaintiff

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has already lost his case at the state court level, the Rooker-Feldman doctrine prohibits the Plaintiff from seeking a subsequently review of the case at the federal level.

[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may be had only in this Court. Therefore, to the extent that Hickey and Feldman sought review in District Court of the District of Columbia Court of Appeals' denial of their petitions for waiver the District Court lacked subject matter jurisdiction over their complaints.

D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S. Ct. 1303, 1315, 75 L. Ed. 2d 206 (1983)

Defendants request this Court grant the Motion for Summary Judgment under the Rooker-Feldman doctrine.

Statute of Limitations

Federal actions under § 1983 do not have specified statute of limitations, but instead borrow the statute of limitations for the general state law statute for personal injury actions. Because there is no federal statute of limitations applicable to suits under § 1983, "it is the rule that the applicable provision limiting the time in which an action [under § 1983] must be brought, must be borrowed from the analogous state statute of limitations." Bireline v. Seagondollar, 567 F.2d 260, 262 (4th Cir. 1977); National Advertising Co. v. City of Raleigh, 947 F.2d 1158, 1161 (4th Cir. 1991); Owens v. Okure, 488 U.S. 235, 250, 109 S.Ct. 573, 582 (1989). South Carolina Code 1976 § 15-3-535 sets the general personal injury statute of limitations in South Carolina as three years. The Statute of Limitations governing the Plaintiff, therefore, is three years.

While state law governs the time frame, determining the time at which the civil rights cause of action began to accrue is a question of federal law. Cox v. Stanton, 529 F.2d 47, 50 (4th Cir. 1975). In addition, "Federal law holds that the time of accrual is when plaintiff knows or has reason to know of the injury which is the basis of the action." Id. (citing Young v. Clinchfield R.R. Co., 288 F.2d 499, 503 (4 Cir. 1961)).

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In this case, the statute of limitations began to toll when the Plaintiff received the summons on September 17, 2010. The Plaintiff claims this summons included a fine with expenses totaling \$1,092.50 for which he now seeks compensation through a damages award. This case was not filed until May 14, 2015, which was four and half years after the initial ticket and nearly four years after his July 13, 2011 conviction. As a result, this case should be dismissed for violating the Statute of Limitations.

Plaintiff fails to state a recognizable claim under 42 U.S.C. 1983

In order to maintain a successful § 1983 action, the Plaintiff needs to demonstrate the following:

In any § 1983 action the initial inquiry must focus on whether the two essential elements to a § 1983 action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.

Parratt v. Taylor, 451 U.S. 527, 527, 101 S.Ct. 1908, 1909 (1981).

The Plaintiff has failed to identify any right, privilege, or immunity of which he has been deprived. The Plaintiff argues for an entitlement to allow his lot to become overgrown without restriction under the theory that after an unspecified period of time an overgrown lot becomes "naturalized" such that it no longer requires maintenance of the yard or, impliedly, maintenance of the structure. (Exhibit A, Plaintiff's depo., p. 49, ll. 7-8, p. 50, ll. 1- p. 51, l. 22).

The Plaintiff has failed to demonstrate that he has a constitutionally protected property interest in the overgrown status of his land. Where the Plaintiff does not have a constitutionally protected interest in allowing his property to become overgrown, the ensuing § 1983 actions contained within the

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Complaint are deficient. This Court should grant Defendants' Motion for Summary Judgment due to the Plaintiff's failure to state a cognizable § 1983 claim.

