THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
CASE No. 2011- CP-10-1084
Circuit Court Judge R. Markley Dennis, Jr.

ROOSEVELT SIMMONS.....Petitioner

Vs.

MASE and COMPANY, LLC, J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S DEPARTMENT,
CHARLESTON COUNTY REVENUE COLLECTIONS
DEPARTMENT and HARRY LONG ..... Respondents

Unpublished Opinion No. 2018-UP-333
(S.C. Ct. App. Filed July 18, 2018)

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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and Harry Long

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Roosevelt Simmons, Appellant,

v.

Mase and Company, LLC, J. Al Cannon, Jr., Charleston County Sheriff's Office, Charleston County Revenue Collections Department, and Harry Long, Respondents.

Appellate Case No. 2014-002575

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-333
Heard November 9, 2017 – Filed July 18, 2018

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Edward A. Bertele, of Charleston, for Appellant.

Wendy Raina Johnson Keefer, of Keefer & Keefer, LLC, of Charleston, for Respondent Mase and Company, LLC; Christopher Thomas Dorsel, of Senn Legal, LLC, of Charleston, for Respondents J. Al Cannon, Jr.,

Charleston County Sheriff's Department, Charleston County, Charleston County Revenue Collections Department, and Harry Long.

PER CURIAM: Roosevelt Simmons appeals the trial court's order granting summary judgment against him on his action to set aside a sheriff's sale of his property to Mase and Company, LLC and other claims against Al Cannon Jr., Charleston County Sheriff's Office, Charleston County, Charleston County Revenue Collections Department, and Harry Long. We affirm in part, reverse in part, and remand.

1. We agree with the circuit court Simmons should have brought his action seeking relief from the magistrate's court judgments in the magistrate's court. *See Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992) ("The power to open, modify or vacate a judgment is possessed solely by the court that rendered the judgment."). Further, we find Simmons was not entitled to relief from the magistrate's court judgments because the magistrate possessed jurisdiction to render them. *See Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997) ("Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong."); *State ex rel. McLeod v. Crowe*, 272 S.C. 41, 46, 249 S.E.2d 772, 775 (1978) ("[M]agisterial courts are vested with judicial power and are, therefore, a part of the State's uniform judicial system."); S.C. Code Ann. § 22-3-10(1) (2007) (providing magistrates have concurrent civil jurisdiction "in actions arising on contracts for the recovery of money only, if the sum claimed does not exceed seven thousand five hundred dollars."); S.C. Code Ann. § 4-9-30(5)(a) (Supp. 2017) (providing authority for counties to assess service charges for solid waste disposal); *Skyscraper Corp. v. Cty. of Newberry*, 323 S.C. 412, 416, 475 S.E.2d 764, 765-66 (1996) ("Unlike a tax, a service charge or user fee is imposed on those members of the community who receive a special benefit from the proceeds of the charge. To be valid, a service charge must be uniform."). We find the magistrate court had subject matter jurisdiction over the County's contract action for collection of the Charleston County Solid Waste Recycling and Disposal User Fee (User Fee). We hold any arguments concerning personal jurisdiction are conclusory, and thus abandoned. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating appellant was deemed to have abandoned issue for which he failed to provide any argument or supporting authority).

Simmons's arguments concerning the alleged removal of the User Fee by the Auditor's Office could have been raised at the magistrate's court proceeding and do not implicate subject matter jurisdiction. *See Smith Cos. of Greenville v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993) ("Relief from judgment under Rule 60 [of the South Carolina Rules of Civil Procedure (SCRCP)] should not be considered a substitute for appeal from a final judgment, particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion."); *United States v. Buck*, 281 F.3d 1336, 1344 (10th Cir. 2002) ("Appellants make the all-too-common error of thinking that a court acts without jurisdiction when it makes a mistake. But 'a judgment is not void merely because it is erroneous.'" (quoting *In re Four Seasons Sec. Laws Litig.*, 502 F.2d 834, 842 (10th Cir. 1974))).

2. We find the trial court did not err in granting summary judgment on Simmons's equal protection claim. Simmons's argument the County did not establish any rational basis for application of the User Fee to him could have been raised during the proceeding to collect the User Fee in magistrate's court. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Under the doctrine of res judicata, '[a] litigant is barred from raising any issues [that] were adjudicated in the former suit and any issues [that] might have been raised in the former suit.'" (quoting *Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987))); *Smith Cos. of Greenville*, 311 S.C. at 359, 428 S.E.2d at 902 ("Relief from judgment under Rule 60[, SCRCP] should not be considered a substitute for appeal from a final judgment, particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion."). Furthermore, the County imposed the User Fee on landowners in an attempt to reduce the amount of trash on private property. Thus, it had a rational basis for the imposition of the fee. *See Denene, Inc. v. City of Charleston*, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004) ("Under the rational basis test, the requirements of equal protection are satisfied when: (1) the classification bears a reasonable relation to the legislative purpose sought to be affected; (2) the members of the class are treated alike under similar circumstances and conditions; and, (3) the classification rests on some reasonable basis."). We also find no merit to Simmons's argument the arbitrary enforcement of the User Fee judgment violated his right to equal protection. *See Town of Iva ex rel. Zoning Adm'r v. Holley*, 374 S.C. 537, 541, 649 S.E.2d 108, 111 (Ct. App. 2007) ("One seeking to show discriminatory enforcement in violation of the Equal Protection Clause must demonstrate arbitrary and purposeful discrimination in the administration of the law being enforced."); *id.* ("[E]ven

assuming [a governmental entity] is not enforcing [an] ordinance equally, the fact that there is some unequal treatment does not necessarily rise to the level of a constitutional equal protection violation." (quoting *Denene, Inc.*, 358 S.C. at 96, 596 S.E.2d at 922); *Engquist v. Oregon Dep't of Agric.*, 478 F.3d 985, 993 (9th Cir. 2007), *aff'd*, 553 U.S. 591 (2008) ("[A]cts that are malicious, irrational, or plainly arbitrary do not have a rational basis."). Long described his search of the public records for Simmons's assets and explained his reasons for deciding to levy against TMS 498. Simmons offered no evidence of any public records or tax records showing his ownership of farm machinery or heavy equipment that would have put Long on notice that Simmons owned those pieces of personal property. We hold Simmons failed to establish any evidence Long's conduct was "malicious, irrational, or plainly arbitrary" and thus lacking a rational basis.

