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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE JOCELYN NEWMAN
Circuit Court Judge
Fifth Judicial Circuit

CASE NO: 2018-CP-400-5641

RONALD I. PAUL.....Appellant,

V.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; PAUL D. DE HOLCZER, individually and as a partner of the law Firm of Moses, Koon & Brackett, PC; MICHAEL H. QUINN, individually and as senior lawyer of Quinn Law Firm, LLC; J. CHARLES ORMOND, JR., individually and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; OSCAR K. RUCKER, in his individual capacity as, Director Rights of Way South Carolina Department of Transportation; MACIE M. GRESHAM, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; NATALIE J. MOORE, in her individual capacity as assistant chief counsel South Carolina Department of Transportation..... Respondents.

MOTION FOR LEAVE TO FILE RULE 60(B) MOTION AND MOTION FOR LACK OF JURISDICTION AND MOTION TO REMAND

Appellant Ronald I. Paul respectfully moves this Court for leave to file and make a motion for relief from the Form 4 Order Granting Motions to Dismiss and Summary Judgment issued by Judge Jocelyn Newman, filed

August 9, 2019 and Formal Order granting Motions to Dismiss issued by Judge Jocelyn Newman, filed November 13, 2019 and form 4 order filed on November 26, 2019 denying his motion to reconsider with the Fifth Judicial Circuit, in the Court of Common Pleas of Richland County, pursuant to Rule 60(b) (1) (3)(4)and (5) of the South Carolina Rules of Civil Procedure ("SCRCP"). As described herein, the above-captioned matter is currently before the Court pursuant to an appeal instituted by Appellant from these orders.

In addition, should this Court decide that leave to file the motion for relief is appropriate, in the interests of judicial economy, this Court would also be justified in retaining jurisdiction over this appeal, but remanding this action to the Honorable Jocelyn Newman for consideration of Appellant's motion, pursuant to Rules 60(b) (1)(3)(4) and (5) of the South Carolina Rules of Civil Procedure ("SCRCP").

STATEMENT OF THE CASE

On October 26, 2018 (to prevent duplications see Complaint filed on October 26, 2018 for statement of the case) Ronald I. Paul filed a Summons and Complaint under the civil rights federal statute 42 USC 1983 for declaratory judgment and civil conspiracy in state court seeking payment for his property taken pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.,* without payment of just

compensation, in other words to be clearly, zero $0.00. dollars and cents.

Paul asserted a civil right cause of action under Section 1983 for declaratory judgment and civil conspiracy under 42 U.S.C. 1983 against all Respondents'.

The Complaint shows that the source of Paul injury is the Respondents' conduct that the Respondents' conduct caused the adverse state court orders and their conduct is an independent claim. The Complaint did not seek to have the state court judgments voided or reversed.

On or about November 20, 26, and 27, 2018, the Respondents filed motions to dismiss (Rule12(b) Motions) and Respondents SCDOT, de Holzcer and Moore filed a motion for summary judgement (Rule 56, SCRCP motion). As of today, Respondents have not filed answers to the Appellant Complaint in this case but attempts to challenge and dispute the facts within the four corners of the Complaint.

On November 23, 27, 2018, Appellant's served his first discovery request First for Production of Documents, specifically the written settlement agreement between SCDOT and the Buckles. On December 19, 27, 2018 said Respondents served Plaintiff Paul with responses to Appellant's first Requests for production". Appellant responded that these responses is an evasive or incomplete answer and, therefore is to be treated as a failure to answer, in accordance with Rule 37(a)(3), SCRCP

Plaintiff served discovery requests on November 23, 2018. On December 17 and 20 of 2018, said Respondents filed Motions for rule 26(c) Protective Order to stay discovery. On December 18 and 20 of 2018 and on

January 31, 2019 and February 1, 2019 Plaintiff served his motions to compel discovery.[1]

On February 11, 2019, the Respondents motions to dismiss, motion for summary judgement, motions for Protective Order to Stay Discovery filed by the Respondents SCDOT, de Holczer, Moore, and Quinn and the Appellant's Motions to Compel Discovery was scheduled before The Honorable Doyet A. Early, III,. Judge Early heard the Respondent's motions to dismiss and motion for summary judgement. Judge Early held all the motions in abeyance.

On or about May 17, 2019, based upon Mr. Lindemann representation, it appears Mr. Lindemann SCDOT attorney ex parte emailed / communicated with Judge Early using his private email address that he obtained through another lawyer not connected with this case, about Respondents pending motions to dismiss and motion for summary judgment.

In July 2019, at this point and time in the case, court ordered mediation (ADR) deadline was approaching (July 31, 2019). Therefore, Paul requested mediation. On July 10, 2019, Mr. Osborne Eugene Powell, the court appointed mediator in this case, filed a Mediation Status update. On July 17, 2019, Mr. Lindemann attorney for SCDOT filed a Notice of Motion and Motion to Defer Mediation pursuant to Rule 5(e). Judge Early III, was

[1] On April 16, 2019, The Honorable L. Casey Manning heard the parties' motions for rule 26(c) Protective Order to stay discovery and motions to compel discovery. Based upon Respondents representation, the Court found that the Appellant's motions to compel discovery are denied as moot and that the motions for protective Order to stay discovery filed by the Respondents SCDOT, de Holczer, Moore, and Quinn are granted, and that any further discovery shall be stayed until such time as the Court has ruled on the motions to dismiss filed by the Respondents which are currently pending.

still holding the Respondents motions to dismiss and for summary judgment in abeyance, the motion to defer requested re-scheduling of these motions. In addition, the motion requested that mediation be deferred until such time as the Motions filed by each of the Respondents have been heard and fully adjudicated by the Court.

On July 30, 2019, before the court scheduled a hearing. The Honorable Jocelyn Newman filed a scheduling order finds that the rehearing of certain motions is necessary pursuant to Rule 63, SCRCP, due to the retirement of the Judge Early III. Rescheduling said motions to dismiss and for summary judgment nine (9) days later, for Thursday, August 8, 2019, at 9:30 am and Mediation before December 31, 2019.

Following the hearing held on August 8, 2019, Judge Newman granted the Respondents motions to dismiss and for summary judgement by form 4 order filed on August 9, 2019. This order stated, "Formal Order to follow".

On August 19, 2019, out of an abundance of caution, Appellant filed a Rule 59(e), SCRCP, motion within the ten-day period allowed by the rule.

On November 13, 2019, Judge Newman filed the Formal Order that omitted summary judgment that's granted in the Form 4 Order filed on August 9, 2019.

Appellant filed a Rule 59(e) Motion on November 25, 2019. Judge Newman denied the motion by Form 4 Order filed on November 26, 2019. The order indicated she was only denying the rule 59 (e) motion filed on

November 25, 2019.

Out of an abundance of caution, on December 20, 2019, Appellant timely served and filed a Notice of Appeal.

ARGUMENT

Judge Newman filed a Form 4 order on August 9, 2019 granting Summary Judgment. (Exhibit A) The form 4 order, titled "Judgment in a civil case" did indicate that a Formal Order to follow for Summary Judgment. Before the Form 4 order "matured" into a full and complete order or judgment, out of an abundance of caution, on August 19, 2019 Appellant filed a Rule 59(e), SCRCP, motion within the ten-day period allowed by the rule. (Exhibit B)

Next, on November 13, 2019, Judge Newman filed a Formal Order that omitted summary judgment that's granted in the form 4 order filed on August 9, 2019, this was a mistake.[2] (Exhibit C)

On November 25, 2019 Appellant filed a Rule 59(e), SCRCP, motion within the ten-day period allowed by the rule that addressed issues raised in the form order filed on November 13, 2019. (Exhibit D)

Judge Newman denied Appellant's "Motion to Reconsider" filed on November 25, 2019, with a form 4 order filed on November 26, 2019. (Exhibit E) That indicated it was not the Court's intention to treat both of

[2] As a matter of law, Summary Judgment granted in the form 4 order filed on August 9, 2019, supersede Judge Newman Formal Order filed on November 13, 2019, granting motions to dismiss, in other words the Formal Order filed on November 13, 2019 is a void order.

