

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2016-CP-26-2330

(Court of Appeals Case No. 2017-000639)

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Jimmy A. Richardson, II, Solicitor, 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# 2GIWB5EKO1166142; 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

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RESPONDENT'S FINAL BRIEF

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUES ON APPEAL ..... 3

STATEMENT OF THE CASE..... 3

STATEMENT OF FACTS.....5

STANDARD OF REVIEW.....5

ARGUMENT.....6

**I. The circuit court properly dismissed Appellant Hatten’s counterclaims against Respondent Richardson based on prosecutorial immunity.**

CONCLUSION..... 8

**TABLE OF AUTHORITIES**

**Cases**

*Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010).....5

*Maples v. Myers*, 2004 WL 6331521 (Ct. App. June 10, 2004).....7

*Williams v. Condon*, 347 S.C. 227, 236, 553 S.E.2d 496, 502 (Ct. App. 2001).....6, 7

*Yaselli v. Goff, et al.*, 12 F.2d 396, 409 (2nd Cir. 1926).....7

**Statutes**

42 U.S.C. § 1983.....8

Rule 12(b)(6), SCRCP .....3, 4, 5, 6

S.C. Code § 44-53-520.....1, 3

S.C. Code § 44-53-530.....3, 4, 5

## STATEMENT OF ISSUES ON APPEAL

### I. Whether the circuit court properly dismissed Appellant Hatten's counterclaims against Respondent Richardson based on prosecutorial immunity?

#### STATEMENT OF THE CASE

On April 11, 2016, Respondent Richardson filed a forfeiture action against multiple defendants, including Appellant Stephanie N. Hatten a/k/a Stephanie N. Mackie. This forfeiture action was brought pursuant to this State's narcotics forfeiture statutes, Sections 44-53-520 and 530 of the South Carolina Code of Laws (1976 as amended). On July 19, 2016, Respondent Richardson added a party and filed an amended complaint. (R. p. 5).

On August 17, 2016, Appellant Hatten filed an answer to Respondent Richardson's complaint. (R. p. 16). Appellant Hatten's answer alleged three counterclaims against Respondent Richardson: conversion, claim and delivery, and punitive damages. (R. pp. 20-22).

On August 19, 2016, Respondent Richardson filed a motion to dismiss Appellant Hatten's counterclaims pursuant to Rule 12(b)(6) of the S.C. Rules of Civil Procedure. (R. p. 24). In a memorandum filed in support of his motion on October 4, 2016, Respondent Richardson argued that Appellant Hatten's counterclaims should be dismissed because: (1) Respondent Richardson was not the seizing law enforcement agency, and therefore, Appellant Hatten had filed her claims against the wrong party; (2) as the Solicitor for the 15th Judicial Circuit, Respondent Richardson was entitled to prosecutorial immunity; and (3) Appellant Hatten's counterclaims

should be dismissed pursuant to the S.C. Tort Claims Act, S.C. Code Sections 15-78-10 to 220. (R. p. 26).

On September 19, 2016, Appellant Hatten filed a response to Respondent Richardson's motion and argued: (1) Respondent Richardson's motion failed to meet the burden for dismissal under Rule 12(b)(6); (2) Respondent Richardson was not entitled to prosecutorial immunity; and (3) Appellant Hatten needed more time for discovery before her claims should be dismissed. (R. p. 47).

On January 5, 2017, the Honorable Benjamin H. Culbertson heard oral arguments on Respondent Richardson's motion. Respondent Richardson and Appellant Hatten were represented by counsel. On the same day as oral argument, Appellant Hatten's counsel wrote a letter to Judge Culbertson clarifying Appellant Hatten's legal arguments. (R. p. 58).

On February 17, 2017, Judge Culbertson granted Respondent Richardson's motion and dismissed Appellant Hatten's counterclaims with prejudice. (R. p. 2). Judge Culbertson's order determined Appellant Hatten's counterclaims should be dismissed because South Carolina's narcotics forfeiture statute, S.C. Code Section 44-53-530(a), requires either the Attorney General or the circuit solicitor bring forfeiture actions. *Id.* Because bringing forfeiture actions is part of the official duties of circuit solicitors, Respondent Richardson, as Solicitor for the 15th Judicial Circuit, was entitled to prosecutorial immunity as to Appellant Hatten's counterclaims. *Id.*

On March 13, 2017, Appellant Hatten initiated this appeal.

