

⑤ 23421

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

AUG 01 2017

SC Court of Appeals

Case No. 2017-000639

Jimmy A. Richardson, II, Solicitor Fifteenth Judicial Circuit, on Behalf of the 15th Circuit Drug Enforcement Unit, Respondent,

v.

Eighty-five thousand six hundred eighty seven and 45/100 dollars (\$85, 687.45); 2010 Chevrolet Impala vin# 2GIWB5EKOAA1166142; 2008 Mercedes vin# WDDDJ72X78A117250; 2009 Honda CBR600RR9 vin# JH2PC400X9K201006; various weapons, miscellaneous gold men's jewelry, electronics and real property located at 732 Dragonfly Drive, Myrtle Beach, SC, TMS#: 1642201065, Defendant Property,

Michael A. Hatten, Stephanie N. Hatten a/k/a Stephanie N. Mackie, Joseph L. White, Eleanor J. Carter, Byron A. Gidney, Kristin J. Milby, Ivan K. Chatman and Steven Mackie, Defendants,

Of whom Stephanie N. Hatten a/k/a Stephanie N. Mackie is the Appellant.

RECORD ON APPEAL

Erin E. Bailey
THE LAW OFFICE OF ERIN E. BAILEY
407 Church St. Suite G
P.O. Box 2560
Georgetown, S.C. 29442
843-606-0764
843-781-8009 (Fax)
Attorney for Appellant

James R. Battle
BATTLE LAW FIRM, LLC
1200 Main St.
P.O. Box 530
Conway, S.C. 29528
843-248-4321
843-248-4512 (Fax)
Attorney for Respondent

Index

Order Dismissing Defendant Stephanie N. Mackie’s Counterclaims with Prejudice.....2

Amended Complaint.....5

Defendant Stephanie N. Hatten A/K/A Stephanie N. Mackie’s Answer to Amended Complaint
and Counterclaim.....16

Motion To Dismiss Defendant Stephanie H. Hatten’s Counterclaim.....24

Memorandum in Support of Plaintiff’s Motion to Dismiss Defendant Stephanie H. Hatten’s
Counterclaims.....26

Defendant Stephanie N. Hatten A/K/A Stephanie N. Mackie’s Response to Motion to Dismiss
the Counterclaim.....47

Defendant Stephanie N. Hatten A/K/A Stephanie N. Mackie’s Response to Plaintiff’s Second
Motion to Dismiss the Counterclaim..... 52

Letter Brief.....58

Transcript of Hearing.....60

Certificate of Counsel.....76

STATE OF SOUTH CAROLINA

HORRY COUNTY

JIMMY A. RICHARDSON, II, SOLICITOR
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE 15TH CIRCUIT DRUG
ENFORCEMENT UNIT,

PLAINTIFF,

v.

EIGHTY-FIVE THOUSAND SIX HUNDRED
EIGHTY SEVEN AND 45/100 DOLLARS
(\$85,687.45); 2010 CHEVROLET IMPALA
VIN#2G1WB5EKOA1166142; 2008
MERCEDES VIN# WDDDJ72X78A117250;
2009 HONDA CBR600RR9
VIN#JH2PC400X9K201006; VARIOUS
WEAPONS, MISCELLANEOUS GOLD
MEN'S JEWELRY, ELECTRONICS AND
REAL PROPERTY LOCATED AT 732
DRAGONFLY DRIVE, MYRTLE BEACH,
SC, TMS #: 1642201065,

DEFENDANT PROPERTY,

MICHAEL A. HATTEN, STEPHANIE N.
HATTEN A/K/A STEPHANIE N. MACKIE,
JOSEPH L. WHITE, ELEANOR J. CARTER,
BYRON A. GIDNEY, KRISTIN J. MILBY,
IVAN K. CHATMAN AND STEVEN
MACKIE,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-26-2330

**ORDER DISMISSING DEFENDANT
STEPHANIE N. MACKIE'S
COUNTERCLAIMS WITH PREJUDICE**

2017 FEB 17 AM 11:10
CLERK OF COURT
HORRY COUNTY, SC

STATEMENT OF THE CASE

Plaintiff brought this action for the forfeiture of the above named Defendant Property pursuant to S.C. Code Section 44-53-520. Defendant Stephanie N. Hatten a/k/a Stephanie N. Mackie ("Defendant Mackie") filed an Answer and Counterclaims to the Complaint on August

1
Mack

002

17, 2016. On August 19, 2016, the Plaintiff filed a Motion to Dismiss Defendant's Counterclaims pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

A hearing on Plaintiff's motion was held on January 5, 2017 at 9:30am before the Honorable Benjamin H. Culbertson. Present at the hearing were Plaintiff's Special Prosecutor, James R. Battle, and Defendant Mackie's attorney, Erin Bailey. The Court heard arguments from both attorneys.

PRESENTATION

Plaintiff's attorney argued that Defendant Mackie's counterclaims for conversion, claim and delivery, and punitive damages should be dismissed because: (1) the Plaintiff was not the seizing agency, and therefore, Defendant Mackie brought her counterclaims against the wrong party; (2) it is an official function of the Plaintiff to bring civil forfeiture actions, and therefore, the Plaintiff is entitled to prosecutorial immunity; and (3) the Plaintiff is immune from civil liability pursuant to the South Carolina Tort Claims Act. Defendant Mackie's attorney argued the arresting agency acted at the direction of the Plaintiff, and therefore her counterclaims applied to the Plaintiff.

DISCUSSION

Pursuant to Rule 12(b)(6), SCRPC, the Court may dismiss a pleading or cause of action if it fails to state facts sufficient to constitute a cause of action. As stated above, the Plaintiff brought the instant forfeiture case pursuant to S.C. Code § 44-53-520. South Carolina Code § 44-53-530 sets forth the procedures for bringing a forfeiture action. Section (a) of that statute states, "Forfeiture of property defined in Section 44-53-520 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized." The Plaintiff is the circuit solicitor for the

2
MK

15th Judicial Circuit. Because it is part of his official duties to bring forfeiture actions, the Plaintiff has prosecutorial immunity from civil liability in this case.

Based on the facts presented and law of this State, the Court finds that Defendant Stephanie Mackie's counterclaims should be dismissed.

NOW THEREFORE, IT IS HEREBY ORDERED:

Defendant Stephanie Mackie's counterclaims for conversion, claim and delivery, and punitive damages are dismissed with prejudice.

Feb. 11, 2017
Georgetown, South Carolina

Georgetown,

Benjamin H. Culbertson

The Honorable Benjamin H. Culbertson
Judge of the 15th Judicial Circuit

STATE OF SOUTH CAROLINA
Horry County

JIMMY A. RICHARDSON, II, SOLICITOR
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE 15TH CIRCUIT DRUG
ENFORCEMENT UNIT,

PLAINTIFF,

v.

EIGHTY-FIVE THOUSAND SIX HUNDRED
EIGHTY SEVEN AND 45/100 DOLLARS
(\$85,687.45); 2010 CHEVROLET IMPALA
VIN# 2G1WB5EKO1166142; 2008
MERCEDES VIN# WDDDJ72X78A117250;
2009 HONDA CBR600RR9
VIN#JH2PC400X9K201006; VARIOUS
WEAPONS, MISCELLANEOUS GOLD
MEN'S JEWELRY, ELECTRONICS AND
REAL PROPERTY LOCATED AT 732
DRAGONFLY DRIVE, MYRTLE BEACH,
SC, TMS #: 1642201065,

DEFENDANT PROPERTY,

MICHAEL A. HATTEN, STEPHANIE N.
HATTEN A/K/A STEPHANIE N. MACKIE,
JOSEPH L. WHITE, ELEANOR J. CARTER,
BYRON A. GIDNEY, KRISTIN J. MILBY,
IVAN K. CHATMAN AND STEVEN
MACKIE,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-26-2330

AMENDED COMPLAINT

Horry County
2016 JUL 19 AM 11:34
HELEN J. HARRIS
CLERK OF COURT

Plaintiff would respectfully allege as follows:

Parties and Defendant Property

1. Plaintiff is the Circuit Solicitor of the Fifteenth Judicial Circuit of the State of South Carolina on behalf of the 15th Circuit Drug Enforcement Unit and is authorized by §44-53-530 of

the Code of Laws of South Carolina 1976 as amended, to initiate this Complaint for the forfeiture of the Defendant Property.

2. Plaintiff is authorized by § 44-53-530 of the Code of Laws of South Carolina 1976 as amended to initiate this Complaint for the forfeiture of the Defendant Property.

3. Defendants Joseph L. White and Eleanor Carter claim an interest in the Defendant Property described as follows:

Forty-eight thousand four hundred and ten and 67/100 dollars (\$48,410.67) found concealed within the residence of 104 Olde Towne Way, Unit 3, Myrtle Beach, SC being Joseph White and Eleanor Carter's shared home; One Thousand Six Hundred Twenty-seven and no/100 dollars (1,627.00) found in the 2005 Chevrolet Malibu pursuant to Search Warrant; One Thousand One Hundred Forty-five and no/100 dollars (1,145.00) found during traffic stop of Defendant Joseph L. White; A Mac Superdrive serial number C17PH1CHGF9F; Apple iPhone 5S serial number DX3MXMNVFF9R; Apple iPhone 6 IMEI number 356977064696932 and an Apple iMac Computer model A1419 serial number C02QG4KPGG79;

4. Defendants Kristen Milby and Byron Gidney claim an interest in the Defendant Property described as follows:

Twenty-nine thousand four hundred and eighty-four and 78/100 dollars (\$29,484.78) found concealed within the residence of 3941 Halyard Way, Unit C7, Myrtle Beach, SC being Kristen Milby and Byron Gidney's shared home; Miscellaneous gold men's jewelry; Apple iPad Mini serial number F4LLTHOFCM8 in a pink case; HP Laptop serial number 5CD447DNXV; Samsung Galaxy S7 Edge serial number RF8H30EEZJV; Samsung Galaxy S7 Edge serial number RF8H30BKL4B; Apple iPad Mini serial number F4KKVC9XF19F; Samsung Galaxy Note 4 serial number RF8G72146FR and a 2010 Chevrolet Impala vehicle identification number 2G1WB5EKOA1166142 registered to Kristen Milby.

5. Defendant Byron Gidney claims an interest in the Defendant Property described as follows:

Storage Unit 983 at 338 Jesse Street, Myrtle Beach, SC registered to Byron Gidney; Kimber Pro Raptor 2 .45 caliber handgun with associated magazines serial number KR44421; Hi-Point model JHP 45 ACP handgun with associated magazine serial number X4268954; Berretta model 92FS 9mm handgun with associated magazines serial number K35701Z; Kel Tec P380 handgun with associated magazines serial number HMD18; Sig Sauer P238 handgun with associated magazine serial number 27B106282; Taurus PT738

380 ACP handgun serial number 27227C; Miscellaneous caliber ammunition and a black in color shooting bag with shooting glasses and holster.

6. Defendants Michael Hatten and Stephanie N. Hatten a/k/a Stephanie N. Mackie claim an interest in the Defendant Property described as follows:

One thousand and twenty and no/100 dollars (\$1,020.00) found concealed within 732 Dragonfly Drive, Myrtle Beach, SC being the shared residence of Michael Hatten and Stephanie Mackie (Hatten); Mossberg 12 gauge pump shotgun serial number R293914; white, four door 2008 Mercedes with VIN # WDDDJ72X78A117250 belonging to Michael Hatten and Stephanie Hatten (a/k/a Stephanie Mackie); 2009 Honda CBR600RR9 VIN# JH2PC400X9K201006 belonging to Michael Hatten; the residence and property located at 732 Dragonfly Drive, Myrtle Beach, SC having TMS number 1642201065, PIN number 39615010010, and Deed Book 3640 at Deed Page 2904 and is the shared residence of Michael Hatten and Stephanie Hatten.