Appellant's rule 59 (e) motions to reconsider (August 19, 2019 and November 25, 2019) as one motion.

Therefore, as a matter of law, Appellant motion for reconsideration filed on August 19, 2019, remains pending in the Circuit Court as of today. See Rule 59 (f) ("SCRCP"). Time for Appeal; End of Term. The time for appeal for all parties shall be stayed by a timely motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions.

Accordingly, for clarification, and pursuant to Rule 60(b)(1)(3)(4) and (5) of the South Carolina Rules of Civil Procedure ("SCRCP"). Appellant request this Appeal be remanded to Judge Newman for lack of jurisdiction and, alternatively, for clarification.

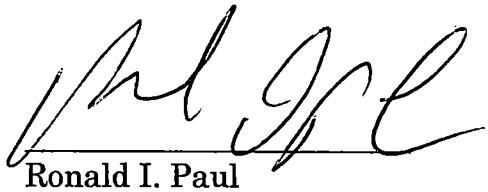
In addition, Appellant respectfully moves this Court for leave to make a motion, pursuant to Rules 60(b) (1)(3) (4) and (5)[3] of the South Carolina Rules of Civil Procedure ("SCRCP"). As described herein, the above-captioned matter is currently before the Court pursuant to an appeal instituted by Appellant from the granting of Respondents motions to dismiss and summary judgment.

[3] Knick v. Township of Scott, overruled, in part, Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985) 34-year old precedent that established a federal claim was not ripe until a state takings plaintiff exhausted its remedies under state law.

CONCLUSION

Appellant respectfully ask the Court to remand this appeal for lack of jurisdiction, for leave to make a motion, pursuant to Rules 60(b)(1)(3)(4) and (5) of the South Carolina Rules of Civil Procedure and, to hold this appeal in abeyance pending Judge Newman ruling on Appellant's motion to reconsider filed on August 19, 2019 and motion pursuant to Rule 60(b)(1)(3)(4) and (5) of the South Carolina Rules of Civil Procedure.

Respectfully submitted,



Ronald I. Paul
Post Office Box 4353
Columbia, S.C. 29240
Appellant, *Pro Se* litigant
(803) 414-2305

Columbia, South Carolina

February 24, 2020

Exhibit A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4005641

Ronald I Paul
PLAINTIFF(S)

SC Department Of Transportation et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☑ **ACTION DISMISSED** (*CHECK REASON*): ☑ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant Quinn's Motion to Dismiss (filed on 11/20/18) is GRANTED.
Motion to Dismiss and for Summary Judgment (filed on 11/26/18) is GRANTED.
Defendant Ormond's Motion to Dismiss (filed on 11/27/18) is GRANTED.
Formal Order to follow.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

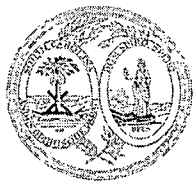
This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/08/2019 .

Ronald I Paul for Ronald I Paul
Ronald I Paul for Ronald I Paul

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Ronald I Paul vs SC Department Of Transportation , defendant, et al

Case Number: 2018CP4005641

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Exhibit B

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	
RONALD I. PAUL Plaintiff, Vs. SOUTH CAROLINA DEPARTMENT OF TRANSPORTATIONS; PAUL D. DE HOLCZER, individually and as a partner of the law firm of Moses, Koon & Brackett, PC; MICHAEL H. QUINN, individually and as senior lawyer of Quinn Law Firm, LLC; J. CHARLES ORMOND, JR., individually and as partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; OSCAR K. RUCKER, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation; MACIE M. GRESHAM, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; NATALIE J. MOORE, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation. Defendants.	**CIVIL ACTION FILE NO. 2018-CP-400-5641** **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION PURSUANT TO SCRCP 59 (e)**

TO: DEFENDANTS SOUTH CAROLINA DEPARTMENT OF TRANSPORTATIONS; PAUL D. DE HOLCZER; NATALIE J. MOORE; MICHAEL H. QUINN; J. CHARLES ORMOND.

YOU WILL PLEASE TAKE NOTICE that the Plaintiff , will move before the Presiding Judge of this Honorable Court of Common Pleas for Richland County at the Richland County Courthouse, Columbia, South Carolina, at such time and

place as directed by the Court, pursuant to Rules 59 (e) of the South Carolina Rules of Civil Procedure and the statutes and laws of the State of South Carolina and Federal laws , for a Motion to Reconsider Defendants South Carolina Department of Transportations; Paul D. De Holzer; Natalie J. Moore; Michael H. Quinn; and J. Charles Ormond Motions to Dismiss on the tenth (10th) day after service hereof or soon thereafter as a hearing can be scheduled or at such time and place as the Court may set. This motion is based upon the following grounds:

STATEMENT OF THE FACTS AND BACKGROUND

To prevent duplications
see Complaint filed October 26, 2019.

STANDARD OF REVIEW

The United States Supreme Court has stated, "A civil rights action under Section 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." *City of Monterey v. Del Monte Dunes atMonterey, Ltd.*, 526 U.S. 687, 707 (1999). The civil rights statute 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.' " *Albright v. Oliver*, 510 U.S. 266, 271 (1994), quoting *Baker v. McCollan*, 443 U.S.137, 144, n. 3 (1979).

The court must accept the complaint's factual allegations as true and view all allegations in a light most favorable to the nonmoving party. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507_U.S._163, 164, 113_S. Ct. 1160, 122_L. Ed. 2d_517 (1993); *GE Inv. Private Placement Partners II v. Parker*, 247 F.3d_543, 548 (4th Cir.2001).

THE STATUTE OF LIMITATIONS

First, all Defendants rely upon "the three-year limitation period" set out in ((S.C. Code section 15-3-530 (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520)). However, the correct statute of limitations in the instant case is 20 years upon a sealed instrument (Paul Commercial Lease) S.C. Code section 15-3-520(b).

Second, in addition, State law does not apply to the time of accrual in federal causes of actions. *See* Gibson v. United States 781 F.2d 1334 (9th Cir. 1986) ... rejecting plaintiffs reliance on state law regarding the running of the statute of limitations in a civil conspiracy under 42 U.S.C. 1983. Stating..."while state law prescribes the statute of limitation applicable to section 1983 claims, federal law governs the time of accrual." *Citing* Venegas v. Wagner, 704 F.2d 1144, 1145 (9th Cir.1983); Gowin v. Altmiller, 663 F.2d 820, 822 (9th Cir.1981)")."Gibson v. United States 781 F.2d 1334 (9th Cir. 1986). ... Gibson further, declaring that in the 9th Cir. the accrual of civil conspiracies for statute of limitations purposes runs separately from each over act that is alleged to cause damage to the plaintiff. Gibson v. United States, 781 F.2d 1334 (9th Cir. 1986), *citing* Lawerence v. Acree 655 F.2d 1319, 1324 (D.C. Cir. 1981).

While the conspiracy exists, the statute of limitations does not commence to run until the "cessation of the wrongful acts committed in furtherance of the conspiracy. Conspiracy is a continuing offense. For statutes such as 18 U.S.C. § 371, which require an overt act in furtherance of the conspiracy, the statute of

limitations begins to run on the date of the last overt act. *See* Fiswick v. United States, 329 U.S. 211 (1946); United States v. Butler, 792 F.2d 1528 (11th Cir. 1986). For conspiracy statutes which do not require proof of an overt act, such as RICO (18 U.S.C. § 1961) or 21 U.S.C. § 846, the government must allege and prove that the conspiracy continued into the limitations period. The crucial question in this regard is the scope of the conspiratorial agreement, and the conspiracy is deemed to continue until its purpose has been achieved or abandoned. *See* United States v. Northern Imp. Co., 814 F.2d 540 (8th Cir. 1987); United States v. Coia, 719 F.2d 1120 (11th Cir. 1983), *cert. denied*, 466 U.S. 973 (1984).