3. We disagree with Simmons's argument the trial court erred in granting summary judgment on his claim for negligent retention. First, as the decision to retain Long as an employee was a discretionary function of the Sheriff's Office, the Sheriff's Office has discretionary immunity under the South Carolina Tort Claims Act. *See* S.C. Code Ann. § 15-78-60(5) (2005) (holding a governmental entity is not liable for a loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee"); *Sabb v. S.C. State Univ.*, 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002) ("Discretionary immunity is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards."). Next, Simmons's claims for negligent hiring and retention fail because he did not demonstrate a nexus or similarity between the underlying facts in Long's disciplinary history and Long's choice to levy upon TMS 498. *See Doe v. ATC, Inc.*, 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005) (noting causes of action for negligent hiring and retention "turn on two fundamental elements—knowledge of the employer and foreseeability of harm to third parties"); *id.* ("From a practical standpoint, these elements are analyzed in terms of the number and nature of prior acts of wrongdoing by the employee, and the nexus or similarity between the prior acts and the ultimate harm caused."); *McCall v. IKON*, 380 S.C. 649, 659-60, 670 S.E.2d 695, 701 (Ct. App. 2008) (noting an appealed order comes to the appellate court with a presumption of correctness and the burden is on appellant to demonstrate reversible error); *id.* (explaining the appellate court is "obliged to reverse when error is called to our attention, but we are not in the business of

figuring out on our own whether error exists" (quoting *Harris v. Campbell*, 293 S.C. 85, 87, 358 S.E.2d 719, 720 (Ct. App. 1987))).

4. We disagree with Simmons's argument the trial court erred in granting summary judgment on his claim against Long. *See* S.C. Code Ann. § 15-78-70(b) (2005) (providing the Tort Claims Act does not provide a governmental employee with immunity from liability "if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude"); *Jones v. Garner*, 250 S.C. 479, 488, 158 S.E.2d 909, 914 (1968) ("Actual malice means that the defendant was actuated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff . . . ."). Simmons contends Long sold TMS 498 with the intention of punishing him for a threatening telephone call Long claims Simmons made. Long testified that he took the threats Simmons made seriously, but there is no indication he took the threats personally. Long stated he flagged Simmons's property for the safety of other officers who might respond to a call to the property. Despite the telephone call, he continued to send Simmons letters advising him to make arrangements to pay the judgment to avoid the sale and tried to explain to Simmons how he could avoid the sale when he served the notice of levy. Long testified he chose TMS 498 because he believed it had the best chance of satisfying the judgments. In addition, he consulted with his supervisor, who approved proceeding with levying TMS 498. Simmons's argument Long acted with actual malice is based on pure speculation. *See Nelson v. Piggly Wiggly Cent., Inc.*, 390 S.C. 382, 390, 701 S.E.2d 776, 780 (Ct. App. 2010) (stating a non-moving party may not rely on speculation to defeat a motion for summary judgment).

5. We agree with Simmons's argument the trial court erred in dismissing his claim to invalidate the sheriff's sale due to the inadequacy of the sale price. *See Bloody Point Prop. Owners Ass'n v. Ashton*, 410 S.C. 62, 70, 762 S.E.2d 729, 733 (Ct. App. 2014) ("A judicial sale will be set aside when either: (1) the sale price 'is so gross as to shock the conscience[;]' or (2) the sale 'is accompanied by other circumstances warranting the interference of the court.'" (quoting *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008))); *id.* (explaining while our courts have "not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court," courts have consistently held a sale for less than ten percent of a property's actual value shocks the conscience). Here, Long testified

the appraised value of TMS 498 was $23,900. Simmons presented an appraisal made in 2006 valuing the property at $70,000. Although the sales price of $600.00 is less than ten percent of even the lower value of the property, Simmons may not be entitled to equitable relief due to his own inequitable conduct. Mace argues Simmons's delay and adversarial stance with the County has made it inequitable to return the property as an appropriate remedy. *See Belle Hall Plantation Homeowner's Ass'n v. Murray*, 419 S.C. 605, 619, 799 S.E.2d 310, 317 (Ct. App. 2017), *reh'g denied* (May 26, 2017), *cert. denied* (Mar. 7, 2018) ("Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." (quoting *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004); *id.* ("The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice."); *id.* (considering the respondent's pre-sale conduct and finding it troubling but nonetheless affirming the trial court's holding the respondent's action to vacate a foreclosure sale was not barred by laches). Therefore, we remand the matter to the trial court for consideration of the issue.

We reverse the trial court's dismissal of Simmons's claim to set aside the sheriff's sale due to the inadequacy of the price and remand the matter to the trial court for a determination of whether Simmons's claim is barred by laches. We affirm all remaining issues.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

LOCKEMY, C.J., and HUFF and HILL, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
CASE No. 2011- CP-10-1084
Circuit Court Judge R. Markley Dennis, Jr.

ROOSEVELT SIMMONS..... Appellant

Vs.

MASE and COMPANY, LLC,
J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S DEPARTMENT,
CHARLESTON COUNTY REVENUE COLLECTIONS DEPARTMENT
and
HARRY LONG..... Respondents

PETITION FOR REHEARING

Appellant respectfully requests Rehearing of that part of this Court's Decision and Opinion of July 18, 2018 affirming the decision of the Circuit Court dismissing the Second Amended Complaint as to Respondents Al Cannon, Jr., Charleston County Sheriff's Department, Charleston County Revenue Collections Department and Harry Long (the "County Respondents) and directing a hearing by the Circuit Court on laches. Appellant asserts that the Court did not correctly apply the established law and overlooked facts in the Record as discussed more fully below.