The description of the Defendant Real Property at 732 Dragonfly Drive, Myrtle Beach, SC is as follows:

ALL AND SINGULAR, that certain piece, parcel or tract of land situate, lying and being in Conway Township, County of Horry, State of South Carolina being identified as Lot 61, as shown upon a plat entitled "Final Subdivision Plat of Phase II The Willows at Bellgrove Preserve for Centex Homes" prepared by Survey Technology, Inc., dated June 3, 2004 and recorded June 21, 2004, in Plat Book 198 at Page 215 in the Office of the Register of Deeds for Horry County, SC, reference to which is craved as forming a part and parcel of these presents.

Subject to that certain Declaration of Covenants, Conditions and Restrictions for Bellgrove Preserve dated July 24, 2003, and recorded August 7, 2003 in Deed Book 2627 at Page 143, in the office of the Register of Deeds for Horry County, South Carolina and any amendments thereto.

ALSO SUBJECT to all other restrictions, reservations easements and rights of way of record, including those which may be set out on the within referenced subdivision plat.

SUBJECT to the restrictive covenants recorded in Deed Book 379 at Page 63.

This being the identical property as conveyed to the grantor by deed of Michael Hatten and Stephanie Hatten, recorded January 10, 2013 in Deed Book 3631 at Page 1094, Horry County records.

Tax Map No: 164-22-01-065

Property Address: 732 Dragonfly Drive, Myrtle Beach. SC 29579

7. Defendant Steven Mackie claims an interest in the above described real property at 732 Dragonfly Drive, Myrtle Beach, SC 29579.

8. Defendant Stephanie Hatten is the title owner to the Defendant Real Property at 732 Dragonfly Drive, Myrtle Beach, SC. There are no open mortgages or judgments against this property. The deed is dated February 25, 2013 and was recorded on February 27, 2013 in Deed Book 3640 at Page 2904 in the office of the Register of Deeds for Horry County.

Facts

9. In or around September of 2015, DEU Agent Suggs initiated a narcotics related investigation into a drug trafficking organization identifying themselves as the "24/7 Boyz." The 24/7 Boyz utilized a dispatch style "on call" drug delivery system in which a drug purchaser would contact the dispatch number, and a 24/7 Boyz member would direct the drug purchaser to a meet location. The 24/7 Boyz' drug delivery system was operational twenty-four hours a day, seven days a week. Therefore, at any point in time a drug purchaser could call and purchase illicit drugs. The 24/7 Boyz would have multiple drug purchasers waiting at the meet location, and when the delivery driver arrived, the purchasers would "swarm" the car and purchase their drugs. The delivery driver would then leave the meet location and conduct counter-surveillance while traveling to the next meet location for the next group of drug purchasers.

10. Through this investigation, as well as other operations, it was determined that the 24/7 Boyz were a large scale drug distribution/trafficking enterprise acquiring large quantities of funds through illicit drug activities. DEU Agents learned the 24/7 Boyz earned on a daily basis \$8,000.00 to \$10,000.00 from illicit drug sales. It is believed that members of the 24/7 Boyz

utilized the funds from the illicit drug sales to fund their lifestyles as well as to purchase various personal property items to include electronics, jewelry, cellular phones, clothing and vehicles.

11. DEU Agents have conducted no less than twelve (12) controlled drug purchases from the 24/7 Boyz. The quantities and weights of the purchased substances are as follows: ten bags (.3 grams) of Heroin, ten bags (.3 grams) of Heroin, ten bags (.3 grams) of Heroin, five bags (.15 grams) Heroin, five small rocks (1.2 grams) of Crack, ten bags (.3 grams) of Heroin, five bags (.15 grams) Heroin, five bags (.15) Fentanyl, three bags (.09 grams) of Heroin, three bags (.09 grams) Fentanyl, four small rocks (.96 grams) of Crack, fifteen bags (.45 grams) Fentanyl, ten bags (.3 grams) of Heroin, ten bags (.3 grams) of Heroin, ten bags (.3 grams) of Heroin, five bags (.15 grams) of Heroin and five bags (.15 grams) of Heroin. The above mentioned drugs field tested positive.

12. DEU Agents observed the 24/7 Boyz utilizing various vehicles to carry out their illicit drug enterprise. On occasion DEU Agents observed 24/7 Boyz members utilizing vehicles that were provided by co-conspirators; one of which being a 2010 Chevrolet Impala owned and registered to Kristin Milby with a vehicle identification number of 2G1WB5EKOA1166142. Those vehicles were utilized for counter-surveillance as well as, on occasion, to re-supply the delivery drivers with drugs.

13. The 24/7 Boyz utilized many techniques in an attempt to elude law enforcement such as using different cellular phones and frequently moving the "driver's house" to different locations within short periods of time. Through their in-depth investigation, DEU Agents were able to secure multiple search warrants for vehicles, residences, and storage facilities utilized by the 24/7 Boyz.

14. On March 17, 2016, Agents executed a search warrant at 104 Olde Towne Way, Unit 3 located in the Myrtle Beach section of Horry County which is the shared residence of Eleanor Jane Carter and Joseph Luis White. During the course of the search, DEU Agents located many items consistent with drug distribution/trafficking. DEU Agents located the following items which were taken for evidence/seizure: Forty-eight thousand four hundred and ten dollars and sixty-seven cents (\$48,410.87) found concealed throughout the house; approximately 34 grams of Marijuana; approximately 12 grams of Crack cocaine; a Smith and Wesson handgun (entered NCIC as missing); an Apple iMac computer serial number CO2QG4KPGG79 which had profiles for Eleanor Carter and Joseph White; a Apple iPhone 5s serial number DX3MXMNVFF9R; an Apple iPhone 6 IMEI number 356977064696932; and a Mac Superdrive serial number C17PH1CHGF9F. The above mentioned drugs all field tested positive, and the weights provided are approximate.

15. On March 17, 2016, DEU Agents executed a search warrant at 3941 Halyard Way, Apartment C7, in the Myrtle Beach section of Horry County which is the shared residence of Byron Gidney and Kristin Milby. During the course of the search, DEU Agents located many items consistent with drug distribution/trafficking. Agents located the following items which were taken for evidence/seizure: Twenty-nine thousand four hundred and eighty-four dollars and seventy-eight cents (\$29,484.78) found concealed in the home; miscellaneous men's jewelry to include necklaces, watches, and a "grill;" approximately 42 grams of Marijuana; rental car receipts; travel documents; multiple cellular phones to include a Samsung Galaxy S7 Edge serial number RF8H30EEZJV; and a Samsung Galaxy S7 Edge serial number RF8H30BKL4B; an Apple iPad Mini serial number F4LLTHOFCM8; an Apple iPad Mini serial number

F4KKVC9XF19F; and an HP laptop serial number 5CD447DNXV. The above mentioned drugs all field tested positive, and the weights provided are approximate.

16. On March 17, 2016, DEU Agents executed a search warrant at 338 Jesse Street Unit 983 being the "Extra Space Storage" facility in the Myrtle Beach Section of Horry County. Unit 983 is registered to Byron Gidney and is believed to be used in the operation of the 24/7 Boyz.

During the course of the search, DEU Agents located the following items which were taken for evidence/seizure: a clear bag containing approximately 18 grams of Methamphetamine; a clear plastic bag containing approximately 6 grams of cocaine; a clear plastic bag containing approximately 2 grams of Methamphetamine; a Kimber Pro Raptor 2 serial number KR44421 with associated magazines and ammunition; a Hi-Point model JHP .45 caliber handgun serial number X 4268954 with associated magazines and ammunition; a Berretta Model 92FS serial number K35701Z with associated magazines and ammunition; a stolen Hi-Point model CP serial number P1580234; a Kel Tec 380 handgun serial number HMD18 with associated magazines and ammunition; a Sig Sauer P238 serial number 27B106282 with associated magazines and ammunition; a Taurus PT738 380 ACP serial number 27227C with associated magazines and ammunition; as well as shooting glasses; large quantity of miscellaneous caliber ammunition; a shooting bag; and miscellaneous handgun magazines. The above mentioned drugs all field tested positive, and the weights provided are approximate.

17. On or about March 17, 2016, a traffic stop was conducted on one of the co-conspirators, Joseph Luis White, while he was operating a black in color Cadillac rental car due to his having active warrants in the Myrtle Beach section of Horry County. During an inventory search of the vehicle, DEU Agents located \$189.00 in miscellaneous currency in the center console of the vehicle and upon searching Joseph White, incident to arrest, he was found to possess \$956.00 in

miscellaneous currency in his wallet. Also found concealed in a compartment was \$4,000.00 banded into one thousand dollar stacks.

18. On or about March 17, 2016, a search warrant was conducted on the 2005 Chevrolet Malibu utilized by Joseph White and members of the 24/7 Boyz which is registered to a co-conspirator, Eleanor Carter. DEU Agents located \$1,627.00 in miscellaneous currency in the glove compartment.

19. On or about March 17, 2016, DEU Agents executed two additional search warrants in regards to this investigation; both being at the "Extra Space Storage" located at 338 Jesse Street in the Myrtle Beach section of Horry County. The first being Unit 778 in which DEU Agents located a clear plastic bag containing approximately 54 grams of cocaine and 72 grams of crack divided into 6 twelve gram bags. In the next unit, Unit 989, DEU Agents located approximately 998 grams of Heroin. Units 989 and 778 were rented in the name of Eleanor J. Carter, a co-conspirator of the 24/7 Boyz. The above mentioned drugs all field tested positive, and the weights provided are approximate.

20. Throughout the course of this investigation, Michael Hatten and his wife, Stephanie Hatten, a/k/a Stephanie Mackie, came up as being upper tier members of the 24/7 Boyz. Through this investigation it was determined that Mr. and Mrs. Hatten were in fact managing and facilitating the 24/7 Boyz by providing residences and salaries for the other 24/7 Boyz members.

21. On March 29, 2016, DEU Agents executed a search warrant at 732 Dragonfly Drive in the Myrtle Beach section of Horry County. During the course of the search, DEU Agents located: a Mossberg pump shotgun serial number R293914 loaded with unfired rounds; a black book containing the names of 24/7 Boyz members; one thousand and twenty dollars (\$1,020.00); a white, four door 2008 Mercedes Benz CLS550 with VIN number WDDDJ72X78A117250

with documentation for Stephanie Hatten as well as her alias, Stephanie Mackie, and Michael Hatten; a 2009 Honda CBR600RR9 VIN number JH2PC400X9K201006 with documents in both Michael Hatten and Stephanie Hatten's names located in the storage compartment.

22. Deputy Puckett, the K9 Unit from the Horry County Sheriff's Department, deployed her department issued drug detection K9 on the 2008 Mercedes Benz, and the K9 gave a positive signal for the presence or previous presence of illicit drugs.

23. Defendant Kristen Milby is the title owner of the 2010 Chevrolet Impala VIN number 2G1WB5EKOA1166142, and there are no lienholders.

24. Defendant Stephanie Hatten is the title owner of the 2008 Mercedes Benz VIN number WDDDJ72X78A117250, and there are no lienholders.

25. Defendant Michael A. Hatten is the title owner of the 2009 Honda CBR600RR9 VIN number JH2PC400X9K201006, and there are no lienholders.

Basis for Seizure

26. The Defendant Property is monies or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or is proceeds traceable to an exchange in violation of Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976, as amended.

27. The Defendant Property is property which was used or which has been positioned for use as a container for use in manufacturing, producing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Article 3 Chapter 53, Title 44 of the South Carolina Code of Laws, 1976 as amended.