Equal Protection

The Plaintiff alleges he suffered an equal protection violation when Defendant Grant, the City of Georgetown Code Compliance officer, sent numerous letters requesting he clean up his property and ultimately issued a summons for his failure to cut back the overgrowth on his lot. During the same time period, Defendant Grant sent numerous letters to individuals with overgrown lots with dilapidated structures. Plaintiff fails to sufficiently address the other letters in his argument. Rather, to support his argument that he has been treated unequally to those similarly situated, the Plaintiff claims that the adjacent lot owned by Mr. Swinnie was similarly overgrown, but did not receive a summons. (Exhibit A, Plaintiff's depo., p. 70, l. 25- p. 71, l. 23) Defendant Grant testified that the adjacent lot had been sent several letters requesting the overgrowth be cleared and the owner of the lot was responsive and cooperative, allowing her to avoid issuing a summons until 2014. Additionally, the owner of the adjacent property eventually donated the lot to the City of Georgetown who, in turn, donated the lot to Habitat for Humanity. (Exhibit B, Grant's depo., p. 56, l. 11- p. 57, l. 1-20) As a result, the Plaintiff's reliance on the adjacent lot is misplaced. Defendant Grant did request the adjacent lot clear their overgrowth and the owner's cooperative response to her request distinguishes the adjacent lot from the Plaintiff's property on a factual basis. Defendant Grant further indicated that the majority of people who receive a letter requesting they remedy a code violation on their property like overgrowth comply with the request, allowing her to avoid issuing summons. Defendant Grant testified she typically issues three warning letters before resorting to a summons. (Exhibit B, Grant's depo., p. 16, ll. 14-17) Additionally, Defendant Grant issued numerous other letters and summons to other individuals regarding similar code violations for overgrown lots with dilapidated structures. Those that failed to

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comply with her request to bring their property into code compliance subsequently received summons. These other letters demonstrate that similar properties received similar treatment, undercutting the Plaintiff's discrimination theory. (Exhibit B, Grant depo., p. 55, l. 14- p. 60, l. 18).

The Plaintiff additionally alleges Defendant Grant targeted him, though he could not be specific as to the basis for her alleged discrimination. He said it was partially racial discrimination though both the Plaintiff and Defendant Grant are African-American. (Exhibit A, Plaintiff's depo., p. 76, l. 2- p. 78, l. 6) The Plaintiff was not able to outline a clear argument as to how he had been treated differently from other similarly situated individuals.

Under the Equal Protection clause, the City of Georgetown must apply its code enforcement equally on similarly situated people and any differences of application must be justified by the purpose of the law. Sylvia Development Corp. v. Calvert County, Md. 48 F.3d 810, 818 (C.A.4 (Md.),1995). The Equal Protection clause "requires that the states apply each law, within its scope, equally to persons similarly situated, and that any differences of application must be justified by the law's purpose." Persons in different circumstances can be treated differently, but the classification of these persons must be "reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810, 818 (4th Cir. 1995) (quoting Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 561-62, 64 L.Ed. 989 (1920)).

The Plaintiff must not only identify the classification to which he belongs, he must also show that the classification is (1) the basis of the requests to clear his overgrowth and ultimate summons for failure to do the same and (2) prompted the City of Georgetown to engage in discrimination. Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach, 420 F.3d 322, 329 (4th Cir. 2005).

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In this case, the Plaintiff fails the equal protection test where he fails to identify the classification to which he was subject. “[I]f a classification is not explicitly stated, the plaintiff bears the initial burden of proving that a classification was nonetheless intentionally utilized. . . . And only if the use of a classification is thus established does the equal protection analysis proceed with the inquiry into whether the classification furthers a legitimate legislative purpose.” Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810, 819 (4th Cir. 1995)(internal citations omitted)

The Plaintiff hasn’t identified his classification so he cannot now show that the unnamed classification was the basis of the decision. By failing to explicitly set out the classification, the Plaintiff failed to show equal protection and have also precluded further analysis of an equal protection allegation. Further, Defendants dispute the term “naturalized lot.” This term does not appear in the City of Georgetown code. It is not a valid basis for classification and the Plaintiff has failed to demonstrate otherwise. Defendants ask this Court to deny and dismiss the Plaintiff’s allegations of equal protection for failure to state a cognizable cause of action.

The Plaintiff does argue, however, that the basis of the alleged discrimination is the Defendants alleged animosity towards the Plaintiff personally. Consequently, even if the Plaintiff could identify a classification to which he belongs, the Plaintiff has not argued that this classification was the basis of the discrimination. Defendants ask the Court to deny and dismiss the equal protection claim on these grounds.