A. The Court erred by interpreting the Magistrates Court Act to include the collection of user fees as part of a general class of case under its jurisdiction

The Court held that the Magistrates Court had jurisdiction over the County's suit for collection of the user fee as part of the " general class to which the proceedings belong" citing Bardon Properties, NV v. Eidolon Corp., 326 S.C. 166, 485 S.E. 2d 371 (1997); and

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that a suit to collect a user fee was an action "arising on contracts for the recovery of money only" under S.C. Code Ann. Section 22-3-10(1). Decision and Order at 2. Rehearing on this issue should be granted for several reasons.

Appellant asserts that the "general class of cases" paradigm cited in Bardon Properties, NV v. Eidolon Corp., 326 S.C. 166, 485 S.E. 2d 371 (1997) and relied upon by the Court is not applicable to expand the Magistrates Court jurisdiction. Bardoon decided the question of whether a lack of standing negated the Circuit Court's jurisdiction – it does not. Bardoon relied upon Dove v Gold Kist, 314 S.C. 235,238, 442 S.E. 2d 598, 600 (1994) which decided the question of whether improper venue would divest the Circuit Court of appellate jurisdiction- it does not. A fair reading of these cases is that the Circuit Court's subject matter jurisdiction which is already present will not be limited based upon procedural concerns i.e. venue and standing.

Bardoon and Dove are not applicable because this case concerns County Respondents efforts to expand the scope of the Magistrates Court jurisdiction where there is no existing jurisdiction. Moreover, Appellant has argued, Appellant's Brief at 44, that the Magistrates Court is a court of limited jurisdiction and these cases are not applicable to an inferior court whose jurisdiction is specifically proscribed. Therefore the "general class of case "theory of jurisdiction applied to the Circuit Court should not be applied to this case involving the Magistrates Court jurisdiction as a matter of sound judicial policy.

The Court also referenced the provisions of the general welfare statute, S.C. Code Ann. Section 4-9-30(5)(a) allowing County to assess service charges for solid waste disposal. Decision and Order at 2. As Appellant has argued, Appellant's Brief at 45-46, S.C. Code Ann. Section 4-9-30(5)(a) is not applicable for considering whether there is additional

Magistrates Court jurisdiction created which is beyond what is contained in the enabling statute, S.C. Code Ann. Section 22-3-10. Instead, the Court should have addressed the specific provisions for the regulation of solid waste disposal S.C. Code Ann. Section 44-55-1210 et seq., as cited in the County's own user fee ordinance, 10-51. It is an established principle of statutory interpretation that the particular statute takes precedence over the more general. Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995); James v. South Carolina Dept. of Transp., 393 S.C. 440, 711 S.E.2d 919 (Ct. App. 2011). In Terpin v. Darlington County Council, 286 S.C. 112,114, 332 S.E.2d 771, 773 (1985), the Supreme Court held that the general welfare statute cannot provide the basis for a County ordinance to regulate activities which are subject to the provisions of a specific statute. Therefore, under Terpin, the existence of a specific statute to regulate solid waste removal specifically prevents this Court from interpreting the general welfare state to allow collection of a user fee other than in accordance with that statute.

County Respondents argued that Rock Hill Body Co. v Rainey, 294 S.C. 426, 365 S.E. 2d 228 (Ct. App. 1987) established that the "general classes of cases to which the proceedings in question belong" does apply to Magistrates Court jurisdiction. County Respondents Brief at 39. County Respondents' interpretation of Rock Hill is wrong, and this Court did not accept it as validation of the theory to inferior courts. That case involved interpretation of S.C. Code Ann. Section 29-15-10 which specifically authorizes the Magistrate to sell property to enforce judicial liens for money owed for services by a repair shop, storage facility or towing company. The Rock Hill Body Court said that "in order to enforce the lien by the statutory method established, there must be a valid lien to enforce. . .

[A] lien must be definite . . . and clearly established and not open to change of any sort in a subsequent proceeding . . . . " 294 S.C. at 429, 365 S.E. 2d at 230. The Court then held that the Magistrate Court could determine the amount of the lien only if the disputed amount was less than its jurisdictional limit. Id. Therefore, Rock Hill Body can be fairly read as interpreting the provisions of S.C. Code Ann. Section 29-15-10 to allow the Magistrates Court to conduct a hearing to implement its statutory power to enforce liens.

This case is clearly distinguishable from Rock Hill Body because it involved a separate and specific authorization of jurisdiction for the Magistrate Court to enforce liens which is not otherwise within its subject matter jurisdiction under S.C. Code Ann. Section 22-3-10. See S.C. Code Ann. Section 29-15-10 (enforcement of a mechanics lien by the Magistrates Court). Unlike the statute in Rock Hill Body, S.C. Code Ann. Section 44-55-1210 et seq. does not authorize the collection of user fees from the Magistrates Court but requires that they be collected like "ad valorem taxes" pursuant to S.C. Code Ann. Section 12-45-70. See also Charleston County Code of Ordinances Section 10-56. Therefore, Rock Hill Body cannot be applied to this case as a justification for creating jurisdiction in the Magistrates Court which does not already exist.

Appellant further contends that the Court's reference to Magistrates Court jurisdiction over contracts for the recovery of money only, S.C. Code Ann. Section 22-3-10(1), Decision and Order at 2, does not support application of the "general class of cases" theory it seeks to adopt here. First, a user fee collection case is not a type of contract case. A user fee is a type of a tax and is not voluntary. See Brown v. Horry County, 308 S.C. 180, 185, 417 S.E.2d 565(1982)(a user fee is a type of tax that is uniform and paid into a special fund); Powell v. Chapman, 260 S.C. 516, 197 S.E.2d 287 (1973)(a tax is an enforced contribution,

collected to raise revenue for public or governmental purposes). Therefore, the County's collection of a user fee cannot be characterized as enforcement of any agreement between Appellant and Respondent Charleston County.