According to the four corners of the Complaint, on page 18 paragraph 80 the civil conspiracy continues to the day through cover-ups, defenses and tactics. Under federal law, the overt act is an independent act that comes after the agreement or conspiracy and is performed to affect the objective of the conspiracy. The overt act "within itself" is not a cause of action under 1983 conspiracy claim; its sole function is to demonstrate that the conspiracy is operative and or continuing. The Complaint in this case was filed on October 26, 2018, the last overt act before the Complaint was filed was on April 19, 2016,[1] therefore, according to the four corners of the

[1] Specific intent is when a person acts with knowledge of what he/she is doing and with the objective of completing some. Examples: Rental of a van, purchase of explosives, obtaining a map of downtown New York City and going back and forth to the World Trade Center, could each be considered overt acts as part of the terrorist bombing of that building. Alternative the U.S. Supreme Court has established a two-part test to determine whether a petitioner is entitled to equitable tolling of the statute of limitations. Generally, a litigant seeking equitable tolling of the statute of limitations bears the burden of establishing that: She/he has been pursuing his rights diligently; and some extraordinary circumstance stood in his way. [Pace v. DiGuglielmo, 544 U.S. 408, 418 (U.S. 2005)]. ((Extraordinary circumstance (see exhibit F page 4 lines 13-14, but not limited to , attached to Plaintiff's Combined Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11, 2019))

Complaint, on page 18 paragraph 79, the statute of limitations started to run / accrual on April 20, 2016.

RES JUDICATA, COLLATERAL ESTOPPELS, ISSUE PRECLUSION, CLAIM PRECLUSION AND LAW OF THE CASE

First in *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson County*, the nature of the constitutional injury in a Just-Compensation-Clause case is twofold: the government must have: (1) taken private property, (2) without just compensation. *See id.* at 195 (recognizing that "a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation . . ."). *Williamson*, therefore, requires a federal takings litigant first to litigate in state court. The Court in *Williamson County* "drew no distinction between physical and regulatory takings, and the rationale of that case, that a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation through the procedures provided by the State.....demonstrates that any such distinction would be unjustified." *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 380 (2nd Cir. 1995), *cert denied*, 519 U.S. 808 (1966). *See also McKenzie v. City of White Hall*, 112 F.3d 313, 317 (8th Cir. 1997) (rejecting argument that *Williamson County* did not apply to physical takings); *Belvedere Military Corp. v. County of Palm Beach, Florida*, 845 F. Supp. 877 (S.D. Fla. 1994) (rationale of *Williamson County* equally applicable to physical takings). Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson County, 473 U.S. 172 (1985); *Also See* No. 14-439 Jack Kurtz, et al., Petitioners v.

Verizon New York, Inc., fka New York Telephone Company, et al petition for a writ of certiorari denied January 20, 2015, Supreme Court of the United States.

Second, after pursuing his rights diligently in state court on April 17, 2012, Plaintiff Filed a civil rights lawsuit in the U.S. District Court of South Carolina (Columbia) against the same defendants, the civil rights lawsuit was dismissed without prejudice. (See exhibits A-E attached to Plaintiff's Combined Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11, 2019) Defendants file no appeal. Now, in this case Defendant Quinn attempt to rely upon the defenses of res judicata, collateral estoppels, issue preclusion, claim preclusion and law of the case, but only put forward the definition of these affirmative defenses.[2] Defendants de Holczer and Moore attempt to rely upon the defenses of res judicata and collateral estoppels[3] and lastly Defendant Ormond res judicata only. Notwithstanding, that when the district Court issued its Order dismissing Plaintiff Complaint without prejudice, defendants failed to file an appeal. *See* Semtek Int'l Inc., 531 U.S. at 505 ("The primary meaning of 'dismissal without prejudice' . . . is

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[2] The Fourth Circuit (including District of South Carolina) has held that the pleading requirements of *Twombly* and *Iqbal* do, indeed, apply to affirmative defenses. This view was perhaps best summed up by a district court in Maryland in a 2011 decision. In *Barry v. EMC Mortgage*, the court stated that *Twombly* and *Iqbal* "recognize the fairness and efficiency concerns highlighted by district courts that have subsequently applied those standards to affirmative defenses." The court also noted that,"[a]ll pleading requirements exist to ensure that the opposing party receives fair notice.

[3] *In re* Microsoft Corp. Antitrust Litig., 355 F.3d 322, 326 (4th Cir. 2004) ("To apply collateral estoppels or issue preclusion to an issue or fact, the proponent must demonstrate that (1) the issue or fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to the judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding.").

In additional *see* Wilkerson v. State of Georgia, No. 14-13649 (11th Cir. July 16, 2015) Does not answer the question of whether his current complaint fails to state a claim.

dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim."); see also Lansdowne on the Potomac Homeowners Ass'n, slip op. at 9-14 (4th Cir. Apr. 5, 2013); A dismissal without prejudice for failure to state a claim is not an adjudication on the merits, *Mann v. Haigh*, 120 F.3d 34, 36 (4th Cir. 1997); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990), and "permits a plaintiff to refile the complaint as though it had never been filed," *Mendez v. Elliot*, 45 F.3d 75, 78 (4th Cir. 1995). Therefore, a dismissal without prejudice makes it unnecessary for the court in which the subsequent action is brought to determine whether that action is based on the same cause as the prior action.

When a case is dismissed but the plaintiff is allowed to bring a new lawsuit on the same claim it is dismissed without prejudice. It is a dismissal that does not bar the plaintiff from bringing a new lawsuit on the same claim. Dismissal without prejudice is based upon procedural errors.

Lastly, these affirmative defenses res judicata, collateral estoppels, issue preclusion, claim preclusion and law of the case are foreclosed by prior decisions of the District Court and, it's well-settled law, if the court specifies that a dismissal is without prejudice, there is no claim preclusion. "Dismissals without prejudice do not bar subsequent suits by *res judicata*." *Choice Hotels Int'l, Inc. v. Goodwin & Boone*, 11 F.3d 469, 473 (4th Cir. 1993).

THE COMPLAINT STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION OR CAUSES OF ACTION AGAINST DEFENDANT QUINN AND WAS A STATE ACTOR.

Defendant Quinn argued the complaint "fails to state facts sufficient to constitute a cause of action or causes of action against defendant Quinn.[4]

According to the four corners of the Complaint, on pages 25,26 paragraphs 108-110, the Defendants have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment rights of the United States Constitution;[5]

> (a) in that the Defendants acted jointly in concert in February 2004, March 2004, September 7, 2004, October 14, 2004, October 20, 2004 and January 8, 2008, to deprive Paul of payment for his property taken in October 2002, pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*, in that all defendants, including Ormond took a position claiming and declaring case 4800 had settled for just compensation. This was an intentionally false statement, because all defendants knew without Paul's consent or approval, as a matter of law, defendants could not settle the case for just compensation,
>
> (b)in furtherance of the conspiracy the defendant Paul D. de Holczer stated that Paul have no right to have a jury trial which resulted in deprivation of a constitutional right, his rights to have a trial by jury and,
>
> (c)in furtherance of the conspiracy the defendant Michael H. Quinn threaten Paul's expert witnesses with criminal prosecution and threaten to have his expert witnesses arrested, if they testified. (additional evidence see exhibit F attached to Plaintiff's Combined Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11, 2019)

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[4] Under state law: This is a 42 USC 1983 case filed in state court, at this time or point federal law applies.