28. The Defendant Property is property which in any manner was knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation, or trafficking in

controlled substances described in Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976, as amended.

29. The Defendant Property is money seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances in violation of Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976 as amended.

30. The Defendant Property is a conveyance which was used or intended for use unlawfully to conceal, contain or transport or facilitate the unlawful concealment, possession, containment or transportation of controlled substances and their compounds as defined in Article 3, Chapter 53, Title 44 of the Code of Laws of South Carolina, 1976 as amended.

WHEREFORE, the Plaintiff prays that:

- a. The Defendant Property be declared forfeited to the State of South Carolina pursuant to §44-53-520 of the Code of Laws of South Carolina 1976, as amended;
- b. The 15th Circuit Drug Enforcement Unit be declared the seizing agency;
- c. The Court transfer the Defendant Property to the seizing agency pursuant to § 44-53-520 of the Code of Laws of South Carolina 1976, as amended;
- d. If the Defendant Property is destroyed or devalued from the time of this filing by the Defendants, then Defendants shall forfeit substitute assets of equal or lesser value to Plaintiff.
- e. The Court directs the Department of General Services to execute the documents necessary for this transfer; and
- f. For such other and further relief as the Court deems proper.

Signature Follows



James R. Battle
Attorney for the Plaintiff
BATTLE LAW FIRM, LLC
PO Box 530
Conway, South Carolina 29528
(843) 248-4321

Date: 7/18/16

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

JIMMY A. RICHARDSON, II,)
SOLICITOR, FIFTEENTH JUDICIAL)
CIRCUIT, ON BEHALF OF THE 15TH)
CIRCUIT DRUG ENFORCEMENT UNIT)

vs.)

EIGHTY-FIVE THOUSAND SIX)
HUNDRED EIGHTY SEVEN AND)
45/100 DOLLARS (\$85,687.45); 2010)
CHEVROLET IMPALA VIN #)
2G1WB5EKOA1166142; 2008)
MERCEDES VIN #)
WDDDJ72X78A117250; 2009 HONDA)
CBR600RR9 VIN #)
JHPC400X9K201006; VARIOUS)
WEAPONS, MISCELLANOUS GOLD)
MEN'S JEWELRY, ELECTRONICS)
AND REAL PROPERTY LOCATED AT)
732 DRAGONFLY DRIVE, MYRTLE)
BEACH, SC TMS# 1642201065)

DEFENDANT'S PROPERTY)

MICHAEL A. HATTEN, STEPHANIE)
N. HATTEN A/K/A STEPHANIE N.)
MACKIE, JOSEPH L. WHITE,)
ELEANOR J. CARTER, BYRON A.)
GIDNEY, KRISTIN J. MILBY, IVAN)
K. CHATMAN AND STEVEN)
MACKIE,)

DEFENDANTS)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH CIRCUIT

2016-CP-26-2330

**DEFENDANT STEPHANIE N. HATTEN A/K/A
STEPHANIE N. MACKIE'S ANSWER TO
AMENDED COMPLAINT AND
COUNTERCLAIM**

Horry County
2016 AUG 17 PM 2:41
HELENE L. HARRIS, CLERK
CLERK OF COURT

NOW COMES Defendant Stephanie N. Hatten a/k/a Stephanie N. Mackie (hereinafter "Defendant"), by and through her attorney, Erin E. Bailey, and files this answer and counterclaim to the amended complaint of Plaintiff and shows unto this Honorable Court the following:

COPY

FOR A FIRST DEFENSE
(General Denial)

1. The Defendant denies each allegation of the Complaint not hereinafter specifically admitted.

FOR A SECOND DEFENSE
(Responding to the allegations contained in Plaintiff's Complaint)

2. The Defendant admits the allegations in Paragraph One.
3. The Defendant admits the allegations in Paragraph Two.
4. The Defendant neither admits nor denies the allegations in Paragraph Three as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
5. The Defendant neither admits nor denies the allegations in Paragraph Four as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
6. The Defendant neither admits nor denies the allegations in Paragraph Five as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
7. The Defendant admits the allegations in Paragraph Six.
8. The Defendant neither admits nor denies the allegations in Paragraph Seven as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
9. The Defendant denies the allegations in Paragraph Eight.
10. The Defendant neither admits nor denies the allegations in Paragraph Nine as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.

11. The Defendant neither admits nor denies the allegations in Paragraph Ten as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
12. The Defendant neither admits nor denies the allegations in Paragraph Eleven as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
13. The Defendant neither admits nor denies the allegations in Paragraph Twelve as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
14. The Defendant neither admits nor denies the allegations in Paragraph Thirteen as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
15. The Defendant neither admits nor denies the allegations in Paragraph Fourteen as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
16. The Defendant neither admits nor denies the allegations in Paragraph Fifteen as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
17. The Defendant neither admits nor denies the allegations in Paragraph Sixteen as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.

18. The Defendant neither admits nor denies the allegations in Paragraph Seventeen as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
19. The Defendant neither admits nor denies the allegations in Paragraph Eighteen as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
20. The Defendant neither admits nor denies the allegations in Paragraph Nineteen as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
21. The Defendant denies the allegations in Paragraph Twenty.
22. The Defendant denies the allegations in Paragraph Twenty-One.
23. The Defendant denies the allegations in Paragraph Twenty-Two.
24. The Defendant neither admits nor denies the allegations in Paragraph Twenty-Three as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
25. The Defendant admits the allegations in Paragraph Twenty-Four.
26. The Defendant neither admits nor denies the allegations in Paragraph Twenty-Five as she is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
27. The Defendant denies the allegations in Paragraph Twenty-Six.
28. The Defendant denies the allegations in Paragraph Twenty-Seven.
29. The Defendant denies the allegations in Paragraph Twenty-Eight.
30. The Defendant denies the allegations in Paragraph Twenty-Nine.

31. The Defendant denies the allegations in Paragraph Thirty.

FOR A THIRD DEFENSE
(Rule 12(b)(6), SCRPC)

32. The Plaintiff's causes of action fail to state a claim against Defendant upon which relief can be granted, and therefore, must be dismissed.

FOR A FOURTH DEFENSE
(Reservation to assert additional defenses)

33. Defendant hereby gives notice that she intends to rely upon any other defenses or claims that may become available or appear during the discovery proceedings in this case and hereby reserves her right to amend this Answer to assert any such defenses or claims. Defendant further gives notice that it intends to rely upon any other affirmative defenses pled by any other defendant not pled by this Defendant in this case to the extent they do not conflict with the affirmative defenses set forth herein.

AS A FIRST CONTERCLAIM AGAINST PLAINTIFF
(Conversion)

Jurisdiction

34. Defendant is a citizen and resident of Horry County in the State of South Carolina.

35. Plaintiff is a citizen and resident of Horry County in the State of South Carolina.

36. This Court has subject matter jurisdiction and personal jurisdiction over the property and the parties.

Statement of Facts

37. The Defendant, Stephanie N. Hatten a/k/a Stephanie N. Mackie is the title owner to a four door 2008 Mercedes with VIN # WDDDJ72X78A117250.

38. The Defendant, Stephanie N. Hatten a/k/a Stephanie N. Mackie claims an interest in Mossberg 12 gage pump shotgun serial number R293914, a 2009 Honda CBR600RR9 VIN # JH2PC400X9K201006, and One thousand and twenty and no/100 (\$1,020.00).
39. March 29, 2016 agents with the 15th Circuit Drug Enforcement Unit executed a search warrant at the home of Defendant. Agents did not locate any illegal substances or items on the property. Despite not finding any drugs, agents removed the property listed in Paragraphs 37 and 38 from Defendant's possession.

Conversion

40. Defendant repeats and re-alleges the allegations contained above in Paragraphs 1-39.
41. Defendant has an interest in the seized property and has a right to possess the seized property.
42. Plaintiff exercised dominion and control over the property and wrongfully and unlawfully detained said property from Defendant.
43. Defendant has made a demand for the return of the property which Plaintiff refused and continue to refuse to allow Defendant to obtain said property.
44. As a direct and proximate cause of Plaintiff's conversion of the Defendant's properties, Defendant has suffered actual damages presently unknown and which will be established at the trial of this case.
45. Defendant demands such actual and punitive damages as may be awarded by the trier of fact.

AS A SECOND COUNTERCLAIM AGAINST PLAINTIFF
(Claim and Delivery)

46. Defendant herein repeats and re-alleges the allegations contained above in Paragraphs 1-45.
47. Defendant is the owner and holder of the seized property.

48. Plaintiff is in possession of the Defendant's belongings; which Defendant has tried to recover but Plaintiff has refused.

49. Defendant is informed and believe that she is entitled to an Order of the Court placing her in full possession of the property and such other and further relief as this Honorable Court may award.

AS A THIRD COUNTERCLAIM AGAINST PLAINTIFF
(Punitive Damages)

50. Defendant herein repeats and re-alleges the allegations contained above in Paragraphs 1-49.

51. The actions and inactions of Plaintiff described herein were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to the Defendant.

52. More specifically, Plaintiff acted with a conscious and flagrant disregard for the rights of Defendant with respect to the property described herein and/or deliberately engaged in willful, wanton and reckless disregard for rights of Defendant with respect to the property described herein.

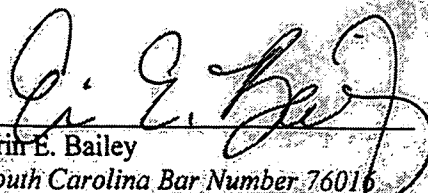
53. Accordingly, Plaintiff is liable for punitive and exemplary damages awardable to Defendant.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, the Defendant now prays:

1. That the Plaintiff's complaint be dismissed with prejudice as to the causes of action asserted against Defendant.
2. That Defendant be awarded attorneys' fees and expenses to the extent provided under South Carolina law.
3. That judgment be entered in favor of Defendant with respect to Plaintiff's causes of action.

4. That this Court issue an Order putting the Defendant in legal possession of the property described herein.
5. That Defendant be awarded actual and punitive damages in an amount to be determined by the trier of fact with respect to Defendant's counterclaims.
6. For such other and further relief as this Honorable Court deems just and proper.

Respectfully Submitted,



Erin E. Bailey
South Carolina Bar Number 76016
The Law Office of Erin E. Bailey LLC
407 Church St. Suite G
Georgetown, S.C. 29440
843-606-0764 (office)
843-781-8009 (fax)
ebailey@erinbaileylaw.com

Attorney for Defendant Stephanie N. Hatten

Georgetown, South Carolina
August 17, 2016

STATE OF SOUTH CAROLINA

HORRY COUNTY

JIMMY A. RICHARDSON, II, SOLICITOR
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE 15TH CIRCUIT DRUG
ENFORCEMENT UNIT,

PLAINTIFF,

v.