As the Plaintiff argues the basis of the discrimination is personal, this Court may find he is presenting a classification of a “class of one.” “[W]here the plaintiff did not allege membership in a class or group” the Equal Protection Clause can give rise to a claim “on behalf of a ‘class of one.’” Village of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S.Ct. 1073, 1074 (2000). In order to have a valid class of one Equal Protection claim, the Plaintiff must show he “has been intentionally treated

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differently from others similarly situated and that there is no rational basis for the difference in treatment.” Willis v. Town of Marshall, N.C., 275 Fed.Appx. 227, 233, 2008 WL 1897528, 6 (4th 2008). Plaintiff must prove he is “similarly situated by showing “an extremely high degree of similarity between [himself] and the persons to whom [he] compare[s].” Id. (quoting Clubsides, Inc. v. Valentin, 468 F.3d 144, 159 (2d Cir. 2006)).

The Plaintiff has failed to show he was treated differently than others similarly situated. The Plaintiff references one other specific property that he believes was similarly overgrown and did not receive a summons until 2014. (Exhibit A, Plaintiff’s depo. p. 56, l. 18- p. 57, l. 16) Even if the Plaintiff properly demonstrated that this property had similar overgrowth, the Plaintiff has failed to demonstrate the adjacent property received different treatment. Defendant Grant testified she contacted this property and requested the owner clear the overgrowth. The property owner complied with her requests and then ultimately donated the property to the City of Georgetown. The City of Georgetown’s treatment of the property owner was not different, it was the property owner’s reaction to the clean up request that was different. The Plaintiff, on the other hand, failed to clear the land despite numerous requests and warnings. As a result, the Plaintiff eventually received a summons.

Moreover, the Plaintiff’s argument is devoid of information regarding other summons issued to overgrown properties. He could not identify a single property that he believed was similarly “naturalized” and also contained a structure. (Exhibit A, Plaintiff’s depo. p. 59, ll. 8-19). Without information regarding the entire pool of summons recipients, this Court cannot properly assess whether or not the Plaintiff was in fact similarly situated to other overgrown lots who did and did not receive summons. (See Sylvia Development Corp.)

Even if the Plaintiff could prove that issued him a summons for overgrowth while allowing all other similarly situated lots to remain overgrown, which Defendants reject, the Plaintiff must also

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prove the issuance of the summons was motivated by an intent to discriminate. (See Sylvia Development Corp. at 819).

Several factors have been recognized as probative of whether a decisionmaking body was motivated by a discriminatory intent, including: (1) evidence of a "consistent pattern" of actions by the decisionmaking body disparately impacting members of a particular class of persons; (2) historical background of the decision, which may take into account any history of discrimination by the decisionmaking body or the jurisdiction it represents; (3) the specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures; and (4) contemporary statements by decisionmakers on the record or in minutes of their meetings.

Id.

Analysis under the Sylvia test is challenging as Plaintiff has not identified the classification on which the decision was based. The Plaintiff has failed to show a consistent pattern of actions disparately impacting either overgrown lots or the Plaintiff individually. The Plaintiff also gives no information regarding traditional treatment of overgrown lots with structures.

If one examines these factors in consideration of the Plaintiff as a class of one, the Plaintiff's equal protection allegation also fails where he cannot show a consistent pattern of discrimination by Defendant Grant. In fact, Defendant Grant extended numerous extensions to the Plaintiff to allow him to clear his property and also requested he contact her so that they could work together on a resolution. (Exhibit B, Grant's depo., p. 49, ll. 1-5).

In Sylvia Development Corp., the Court held the Plaintiffs failed to establish a statistical pattern of discriminatory impact and noted the Plaintiffs neglected to provide information on the entire applicant pool or the voting records of individual county council members. See Id. at 823. Under Fourth Circuit case law, the Plaintiff in the case at hand should have furnished this Court with the results on the entire pool of overgrown lots with structures rather than referencing a single adjacent lot.

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(Exhibit B, Grant's depo, p. 56, l. 11- p. 57, l. 19) The Plaintiff's presentation of vague and unspecific allegations regarding treatment of overgrown lots has failed to demonstrate discrimination. Defendants request this Court grant the Motion for Summary Judgment where the Plaintiff has failed to support his discrimination claim with statistical information.