[5] Alternatively, a claim of civil conspiracy may be established if plaintiff "can show some 'peculiar power of coercion' possessed by the conspirators by virtue of their combination, which an individual acting alone does not possess." Walters, 931 So. 2d at 140 (civil conspiracy was actionable against neighbors who posted "for sale" signs before their units making it appear that five units were for sale in the same condominium and driving down the value of plaintiffs' unit).

109. Because of the foregoing Paul has suffered a denial of its Constitutional rights, the inability to set forth all his evidences, before a jury, as otherwise allowed in accordance with the State and Federal Constitutionally established and protected safeguards designed to prevent just such occurrences and, the resultant financial damages approximating $310,000.00.

110. Further, because of the foregoing actions the Defendants have deprived Paul of its property without just compensation and Paul has suffered a denial of its Constitutional rights, the right to payment for taking of his property as otherwise allowed in accordance with the Takings Clause of the Fifth Amendment, *in other words to be clearly, zero $0.00. dollars and cents,* and the resultant financial damages approximating $310,000.00.

In addition, see the District Judge Order in Paul III 3:13-cv-01852-CMC (ECF 43 p. 11) *"..that some statements may have been made in the proceedings that mischaracterized or misrepresented Plaintiff's actions or positions.."*; Also see the district judge Order in Paul III 3:13-cv-01852-CMC (ECF 43 p. 12) *"They also suggest that Landlord and the SCDOT acted cooperatively in opposing Plaintiff's claims, consistent with their settlement agreement..."*. [6]

[6] The agreement to reach a predetermined outcome to enter the settlement as just compensation, with the goal of ruin Paul's cause of action, under The Takings Clause, against SCDOT based on the Highest and Best Use of his property as "Commercial Retail Property" appraised between 310,000.00 - 400,000.00 itself violated Paul's constitutional rights, independently of the subsequent state court decisions. See Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."); Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d at 159, 166 (3d Cir. 2010).

THE DEFENDANTS DE HOLCZER AND MOORE ARE NOT ENTITLED TO ANY KIND OF IMMUNE WHATSOEVER.

Defendants De Holczer and Moore argued they are entitled to dismissal because an attorney is immune from liability to third persons arising from the performance of his or her professional activities as an attorney on behalf of and with the knowledge.[7]

According to the four corners of the Complaint, on page 3 paragraph 6 this action is brought pursuant to 42 U.S.C. Sections 1983 for the defendants Natalie J. Moore and Paul D. de Holczer violating Plaintiff's rights while acting under color of state law. On page 4 paragraph 13 defendant Moore is named in her individual capacity and on page 4 paragraph 15 defendant de Holczer is sued as a State Actor and individually.

Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[7] Under state law: This is a 42 USC 1983 case filed in state court, at this time or point federal law applies.

DEFENDANT ORMOND AND QUINN WAS A STATE ACTOR.

Defendants Ormond and Quinn argued that they were not state actors. According to the four corners of the Complaint, on page 3 paragraph 6 this action is brought pursuant to 42 U.S.C. Sections 1983 for the defendants Ormond and Quinn violating Plaintiff's rights while acting under color of state law and on page 5 paragraph 19 defendant Ormond is sued as a State Actor / individually and on page 5 paragraph 17 defendant Quinn is sued as a State Actor / individually.

In additional, According to the four corners of the Complaint, on pages 25,26 in paragraphs 108-110 Defendants have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment rights of the United States Constitution, defendants Ormond and Quinn jointly participates in constitutional wrongdoing with state official in "state action" which meets the requirement of § 1983, See Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984); Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S.Ct. 183, 186-187, 66 L.Ed.2d 185 (1980).

Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

1983 includes private individuals, the term "person" in § 1983 includes private individuals and corporations acting under color of law, Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), and local governmental entities and natural persons

such as state, county, and municipal officials, Monell v. New York City Dep't of Social Servs., 436 U.S. 658 (1978).

THE DEFENDANT SCDOT IS A "PERSON" AMENABLE TO SUIT UNDER 42 U.S.C. § 1983 COUNT ONE DECLARATORY JUDGMENT: (SEE EXHIBITS G, H, K AND I page 9 exhibits attached to Plaintiff's Combined Memorandum and Amended Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11 and April 5, 2019)

Defendant SCDOT claimed that SCDOT is not a "person" amenable to suit under 42 U.S.C. § 1983.

Plaintiff concedes that SCDOT is not a "person" amenable to suit under 42 U.S.C. § 1983 for monetary damages - are unavailable against SCDOT. Plaintiff argues, however, that for purposes of declaratory relief, SCDOT is a "person" under § 1983. In other words, state officials are "persons" for purposes of § 1983 if the relief sought is declaratory relief. Will v. Michigan Dept. of State Police, 491 U.S. at 71 n.10. Declaratory relief is the only remedy Plaintiff have against SCDOT. Plaintiff have standing to pursue declaratory relief against SCDOT. (See exhibits G, H, K and I page 9 attached to Plaintiff's Combined Memorandum and Amended Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11 and April 5, 2019)

The Supreme Court has stated that "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Warth v. Seldin, 422 U.S. 490, 498 (1975). The standing "inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." Id. The constitutional aspects of standing "import[] justiciability: whether the plaintiff has made out a 'case or controversy' between

himself and the defendant within the meaning of Art. III." Id. (citations omitted). Consequently, "at an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.'" Valley Forge Christian Coll. v. Am.'s United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982) (citations omitted). Plaintiff lacks standing because she cannot meet the final element of the standing inquiry: redressability.

The Supreme Court has stated that "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The standing "inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Id.* The constitutional aspects of standing "import[] justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." *Id.* (citations omitted). Consequently, "at an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.'" *Valley Forge Christian Coll. v. Am.'s United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (citations omitted).

SUMMARY JUDGEMENT

This motion was raised by Plaintiff and Defendants SCDOT, De Holzer and Moore at the hearing and it appeared the Court had denied the motion and therefore, said defendants had abandoned the Motion for Summary Judgement. Therefore, Plaintiff did not argue his defenses or present his evidences against Summary Judgement.

CONCLUSION

Plaintiff disagree and object to Defendant Quinn "Statement of the Facts; Defendants Ormond, SCDOT, De holczer and Moore "backgrounds" that are misleading.

For the aforementioned reasons, the Form 4 order filed on August 9, 2019 granting defendants Motions to Dismiss should be vacated/reversed and an order enter denying defendants Motions to Dismiss.

Respectfully submitted,

Ronald I. Paul
Post Office Box 4353
Columbia, South Carolina 29240
Plaintiff, *Pro se* (803) 414-2305

Columbia, South Carolina
August 19, 2019

Exhibit C

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Ronald I. Paul,	)	
	)	Civil Action No. 2018-CP-40-5641
Plaintiff,	)	
	)	
v.	)	
	)	
South Carolina Department of Transportations; Paul D. de Holczer, individually and as a partner of the law firm of Moses, Koon & Brackett, PC; Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC; J. Charles Ormond, Jr. individually and as partner of the Law Finn of Holler, Dennis, Corbett, Ormond, Plante & Garner; Oscar K. Rucker, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation; Macie M. Gresham, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; Natalie J. Moore, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation,	)	**ORDER GRANTING MOTIONS TO DISMISS**
	)	
Defendants.	)	

This matter is before this Court on the Motions to Dismiss filed by the Defendants South Carolina Department of Transportation ("SCDOT"), Paul D. de Holczer, Natalie J. Moore, Michael H. Quinn, Quinn Law Firm, LLC, and J. Charles Ormond, Jr. A hearing was held on August 8, 2019, with the *pro se* Plaintiff and counsel for these Defendants present. After a

review of the pleadings, the written submissions of the parties, and the oral arguments of the parties, this Court grants the Motions to Dismiss on the bases set forth below.