EIGHTY-FIVE THOUSAND SIX HUNDRED
EIGHTY SEVEN AND 45/100 DOLLARS
(\$85,687.45); 2010 CHEVROLET IMPALA
VIN# 2G1WB5EKOA1166142; 2008
MERCEDES VIN# WDDDJ72X78A117250;
2009 HONDA CBR600RR9
VIN#JH2PC400X9K201006; VARIOUS
WEAPONS, MISCELLANEOUS GOLD
MEN'S JEWELRY, ELECTRONICS AND
REAL PROPERTY LOCATED AT 732
DRAGONFLY DRIVE, MYRTLE BEACH,
SC, TMS #: 1642201065,

DEFENDANT PROPERTY,

MICHAEL A. HATTEN, STEPHANIE N.
HATTEN A/K/A STEPHANIE N. MACKIE,
JOSEPH L. WHITE, ELEANOR J. CARTER,
BYRON A. GIDNEY, KRISTIN J. MILBY,
IVAN K. CHATMAN AND STEVEN
MACKIE,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-26-2330

**MOTION TO DISMISS DEFENDANT
STEPHANIE H. HATTEN'S
COUNTERCLAIMS**

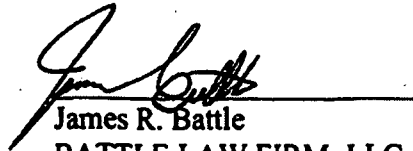
2016 AUG 19 AM 10:59

**TO DEFENDANT STEPHANIE H. HATTEN AND HER ATTORNEY ERIN BAILEY,
ESQ.:**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through its undersigned
counsel, moves and will move, at such time and place as may be scheduled by the Court of

• Common Pleas for Horry County, at least ten (10) days hence, for an order dismissing Defendant Stephanie Hatten's counterclaims.

This motion is brought pursuant to Rule 12(b)(6), SCRPC, and is based upon the fact that Defendant's counterclaims fail to set out sufficient allegations to constitute a claim as against the Plaintiff. This motion is further based upon the South Carolina Tort Claims Act, S.C. Code §§ 15-78-10 to 220, and upon the fact that there are no allegations in the counterclaims against the Solicitor or any employees of the Solicitor's Office.



James R. Battle
BATTLE LAW FIRM, LLC
Attorney for the Plaintiff
PO Box 530
Conway, South Carolina 29528

August 18, 2016

COPY

STATE OF SOUTH CAROLINA

HORRY COUNTY

JIMMY A. RICHARDSON, II, SOLICITOR
FIFTEENTH JUDICIAL CIRCUIT, ON
BEHALF OF THE 15TH CIRCUIT DRUG
ENFORCEMENT UNIT,

PLAINTIFF,

v.

EIGHTY-FIVE THOUSAND SIX HUNDRED
EIGHTY SEVEN AND 45/100 DOLLARS
(\$85,687.45); 2010 CHEVROLET IMPALA
VIN# 2G1WB5EKO1166142; 2008
MERCEDES VIN# WDDDJ72X78A117250;
2009 HONDA CBR600RR9
VIN#JH2PC400X9K201006; VARIOUS
WEAPONS, MISCELLANEOUS GOLD
MEN'S JEWELRY, ELECTRONICS AND
REAL PROPERTY LOCATED AT 732
DRAGONFLY DRIVE, MYRTLE BEACH,
SC, TMS #: 1642201065,

DEFENDANT PROPERTY,

MICHAEL A. HATTEN, STEPHANIE N.
HATTEN A/K/A STEPHANIE N. MACKIE,
JOSEPH L. WHITE, ELEANOR J. CARTER,
BYRON A. GIDNEY, KRISTIN J. MILBY,
IVAN K. CHATMAN AND STEVEN
MACKIE,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-26-2330

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO DISMISS
DEFENDANT STEPHANIE H. HATTEN'S
COUNTERCLAIMS

2016 OCT -1 AM 11:23

Plaintiff Jimmy Richardson, Solicitor for the 15th Judicial Circuit, submits this memorandum in support of his motion to dismiss Defendant Stephanie N. Hatten a/k/a Stephanie Mackie's counterclaims.

STATEMENT OF THE CASE

Plaintiff brought this action for the forfeiture of the above named Defendant Property pursuant to S.C. Code § 44-53-520. Defendant Stephanie N. Hatten a/k/a Stephanie Mackie ("Defendant Hatten") filed an answer and counterclaims to the complaint on August 17, 2016. The alleged counterclaims are conversion, claim and delivery, and punitive damages. On August 19, 2016, the Plaintiff filed a motion to dismiss Defendant's counterclaims pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. On September 19, 2016, Defendant Hatten filed a response to Plaintiff's motion and argued that Plaintiff's motion should be dismissed because Plaintiff's arguments were not sufficiently articulated in the motion, and the seizing agency, the 15th Circuit Drug Enforcement Unit, is an agent of the Plaintiff.

STANDARD

Pursuant to Rule 12(b)(6), SCRCP, the court may dismiss a pleading or cause of action if it fails to state facts sufficient to constitute a cause of action. "In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

ARGUMENT

I. Plaintiff was not the seizing agency, and therefore, Defendant Hatten filed her counterclaims against the wrong party.

As stated above, the instant lawsuit is a forfeiture action brought pursuant to S.C. Code § 44-53-520 and 530. The Plaintiff brought the instant lawsuit in his official capacity as Solicitor for the 15th Judicial Circuit. See S.C. Code § 44-53-530(a) ("Forfeiture of property defined in

Section 44-53-520 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee.”).

The seizing agency, the 15th Circuit Drug Enforcement Unit (“DEU”), is a law enforcement agency made up of several law enforcement agencies within the 15th Circuit, i.e. Horry and Georgetown Counties. See DEU Agreement. Although the Plaintiff, along with the head of every participating agency, is a member of the Governing Board, “the participating Agencies shall assume all civil liability for the actions of their respective assigned law enforcement agents.” *Id.* at 4. No agents from the 15th Circuit Solicitor’s Office participated in the seizure of the Defendant Property. Therefore, Plaintiff is the improper party for Defendant Hatten’s counterclaims of conversion, claim and delivery, and punitive damages, and her counterclaims should be dismissed.

ii. Plaintiff is entitled to prosecutorial immunity as to Defendant Hatten’s counterclaims.

The instant lawsuit is analogous to *Maples v. Myers*, 2004 WL 6331521 (Ct. App. 2004). In *Myers*, a defendant in a forfeiture action sued a circuit solicitor for conversion. The Court noted that S.C. Code § 44-53-530 grants solicitor’s the power to petition the circuit court for the forfeiture of property. *Id.* at *3. As such, a solicitor bringing a forfeiture action is acting in his official, not personal, capacity. *Id.* The Court ruled that because a solicitor bringing a forfeiture action is acting within his capacity as a prosecutorial agent of the State, he enjoys “an absolute immunity from civil suits.” *Id.*

Because the facts in *Myers* match the facts in the instant case, Plaintiff is entitled to prosecutorial immunity as to Defendant Hatten’s counterclaims, and therefore, her counterclaims should be dismissed. See also *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)

(affirming a circuit court judge's decision to grant a solicitor's Rule 12(b)(6) motion to dismiss a civil lawsuit based on prosecutorial immunity.).

iii. Defendant Hatten's counterclaims should be dismissed pursuant to the Tort Claims Act.

"It [is] well settled that the South Carolina Tort Claims Act ("TCA") governs all tort claims against governmental entities and that the [TCA] is the exclusive civil remedy available in an action against a governmental entity or its employees." *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 230, 692 S.E.2d 499 (2010).

"[A] prosecutor, in his official capacity, is immune from a Tort Claims Act suit involving 'judicial' or 'quasi-judicial' acts." *See Condon*, 347 S.C. at 249, 553 S.E.2d at 508 (quoting S.C. Code § 15-78-60(1)). Because the Plaintiff is mandated by state law to bring forfeiture actions, they are part of his regular official duties. As such, they are judicial or quasi-judicial acts, and Plaintiff is entitled to immunity under the TCA as to Defendant Hatten's counterclaims.


Specifically, as to Defendant Hatten's counterclaim for punitive damages, S.C. Code § 15-78-120(b) of the TCA states, "No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment." Based on this provision, Defendant Hatten is not entitled to punitive damages against Plaintiff.

iv. Defendant Hatten will not be prejudiced by the dismissal of her counterclaims.

In her counterclaims, Defendant Hatten seeks the return of her property. This is the same relief Defendant Hatten would receive should she defeat Plaintiff's forfeiture action. Therefore, the dismissal of Defendant Hatten's counterclaims would not prejudice the relief available to her at trial.

CONCLUSION

Based on the above, Plaintiff requests the dismissal of Defendant Hatten's counterclaims.


James R. Battle
BATTLE LAW FIRM, LLC
Attorney for the Plaintiff
PO Box 530
Conway, South Carolina 29528

October 9, 2016

FIFTEENTH CIRCUIT DRUG ENFORCEMENT UNIT (DEU)

This agreement is entered into on this 23rd day of September, 2014, and made pursuant to S.C. Code §§ 23-1-210 et. Seq. The Agencies and governing bodies entering into this Agreement are:

- | | |
|--|---|
| Conway Police Department | Conway City Council |
| Horry County Sheriff's Office | Horry County Council |
| Fifteenth Circuit Solicitor's Office | Myrtle Beach Police Department |
| Myrtle Beach City Council | North Myrtle Beach Dept. of Public Safety |
| North Myrtle Beach City Council | Surfside Beach Dept. of Public Safety |
| Surfside Beach Town Council | Coastal Carolina University Police |
| Coastal Carolina Univ. Board of Trustees | Georgetown County Sheriff's Office |
| Georgetown County Council | Georgetown City Police Department |
| Georgetown City Council | Aynor Police Department |
| Aynor Town Council | Horry County Police Department |

By their signatures affixed hereto, these Agencies and their respective governing bodies agree to the establishment of the Fifteenth Circuit Drug Enforcement Unit, hereinafter referred to as "DEU," and agree to be bound by the terms of this Agreement.

The parties to this Agreement understand and agree that the governing bodies of each participating Law Enforcement Agency must sign off on, and approve this Agreement before it is to be considered properly executed. By law, this is a duty that cannot be delegated to the Chiefs or heads of the respective Law Enforcement Agencies.

The parties to this Agreement understand and agree that the governing bodies of each respective Law Enforcement Agency (e.g. Myrtle Beach City Council as governing body of the Myrtle Beach Police Department) shall be notified by that Law Enforcement Agency of the execution and termination of this Agreement and any amendment or subsequent Agreement. All parties acknowledge and agree that this notice must be in writing, and must be within seventy-two (72) hours of the Agreement's execution or termination. Further, the parties acknowledge and agree that this requirement is not ministerial, and must be strictly complied with. To

accomplish this requirement, the DEU will supply a copy of this Agreement to the Law Enforcement Agency, who will in turn, provide such written notice to its governing body.

The parties to this Agreement all agree that there is an on-going problem with drug use and trafficking in the Fifteenth Circuit, and that past, present, and future drug related crimes are best investigated via a specialized team. As such, the DEU's mission is to identify, investigate, and prosecute individuals who participate in the manufacturing, cultivation, distribution, and/or trafficking of illegal drugs or controlled substances within the Fifteenth Judicial Circuit. Specifically, the DEU intends to combine the intelligence and investigative powers of the above-referenced law enforcement agencies in an effort to enhance and streamline drug investigations in Horry and Georgetown Counties.

The DEU arose out of two circumstances: First, major drug enterprises are inherently multi-jurisdictional. Unilateral, uncoordinated investigations can be duplicative, and a waste of extremely limited resources. Second, in recent years, multi-agency drug enforcement units have been extremely effective in investigating and prosecuting large-scale drug organizations.

In operation, the DEU shall maintain a close working relationship with all participating agencies, and shall provide information to assist in the arrest and conviction of individuals or organization members currently being investigated by the DEU. This ensures the efforts of the DEU and local narcotics teams do not overlap.

ORGANIZATION

The DEU shall operate out of locations mutually agreed upon by the participating Agencies.

A Governing Board, consisting of the Fifteenth Circuit Solicitor, and the head of each participating Law Enforcement Agency will set policy, approve the budget, and provide general direction for DEU operations.