Takings

The Plaintiff seems to be raising a takings argument in his Complaint, but failed to identify a protected property interest of which he was deprived. As a result, any takings argument fails on its face. The Plaintiff did not take any corrective action related to his property following the summons, so the property remained in the same status and also remained in his ownership. (Exhibit A, Plaintiff's depo. p. 53, ll. 18-22; p. 60, ll. 18- 22). The structure on his property was never condemned and he was never required to remove it. The Plaintiff acknowledged he never received anything from the City of Georgetown that the house had been condemned. (Exhibit A, Plaintiff's depo., p. 46, ll. 16-23; Exhibit B, Grant's depo., p. 47, l. 5- p. 49, l. 5) The structure on his property did, however, collapse on its own due to its dilapidated status. When it collapsed, it fell on the City of Georgetown sidewalk. (Exhibit A, Plaintiff's depo., p. 42, l. 24- p. 45, l. 7). Where the Plaintiff was never deprived of his property, any takings claim must fail. Defendants request this Court grant the Defendants' Motion for Summary Judgment as to all takings allegations.

Procedural Due Process

In order to demonstrate procedural due process, the Plaintiff must show "(1) they had property or a property interest (2) of which the [Defendants] deprived them (3) without due process of law." Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810, 826 (4th Cir. 1995).

In order for the Plaintiff to have a valid property interest, he must have a "legitimate claim of entitlement to it". *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709,

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33 L.Ed.2d 548 (1972). In Sylvia Development Corp., the Court found the Plaintiffs had no property interest right in the County's approval of the Plaintiffs' property as a Transfer Zone District, which would allow Plaintiff to construct a residential neighborhood. Id. at 826

Even, if the Plaintiff could show he had a property interest in his lot being overgrown and the City of Georgetown unfairly deprived him of this interest, the Plaintiff still fails to substantiate a due process claim. The Fourth Circuit has held that even if a hearing was determined to be unfair, an unfair hearing does not mean a due process violation occurred. Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach, 420 F.3d 322, 328 (4th Cir. 2005). A "due process violation actionable under § 1983 is not complete when the deprivation occurs; it is only complete if and when the State fails to provide due process." Tri County Paving, Inc. v. Ashe County, 281 F.3d 430, 437 (4th Cir. 2002).

In this instance, the Plaintiff cannot recover on his procedural due process claim because Plaintiff received all the process that was due. "We have, however, recognized that postdeprivation remedies made available by the State can satisfy the Due Process Clause. In such cases, the normal predeprivation notice and opportunity to be heard is pretermitted if the State provides a postdeprivation remedy." Parratt v. Taylor, 451 U.S. 527, 538, 101 S.Ct. 1908, 1914 (U.S.Neb., 1981).

Defendants provided the Plaintiff with several processes by which he could avoid the summons altogether and also appeal his conviction stemming from the summons. The Plaintiff was given several warnings to clear out the overgrowth on his lot prior to receiving the summons and had the opportunity to avoid the issuance of the summons through compliance. Even after the summons was issued, the Plaintiff was given another opportunity to clear his property and avoid prosecution. After receiving the summons, the Plaintiff was again given due process through the opportunity to have a jury trial on the charge. Following his conviction, the Plaintiff availed himself of two different

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appellate processes before his appeal was ultimately rejected by the South Carolina Court of Appeals as untimely.

"[A] 'due process violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process.'" Tri County Paving, Inc. v. Ashe County, 281 F.3d 430, 437 (4th Cir. 2002) (quoting Fields v. Durham, 909 F.2d 94, 98 (4th Cir. 1990)). See Mathews v. Eldridge, 424 U.S. 319, 349 (1976) ("We conclude that an evidentiary hearing is not required prior to the termination of disability benefits and that the present administrative procedures fully comport with due process."); Wudtke v. Davel, 128 F.3d 1057, 1063 (7th Cir. 1997) ("Post-deprivation remedies are a constitutionally acceptable substitute for predeprivation remedies in many procedural due process cases."); Crawford v. Parron, 709 F. Supp. 234, 238 (D.D.C. 1986) ("As he has neither alleged that the District of Columbia fails to provide adequate post-deprivation remedies, nor in any way challenged defendant's assertion that such remedies are in fact available to him, plaintiff's procedural due process claim must be dismissed for failure to state a claim upon which relief can be granted.").