Background and Procedural History

This litigation arises from a condemnation action that was commenced in 2002 by SCDOT and captioned *South Carolina Department of Transportation v. Buckles*, Civil Action Number 2002-CP-40-4800. That condemnation action was tried by former Circuit Court Judge Reginald I. Lloyd in October 2004. The Defendant Ormond was Ronald Paul's legal counsel in that 2002 condemnation action. The Defendant Quinn represented Keith Buckles and G.L. Buckles, who were the landowners in that action. The Defendants de Holczer and Moore represented SCDOT in that action. In the Order of Judgment filed March 11, 2005, Judge Lloyd directed the Clerk of Court to disburse $2,450.00 to the Plaintiff Ronald Paul as the just compensation payable for his leasehold interest.[1] That Order was subsequently appealed by Paul, and the Court of Appeals affirmed on October 23, 2006. The South Carolina Supreme Court later denied a petition for writ of certiorari.

On February 20, 2008, the Plaintiff Ronald Paul filed a civil action bearing Civil Action Number 2008-CP-40-1259 in the Court of Common Pleas against most of the same Defendants as in this case, including SCDOT, de Holczer, and Quinn. That Complaint included causes of action for civil conspiracy in several particulars. By Order filed March 25, 2009, Special Circuit Court Judge Joseph M. Strickland granted the Defendants' motion to dismiss based on a statute of limitations defense and other defenses. The Plaintiff appealed to the Court of Appeals which

[1] The pertinent pleadings and orders filed in the 2002 condemnation action and subsequent litigation commenced by the Plaintiff have been submitted into the record, and this Court takes judicial notice of those pleadings and orders. *See, Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325, 327 (Ct. App. 1984) ("[a] court can take judicial notice of its own records, files, and proceedings for all proper purposes including facts established in its records").

affirmed the dismissal on November 19, 2010. On October 9, 2011, the Supreme Court denied a petition for writ of certiorari.

The Plaintiff thereafter filed several lawsuits in the United States District Court, including the following:

Paul v. South Carolina Department of Transportation, C/A No. 3:12-1036-CMC-PJG
Paul v. South Carolina Department of Transportation, C/A No. 3:13-367-CMC-PJG
Paul v. South Carolina Department of Transportation, C/A No. 3:13-1852-CMC-PJG
Paul v. South Carolina Department of Transportation, C/A No. 3:15-2178-CMC-PJG
Paul v. South Carolina Department of Transportation., C/A No. 3:16-1727-CMC-PGJ

In these federal lawsuits, the Plaintiff alleged causes of action under 42 U.S.C. § 1983 for civil conspiracy in which he sought both declaratory and monetary relief. In the 2012 action, which was brought against the same Defendants as in the present case, the United States District Judge Cameron Currie granted the Defendants' motions to dismiss without prejudice. The Plaintiff thereafter continued to file the identical or nearly identical Complaints in 2013, 2015, and 2016, and each of those lawsuits were dismissed by Judge Currie without prejudice and without issuance of service of process. In dismissing the 2016 action, Judge Currie imposed a pre-filing injunction on the Plaintiff. In those previous lawsuits, the Plaintiff alleged conspiracy claims under state and federal law against the current Defendants arising from the prosecution of the 2002 condemnation action, including a settlement reached with the Buckles parties as well as actions taken during the trial of that case in October 2004.

On October 26, 2018, the Plaintiff filed the current lawsuit in state court. This action includes federal Section 1983 civil conspiracy claims against the same Defendants. In lieu of filing Answers, the Defendants SCDOT, de Holczer, Moore, Quinn, and Ormond filed the Motions to Dismiss currently before this Court asserting a number of separate and independent bases for dismissal as discussed below.

Legal Analysis

I. Statute of Limitations Defense

The applicable statute of limitations for the Plaintiff's federal conspiracy claims is three years. The Plaintiff contends, however, that the applicable statute of limitations is twenty years. He relies on S.C. Code Ann. § 15-3-520(b), which provides for a twenty year statute of limitations for an action upon a sealed instrument, and argues that his Section 1983 action is based upon a commercial lease with the Buckles that constitutes a sealed instrument. The Court finds the Plaintiff's position to be unpersuasive. In determining the proper statute of limitations in a Section 1983 claim, the United States Supreme Court has found that the federal court should adopt the state law statute of limitations for personal injury. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). Under South Carolina law, the statute of limitations for a personal injury claim is three years. *See*, S.C. Code Ann. § 15-3-530(5). Consequently, it has been held that "[t]he statute of limitations for section 1983 causes of action arising in South Carolina is three years." *Hamilton v. Middleton*, 2003 WL 23851098 (D.S.C. 2003). *See also*, *Simmons v. South Carolina State Ports Authority*, 694 F.2d 64 (4th Cir. 1982). In the case at bar, the Plaintiff did not file his current Complaint until October 26, 2018. Thus, all claims arising prior to October 26, 2015 are time-barred.

The record, which includes orders and pleadings from the prior 2008, 2012, 2013, 2015, and 2016 lawsuits, demonstrates that the Plaintiff's alleged claims accrued and were known to the Plaintiff prior to October 26, 2015. During the hearing, the Plaintiff conceded that his current Section 1983 claims are the same as those previously brought in federal court and were known to him prior to 2015, and that the acts on which he is basing his claims occurred prior to that date. The Court further recognizes that the allegations of the current Complaint itself reflect

that the causes of action accrued during the course of the 2002 condemnation action which, including appeals, ended in October 2007. The Plaintiff's 2008 state court litigation raised the same facts and conspiracy claims as presently re-asserted in the 2018 action. That lawsuit was dismissed on the merits, and that dismissal was upheld on appeal. The 2008 action, including appeals, ended in October 2011. The series of federal court actions further demonstrate that the Plaintiff was well aware of the existence of his claims prior to October 26, 2015. As a result, this Court concludes that the Plaintiff's current Complaint is time-barred and is dismissed with prejudice.

II. Claim and Issue Preclusion

The Defendants have also asserted res judicata (claim preclusion) and collateral estoppel (issue preclusion) as additional bases requiring the dismissal of this action. The Court agrees with the Defendants' position. "Under the doctrine of res judicata, a final judgment on the merits in a prior action will preclude the parties from relitigating any issues actually litigated or those that might have been litigated in the first action." *Wright v. Marlboro County School District*, 317 S.C. 160, 452 S.E.2d 12, 14 (Ct. App. 1994). "The res judicata defense requires a showing of three essential elements: (1) the prior judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matters properly included in the first action." *Id.* Importantly, "[r]es judicata bars not only issues litigated in a prior action, but issues that could have been litigated." *Plum Creek Development Co. v. Conway*, 328 S.C. 347, 351, 491 S.E.2d 692 (Ct. App. 1997). *See also*, *Jimmy Martin Realty Group Inc. v. Fameco Dist.,* 300 S.C. 192, 386 S.E.2d 803 (Ct. App. 1989).

This Court finds that the Plaintiff's current Complaint is barred by res judicata. The Plaintiff has previously litigated the same claims in the 2008 action, which resulted in a dismissal on

the merits as issued by Judge Strickland. The three elements of res judicata are all satisfied. The 2008 action is final, valid, and on the merits. The parties in the 2008 action are identical, with the exception that Natalie Moore was not a party to that case. Lastly, the conspiracy claims asserted in both actions are the same. And certainly, even if not precisely the same, res judicata is a bar to any other claims that could have been brought as part of the 2008 action, which includes a Section 1983 claim for civil conspiracy.

Alternatively, the Defendants argue that the Plaintiff's current Complaint should be dismissed based on the doctrine of collateral estoppel. This Court agrees. Under South Carolina law, collateral estoppel "prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281, 285 (2003). "A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Crosby v. Prysmian Communications Cable and Systems USA, LLC*, 397 S.C. 101, 723 S.E.2d 813, 817 (Ct. App. 2012).