Each Law Enforcement Agency head shall, with the advice and consent of the DEU Commander, appoint agents from his or her agency to be assigned to the DEU. Each Agency head shall make best efforts to insure that the individuals appointed and assigned to the DEU are of the highest quality available. The assignment of each individual agent from his or her respective Agency shall last for a temporary time period of three (3) years. The DEU Commander will review each Agent's caseload and performance on an annual basis while the Agent is assigned to the DEU. Unsatisfactory performance will submit the Agent to a review of the Governing Board, in order to determine whether he or she should be sent back to his or her home agency.

With the exception of the DEU Commander, Deputy Commander, or other individuals specifically identified by the Governing Board, each DEU Agent will be equal in rank while participating in the DEU, regardless of the rank that each holds in his or her respective Agency.

All Agents assigned to a unit will adhere to the DEU policies and procedures. Failure to do so is grounds for dismissal from the DEU. In the event that an Agent fails to fulfill his or her duties while assigned to the DEU, the DEU Commander may suspend the Agent, and remove him or her from participating in any DEU activities, until such time as the Governing Board meets and decides whether the Agent should be permanently removed from the DEU. If the DEU Commander becomes aware that an Agent has violated the policies of his or her home Agency, he shall notify the appropriate official within that Agency or Department. The decision to remove any DEU Agent from service shall be made by a simple majority vote of the Governing Board.

AGENTS

DEU Agents shall be vested with the authority and jurisdiction of agencies located within the Fifteenth Judicial Circuit-whether state, county, or municipal. This authority and jurisdiction is the same as any other commissioned agent. Each Agent will report to the DEU Commander and the Governing Board. Direct Agency supervision will be left to the DEU Commander or Deputy Commanders. In order to maintain operation security, participating Agencies will avoid

unnecessary involvement in DEU investigations. All DEU investigations, targets, areas of interest, and activities will be reported solely through the DEU Commander and the Governing Board.

The participating Agencies shall assume all civil liability for the actions of their respective assigned law enforcement agents while they are acting within the course and scope of their duties. This shall be regardless of the incident location, and shall encompass, but not be limited to negligence, gross negligence, or recklessness.

This Agreement will in no manner effect the compensation, pension, or retirement rights of any Agent acting under its authority. Such Agents shall continue to be paid by their home Agency, or, where they are permanently employed. The bond for any Agent operating under this Agreement will include coverage for all of the Agent's activities in the counties or municipalities covered by the Agreement, and to the same extent as provided by bonds of regularly employed state, county, or municipal agents.

The parties to the Agreement expressly agree that reimbursement for services, as described in this Agreement, will be limited to the same kind and quantity as provided by the involved Agencies. Any other agreement for reimbursement must be made in writing between or among the Agencies on a case-by-case basis.

Agent work schedules shall vary according to the priorities, timing, and volume of cases being investigated during the workweek, and will be determined by the DEU Commander or Field Supervisor.

The normal workweek will be forty (40) hours. Each Agent may be requested by the DEU Commander to work no more than ten (10) hours of overtime, per pay period, without prior approval. After ten (10) hours, the DEU Commander must contact the head of the Agency that assigned the Agent, for approval.

AGENT SUPPORT

Each participating Agency agrees to provide its DEU Agents with the following: 1) an unmarked police car, 2) a ballistic vest, 3) standard issued police equipment such as handcuffs, flashlight, etc. 4) a service weapon, 5) a 12 gauge shotgun, 6) a mobile communications device such as a mobile or cellular phone, 7) any other equipment the Governing Board deems necessary.

Each participating Agency is responsible for maintaining its Agents' Academy and DEU mandated training as required by law. Special instruction may be required for DEU Agents, and, if approved by the Agent's home Agency, he or she may attend that special training at that Agency's expense.

The DEU Commander will, within thirty (30) days of his or her appointment, create a Standard Operation Procedure Manual. This Manual must be unanimously approved by all participating Agencies. The Manual will direct all DEU operations, and will become part and parcel of this Agreement.

Once funding becomes available, the DEU will provide each Agent with a common shield, raid jacket, shirt, or other necessary attire, displaying "DEU" and "Police."

ASSET FORFEITURE

While the DEU's primary mission is to identify, investigate, and prosecute major drug offenders and organizations, parallel emphasis will be placed on the identification, seizure, and ultimate forfeiture of the gains of illegal activity. When assets are successfully forfeited as a result of DEU investigation and prosecution, the following guidelines will apply:

1. Assets seized in Georgetown County, which are later awarded to law enforcement, also known as "Program Income," will be held in an interest-bearing account for the duration of the grant period. During the grant period, the DEU shall provide to each participating Agency, an accounting of Program Income, no less than on a quarterly basis.

2. Assets seized in Georgetown County (Program Income) may be used to purchase equipment, or for any other use related to the DEU's mission, so long as the Governing Board and grant coordinator approve the expenditures.
3. After the grant period expires, assets seized in Georgetown County (Program Income) that remain, shall be distributed to all participating agencies, subject to the approval of the South Carolina Department of Public Safety, and in accordance with the following formula:
 - a. The total of each agency's months of service during the distribution period, divided by all Agents months of service during the distribution period. (example: for a distribution period of one year, and a total number of Agents months of 180, if Conway Police Department has one Agent assigned to the DEU for 12 months, and another assigned for 6 months, it would get a distribution of 18 months divided by 180 months, or 10% of distributable Program Income)
4. Assets seized in Horry County that are awarded to law enforcement shall be distributed to all participating Agencies in accordance with the following formula:
 - a. The total of each agency's months of service during the distribution period, divided by all Agents months of service during the distribution period. (example: for a distribution period of one year, and a total number of Agents months of 180, if Conway Police Department has one Agent assigned to the DEU for 12 months, and another assigned for 6 months, it would get a distribution of 18 months divided by 180 months, or 10% of distributable Program Income)
5. Assets seized as a result of DEU efforts will be awarded in accordance with state law, and will be shared among all participating Agencies, as set forth above.
6. The DEU may use money or assets seized in furtherance of its stated mission, in accordance with the provisions of this Agreement.

DISSOLUTION

Upon the DEU's dissolution, all equipment purchased using grant funds will be retained by the Agency that paid the local match. All equipment purchased using DEU income will be divided as set forth above at the time of dissolution.

If a participating Agency chooses to withdraw from the DEU while the DEU is operational, that Agency may retain all the equipment that it purchased. Equipment purchased with grant funds or the matching funds paid by the withdrawing Agency will be assigned to DEU so long as the DEU continues to operate. No equipment purchased using Program Income will be assigned to any withdrawing Agency, so long as the DEU continues to operate.

WE AGREE:

Sheriff Phillip Thompson
Horry County Sheriff's Department

Warren S. Gel

Chief Warren Gal
Myrtle Beach Police Department

Chief Sandra Rhodes
Horry County Police Department

Chief Reginald Gosnell
Conway Police Department

Chief Jay Fernandez
North Myrtle Beach DPS

Chief Rodney Keziah
Surfside Beach DPS

Jimmy A. Richardson, II
Fifteenth Circuit Solicitor

Chief Paul Gardner
Georgetown Police Department

Director David Roper
Coastal Carolina University Police


Sheriff Lane Cribb
Georgetown County Sheriff's Dept.

Chief David Thompson
Aynor Police Department

HORRY COUNTY COUNCIL

Mark Lazarus
Chairmen

MYRTLE BEACH CITY COUNCIL


John T. Rhodes
Mayor

NORTH MYRTLE BEACH CITY COUNCIL

Marilyn Hatley
Mayor

CONWAY CITY COUNCIL

Alys C. Lawson
Mayor

SURFSIDE BEACH TOWN COUNCIL

Douglas F. Samples
Mayor

AYNOR TOWN COUNCIL

Kei Johnson
Mayor

GEORGETOWN COUNTY COUNCIL

Johnny Morant, Chairman
District 7

GEORGETOWN CITY COUNCIL

Jack Scoville
Mayor

**COASTAL CAROLINA UNIVERSITY
BOARD OF TRUSTEES**

**D. Wyatt Henderson
Chairman, Seat 4**

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH CIRCUIT

2016-CP-26-2330

JIMMY A. RICHARDSON, II,)
SOLICITOR, FIFTEENTH JUDICIAL)
CIRCUIT, ON BEHALF OF THE 15TH)
CIRCUIT DRUG ENFORCEMENT UNIT)

vs.)

**DEFENDANT STEPHANIE N. HATTEN A/K/A
STEPHANIE N. MACKIE'S RESPONSE TO
MOTION TO DISMISS THE
COUNTERCLAIM**

EIGHTY-FIVE THOUSAND SIX)
HUNDRED EIGHTY SEVEN AND)
45/100 DOLLARS (\$85,687.45); 2010)
CHEVROLET IMPALA VIN #)
2G1WB5EKOA1166142; 2008)
MERCEDES VIN #)
WDDDJ72X78A117250; 2009 HONDA)
CBR600RR9 VIN #)
JHPC400X9K201006; VARIOUS)
WEAPONS, MISCELLANOUS GOLD)
MEN'S JEWELRY, ELECTRONICS)
AND REAL PROPERTY LOCATED AT)
732 DRAGONFLY DRIVE, MYRTLE)
BEACH, SC TMS# 1642201065)

DEFENDANT'S PROPERTY)

MICHAEL A. HATTEN, STEPHANIE)
N. HATTEN A/K/A STEPHANIE N.)
MACKIE, JOSEPH L. WHITE,)
ELEANOR J. CARTER, BYRON A.)
GIDNEY, KRISTIN J. MILBY, IVAN)
K. CHATMAN AND STEVEN)
MACKIE,)

DEFENDANTS)

2016 SEP 19 AM 11:09
Horry County
REC. CLERK OF COURT

Defendant Stephanie N. Hatten a/k/a Stephanie N. Mackie (hereinafter "Defendant"), by and through her attorney, Erin E. Bailey, files this response to Plaintiff's Motion to Dismiss the Counterclaim.

COPY

PLAINTIFF'S MOTION MUST BE DENIED BECAUSE IT IS PROCEDURALLY DEFECTIVE

1. According to an Order of the South Supreme Court, the 15th Circuit is part of a Civil Motions Pilot Program that requires parties to file a memorandum of law with any motion (see Op. 2015-09-10-01, S.C. Sup. Ct. September 10, 2015). The order does not require a memorandum of law where a full explanation of the motion is contained in the motion and a memorandum would serve no useful purpose. In this case, the Plaintiff filed a two paragraph motion with no supporting memorandum of law. Only one paragraph of the two paragraph motion details the law upon which the Plaintiff moves this Court to dismiss the Defendant's counterclaims. That paragraph only contains two sentences. In those two sentences, the Plaintiff cites Rule 12(b)(6), SCRCP and the standard for a motion to dismiss set forth therein, but does not set forth with any particularity its cause for filing this motion. That short paragraph also cites the South Carolina Tort Claims Act in its entirety, without direction to a particular section of the act from which the Plaintiff's ask this Court to dismiss the counterclaim.
2. The motion does not comport with Rule 7(b)(1), SCRCP, which provides: "An application to the court for an order shall be by motion which . . . shall state with particularity the grounds thereof and shall set forth the relief or order sought." The instant motion¹ suffers from a lack of such particularity. However, "when a motion is challenged for a lack of particularity, the court should ask 'whether any party is prejudiced by a lack of particularity or 'whether the court can comprehend the basis for the motion and deal with it fairly.'" Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010) (holding that Rule 7(b)(1), SCRCP, advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly) citing Calderon v. Kansas Dept. of Soc. and Rehab. Servs., 181 F.3d 1180, 1186 (10th Cir. 1999) (quoting 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND

¹ Defendant notes that Plaintiff's Motion does contain a Notice of Hearing which brings it in technical compliance with Rule 7(b)(1), SCRCP, but NOT the spirit of that rule nor the Supreme Court's September 10, 2015 Order.