Further, County Respondents did not assert the theory that collection of a user fee was analogous to a contract action before this Court or ask that the lower Court ruling be affirmed on any basis found in the Record under Rule 208(a (2), S.C.A.C.R. See County Respondents' Brief at 37-40; nor did they assert it before the Circuit Court. See R. 163-178,417-420, 459-461. Since the Circuit Court did not make any ruling on that issue, County Respondents are barred from raising it here. Brashier v. South Carolina Dept. of Transp., 327 S.C. 179, 186 fn. 7, 490 S.E.2d 8 (1997) (additional ground for sustaining dismissal not raised below will not be considered)

In summary, there is no specific statutory authority in the Magistrates Court Statute, S.C. Code Ann. Section 22-3-10 creating jurisdiction over the collection of a user fee. There is no reported case applying the "general class of cases" paradigm to the scope of the Magistrates Court jurisdiction under S.C. Code Ann. Section 22-3-10.

Therefore, based upon the clear language of S.C. Code Ann. Section 44-55-1210 and the lack of any controlling precedent supporting its expansion of Magistrates Court jurisdiction, Appellant urges this Court to reconsider its Decision and Order. The Court should apply the enabling statute as written i.e., that the user fee must be collected like a tax and if unpaid by a sale of the property subject to the user fee and not in any proceeding in the Magistrates Court. As a matter of judicial policy, this Court should not apply cases dealing with the jurisdiction of the Circuit Court, the statewide court of general jurisdiction to the Magistrates Court which is of limited jurisdiction. That is solely the province of the

Legislature. The Court should not find jurisdiction where none has been plainly vested by the Legislature. Finally, this Court should not uphold the Magistrates Court jurisdiction for a reason which is not set forth on the face of the Record. See Rule 220(b), S.C.A.C.R. (basis for opinion must be "fairly arising upon the record").

B. The Court erred on the law and facts in dismissing the Fourth Count equal protection claims

Appellant's claims for denial of equal protection under the Fourth Count were based upon (1) the alleged discriminatory effect of imposing a user fee upon Appellant, who did not receive solid waste disposal services and (2) Respondent Long's execution upon real property instead of personalty. The Court denied both bases for an equal protection violation. Decision and Order at 3-4. Appellant contends that for the reasons set forth below, the Court should grant Rehearing as to each claim

1. Application of the user fee to non-users violates equal protection

Although the Court found that the alleged unequal application of the user fee could have been raised at a hearing in Magistrates Court and was res judicata, Id. at 3, the Court addressed the merits of this equal protection claim. Id. The Court held that the user fee was imposed against all landowners regardless of their use of the solid waste facilities in order to reduce trash on all private property. Id. In view of Appellant's request for Rehearing on the issue of Magistrates Court jurisdiction and for the reasons set forth below, Appellant respectfully urges Rehearing on whether the user fee may be applied to Appellant without violating the equal protection provisions of the Constitution.

Appellant contended that he was not similarly situated to other residential property owners to whom the Ordinance was applied. Appellant's Brief at 26-27. In denying this equal protection claim, this Court applied the "rational basis test" citing Denene v City of

Charleston, 359 S.C. 85, 596 S.E. 2d 917 (2004). The Court's reason that the fee could be charged to non-users was that the purpose of the user fee was to reduce trash on private property, implying that Appellant benefitted nonetheless. County Respondents argued that this general purpose be applied to justify the disparate treatment. County Respondents' brief at 26. But the Court's reasoning ignores the plain language of the enabling statue and Charleston County Ordinance Section 10-51(8) which "grants the county council the power to provide and regulate solid waste . . . and to levy fees against **persons for whom services are provided.**" (emphasis added). Respondent Charleston County Revenue Collection Department's own witness, George Boniface admitted that this was the purpose of the Ordinance. R. p. 276, page 25 line 12 to 17. Where the language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

It is well established that in considering whether there is a violation of equal protection, "[a]ny differences of application must be justified by the law's purpose.'" Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009). As noted by Appellant, Appellant's Brief at 27, County Ordinance 10-51 does not mandate that Appellant send his trash to a county facility for disposal, in other words he is not required to become a user. He can dispose of it on his own property as long as he does not create a nuisance. See Charleston County Ordinance Section 10-69 (2). If the express purpose of the Ordinance is to provide solid waste removal services for users and to charge a fee, there is no rational basis to apply the ordinance to non-users. The Court's ruling that the purpose was to reduce trash on private property is not consistent with the plain language and purpose for which the Ordinance was

adopted. The rationale adopted by the Court of removing trash is more applicable to a tax since the purpose of a tax is to fund an overall public benefit for which all property owners can be taxed, see Powell v. Chapman, 260 S.C. 516, 197 S.E.2d 287 (1973) and should not be applied to a user fee. The user fee cases cited below rely upon the rationale that the fee can be imposed for services provided to determine whether any disparate treatment violates equal protection. Therefore, the classification must be rational for the particular purpose not a general public purpose.

Appellant contends that the prior cases involving user fees do not support the conclusion that they can be applied to non-users. In Skyscraper Corp. v County of Newberry, 323 S.C. 412, 416-417, 475 S.E. 2d 764, 766 (1996), the Supreme Court upheld the imposition of a user fee for solid waste removal. The Court found that "while Skyscraper alone does not generate all of the solid waste produced in the Parr Building, as landlord, Skyscraper clearly benefits from the collection and disposal of the solid waste from its building." Thus, Skyscraper Corp. supports Appellant's contention that use of the waste removal services is an essential basis for imposition of the user fee, whether by the owner or a tenant.

Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (S.C. 1992) supports the same proposition. In Brown, the Supreme Court said that under the general welfare statute "a county can impose a service charge, as in the situation here, where it is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided. . .. A service charge is imposed on the theory that the portion of the community which is required to pay it receives some special benefit as a result of the improvement made with the proceeds of the charge."308 S.C. at 567,568. Plaintiff in

Brown claimed that a vehicle tax imposed for road maintenance violated equal protection because the owners of registered vehicles were charged the same rate whether they lived within or without the municipality. The Court held: "The classification rests on a reasonable basis as the vehicle owners are the persons who most often would use the roads. Therefore, the ordinance does not violate the equal protection clause." 308 S.C. 569, 417 S.E. 2d 569. Appellant contends that the holdings and dicta in both cases support his contention that the user fee cannot be constitutionally be applied to non-users.

Denene v City of Charleston, 359 S.C. 85, 596 S.E. 2d 917 (2004) relied upon by the Court is not applicable to the facts here. In Denene, plaintiff, a bar owner, argued that the local ordinance requiring all commercial establishments serving liquor to close between 2:00am and 6:00 am was discriminatory because it was not applied to hospital and hotels who also served alcohol. The record showed that the purpose of the ordinance was to limit noise from public facilities and neither the hospitals nor the hotels served liquor during those hours. 359 S.C. at 94. Since plaintiff was a bar in the category of public facilities to which the ordinance was directed, the Court found that non-enforcement against other type of commercial facilities did not violate equal protection. Id. The Supreme Court in Denene thus justified unequal enforcement of the ordinance because the hotels and hospitals were not similarly situated to the bars for which the ordinance was intended to be applied. Simmons contends that just like the user fee ordinance in Skyscraper Corp., the purpose of the Charleston County Ordinance 10-51 was to collect user fees from the persons who utilize the disposal facilities, that are why they are called user fees.

In summary, Appellant is not similarly situated with all other persons for whom the user fee was imposed because he receives no benefit from these services. There is no rational

basis to collect a user fee from a person who receives no benefit of the services for which the fee is imposed and its efforts to collect it are arbitrary and discriminatory. The Court held that a general benefit justifies the imposition of the fee and by so doing is treating the user fee as a tax, applied to all residents. The enabling statute and County Ordinance establish that the purpose is to provide services for those who will pay a fee. "[A]ny differences of application must be justified by the law's purpose.'" Harbit v. City of Charleston, 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009). Therefore, this Court should grant Rehearing on the issue of whether County Respondent Revenue Collections Department violated equal protection by collecting a user fee from Appellant.

2. There was sufficient evidence of willful disregard of enforcement procedures to establish a violation of equal protection

The Court held that Respondents Al Cannon, Jr., Charleston County Sheriff's Department and Harry Long did not violate equal protection by the manner in which the judgment was enforced. Decision and Order at 4. The Court said that Respondent Long did not act arbitrarily by levying on real property, TMS 498. Id. However, the facts in the Record do not justify the Court's ruling. As set forth in Appellant's Brief at 29, Respondent Long did a record search and found several motor vehicles titled in Appellant's name without any liens but disregarded them. Although he thought one of the vehicles was too old, he did not investigate the others although he admitted they might be worth looking into. R. p. 302, page128, line 2 to 16; R. p. 392-394. S.C. Code Ann. Section 15-39-80 requires "the Officer . . . (1) to satisfy the judgment out of the personal property of such debtor and, if sufficient personal property cannot be **found**, out of the real property belonging to him." (emphasis added). The statute is clear that only if personal property cannot be found, then the officer enforcing the judgment may execute on real property. Respondent Long did not have the

discretion to ignore the personal property, i.e. the motor vehicles he found in Appellant's name. By admitting that the vehicles were worthy of pursuing, Respondent Long was obligated to levy on them and sell them to satisfy the judgment before pursuing any real property.

It is uncontested that Respondent Long came to Appellant's house in August 2009 and that there was farm machinery and heavy equipment belonging to Appellant in plain view. R. p. 397; R. p. 295, page 76 lines 8 to 22. Therefore, Respondent Long had actual knowledge of its existence as potential sources to satisfy the user fee judgment.

The Court said that there was no evidence of any record of Appellant's ownership of farm machinery and heavy equipment. Decision and Opinion at 4. County Respondents asserted that claim before this Court, County Respondents' Brief at 30, but did not raise it below. Appellant asserted that an evidential issue which was not raised below cannot be considered. Brashier v. South Carolina Dept. of Transp., 327 S.C. 179,186 fn. 7, 490 S.E.2d 8,12 (1997). Therefore, that argument should be considered as waived.

Based upon the lack of public notice of these assets, the Court held that Respondent Long did not arbitrarily enforce the writ against real property. Decision and Order at 4. The Court's assumption that the search of the public records was all that was required before levying on real property is not in accordance with the language of the statute which only says that the officer must be unable to "find" personal property. Clearly Respondent Long found these substantial personal assets and was obligated under S.C. Code Ann. Section 15-39-80 to levy upon and sell them before any real property. According to Respondent Sheriff's Department regulations, Sheriff's Department personnel must first try to find personal

property, presumably by contacting the debtor and if unsuccessful then by a search of the public records. R. p. 361-362.

In summary, the Court's finding that Respondent Long did not act arbitrarily is not supported in the Record. It is uncontested that Respondent Long ignored registered motor vehicles and farm and heavy machinery in plain view before levying and selling TMS 498 to enforce a judgment in the amount of only $600.00. Appellant contends that this is prima facie evidence of willfulness for this issue to be submitted to a jury and respectfully requests Rehearing on this issue.

C. The Court did not address County Respondents' failure to prove it exercised discretion and erred by finding a lack of nexus between the disciplinary history and the injury complained of.