The record includes not only the 2008 dismissal order issued by Judge Strickland but also the federal court orders issued by Judge Currie, all of which address various defenses and insufficiencies applicable to the Plaintiff's repetitive Complaints. In fact, in her Order in the 2016 action, Judge Currie observed:

> Paul is correct in noting that the prior dismissals were without prejudice and, consequently, do not preclude him from filing a new action against the previously named Defendants. That the dismissals were without prejudice does not, however, render them without meaning. The dismissal Orders (and incorporated Reports) in Paul I, Paul II, Paul III, and Paul IV stand as authority for the proposition that the allegations in each of those cases failed

> for reasons explained in each of those Orders (and Reports). It follows that the prior decisions are on-point authority for dismissal of Paul's present complaint to the extent it merely repeats prior allegations and claims found in his prior complaints. This is particularly true as to Paul III and Paul IV, both of which the Fourth Circuit summarily affirmed "for the reasons stated by the district court." Paul III, *aff'd*, 599 F.App'x 108; Paul IV, *aff'd*, 631 F.App'x 197. Under these circumstances, the Report properly relied on prior rulings as to repetitive allegations and claims.

Therefore, in applying the defense of collateral estoppel, the Court also concludes that the current Complaint must be dismissed on the same bases that the prior Complaints have been dismissed.

III. Defendants Quinn and Ormond Not "State Actors"

As an additional basis for dismissal, the Defendants Quinn, Ormond, and their law firms argue that they are not "state actors" and were not acting under "color of state law" in their representation of the Plaintiff and the Buckles parties in the 2002 condemnation action. In order to state a cause of action under 42 U.S.C. § 1983, a plaintiff must allege that (1) the defendant deprived him of a federal right, and (2) did so under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The Fourth Circuit has recently held that "private actors are not amenable to suit under § 1983. In addition, private attorneys do not act under color of state law and a § 1983 suit may not be maintained against an attorney based on his representation." *Marcantoni v. Bealefeld*, 734 Fed. Appx. 198, 199 (4th Cir. 2018). The Court, therefore, concludes that the Defendants Quinn, Ormond, and their law firms are not proper parties and are dismissed on this additional basis.

IV. Defendant SCDOT Not a "Person" Amenable to Suit under 42 U.S.C. § 1983.

As an additional basis for dismissal, the Defendant SCDOT argues that it is not a proper party in any action brought pursuant to 42 U.S.C. § 1983. This Court agrees. In *Will v. Michigan State Police*, 491 U.S. 58 (1989), the United States Supreme Court held that the state is

not a "person" amenable to suit under Section 1983. *See also, Alabama v. Pugh*, 438 U.S. 781 (1978); *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89 (1984). The same is true for a state agency such as SCDOT. The federal courts have consistently ruled that South Carolina state agencies such SCDOT are the arms or alter egos of the state and, therefore, do not qualify as "persons" amenable to suit under 42 U.S.C. § 1983. *See e.g., South Carolina Department of Disabilities and Special Needs v. Hoover Universal, Inc.*, 535 F.3d 300 (4th Cir. 2008) (SCDMH, as a state agency and "arm of the state," is not a "person" amenable to suit under 42 U.S.C. § 1983).

This Court concludes that the Defendant SCDOT is not a "person" or proper party not just for money damages claims but also for claims seeking injunctive or prospective relief. The United States Supreme Court has explained that "a State cannot be sued directly in its own name regardless of the relief sought." *Kentucky v. Graham*, 473 U.S. 159, 169, n.14 (1985). Similarly, in *Arizonians for Official English v. Arizona*, 520 U.S. 43 (1997), the Supreme Court held that "§ 1983 creates no remedy against a State." 520 U.S. at 69. Thus, the Defendant SCDOT is dismissed on this additional basis.[2]

IT IS, THEREFORE, ORDERED that, based on the reasons stated herein, the Defendants' Motions to Dismiss are granted and the Plaintiff's Complaint is dismissed with prejudice as to the Defendants South Carolina Department of Transportation, de Holczer, Moore,

---

[2] With respect to grounds that may be characterized as pleading deficiencies, a dismissal under Rule 12(b)(6), SCRCP, should generally be without prejudice, and "[t]he plaintiff in most cases should be given an opportunity to file and serve an amended complaint." *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869, 881 (2006). However, where the dismissal is premised on legal grounds which cannot be corrected by an opportunity to amend, the dismissal should properly be entered with prejudice and without an opportunity to replead or amend. *Id.* The Court notes that the Plaintiff's federal claims are dismissed on the merits and not because of any correctable pleading deficiency. *See, Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019).

Quinn, Ormond, and their law firms.

AND IT IS SO ORDERED.

JOCELYN NEWMAN
Presiding Circuit Court Judge,
Fifth Judicial Circuit

Richland Common Pleas

Case Caption: Ronald I Paul vs SC Department Of Transportation , defendant, et al

Case Number: 2018CP4005641

Type: Order/Dismissal

So Ordered

Jocelyn Newman

Exhibit D

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** RONALD I. PAUL **Plaintiff,** **Vs.** SOUTH CAROLINA DEPARTMENT OF TRANSPORTATIONS; PAUL D. DE HOLCZER, individually and as a partner of the law firm of Moses, Koon & Brackett, PC; MICHAEL H. QUINN, individually and as senior lawyer of Quinn Law Firm, LLC; J. CHARLES ORMOND, JR., individually and as partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; OSCAR K. RUCKER, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation; MACIE M. GRESHAM, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; NATALIE J. MOORE, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation. **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT** **CIVIL ACTION FILE NO.** **2018-CP-400-5641** **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION PURSUANT TO SCRCP 59 (e)**

TO: DEFENDANTS SOUTH CAROLINA DEPARTMENT OF TRANSPORTATIONS; PAUL D. DE HOLCZER; NATALIE J. MOORE; MICHAEL H. QUINN AND J. CHARLES ORMOND.

YOU WILL PLEASE TAKE NOTICE that the Plaintiff , will move before the Presiding Judge of this Honorable Court of Common Pleas for Richland County at the Richland County Courthouse, Columbia, South Carolina, at such time and

place as directed by the Court, pursuant to Rules 59 (e) of the South Carolina Rules of Civil Procedure and the statutes and laws of the State of South Carolina and Federal laws , for a Motion to Reconsider the court order filed on November 13, 2019 granting South Carolina Department of Transportations; Paul D. De Holzer; Natalie J. Moore; Michael H. Quinn; and J. Charles Ormond Motions to Dismiss on the tenth (10th) day after service hereof or soon thereafter as a hearing can be scheduled or at such time and place as the Court may set. This motion is based upon the following grounds:

STATEMENT OF THE CASE

On October 26, 2018 (to prevent duplications see Complaint filed on October 26, 2018 for statement of the case) Ronald I. Paul filed a Summons and Complaint under the civil rights federal statute 42 USC 1983 for declaratory judgment and civil conspiracy in state court seeking payment for his property taken pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*, without payment of just compensation, in other words to be clearly, zero $0.00. dollars and cents.

Paul asserted a civil right cause of action under Section 1983 for declaratory judgment and civil conspiracy under 42 U.S.C. 1983 against all Defendants'.

The Complaint shows that the source of Paul injury is the defendants' conduct that the defendants' conduct caused the adverse state court orders and their conduct is an independent claim. The Complaint did not seek to have the state court judgments voided or reversed.

On or about November 20, 26, and 27, 2018, the Defendants filed motion to dismiss (Rule12(b) Motions) and Defendants SCDOT, de Holzcer and Moore filed a motion for summary judgement (Rule 56, SCRCP motion), as of today defendants have not filed answers to the Plaintiff's Complaint to this action.