PROCEDURE § 1192, at 42 (2d ed. 1990)). In this case, Plaintiff's lack of particularity is prejudicial because the Civil Motions Pilot Program requires Defendant to file a written response to a bare-bones motion which is void of a short and plain statement showing that the Plaintiff is entitled to relief under Rule 12(b)(6), SCRCPP, and/or the South Carolina Tort Claims Act. Defendant notes that by citing to the South Carolina Tort Claims Act in its entirety, Plaintiff is relying upon a statute that is comprised of 22 sections and 7,914 words. Defendant is prejudiced by having to guess which of these statutory provisions Plaintiff relies upon.

3. Given the procedural defects in Plaintiff's motion to dismiss the counterclaim, it is impossible for the Defendant to file a meaningful memorandum of law in opposition to this motion because the motion does not contain enough detail from which the Defendant can answer. As such, the Defendant respectfully requests that this Honorable Court deny Plaintiff's motion to dismiss the counterclaim with prejudice.

**PLAINTIFF'S MOTION MUST BE DENIED BECAUSE DEFENDANT'S
COMPULSORY COUNTERCLAIMS WERE ASSERTED AGAINST THE REAL
PARTY IN INTEREST, THE 15th CIRCUIT SOLICITOR'S DEU**

4. In the event that the Court rejects the above procedural argument, Defendant – in an effort to protect the record and comply with the Supreme Court's Order regarding the Civil Motions Pilot Program – shows unto this Honorable Court the following:
5. The Plaintiff alleges in its motion that “there are no allegations in the counterclaims against the Solicitor or any employees of the Solicitor's Office.”
6. Paragraph #39 of Defendant's Counterclaim specifically alleges that the 15th Circuit Drug Enforcement Unit executed the search warrant which resulted in the Defendant's property being wrongfully withheld from her.

7. It is beyond dispute that the commander and deputy commanders of the 15th Circuit Drug Enforcement Unit are Solicitor's office employees.
8. As such, if the Solicitor has the legal authority to bring this action on behalf of his own employees of the DEU, the Solicitor has the legal authority to return the property to its rightful owner and be counterclaimed against for tortious actions arising from the same occurrence. See generally Rule 17, SCRPC; Reporter's Note to Rule 13, SCRPC ("counterclaims arising out of the same transaction or occurrence that is the subject of the action are 'compulsory' under Rule 13(a) and are barred by *res judicata* or estoppel by judgment if not asserted."); and Hembree v. One Thousand Eight Hundred Forty-Seven Dollars, 404 S.C. 241, 249, 743 S.E.2d 864, 868 (Ct. App. 2013) (affirming the dismissal of a counterclaim against the 15th Circuit Solicitor who brought an action on behalf of the Horry County Police Department not SLED against whom the counterclaim was made). In this case, Defendant asserts counterclaims against the same law enforcement officers employed by the Solicitor whose shoes the Solicitor fills in bringing this action.
9. The failure of the Solicitor's employees (the DEU) to return the subject property to its rightful owner gives rise to the counterclaims for Claim and Delivery and Conversion.

WHEREFORE the Defendant has made a showing with particularity by and through this response that the Plaintiff's motion to dismiss is procedurally defective and substantively in error. As such, this Honorable Court should DENY Plaintiff's motion to dismiss with prejudice.

Respectfully Submitted,



Erin E. Bailey
South Carolina Bar Number 76016
The Law Office of Erin E. Bailey LLC
407 Church St. Suite G
Georgetown, S.C. 29440
843-606-0764 (office)
843-781-8009 (fax)
ebailey@erinbaileylaw.com

Attorney for Defendant Stephanie N. Hatten

Georgetown, South Carolina
September 19, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
JIMMY A. RICHARDSON, II,)
SOLICITOR, FIFTEENTH JUDICIAL)
CIRCUIT, ON BEHALF OF THE 15TH)
CIRCUIT DRUG ENFORCEMENT UNIT)

vs.)

EIGHTY-FIVE THOUSAND SIX)
HUNDRED EIGHTY SEVEN AND)
45/100 DOLLARS (\$85,687.45); 2010)
CHEVROLET IMPALA VIN #)
2G1WB5EKOA1166142; 2008)
MERCEDES VIN #)
WDDDJ72X78A117250; 2009 HONDA)
CBR600RR9 VIN #)
JHPC400X9K201006; VARIOUS)
WEAPONS, MISCELLANOUS GOLD)
MEN'S JEWELRY, ELECTRONICS)
AND REAL PROPERTY LOCATED AT)
732 DRAGONFLY DRIVE, MYRTLE)
BEACH, SC TMS# 1642201065)

DEFENDANT'S PROPERTY)

MICHAEL A. HATTEN, STEPHANIE)
N. HATTEN A/K/A STEPHANIE N.)
MACKIE, JOSEPH L. WHITE,)
ELEANOR J. CARTER, BYRON A.)
GIDNEY, KRISTIN J. MILBY, IVAN)
K. CHATMAN AND STEVEN)
MACKIE,)

DEFENDANTS)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH CIRCUIT

2016-CP-26-2330

DEFENDANT STEPHANIE N. HATTEN A/K/A
STEPHANIE N. MACKIE'S RESPONSE TO
PLAINTIFF'S SECOND MOTION TO
DISMISS THE COUNTERCLAIM

HORRY COUNTY
2016 NOV -9 PM 12:38
NELANIE BAILEY, CLERK OF COURT

Defendant Stephanie N. Hatten a/k/a Stephanie N. Mackie (hereinafter "Defendant"), by and through her attorney, Erin E. Bailey, files this response to Plaintiff's Second Motion to Dismiss the Counterclaim.

COPY

PROCEDURAL HISTORY

This action was commenced by Plaintiff on or about April 11, 2016.

On or about August 17, 2016, Defendant filed an Answer and asserted Counterclaims against the Plaintiff.

On or about August 19, 2016, Plaintiff filed a Motion to Dismiss Defendant's Counterclaims.

On or about September 19, 2016, Defendant responded to Plaintiff's Motion asserting that Plaintiff failed to comply with the Civil Motions Pilot Program which requires parties to file a memorandum of law with any motion (see Op. 2015-09-10-01, S.C. Sup. Ct. September 10, 2015). Defendant also responded substantively to the bare-bones Motion which had been filed and served. The motion was then taken under advisement by the Court.

On or about October 4, 2016, Defendant filed a Memorandum in Support of Plaintiff's Motion.

SUMMARY OF ARGUMENT

To the extent that Plaintiff is seeking to file a *second* motion to dismiss, "successive Rule 12(b)(6) are prohibited." JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE (3d ed. 2010) 101. Instead of permitting a second bite of the apple, Rule 12(h)(2), SCRC, permit a renewal, at a trial on the merits, of a defense of failure to state facts sufficient to constitute a cause of action pursuant. Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 242, 363 S.E.2d 691, 692 (1988). In the alternative, Plaintiff's memorandum, to the extent it is not a *second* motion, seeks to circumvent the requirements of the Civil Motions Pilot Program with an untimely filing.

More importantly, Plaintiff misapprehends the applicable standard on a Rule 12(b)(6) motion and relies upon inapplicable citations to authority to create blanket immunity for elected Solicitors.

For the reasons discussed below, Plaintiff's motion is due to be denied.

ARGUMENT AND CITATION OF AUTHORITY

I. Plaintiff's Motion fails to meet the burden required for dismissal under Rule 12(b)(6).

"A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the complaint and [the court] must presume all well-pled facts to be true." Gressette v. South Carolina Electric & Gas Co., 370 S.C. 377, 378-79, 635 S.E.2d 538 (2006). "[A] judgment on the pleadings is considered to be a drastic remedy by our courts. Therefore, pleadings in a case should be construed liberally and the trial court . . . must presume all well pled facts to be true so that substantial justice is done between the parties." Overcash v. South Carolina Electric & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005).

Plaintiff has not converted this motion to one for summary judgment which would be premature because discovery¹ has not been completed.

As a result, this Court must look to only the pleading itself and the detail and content of the pleading must be viewed according to general pleading rules. State Bd. of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274, 276, 387 S.E.2d 458 (1990) ("A ruling on a 12(b)(6) motion to dismiss [for failure to state a claim] must be based solely upon allegations set forth on the face of a complaint."). Rule 8(e), SCRCF, provides for simple, concise and direct averments and states that "no technical forms of pleading are required." In addition, a trial court must review a challenged complaint in the light most favorable to

¹"[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) citing 10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983); 6 Moore's Federal Practice ¶ 56.02[6], p. 56-39 (2d ed. 1990). In Baughman, our Supreme Court ruled that summary judgment is premature when (1) plaintiffs demonstrate a likelihood that further discovery will uncover additional relevant evidence and (2) plaintiffs are not dilatory in seeking discovery. Accord, Doe ex rel. Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001) (holding that summary judgment was premature three years after the date of the commencement of a lawsuit because plaintiff had not taken depositions and was not dilatory in seeking discovery). In the instant case, the parties are in the process of exchanging written discovery and no depositions have been taken.

the nonmoving party and must consider the facts alleged in the complaint as true. Woodell v. Marion Sch. Dist. One, 307 S.C. 297, 298, 414 S.E.2d 794 (Ct. App. 1992).

Paragraph #39 of Defendant's Counterclaim specifically alleges that the 15th Circuit Drug Enforcement Unit executed the search warrant which resulted in the Defendant's property being wrongfully withheld from her.

Additionally, by submitting supporting documentation with his motion, Defense counsel is asking this court to look beyond the four corners of the document, which is inappropriate in a 12(b)(6) motion.

Under the applicable Rule 12(b)(6) standard, this allegation is sufficiently well pled² to survive a Motion to Dismiss as Plaintiff's efforts to go outside the four corners of the Counterclaim must be disregarded. As a result, this Honorable Court should deny Plaintiff's Motion.

II. Plaintiff is not entitled to blanket "prosecutorial immunity" for actions involving conversion.

Plaintiff asserts that he, as the Solicitor of the Fifteenth Circuit, is entitled to "prosecutorial immunity" from Plaintiff's Counterclaims. Plaintiff misapprehends the law of South Carolina in this regard.

As a threshold matter, Plaintiff relies on two cases for this proposition. The first, Maples v. Myers, 2004-UP-364, is an unpublished opinion from the Court of Appeals. Thus, pursuant to Rule 268(d)(2),

² Defendant further notes that, logically, if the Solicitor has the legal authority to bring this action on behalf of his own employees of the DEU, the Solicitor has the legal authority to return the property to its rightful owner and be counterclaimed against for tortious actions arising from the same occurrence. See generally Rule 17, SCRCP; Reporter's Note to Rule 13, SCRCP ("counterclaims arising out of the same transaction or occurrence that is the subject of the action are 'compulsory' under Rule 13(a) and are barred by *res judicata* or estoppel by judgment if not asserted."); and Hembree v. One Thousand Eight Hundred Forty-Seven Dollars, 404 S.C. 241, 249, 743 S.E.2d 864, 868 (Ct. App. 2013) (affirming the dismissal of a counterclaim against the 15th Circuit Solicitor who brought an action on behalf of the Horry County Police Department *not* SLED against whom the counterclaim was made). In this case, Defendant asserts counterclaims against the same law enforcement officers employed by the Solicitor whose shoes the Solicitor fills in bringing this action.