Further, the Plaintiff's failure to timely file his initial appeal has no bearing on whether Defendants violated the Plaintiff's due process rights. See Tri County Paving, Inc. v. Ashe County, 281 F.3d 430, 436 (4th Cir. 2002) (concluding summary judgment was appropriate on the plaintiff's procedural due process claims because the plaintiff "was provided with more than constitutionally adequate pre-and post-deprivation process" but simply "failed to take advantage of much of it").

Where the Plaintiff received due process, this Court should grant the Defendants' Motion for Summary Judgment on these grounds.

Substantive Due Process

Where the Plaintiff's due process claim is not clearly outlined, this Court may find the Plaintiff raised a substantive due process claim alleging that Defendant Grant's issuance of the summons was discriminatory. This theory is undercut by the fact that Defendant Grant originally contacted Ms. Alford to clear the property and only approached the Plaintiff when she found out his role as the owner. (Exhibit B, Grant depo., p. 58, l. 1-14)

The Plaintiff's cause of action for a violation of his substantive due process rights also fails. To establish a violation of substantive due process, a plaintiff "must demonstrate (1) that [he] had property or a property interest; (2) that the state deprived [him] of this property or property interest; and (3) that the state's action falls so far beyond the outer limits of legitimate governmental action that *no process* could cure the deficiency.'" MLC Automotive, LLC v. Town of S. Pines, 532 F.3d 269, 281 (4th Cir. 2008) (quoting Sylvia Dev. Corp. v. Calvert County, 48 F.3d 810, 827 (4th Cir. 1995)). However, "[s]ubstantive due process protects only those specific liberty interests that are generally recognized as basic or fundamental to our way of life." Prism Constr. Co. v. Montgomery County, Md., 37 F.3d 1495, at *3 (4th Cir. 1994) (unpublished table decision) (citing Bowers v. Hardwick, 478 U.S. 186, 194-95 (1986)). "Substantive due process rights are created only by the Constitution of the United States." Id. at *3 (citing Regents of the Univ. of Mich. V. Ewing, 474 U.S. 214, 229 (1985) (Powell, J., concurring); Edwards v. Johnson City Health Dep't, 885 F.2d 1215, 1219 (4th Cir. 1989)).

In MLC Automotive, LLC, the Fourth Circuit stated,

[I]n the context of a zoning action involving property, it must be clear that the state's action "has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense." Nectow v. City of Cambridge, 277 U.S. 183, 187-88 (1928). In making this determination [on whether a plaintiff has established a violation of substantive due process] we may consider, among other factors, whether: (1) the zoning decision is tainted with fundamental procedural irregularity; (2) the action is targeted at a single party; and (3) the action deviates from or is consistent with regular practice. A Helping Hand, LLC v.

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Baltimore County, 515 F.3d 356, 373 n.10 (4th Cir. 2008); see also Scott v. Greenville County, 716 F.2d 1409, 1419-21 (4th Cir. 1983).

MLC Automotive, 532 F.3d at 281.

As stated repeatedly, the Plaintiff cannot prevail on the substantive due process claim where he has not identified any protected property interest at issue. In this case, the City of Georgetown issued a proper summons for a code violation where the City of Georgetown Ordinance Article II, Public Nuisance Section 11-26, identifies Public Nuisances as being:

- (3) Any building or part of any building which, on account of its condition, its occupancy or use, may endanger life or health;
- (7) Any property, whether occupied or vacant, upon which grass, weeds, or undergrowth exceeding eighteen (18) inches in height, trash, garbage, offal, stagnant water, building materials, glass, wood, metal or other matter deleterious to good health and public sanitation is permitted or caused to accumulate in any manner which is or may become a nuisance causing injuries or sickness to the public or neighboring property;
- (8) Any property which, because of its condition, may promote the breeding or harborage of flies, rates, snakes, vermin or other insects and animals.

The Plaintiff does not dispute the overgrowth exceeded eighteen inches. At trial, Defendant Grant testified that she fear the dilapidated structure was a danger where it may fall onto the sidewalk (it eventually did), and she also indicated that the property led to the breeding of mice and snakes which had been reported to the City of Georgetown. (Exhibit F, Municipal Court Trial Transcript, p. 1-2) Therefore, the property clearly fell within the definition of the Public Nuisance statute cited by Defendant Grant as the basis of the Plaintiff's summons.