On February 11, 2019, the Defendants motions to dismiss (Rule12(b) Motions) and Defendants SCDOT, de Holzcer and Moore motion for summary judgement (Rule 56, SCRCP motion) was scheduled and heard before The Honorable Doyet A. Early, III. Judge Early held the Defendants Rule12(b) Motions and Defendants SCDOT, de Holzcer and Moore Rule 56, SCRCP motion in abeyance. (Exhibit A)

On or about May 17, 2019, based upon Mr. Lindemann representation, it appears Mr. Lindemann SCDOT attorney ex parte emailed / communicated with Judge Early using his private email address that he obtained through another lawyer not connected with this case, about defendants pending motions to dismiss and motion for summary judgment.

On July 10, 2019, Mr. Osborne Eugene Powell, the court appointed mediator in this case, filed a Mediation Status update.

On July 17, 2019, Mr. Lindemann attorney for SCDOT filed a Notice of Motion and Motion to Defer Mediation pursuant to Rule 5(e). The Honorable Doyet A. Early, III was holding the Defendants motions to dismiss and for summary judgment in abeyance, the motion to defer requested re-scheduling of these motions. In addition, the motion requested that mediation be deferred until such time as the

Rule 12(b) Motions filed by each of the Defendants have been heard and fully adjudicated by the Court.

On July 30, 2019, without scheduling a hearing the Court filed a scheduling order finds that the rehearing of certain motions is necessary pursuant to Rule 63, SCRCP, due to the retirement of the Honorable Doyet A. Early, III., re-scheduling motions to dismiss and for summary judgment for Thursday, August 8, 2019, at 9:30 am and Mediation before December 31, 2019.

STANDARD OF REVIEW

The United States Supreme Court has stated, "A civil rights action under Section 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." *City of Monterey v. Del Monte Dunes atMonterey, Ltd.*, 526 U.S. 687, 707 (1999). The civil rights statute 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.' " *Albright v. Oliver*, 510 U.S. 266, 271 (1994), quoting *Baker v. McCollan*, 443 U.S.137, 144, n. 3 (1979).

The court must accept the complaint's factual allegations as true and view all allegations in a light most favorable to the nonmoving party. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507_U.S._163, 164, 113_S. Ct. 1160, 122_L. Ed. 2d_517 (1993); *GE Inv. Private Placement Partners II v. Parker*, 247 F.3d_543, 548 (4th Cir.2001).

THE STATUTE OF LIMITATIONS

FIRST, all Defendants rely upon "the three-year limitation period" set out in ((S.C. Code section 15-3-530 (5) an action for assault, battery, or any injury to the person or rights of another, **not arising on contract** and not enumerated by law, and those provided for in Section 15-3-545)).

> Then go to ((S.C. Code section 15-3-530 (1) an action upon a **contract**, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520)).
>
> Then go to S.C. Code section 15-3-520(b).
>
> Then go to Richland County Register of Deeds, Record Book 00593-1478 and Renewal Record Book 00868-2723 pursuant to judicial notice of this fact as records of the Richland County Register of Deeds are "generally known within the territorial jurisdiction of the trial court" and the "accuracy of which cannot be reasonably questioned." S.C. R. Evid. 201 (b)and further notes case law (Byerly v. Connor, 307 S.C. 441, --- 415 S.E.2d 796, 798 (1992).
>
> ("In the state of South Carolina, "when land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee." Byerly v. Connor, 307 S.C. 441, --- 415 S.E.2d 796, 798 (1992).")

The Order stated, Paul "argued that his Section 1983 action is based upon a commercial lease with the Buckles that constitutes a sealed instrument" (Order page 4). The record shows Paul have never, "argued that his Section 1983 action is based upon a commercial lease with the Buckles that constitutes a sealed instrument. Paul Section 1983 action is based upon the four corners of the complaint filed on October 26, 2018, that included, but not limited to, a commercial

lease with SCDOT that constitutes a sealed instrument. In other words, on October 21, 2002, when SCDOT, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore and Paul D. de Holczer (hereinafter referred to as state official) filed an Amended Condemnation Notice, as a matter of law, pursuant to the Eminent Domain Procedure Act, S.C. Code Ann. §28-2-10, *et seq.* (hereinafter the "Act") they inherited Paul's commercial lease. On or about October 28, 2003, the state official terminated Paul's commercial lease, without payment of just compensation to Paul, *in other words to be clearly, zero $0.00. dollars and cents.*

According to the four corners of the Complaint, in this case, the statute of limitations is 20 years upon a sealed instrument (Paul Commercial Lease) S.C. Code section 15-3-520 (b).

SECOND, this is a 42 USC 1983 civil conspiracy case filed in state court, at this time or point federal law applies. Under Federal Law, State law does not apply to the time of accrual in federal causes of actions. *See* Gibson v. United States 781 F.2d 1334 (9th Cir. 1986) ... rejecting plaintiffs reliance on state law regarding the running of the statute of limitations in a civil conspiracy under 42 U.S.C. 1983. Stating..."while state law prescribes the statute of limitation applicable to section 1983 claims, federal law governs the time of accrual." *Citing* Venegas v. Wagner, 704 F.2d 1144, 1145 (9th Cir.1983); Gowin v. Altmiller, 663 F.2d 820, 822 (9th Cir.1981)")."Gibson v. United States 781 F.2d 1334 (9th Cir. 1986). ... Gibson further, declaring that in the 9th Cir. the accrual of civil conspiracies for statute of limitations purposes runs separately from each over act that is alleged to cause

damage to the plaintiff. Gibson v. United States, 781 F.2d 1334 (9th Cir. 1986), *citing* Lawerence v. Acree 655 F.2d 1319, 1324 (D.C. Cir. 1981).

Under Federal Law, while the conspiracy exists, the statute of limitations does not commence to run until the "cessation of the wrongful acts committed in furtherance of the conspiracy. Conspiracy is a continuing offense. For statutes such as 18 U.S.C. § 371, which require an overt act in furtherance of the conspiracy, the statute of limitations begins to run on the date of the last overt act. *See Fiswick v. United States*, 329 U.S. 211 (1946); *United States v. Butler*, 792 F.2d 1528 (11th Cir. 1986). For conspiracy statutes which do not require proof of an overt act, such as RICO (18 U.S.C. § 1961) or 21 U.S.C. § 846, the government must allege and prove that the conspiracy continued into the limitations period. The crucial question in this regard is the scope of the conspiratorial agreement, and the conspiracy is deemed to continue until its purpose has been achieved or abandoned. *See United States v. Northern Imp. Co.*, 814 F.2d 540 (8th Cir. 1987); *United States v. Coia*, 719 F.2d 1120 (11th Cir. 1983), *cert. denied*, 466 U.S. 973 (1984).

This is a 42 USC 1983 civil conspiracy case filed in state court, at this time or point federal law applies. Under federal law, the overt act is an independent act that comes after the agreement or conspiracy and is performed to affect the objective of the conspiracy. The overt act "within itself" is not a cause of action under 1983 conspiracy claim; its sole function is to demonstrate that the conspiracy is operative and or continuing.

Overt acts after October 26, 2015 according to the four corners of the Complaint, on page 18 paragraph 80 the civil conspiracy continues to the day through cover-ups, defenses and tactics ((one example: is on April 16, 2019, *see* (Plaintiff's first amendment to Plaintiff's combined memorandum in opposition to all defendants motions to dismiss and/or motion for summary judgment filed on August 5, 2019 page two)).

Overt acts after October 26, 2015 according to the four corners of the Complaint, the Complaint in this case was filed on October 26, 2018, the last overt act before the Complaint was filed was on April 19, 2016,[1] therefore, according to the four corners of the Complaint, on page 18 paragraph 79, the statute of limitations in a civil conspiracy case under 42 U.S.C. 1983 started to run / accrual on April 20, 2016.