SCACR, this case is not precedent. Maples also is distinguishable from the instant case because The Plaintiff in the Maples case was seeking to hold Myers liable in his individual capacity, not in his capacity as Solicitor. The second, Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001) involves a Solicitor's assertion of the common law doctrine of "judicial immunity" as codified in the South Carolina Tort Claims Act in a malicious prosecution case. Defendant acknowledges that our Court of Appeals held that:

a prosecutor in the employ of this state is immune from personal liability under § 1983 or the South Carolina Tort Claims Act for actions relating to the prosecution of an individual as a criminal defendant -- regardless of the prosecutor's motivation -- provided the actions complained of were committed while the prosecutor was acting as an "advocate," as defined by Imbler v. Pachtman and its progeny. Additionally, the law is clear that a prosecutor cannot be sued in his official capacity under either § 1983 for money damages or the Tort Claims Act when the acts complained of were "judicial" or "quasi-judicial" in nature.

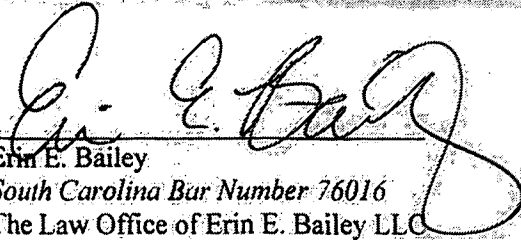
347 S.C. at 250, 553 S.E.2d at 509 (emphasis added).

This case, however, is factually different than the provision of immunity provided by the Court of Appeals in Williams. Defendant's counterclaims are brought for actions not directly related to the Solicitor's prosecution of her as a criminal defendant. Moreover, this is not a case where a Solicitor, or his deputy or assistant, allegedly engaged in malicious prosecution or made an allegedly defamatory statement about a criminal defendant while in court. Instead, this is a simple case about armed employees of the Solicitor seizing the property of a citizen and that citizen seeking recourse through the courts to obtain possession of her wrongfully seized property. In response, Plaintiff, the elected Solicitor, advances the extraordinary position that he can never be sued for any actions, including the forcible taking of real property and chattel, that his armed employees, who are members of the executive branch of government, engage in against the citizens of this State because he is a "quasi-judicial" officer.

Simply stated, that is not the law of the State of South Carolina or the United States of America; that is tyranny. See JAMES MADISON, FEDERALIST PAPER #47 ("The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.")

For the reasons set forth above, Defendant respectfully requests that this Honorable Court DENY Plaintiff's Motion.

Respectfully Submitted,



Erin E. Bailey
South Carolina Bar Number 76016
The Law Office of Erin E. Bailey LLC
407 Church St. Suite G
Georgetown, S.C. 29440
843-606-0764 (office)
843-781-8009 (fax)
ebailey@erinbaileylaw.com

Attorney for Defendant Stephanie N. Hatten

Georgetown, South Carolina
November 3, 2016



THE LAW OFFICE OF
ERIN E. BAILEY
LLC

Horry County Clerk of Court
For filing
1301 2nd Avenue
Conway, SC 29526

The Honorable Judge Benjamin Culbertson
P.O. Box 479
401 Cleland St.
Georgetown, SC 29442
(also delivered via e-mail to law clerk at bculbertsonlc@sccourts.org)

RE: 2016-CP-26-2330 Richardson v. Hatten et. al.

LETTER BRIEF

January 5, 2017

Dear Judge Culbertson:

Thank you for a robust discussion of the matters in the 12(b)(6) motion hearing regarding dismissal of my client's counterclaim today. When I left the hearing I realized that while I cited the content of a relevant case, I misstated the case name that contained said content, and I wanted to clarify for you before you make a decision and to preserve the record.

My argument relied on Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002), of which I misspoke and referred to as the Williams v. Condon decision. The Faile court held that in determining whether an actor is entitled to judicial immunity, the Court should look to the nature and function of the act, not the title of the actor. Faile at 324. After analyzing how other jurisdictions have dealt with judicial immunity questions, the court held:

South Carolina recognizes three exceptions to judicial or quasi-judicial immunity. Judges and other officials are not entitled to judicial immunity if: (1) they did not [**541] have jurisdiction to act; (2) the act did not serve a judicial function; [***7] or (3) the suit is for prospective, injunctive relief only. Id. at 385, 498 S.E.2d at 692. The second exception, which emphasizes the importance of the act, as opposed to the actor, is relevant here. Under the second exception, even judges are not insulated by judicial immunity when

📍 : P.O. Box 2560 Georgetown, S.C. 29442
407 Church Street Suite 1-G Georgetown, S.C. 29440¹

☎ : 843-606-0764
✉ : ebailey@erinbaileylaw.com

they act in an administrative capacity. Id. (citing Forrester v. White, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988)). In determining whether an act is judicial, the Court looks to the nature and function of the act. Id.; Mireles v. Waco, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991); Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978). Therefore, we must [*325] determine whether probation officer Dorsey's placement of Fredrico had the nature and function of a judicial act, thereby entitling him, and thus DJJ, to quasi-judicial immunity.

Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 324-325, 566 S.E.2d 536, 540-541 (2002).

As I indicated in my argument today, these issues of whether the act is an administrative act or a judicial act, along with the issues regarding the governance of the D.E.U. and its relationship with the Solicitor's office are issues that are ripe for exploration in discovery. As such, a motion for summary judgment based on these same arguments would be more proper than granting relief in a 12(b)(6) motion to dismiss which requires that the court only explore the four corners of the pleadings.

Respectfully submitted,



Erin E. Bailey
The Law Office of Erin E. Bailey LLC
407 Church St. Suite G
Georgetown, S.C. 29440
843-606-0764
ebailey@erinbaileylaw.com
Bar No: 76016

Cc: James Battle (via e-mail)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF Horry) 2016-CP-26-02330

Jimmy A. Richardson, II, Solicitor,)
Fifteenth Judicial Circuit on behalf)
Of the Fifteenth Circuit Drug)
Enforcement Unit,)

Plaintiff,)

vs.)

Michael A. Hatten, et al.,)

Defendants.)

Transcript of Record.

January 5, 2017

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

James R. Battle, II, Esquire
Attorney for Plaintiff

Erin E. Bailey, Esquire
Attorney for Defendant,
Stephanie Hatten

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 (On the record, January 5, 2017.)

2 THE COURT: 2016-CP-26-2330, Richardson and others versus
3 Hatten and others. I've got that this is a motion to dismiss.
4 Please give the court reporter your name and who you
5 represent.

6 MR. BATTLE: James Battle on behalf of Solicitor Jimmy
7 Richardson.

8 THE COURT: All right.

9 MS. BAILEY: Erin Bailey on behalf of Stephanie Hatten.

10 THE COURT: All right. Mr. Richardson [sic], this is
11 your motion?

12 MR. BATTLE: Yes, sir, Your Honor. I'm James Battle.
13 I'm representing Solicitor Richardson.

14 THE COURT: I mean, Mr. Battle. I apologize.

15 MR. BATTLE: That's okay.

16 THE COURT: All right. Let me hear from you.

17 MR. BATTLE: Okay. So this underlying case is a
18 forfeiture action. Ms. Bailey's client, Stephanie Mackie was
19 arrested for drug charges and then had property seized.
20 Solicitor Jimmy Richardson brought a forfeiture action
21 pursuant to the Forfeiture Statute. In her answer Ms. Mackie
22 has three counterclaims. One is for conversion, claim and
23 delivery and then punitive damages are alleged as a
24 counterclaim as well. Our motion to dismiss is based on that
25 Mr. Richardson or Solicitor Richardson was not the seizing

1 agency. He didn't seize the property, that the Drug
2 Enforcement Unit would be the proper party to sue if she had
3 some allegation as to how that seizure was conducted, also
4 that Solicitor Richardson has prosecutorial immunity when he's
5 carrying out his official duties and that same immunity could
6 be carried over from common law into the Tort Claims Act. So
7 that's the basis for our motion.

8 THE COURT: But I mean is her counterclaims against him
9 --

10 MR. BATTLE: Yes, sir, Your Honor.

11 THE COURT: -- personally or, I mean, he's appearing on
12 behalf of the Fifteenth Circuit Drug Enforcement Unit.

13 MR. BATTLE: That's right.

14 THE COURT: So she's not -- in his representative
15 capacity? I mean, I hadn't even seen --

16 MR. BATTLE: No. He's not -- he is, he is the party
17 bringing the case. The way the -- okay. So the way the
18 statute reads is this is 44-53-530.

19 THE COURT: Well, let me -- excuse me for interrupting.

20 MR. BATTLE: Sure.

21 THE COURT: What are you saying she should have done in
22 this case?

23 MR. BATTLE: She should, she should bring a separate
24 lawsuit against the Drug Enforcement Unit if she has an action
25 against the way this property was seized.

1 THE COURT: But then wouldn't -- couldn't you -- that
2 result in conflicting judgments if in this case it's ordered
3 the funds forfeited and then in that case it -- they could
4 rule that it was a wrongful conversion and you would have
5 conflicting judgments?

6 MR. BATTLE: Sure. And they do that -- they have -- when
7 you bring an action against a law enforcement agency, you have
8 a civil action against that law enforcement agency, oftentimes
9 the criminal action is, is -- has to be carried out and then
10 your civil action can go forward.

11 THE COURT: But I mean, this is a civil action.

12 MR. BATTLE: Well, this is a civil action but it's a --
13 it's, it's an official duty of the solicitor to bring
14 forfeiture actions. It specifically says in the statute, you
15 know, only the solicitor can bring a forfeiture action. So
16 his -- he -- in carrying out his official duties he has
17 absolute prosecutorial immunity and is not susceptible to
18 punitive damages or any damages that Ms. Mackie suffered in
19 the seizure.

20 THE COURT: All right. Ms. Bailey.

21 MS. BAILEY: Thank you, Your Honor. There's two major
22 issues here to address. First is this issue of the seizing
23 agency. As Your Honor's aware, the name of the DEU is the
24 Fifteenth Circuit Solicitor's Drug Enforcement Unit. Jimmy
25 Richardson is responsible for hiring and supervising the

1 commander of the DEU, the deputy commanders of the DEU. They
2 respond directly to him. They are solicitor's office
3 employees, and so this idea that it is a separate agency that
4 should be sued separately would, as Your Honor pointed out,
5 would create duplicitous litigation that could have
6 conflicting results, and in addition, the extent to which Mr.
7 Richardson supervises and handles DEU business is a matter
8 that can be handled in discovery that may be more appropriate
9 for summary judgment motion. We are here only on a motion to
10 dismiss. The only thing that is proper for Your Honor's
11 consideration is the four corners of the document and the four
12 corners of the document is silent as to this issue. We would
13 like the opportunity to explore the relationship between the
14 DEU and the solicitor's office in the discovery process before
15 Your Honor rules on that particular aspect of, of this
16 litigation.

17 THE COURT: But I mean what is it you're asking in your
18 counterclaims, for the \$85,000 and the weapons or, I mean,
19 what is it your counterclaim is it you're seeking aside from
20 the punitive damages?

21 MS. BAILEY: We're just -- we're asking, number one, for
22 the property back, and number two, for any damages arising out
23 of not having the property for as long as it takes to get the
24 property back.

25 THE COURT: I see.

1 MS. BAILEY: You know, my client is without a car. She
2 is without some cash that she could certainly use, and in the
3 meantime, she's suffering economic damages as a result.