Appellant seeks Rehearing of the Court's Decision and Order affirming dismissal of his claim against Respondent Charleston County Sheriff's Department for negligent retention of Respondent Harry Long. The Court held that the Sheriff's Department had discretionary immunity from suit under S.C. Code Ann. Section 15-78-60(5). Decision and Order at 4. The Court noted that this immunity was "contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards", but did not address Appellant's argument that the Respondent Charleston County Sheriff's Office had failed to meet its burden of proof on the issue. See Appellant's Brief at 18-19, 31-33. The Court also held that appellant had failed to establish a similarity between the prior disciplinary infractions and the incident involving Appellant respectfully requests Rehearing on the lack of proof that County Respondents exercised discretion because this issue is a predicate to Appellant's claim of negligent

retention. Appellant also requests Rehearing on the Court's finding that there was no similarity between Respondent Long's disciplinary violations and the conduct complained of.

1. Sheriff's Office did not prove that it exercised discretion in retaining Deputy Long

Respondent Charleston County Sheriff's Office personnel records established that Respondent Long was subject to numerous disciplinary actions since joining the Department including two (2) suspensions and three (3) letters of reprimand. These actions all involved serious breaches of Department policy and included: failing to transport a black male suspect he arrested to a court hearing resulting in the suspect being issued 3 contempt citations; an unauthorized absence and neglect of duty (to walk his dog); a motor vehicle accident for which he was found to be responsible; conducting warrantless search without probable cause; failure to timely serve an arrest warrant allowing the suspect to escape; violating standing policy by not obtaining a search warrant resulting in loss of thousands of dollars and other evidence of a crime resulting in Probationary Status due to failure to meet Professional Responsibility Standards. Respondent Long was also cited for five separate instances of violations of Department policy or decorum for which no disciplinary action was taken, including yelling at supervisors after being removed from an interview of a suspect; failure to respond to a call; failure to document a crime victim interview; and unauthorized appearance at a search. His own partner accused him of lying and refused to work with him.R.p.310-323, 441-443.

Respondent County Sheriff's Department policy required "gradually increasing actions for each successive instance of employee misconduct. . . [T]he employee may be subject to termination for the accumulation of violations." R. p. 383, Section III, B (3). There is no evidence that Department followed its own policy of progressive punishment.

The disciplinary actions cover a six (6) year period. Each of the disciplinary reports refers to the incident in question and do not consider any earlier misconduct. R. p. 310-323. Sergeant Wilson, one of Respondent Long's superiors believed that what happened in the past had no bearing on his evaluation of Long. R. p. 374, page 35, line 15 to page 36, line 4.

There is no evidence that Respondent County Sheriff's Department exercised its discretion to retain Respondent Long despite the numerous disciplinary actions against him for serious breaches of department policy and legal and ethical standards. According to the statements of disciplinary action, each of his offenses was considered in isolation, without regard to the cumulative effect. R. p. 312-323. Respondent County Sheriff's Department admitted that it had no documents concerning any decision to retain Respondent Long. R. p. 368 No. 5 and R. p. 369, No. 5.

Therefore, based upon the Record, this Court should have found that Respondent Charleston County Sheriff's Department failed to meet its burden of proof that it exercised discretion in retaining Respondent Long and is not entitled to discretionary immunity for its failure to terminate his employment. Accordingly, Appellant respectfully requests Rehearing on this issue as it is a predicate to Appellant's claim of negligent retention.

2. The issue of causation was for the jury

In affirming dismissal of the negligent retention claim, the Court found that Appellant had failed to establish a nexus between Respondent Long's disciplinary violations and the failure to levy on personal property. Decision and Order at 4-5. Appellant seeks Rehearing on this issue because the establishment of a nexus is a part of the determination of probable cause which is normally to be determined by a jury. Appellant's Brief at 33. See Small v. Pioneer Mach., Inc.,329 S.C. 448, 464, 494 S.E.2d 835, 843 (Ct.App.1997) ("Ordinarily, the

question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence."). The exception to the rule that this issue is for the jury is that reasonable minds could not differ as to the lack of causation. See Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011). County respondents urged this Court to rely upon Kase, County Respondents' Brief at 32, and Appellant had demonstrated that it was distinguishable on its facts because Kase involved a substantial time lapse between the disciplinary conduct and the act complained of. Appellant's Reply Brief at 19-20.

In its Decision and Order at 4, the Court relied upon Doe v. ATC, Inc.,367 S.C. 199, 624 S.E.2d 447(Ct. App. 2005) for its determination that there was no nexus between the prior disciplinary violations and the act complained of, sale of real not personal property. Decision and Order at 4. Appellant contends that Doe does not support the Court's Decision and is entirely distinguishable. The Court in Doe relied upon the standard for negligent retention cases in the Restatement (Second) of Torts Section 317, Comment c of "whether the employer knew the offending employee was "in the habit of misconducting [himself] in a manner dangerous to others". 624 S.E. 2d at 451. The Court ruled that even a single isolated incident of prior misconduct (of which the employer knew or should have known) may support a negligent retention claim, provided the prior misconduct has a sufficient nexus to the ultimate harm." Id. However, the Court held that the prior single incident of sexual misconduct "is a far cry from the reprehensible, persistent pattern of abuse against [plaintiff]. If Moss's allegation against [the employee] Murray were founded, then Murray's conduct involving Moss certainly deserved some form of disciplinary action. . . However,

. . . we are not confronted with any claim of negligent supervision, but only the claim that ATC should have fired Murray. Doe's laser-beam approach — Murray had to be fired — is simply not reasonable under the facts presented, including the nature of the incident involving Moss, Moss's unwillingness to file a formal complaint, and the complete absence of evidence of other such similar conduct by Murray. Indeed, but for the allegation by Moss, Murray had a "clean" work record. Imposition of liability against an employer for negligent retention under these facts is legally untenable." Id. Thus Doe involved what may be considered as a single incident of less serious sexual misconduct followed by a very serious pattern of sexual misconduct. The holding in Doe is that the employer had no notice based upon the first incident that the employee's misconduct would escalate to more serious misconduct and had no reason to fire him based upon the single incident.