## STATEMENT OF THE FACTS

Respondent Richardson's forfeiture complaint alleges multiple defendants, including Appellant Hatten, were involved in a large scale drug dealing operation calling itself the 24/7 Boyz. (R. p. 5). The basis of the operation was 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. *Id.* 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 illegal drugs. *Id.* The Defendant Property, as described in the caption, was either used in furtherance of the 24/7 Boyz' drug dealing operation or purchased with funds from the 24/7 Boyz' drug dealing operation. *Id.*

Appellant Hatten denied these allegations in her answer. (R. p. 16).

The circuit court dismissed Appellant Hatten's counterclaims based on legal considerations and did not consider the facts of this case.

## STANDARD OF REVIEW

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Id.* "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.” *Id.* “In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Id.*

## ARGUMENT

### *I. Prosecutorial Immunity*

The circuit court’s rationale for dismissing Appellant Hatten’s counterclaims was straightforward. (R. p. 2). Respondent Richardson brought the instant forfeiture action pursuant to the drug forfeiture statute, S.C. Code Section 44-53-520. South Carolina Code Section 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.” Respondent Richardson is the circuit solicitor for the 15th Judicial Circuit. “Because it is part of his official duties to bring forfeiture actions, [Respondent Richardson] has prosecutorial immunity from civil liability in this case.” (R. p. 4).

Prosecutorial immunity is an absolute immunity derived from the common law and grounded in the principles of public policy. *Williams v. Condon*, 347 S.C. 227, 236, 553 S.E.2d 496, 502 (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.).

“The public interest requires that persons occupying such important positions and so closely identified with the judicial departments of the government should speak and act freely and fearlessly in the discharge of their important official functions. They should be no more liable to private suits for what they say and do in the discharge of their duties than are the judges and jurors, to say nothing of the witnesses who testify in a case.” *Id.* (quoting *Yaselli v. Goff, et al.*, 12 F.2d 396, 409 (2nd Cir. 1926)). Therefore, it follows “[o]fficials in the performance of a duty imposed by law cannot be held in damages for acts done strictly within the lines of official duty.” *Id.*

Appellant Hatten has not alleged that Respondent Richardson lacked the authority to bring the instant action or that in bringing this action he acted outside the scope of his official capacity. Accordingly, Respondent Richardson is entitled to prosecutorial immunity as to Appellant Hatten’s counterclaims, and the circuit court’s order should be affirmed.

Importantly, this issue is not one of first impression for this Court. In the unpublished opinion *Maples v. Myers*, this 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.” 2004 WL 6331521 at \*3 (Ct. App. June 10, 2004).

## ***II. Tort Claims Act***

The circuit court did not base its decision to dismiss Appellant Hatten’s counterclaims on the S.C. Tort Claims Act, S.C. Code Sections 15-78-10 to 220, and therefore, it is not relevant to this appeal.

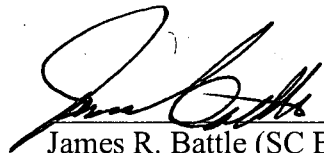
### ***III. Wrong Party***

Assuming, *arguendo*, Appellant Hatten defeated Respondent Richardson's forfeiture action, she would then be entitled to the immediate return of her seized property. If Appellant Hatten believes she is entitled to damages beyond the return of her seized property, the proper procedure for recovering those damages would be a separate lawsuit against the 15th Circuit Drug Enforcement Unit ("DEU") and/or the agents involved in the seizure of her property. Such claims are routinely brought pursuant to the S.C. Tort Claims Act or 42 U.S.C. Section 1983.

However, filing tort action counterclaims in a forfeiture action brought by a circuit solicitor is not the proper procedure. To allow such actions to go forward would discourage circuit solicitors from carrying out their official duties and mire forfeiture actions in prolonged litigation.

### **CONCLUSION**

For the forgoing reasons, Respondent Richardson respectfully requests that the order of the Honorable Benjamin H. Culbertson be affirmed and that Appellant Hatten's appeal be dismissed.

  
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