4 The second issue has to do with prosecutorial immunity,
5 and Mr. Battle misstates the law. He says that there is
6 absolute prosecutorial immunity and that is just not correct.
7 There is immunity in the prosecution of a criminal case for
8 the elected solicitor and his employees. There is not
9 immunity, in fact there's a case that Mr. Battle relies on, I
10 believe it's Condon v. Williams, that goes in detail into --
11 yeah, it's Williams v. Condon, goes into detail about what a
12 prosecutor can be liable for and what he cannot be liable for.
13 So a prosecutor certainly in the course of actually
14 prosecuting a criminal action has some measure of protection.
15 However, it -- that case notes that there have been exceptions
16 carved out to prosecutorial immunity. One is advice to law
17 enforcement for instance, any advice that the solicitor gives
18 to law enforcement pre-prosecution he could be liable for.
19 The other one is for press conferences, any statements made in
20 press conferences. Now, this specific issue of a forfeiture
21 action it's not been spoken to as to where it falls, right, as
22 to whether it is in the course of prosecution of a crime or
23 whether it is an administrative action. The Williams court is
24 very specific that you don't look at the actor, right, you
25 don't look at the fact that he's a solicitor and say, "He's

1 immune." You look at the acts that's being performed, and if
2 the act is administrative in nature then there may be some
3 liability that arises out of those acts, and given that, you
4 know, there's a difference between saying it's his job to go
5 do forfeitures. No, not necessarily. The statute says he can
6 bring forfeitures, and there are many solicitors in this state
7 who don't bring forfeiture actions. Mr. Richardson decides to
8 bring forfeiture actions to fund his drug enforcement unit,
9 and given those facts, and Your Honor, we're not going into
10 the facts of the case today, but let me tell you briefly that
11 there were no drugs found in Ms. Hatten's home. There were no
12 drugs found in Ms. Hatten's car. There were no drugs found on
13 Ms. Hatten's person. There was \$1,000 found in her house, one
14 gun, yet they file a lis pendens on her house, they take her
15 money, they take her cars. The idea that we cannot
16 counterclaim for damages as a result of the seizure of that
17 property means that there would be unchecked authority.

18 THE COURT: All right. And I'm assuming that this issue
19 has not been addressed on appeal as to whether or not --

20 MR. BATTLE: It has, Your Honor. I have an opinion
21 unpublished, but it's an opinion from the Court of Appeals
22 that says prosecutors do have immunity in forfeiture actions,
23 and I have a copy of that case I can hand up to the Court, as
24 well as the Williams v. Condon case which Ms. Bailey
25 referenced.

1 MS. BAILEY: And, Your Honor, as to that unpublished
2 opinion I have several points to make on that.

3 THE COURT: Yeah. I mean, it's -- I've always understood
4 unpublished opinions cannot be relied on as authoritative, but
5 if that's the only thing we've got, tell me why I shouldn't
6 consider it.

7 MS. BAILEY: Yeah. I have several, several issues with
8 that. Number one, Mr. Maples was pro se in that litigation,
9 and as a result, the issues were not fully briefed and fully
10 laid out which I think is why it ended up as an unpublished
11 opinion because it wasn't a fully appropriately litigated case
12 for such an important issue. Second of all, it was a strange
13 set of facts. It took five years for Solicitor Myers to file
14 the action that confirmed the seizure, and so the issue there
15 really had to do with a civil -- the pro se litigant filed a
16 complaint for a civil conspiracy based on the technical
17 failures of, of Solicitor Myers' forfeiture action. Also
18 drugs were actually found on the Defendant in that case, and
19 it was a separate agency, right. So in that case you're
20 talking about a separate law enforcement agency, not an agency
21 that the solicitor himself created, and finally in Maples v.
22 Myers that was a summary judgment motion. It was a not a
23 motion to dismiss. They had the opportunity to do discovery
24 and determine the relationship between the, you know, the
25 agency and the solicitor and determined more about the facts

1 of the case before the judge decided legally where it fell,
2 whereas this is just a 12(B)(6) motion. So, you know, Your
3 Honor can only consider the facts in the pleadings themselves,
4 and we would just like the opportunity to do additional
5 discovery. We think these arguments should be fleshed out
6 after discovery at the summary judgment phase.

7 THE COURT: Okay. Anything in reply?

8 MR. BATTLE: Just that, Your Honor, I've been in front of
9 you on a similar motion and had it granted and, and it's a --

10 THE COURT: What case was that?

11 MR. BATTLE: It was a case in Georgetown. I don't know
12 the name, but it -- it's a counterclaim against the solicitor
13 on a forfeiture and it was, you know, I made a motion to
14 dismiss and that was granted.

15 THE COURT: Was there anybody there arguing in opposition
16 to it?

17 MR. BATTLE: Yes, sir, Your Honor, there was an attorney.

18 THE COURT: I don't remember it. What was the
19 counterclaim for?

20 MR. BATTLE: I don't remember, Your Honor. It was a -- I
21 mean, I can get that information to you.

22 THE COURT: No. We're here ready to go forward. All
23 right.

24 MR. BATTLE: And I submitted a memo in response to Ms.
25 Bailey's argument that the drug enforcement unit is the same

1 as the solicitor's office with that agreement that shows how
2 actually the drug enforcement unit is constructed.

3 THE COURT: So you're saying that she can sue the drug
4 enforcement?

5 MR. BATTLE: Absolutely, absolutely. There's nothing
6 preventing her from doing that, and there's extensive case
7 law.

8 THE COURT: Well, let me ask you, I mean --

9 MR. BATTLE: Right.

10 THE COURT: -- so, so how does the decision come about
11 for these forfeitures? Is it somebody from the drug
12 enforcement unit contacts Mr. Richardson and says, "We want
13 you to bring this forfeiture action?"

14 MR. BATTLE: So it's very specifically laid out in the
15 statute. They -- the drug enforcement unit does the arrest.
16 They seize the property. They create a seizure packet which
17 has an affidavit for their basis for seizing the property.
18 It's submitted to the solicitor's office, and then the
19 solicitor or his designee, in this case me, brings the
20 forfeiture action as a civil action on behalf of the law
21 enforcement agency. The statute says a forfeiture must be
22 accomplished either by the attorney general or the solicitor.

23 THE COURT: Okay. So only the solicitor and attorney
24 general can bring forfeitures --

25 MR. BATTLE: Right.

1 THE COURT: -- actions.

2 MR. BATTLE: The drug enforcement unit cannot bring a
3 forfeiture action.

4 MS. BAILEY: And Your Honor --

5 THE COURT: So they just seize it --

6 MS. BAILEY: The distinction is this, if it was the Horry
7 County PD that made the seizure then, yes, this case law says
8 we couldn't counterclaim against Solicitor Richardson for the
9 Horry County PD seizure, but in this case it's a DEU case,
10 it's its own agency and he makes the decisions. He drew up
11 the packet or staff in his office drew up the packet that the
12 DEU fills out, and then it -- then the DEU fills out the
13 packet, they submit it to Solicitor Richardson. If it's
14 insufficient in some way his office decides not to move
15 forward on it, and yet those things have happened. He has
16 made those decisions along the way. Therefore, a counterclaim
17 is not only -- it -- there's -- the rules of civil procedure
18 say that's it actually compulsory that if I have the
19 counterclaim I go ahead and bring it now in the course of the
20 same litigation, not that I file a separate lawsuit with
21 similar facts and everything.

22 THE COURT: Well, I mean, I guess my question is let's
23 say that the seizing agency was someone other than the DEU.
24 They seize the funds, the car, they take all of that, they
25 notify the solicitor's office, and the solicitor's office

1 says, "No. I'm not going to pursue it," then what happens to
2 the seized property? It's returned automatically then?

3 MS. BAILEY: Yes, Your Honor.

4 THE COURT: Okay. All right. So does the solicitor have
5 the option of telling Horry Police Department, "I'm not going
6 to bring a forfeiture action on your behalf"?

7 MS. BAILEY: Yes.

8 THE COURT: Okay. So the ultimate decision as to whether
9 or not to bring a forfeiture action rests with the solicitor;
10 is that correct?

11 MR. BATTLE: Yes, Your Honor.

12 THE COURT: All right. So how is the DEU liable for
13 bringing the forfeiture action or for -- how is -- the DEU
14 just seizes it --

15 MR. BATTLE: Uh-huh.

16 THE COURT: -- and basically tells the solicitor, "This
17 is what happened, this is what we've seized."

18 MR. BATTLE: Right.

19 THE COURT: And the solicitor says, "Well, we're going to
20 seek forfeiture of that then."

21 MR. BATTLE: That's right.

22 THE COURT: All right. So how is the DEU liable when
23 they're not even making the decision?

24 MR. BATTLE: They're making the -- they're making the
25 decision to conduct the seizure. So the car gets taken, it's

1 put on Horry County's lot, DEU uses Horry County's lot. So
2 when that packet gets to the solicitor's office all that
3 property has been seized. It's the same -- I'll make the
4 analogy, the law enforcement agency makes the arrest. The
5 decision on whether or not to prosecute is the solicitor's.
6 That discretion, be it making an arrest or making a
7 forfeiture, the basis for him having immunity is that decision
8 is not to be influenced by his exposure to civil liability.
9 So the reason we have prosecutorial immunity is because we
10 don't want the prosecutor thinking, "Well, I don't want to go
11 forward with this arrest," or "I don't want to go forward with
12 this forfeiture because I might get sued." The law
13 enforcement agency has a different immunity, qualified
14 immunity, but the prosecutor has absolute immunity, and, and
15 that would be the, the, the -- I guess the structure of how it
16 works, and if she has a complaint with how that property was
17 seized, her remedy, if she seeks outside remedy beyond just
18 having that property returned, it's to sue the law enforcement
19 agency, but the prosecutor is out of bounds and that -- and
20 that's well-established case law.

21 THE COURT: All right. Anything further?

22 MS. BAILEY: Your Honor, I mean, that's just not well
23 established case law, but if you read Williams v. Condon
24 you'll see that, that there have been times where there's not
25 absolute prosecutorial immunity, that if it's an

1 administrative action that there is liability for a prosecutor
2 potentially.

3 THE COURT: Well, I mean, I guess my question is is your
4 counterclaim based upon the fact that the solicitor brought
5 this forfeiture action or is your counterclaim based upon the
6 fact that the DEU took your client's car, money and that
7 stuff?

8 MS. BAILEY: Both. Both.

9 THE COURT: Both. Okay.

10 MS. BAILEY: And finally, Your Honor, the last argument
11 that I want to make and just point out is that these issues of
12 governance with the DEU, the issues of how the solicitor's
13 office interacts with the DEU are all ones that we would like
14 to explore in some discovery, and so that's why we feel like
15 this argument, while it is an interesting and fruitful one
16 because there's no clear case law on it, is one that's more
17 appropriate for summary judgment after all the facts have been
18 fleshed out and we've had an opportunity to depose some folks
19 and get some documents.

20 THE COURT: Okay. All right. I'll take it under
21 advisement and I'll let you know.

22 MS. BAILEY: Thank you, Your Honor.

23 MR. BATTLE: Thank you, Your Honor.

24 THE COURT: All right. Thank you.

25

(Adjourned.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of Jimmy A. Richardson, II, Solicitor, Fifteenth Judicial Circuit on behalf of the Fifteenth Circuit Drug Enforcement Unit versus Michael A. Hatten, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on January 5, 2017.

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

Grace L. Hurley
Grace L. Hurley, CVR-CM-M
Official Reporter

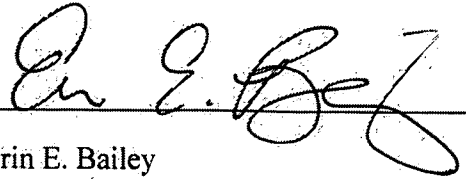
March 21, 2017.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 21, 2017

By:



Erin E. Bailey
THE LAW OFFICE OF
ERIN E. BAILEY LLC
407 Church St. Suite G
P.O. Box 2560
Georgetown, S.C. 29442
843-606-0764
843-781-8009 (Fax)
Attorney for Appellant

RECEIVED

AUG 01 2017

SC Court of Appeals