Contrary to the facts in Doe, Respondent County Sheriff Office had notice of a six-year history of serious disciplinary violations which according to its own policy should have resulted in escalating discipline and termination. Respondent Long violated various Department regulations, procedures and legal and ethical standards. His pattern of behavior amply demonstrated a lack of respect for procedure. Many of the prior incidents were much more serious that his failure to levy on personal property, including conducting warrantless search without probable cause; failure to timely serve an arrest warrant allowing the suspect to escape; violating standing policy by not obtaining a search warrant resulting in loss of thousands of dollars and other evidence of a crime. Several of Respondent Long's infractions directly involved third persons including a suspect in jail who was held in contempt because Deputy Long did not pick him up and take him to a hearing. Doe does not support this Court's determination that there is no nexus because the Respondent County Sheriff's Office

had ample evidence of Respondent Long's "habit of misconducting [himself] in a manner dangerous to others" as established under Restatement (Second) of Torts Section 317, Comment c.

As Appellant previously argued, Appellant's Reply Brief at 18, "[i]t is not necessary for a plaintiff to demonstrate the defendant should have foreseen the particular event which occurred but merely that the defendant should have foreseen [its]negligence would probably cause injury to someone." Parks v. Characters Night Club, 345 S.C. 484, 491 548 S.E.2d 605 (Ct. App. 2001) (citing Greenville Memorial Auditorium v. Martin, 301 S.C. 242, 245, 391 S.E.2d 546,548 (1989)). The prior misconduct almost entirely involved breaches of regulations as well as argumentative behavior. The conduct complained of involved failure to follow statutory procedure and department policy in enforcing judgments against personal property.

Appellant contends that the Court should not have affirmed dismissal of the negligent retention claim because the general rule required the issue of causation to be submitted to the jury unless reasonable minds could not differ. Neither Doe nor Kase support this Court's Decision to apply the exception to that rule. Accordingly, Appellant respectfully requests Rehearing on that issue.

D. The facts support a reasonable inference that Respondent Long acted with malice

The Court affirmed the Circuit Court's dismissal of the claim against Respondent Long for malice on the basis that it was speculative. Decision and Order at 5. Appellant respectfully requests Rehearing because the facts and the law support the conclusion that there was a reasonable inference of malice which should be decided by the jury. "[W]hen only one reasonable inference, not just one inference, but one reasonable inference, can be

deduced from the evidence, it becomes a question of law for the court." Hart v. Doe, 261 S.C. 116,120 198 S.E.2d 526,528 (1973).

Appellant contends that there was more than a scintilla of evidence to support an inference of malice. Respondent Long stated that Appellant physically threatened him if he came to post a notice of sale on the house and in response he filed an incident report and "flagged" his property. The reasonable inference is that he believed the threat was real. Respondent Long's collection file indicates that "[Appellant] is going to very difficult to collect 6 judgments from". R. p. 378. Given the number of letters and phone calls that allegedly went unanswered and the threat of violence if Long went to the property, it is reasonable to conclude that Respondent Long considered Appellant uncooperative.

The Court found that "there was no indication [Long] took the threats personally." Decision and Order at 5. Appellant contends that Respondent's Long's true attitude toward Appellant is manifest by his ignoring personal property, motor vehicles which he admitted were worth pursuing and farm and heavy equipment that were in plain view to enforce a $144.00 judgment against real estate which he believed was worth $24,000. Respondent Long had gone after real estate only three times before in enforcing hundreds of Magistrate Court (user fee) judgments. Respondent Long was so personally invested in getting the real estate sold that he went to the office of the Master in Equity in August 2009 to confirm that a pending suit involving TMS 498 had been dismissed to be sure that his sale could go forward. See Appellant's Brief at 16. The evidence supports the inference that Respondent Long ignored the statutory requirement to levy upon personal property he found before any real estate out of malice and in so doing willfully harmed Appellant.

In Pridgen v. Ward, 391 S.C. 238, 705 S.E.2d 58 (Ct. App.2011), this Court affirmed denial of a directed verdict against a claim of malice based upon evidence that Defendants had a motive to harm plaintiff. "The jury could infer from the relationship of the Appellants, as well as the nature of their actions, that they intended to harm [plaintiff]." 705 S.E. 2d at 63. The issue of whether a reasonable inference of malice can be drawn from the surrounding circumstances is normally left to the jury. See e.g. Swinton Creek v Edisto Farm Credit, 334 S.C. 469, 485, 514 S.E. 2d 126, 134 (1999); Duckworth v First Nat'l Bank, 254 S.C. 563, 176 S.E. 2d 287(1970); West v Moorehead, 396 S.C. 1, 720 S.E. 2d 495, 499 (Ct. App. 2011). The facts here support a scintilla of evidence of malice sufficient to defeat summary judgment. See Hill v York County Sheriff's Department, 313 S.C. 303,308, 437 S.E.2d 179,182 (Ct. App. 1993) cert. den (1994)

In determining whether any triable issues of fact exist, this Court must view the evidence and all inferences which can be reasonably drawn therefrom in the light most favorable to the nonmoving party. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "When only one reasonable inference, not just one inference, but one reasonable inference, can be deduced from the evidence, it becomes a question of law for the court." Hart v. Doe, 261 S.C.116,120, 198 S.E.2d 526, 528 (1973). T There is a reasonable inference based upon the circumstances that Respondent Long punished Appellant for threatening him if he came out to post the property and being generally uncooperative by using his authority to deprive Appellant of valuable property to satisfy a small judgment. Therefore, Appellant respectfully requests Rehearing on the issue of malice based upon the circumstances and the reasonable inferences that may be drawn therefrom and the established principle that questions of malice are normally left to the jury.