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The Plaintiff certainly cannot demonstrate the right an overgrown lot is a right that is "basic or fundamental to our way of life." Further, the Plaintiff failed to show the Summons was irregular where the Plaintiff has not provided any examples of similarly situated properties that were not given a summons after they refused to clear the lot upon request, which is what occurred in the Plaintiff's situation. As to the basis of his alleged discrimination, the Plaintiff indicated he did not know the reason for the alleged discrimination. Therefore, the Plaintiff has failed to meet any of the factors set forth in MLC Automotive. Defendants humbly submit this Court should grant Defendants' Motion for Summary Judgment on these grounds.

Defendant City of Georgetown is Not Liable Under Monell

According to U.S. Supreme Court case law, in order to have a valid § 1983 action against the City of Georgetown, the Plaintiff must show the alleged constitutional violations are the result of the City of Georgetown's implementation of a City custom or policy. Monell v. Dep't. of Soc. Serv. of City of N.Y., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). The Plaintiff must further demonstrate that the policy or custom at issue amounted to a "deliberate indifference" of Plaintiff's constitutional rights. Pembaur v. Cincinnati, 475 U.S. 469, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986).

In the matter before this Court, the Plaintiff has failed to identify an objectionable custom or policy of the City of Georgetown that resulted in Plaintiff's deprivation of constitutional rights. Consequently, Defendants request this Court grant Defendants Motion for Summary Judgment as to all claims against the City of Georgetown on this basis.

Defendants Janet Grant, Ricky Martin and Robert O'Donnell are protected by Qualified

Immunity

The Plaintiff raises specific allegations of due process and equal protection violations against individually named Defendants. These due process and equal protection claims all fail for the reasons

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identified above. Moreover, to the extent Defendants Janet Grant, Ricky Martin and Robert O'Donnell are sued in their individual capacities, they are entitled to qualified immunity as a matter of law. In Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982), the Supreme Court held that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." The Court noted that reliance on this standard of objective reasonableness, or objective legal reasonableness as measured by clearly established law, is necessary to "avoid excessive disruption of government and [to] permit the resolution of many insubstantial claims on summary judgment." Id.

A further explanation of the Harlow standard was made in Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034 (1987). The standard to be applied here to the Defendants in their individual capacities is one of "the objective legal reasonableness" of official conduct, "assessed in light of the legal rules that were 'clearly established' at the time it was taken." Anderson, supra, 107 S.Ct. at 3038. As the Fourth Circuit stated in Turner v. Dammon, 848 F.2d 440, 444 (4th Cir. 1988), the Defendants are entitled to "summary judgment unless there is a genuine issue as to whether the Defendant in fact committed a violation of clearly established law."

Applied to the instant case, the standard proposed in Harlow, Anderson, and their progeny of cases would, as a matter of law, entitle the individually named Defendants to qualified immunity as there is no competent evidence that the Defendants engaged in unlawful conduct or violated any clearly established statutory or constitutional right which is subject to redress under Section 1983. Additionally, Defendant Grant testified that her decision, as City of Georgetown employee requesting the Plaintiff clean his lot and then issuing a summons after his failure to do so, was based on the Georgetown nuisance ordinance cited above. (Exhibit B, Grant depo., p. 14, ll. 16-22) As such, to the

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extent these Defendants are sued in their individual capacities, they are entitled to qualified good-faith immunity from suit as a matter of law and should be entitled to Summary Judgment in accordance with Rule 56 (c) of the Federal Rules of Civil Procedure.

South Carolina Tort Claims Act

Though the Plaintiff's Complaint does not appear to raise any state law causes of action, in the even this Court interprets one of his allegations to be a state law cause of action, the Defendants seek dismissal of the same under the South Carolina Tort Claims Act. The South Carolina Tort Claims Act prevents the Plaintiff from suing the Defendants in their individual capacity. The Tort Claims Act "is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." Wells v. City of Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998). The South Carolina Tort Claims Act § 15-78-70 says that an employee acting in the course of the scope of his employment cannot be held individually liable. As a result, Plaintiff's state law causes of actions are covered under South Carolina Tort Claims Act.

§ 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(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 therefore 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.

Code 1976 § 15-78-70.

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Clearly, Defendants' interactions with the Plaintiff occurred during the scope of their employment and/or official positions with the City of Georgetown and consequently, they are protected from individual liability by § 15-78-70 (a). Further, § 15-78-60 (4) states that governmental entities are not liable for losses resulting from the execution, enforcement or implementation of an ordinance. In the case at hand, the Plaintiff's claims stem from Defendants enforcement of the City of Georgetown Public Nuisance ordinance. As such, Defendants' actions fall within the enumerated exceptions to waiver of governmental immunity see below.

SECTION 15-78-60. Exceptions to waiver of immunity.

The governmental entity is not liable for a loss resulting from:

- (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;

Moreover, where any state law claims have been brought against a governmental entity and its officers and employees; this Action is governed by the South Carolina Tort Claims Act's two-year Statute of Limitations See, S.C. Code Ann. §15-78-10, *et. seq.* (1976 as amended). Pursuant to §15-78-110, any Action brought pursuant to or under the Tort Claims Act is forever barred unless the Action is commenced within two years after the date the loss was or should have been discovered. Id. In the case at bar, the statute of limitations began to toll when the Plaintiff received the summons on September 17, 2010. As previously noted, this case was not filed until May 14, 2015, which was four and half years after the initial ticket and nearly four years after his July 13, 2011 conviction. As a result, this case should be dismissed for violating the Statute of Limitations.

Judicial Immunity

The Plaintiff acknowledges that all of his claims related to Defendant O'Donnell's involvement in the land transfer were known to him in 2007. (Exhibit A, Plaintiff's depo., p. 61, l. 4- p. 67, l. 13). As a result, the Statute of Limitations has expired on these issues. The remaining allegations pertaining to Defendant O'Donnell relate to Defendant O'Donnell's involvement in the Plaintiff's case as the presiding municipal judge. However, judges are immune from liability for damages for acts committed within their judicial jurisdiction, even when it is alleged the judge was acting maliciously and corruptly. Pierson v. Ray, 386 U.S. 547 (1967). Defendants' request the Court grant this Motion for Summary Judgment as to all allegations against Defendant O'Donnell on the basis of judicial immunity.

Conclusion

Based on the foregoing, the Defendants request that the Court grant Defendants' Motion for Summary Judgment.

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June 1, 2016

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

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

City of Georgetown, Respondent,

v.

Willie Singleton, Appellant.

Appellate Case No. 2012-212102

Appeal From Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2015-UP-009
Submitted October 10, 2014 — Filed January 7, 2015

VACATED

Willie Singleton, pro se, of Georgetown.

Robert Wade Maring, of Maring Law Firm, P.A., of
Georgetown, for Respondent.

PER CURIAM: Willie Singleton appeals the circuit court's order affirming his municipal court conviction of maintaining a public nuisance. We vacate the circuit court's order.

We find the circuit court lacked appellate jurisdiction over this appeal because Singleton failed to timely appeal to the circuit court. *See* S.C. Code § 14-25-95



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(Supp. 2013) ("Any party shall have the right to appeal from the sentence or judgment of the municipal court to the Court of Common Pleas of the county in which the trial is held. Notice of intention to appeal, setting forth the grounds for appeal, must be given in writing and served on the municipal judge or the clerk of the municipal court within ten days after sentence is passed or judgment rendered, or the appeal is considered waived."). Singleton was convicted on July 13, 2011; however, he did not serve his notice of appeal until July 29, 2011. Because Singleton failed to file and serve his notice of appeal within ten days, his appeal was untimely. Therefore, the circuit court lacked appellate jurisdiction over the appeal. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 224, 634 S.E.2d 59, 61 (Ct. App. 2006) ("A party who fails to timely appeal or take any other timely action necessary to correct an error is procedurally barred from contesting the validity of the conviction."). Therefore, we find the circuit court erred in not dismissing this appeal for lack of appellate jurisdiction. Accordingly, we vacate the circuit court's order.¹

VACATED.²

HUFF, SHORT, and KONDUROS, JJ., concur.

¹ In light of our decision, we do not address the remaining issues.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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