E. The Circuit Court had jurisdiction to consider all issues

Appellant argued that the Circuit Court had jurisdiction to hear and decide all the issues based upon the particular circumstances of the case, Appellant's Brief at 20-23 and that it nonetheless had jurisdiction to hear the Fourth, Fifth and Sixth Counts. Appellant's Brief at 24-25. By reversing dismissal of the Sixth Count and remanding it to the Circuit Court, this Court has apparently agreed that the Circuit Court had jurisdiction over the remaining claims although it does not address the issue separately. If Appellant's interpretation of the Decision and Order is incorrect in that regard, he respectfully requests Rehearing on that issue because none of these claims are within the jurisdiction of the Magistrate Court. See S. C. Code Ann. Section 22-3-10.

F. The Court improperly remanded the matter to determine whether Respondent Mase was entitled to equitable relief

In addition to reversing the dismissal of the Sixth Count, this Court directed the Circuit Court to conduct a hearing as to whether Appellant's claim for inadequacy of price should be barred by laches. Decision and Order at 6. Appellant argued that this issue was not raised below and that Respondent Mase and Company had not provided any legal citation to support it claim for denial of relief on the Sixth Count such as appeared in this Court's Decision and Order. Appellant's Reply Brief at 20-21. Also, Respondent Mase and Company did not file any motion in support of summary judgment. Or raise the issue of laches below.

Appellant strongly requests Rehearing on that part of the Court's Decision and Order directing the Circuit Court to conduct a hearing and asks that it be redacted. This issue was

not properly before this Court since it was not raised below and not preserved for review. See State v Crocker, 366 S.C. 394,399 n.1, 621 S.E. 2d 890, 893 n.1 (Ct. App. 2005) (arguments unaccompanied by legal citation do not preserve an issue for appellate review); State v Freiburger, 366 S.C. 125,134, 620 S.E. 2d 737,741(2005) (argument on appeal not raised below is not preserved for review). Clearly under established principles of appellate review, the issue of laches was not properly before this Court. Furthermore, by ordering a hearing by the Circuit Court, this Court is deciding on a matter which is not justified by the Record. See. Rule 220(b), S.C.A.C.R.

By directing such a hearing, this Court has precluded Appellant from raising any objection to this issue being considered for whatever reason. This part of the Court's Decision and order is unnecessary and oversteps this Court's authority to decide the issues which are property before it. Remand on the adequacy of the price is clearly justified by the law and facts but any other action to be taken by the Circuit Court should be left up to the Court below. Accordingly, Appellant respectfully urged a Rehearing on this part of the Court's Decision and Order.

CONCLUSION

Appellant respectfully requests Rehearing on the issues addressed herein which require clarification based upon the facts contained in the Record and the legal principles which this Court have applied in deciding the case.

Respectfully Submitted

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Attorney for Appellant

The South Carolina Court of Appeals

Roosevelt Simmons, Appellant,

v.

Mase and Company, LLC, J. Al Cannon, Jr., Charleston County Sheriff's Office, Charleston County Revenue Collections Department, and Harry Long, Respondents.

Appellate Case No. 2014-002575

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James Edwards C.J.

Thomas C. Huff J.

J.

Columbia, South Carolina

cc:
Edward A. Bertele, Esquire
Wendy Raina Johnson Keefer, Esquire

App 30

FILED
Sept. 20, 2018

Christopher Thomas Dorsel, Esquire
The Honorable R. Markley Dennis, Jr.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
CASE No. 2011- CP-10-1084
Circuit Court Judge R. Markley Dennis, Jr.

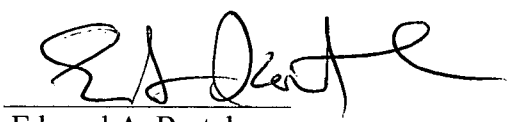
ROOSEVELT SIMMONS.....Petitioner

Vs.

MASE and COMPANY, LLC, J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S DEPARTMENT,
CHARLESTON COUNTY REVENUE COLLECTIONS
DEPARTMENT and HARRY LONG ..... Respondents

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the Petition for Writ of Certiorari and Appendix was served upon the Respondents' attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. and the Clerk of the Court of Appeals by regular mail postage prepaid at their last known mailing addresses.



Edward A. Bertele

October 22, 2018

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October 22, 2018

Mr. Daniel Shearouse, Clerk
Supreme Court
Supreme Court Building
1231 Gervais Street
P.O. Box 11330
Columbia, SC 29211

Re: Simmons v. Mase and Company, LLC et al.
Appellate Case No. 2014-002575

Dear Mr. Shearouse:

I am enclosing for filing the following: original and six copies of the Petition for Writ of Certiorari by Petitioner Roosevelt Simmons; two copies of the Appendix (one unbound); the Certification of Service and my check for $250.00 for the filing fee. If you have any questions, please do not hesitate to call. Thank you for your kind assistance.

Cordially,

Edward A. Bertele

CC: Christopher T. Dorsel, Esq.
Wendy R. Keefer, Esq.
Clerk of Court of Appeals

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October 22, 2018

Ms. Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate St.
PO Box 11629
Columbia, SC 29211

Re: Simmons v. Mase and Co., LLC et al.
Case No. 2014-002575

Dear Ms. Kitchings:

I am enclosing for filing one copy of the Petitioner for Writ of Certiorari to the South Carolina Supreme Court and a Certificate of Service. Thank you for your kind assistance.

Very truly yours

Edward A. Bertele

Encl:
CC: Chris Dorsel, Esq.
Wendy Keefer, Esq.

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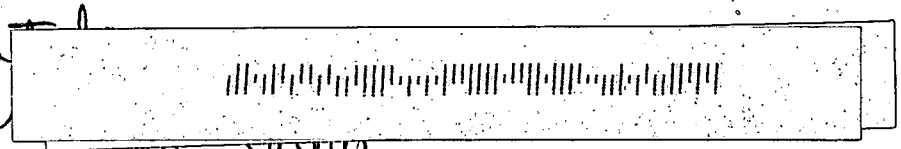

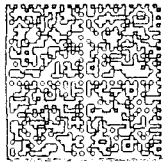

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