[1] Specific intent is when a person acts with knowledge of what he/she is doing and with the objective of completing some. Examples: Rental of a van, purchase of explosives, obtaining a map of downtown New York City and going back and forth to the World Trade Center, could each be considered overt acts as part of the terrorist bombing of that building. Alternative the U.S. Supreme Court has established a two-part test to determine whether a petitioner is entitled to equitable tolling of the statute of limitations. Generally, a litigant seeking equitable tolling of the statute of limitations bears the burden of establishing that: She/he has been pursuing his rights diligently; and some extraordinary circumstance stood in his way. [Pace v. DiGuglielmo, 544 U.S. 408, 418 (U.S. 2005)]. ((Extraordinary circumstance (see exhibit F page 4 lines 13-14, but not limited to, attached to Plaintiff's Combined Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11, 2019))

RES JUDICATA, COLLATERAL ESTOPPELS, ISSUE PRECLUSION AND CLAIM PRECLUSION

FIRST, this is a 42 USC 1983 civil conspiracy case filed in state court, at this time or point federal law applies. Under Federal Law, in *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson County*, the nature of the constitutional injury in a Just-Compensation-Clause case is twofold: the government must have: (1) taken private property, (2) without just compensation. *See id.* at 195 (recognizing that "a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation . . ."). *Williamson*, therefore, requires a federal takings litigant first to litigate in state court. The Court in *Williamson County* "drew no distinction between physical and regulatory takings, and the rationale of that case, that a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation through the procedures provided by the State.....demonstrates that any such distinction would be unjustified." *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 380 (2nd Cir. 1995), *cert denied*, 519 U.S. 808 (1966). *See alsoMcKenzie v. City of White Hall*, 112 F.3d 313, 317 (8th Cir. 1997) (rejecting argument that *Williamson County* did not apply to physical takings); *Belvedere Military Corp. v. County of Palm Beach, Florida*, 845 F. Supp. 877 (S.D. Fla. 1994) (rationale of *Williamson County* equally applicable to physical takings). Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson County, 473 U.S. 172 (1985); *Also See* No. 14-439 Jack Kurtz, et al., Petitioners v. Verizon New York, Inc., fka New York Telephone

Company, et al petition for a writ of certiorari denied January 20, 2015, Supreme Court of the United States.

This is a 42 USC 1983 civil conspiracy case filed in state court, at this time or point federal law applies. Under Federal Law, pursuant to *Williamson County* State Court cases raised by the defendants were required under federal law, *Williamson County* demonstrate that the Plaintiff did not have a cause of action for violation of the Just Compensation Clause until he first litigated in State Court.

In other words, how can res judicata, collateral estoppels, issue preclusion and claim preclusion bar a cause of action that didn't exist in State Court, under Federal Law pursuant to *Williamson County*. *Williamson* (recognizing that "a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation . . ."). *Williamson*, therefore, requires a federal takings litigant first to litigate in state court.

SECOND, after pursuing his rights diligently in State Court on April 17, 2012, Plaintiff Filed a civil rights lawsuit in the U.S. District Court of South Carolina (Columbia) against the same defendants, the civil rights lawsuit was dismissed without prejudice (See exhibits A-E attached to Plaintiff's Combined Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11, 2019) defendants file no appeal. Now, in this case Defendant Quinn attempt to rely upon the defenses of res judicata, collateral estoppels, issue preclusion, claim preclusion and law of the case, but only put forward the definition of these affirmative

defenses.[2] Defendants de Holczer and Moore attempt to rely upon the defenses of res judicata and collateral estoppels[3] and lastly Defendant Ormond res judicata only. Notwithstanding, that when the district Court issued its Order dismissing Plaintiff Complaint without prejudice, defendants failed to file an appeal. *See* Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 505, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001), the Court wrote: ("The primary meaning of 'dismissal without prejudice' . . . is dismissal without barring the plaintiff from returning later, to the same court, with the same underlying claim."); see also Lansdowne on the Potomac Homeowners Ass'n, slip op. at 9-14 (4th Cir. Apr. 5, 2013); A dismissal without prejudice for failure to state a claim is not an adjudication on the merits, *Mann v. Haigh*, 120 F.3d 34, 36 (4th Cir. 1997); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990), and "permits a plaintiff to refile the complaint as though it had never been filed," *Mendez v. Elliot*, 45 F.3d 75, 78 (4th Cir. 1995). Therefore, a dismissal without prejudice makes it unnecessary for the court in which the

---

[2] The Fourth Circuit (including District of South Carolina) has held that the pleading requirements of *Twombly* and *Iqbal* do, indeed, apply to affirmative defenses. This view was perhaps best summed up by a district court in Maryland in a 2011 decision. In *Barry v. EMC Mortgage*, the court stated that *Twombly* and *Iqbal* "recognize the fairness and efficiency concerns highlighted by district courts that have subsequently applied those standards to affirmative defenses." The court also noted that,"[a]ll pleading requirements exist to ensure that the opposing party receives fair notice.

[3] *In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004) ("To apply collateral estoppels or issue preclusion to an issue or fact, the proponent must demonstrate that (1) the issue or fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to the judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding.").

In additional *see Wilkerson v. State of Georgia*, No. 14-13649 (11th Cir. July 16, 2015) Does not answer the question of whether his current complaint fails to state a claim.

subsequent action is brought to determine whether that action is based on the same cause as the prior action.

THIRD, According to the Order, this case is substantially similar to one brought by Plaintiff against Defendants in State Court in 2008, which was also all about alleged conspiracies. That case was dismissed and unsuccessfully appealed. This same argument was rejected by Judge Currie in Federal Court, see exhibit list of defendant Quinn filed on January 31, 2019, exhibit #11 pages 5-7 (Judge Currie Order). Furthermore, this is a 42 USC 1983 civil conspiracy case filed in State Court, at this time or point federal law applies. Under Federal Law, pursuant to *Williamson County* Paul didn't have a cause of action in 2008, for violation of the Just Compensation Clause until he first litigated in State Court. To prevent duplications, all the above arguments are set forth herein as if more fully stated in their entirety, but not inconsistent.

When a case is dismissed but the plaintiff is allowed to bring a new lawsuit on the same claim it is dismissed without prejudice. It is a dismissal that does not bar the plaintiff from bringing a new lawsuit on the same claim. Dismissal without prejudice is based upon procedural errors.

This is a 42 USC 1983 civil conspiracy case filed in state court, at this time or point federal law applies. Under Federal Law, these affirmative defenses res judicata, collateral estoppels, issue preclusion and claim preclusion are foreclosed by prior decisions of the District Court and, it's well-settled law, if the court specifies that a dismissal is without prejudice, there is no claim preclusion. "Dismissals without

prejudice do not bar subsequent suits by *res judicata." Choice Hotels Int'l, Inc. v. Goodwin & Boone,* 11 F.3d 469, 473 (4th Cir. 1993).

STATE ACTORS

Defendants Ormond and Quinn[4] argued that they were not state actors. According to the four corners of the Complaint, on page 3 paragraph 6 this action is brought pursuant to 42 U.S.C. Sections 1983 for the defendants Ormond and Quinn violating Plaintiff's rights while acting under color of state law and on page 5 paragraph 19 defendant Ormond is sued as a State Actor / individually and on page 5 paragraph 17 defendant Quinn is sued as a State Actor / individually.

In additional, According to the four corners of the Complaint, on pages 25,26 in paragraphs 108-110 Defendants have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment rights of the United States Constitution, defendants Ormond and Quinn jointly participates in constitutional wrongdoing with state official in "state action" which meets the requirement of § 1983, See Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984); Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S.Ct. 183, 186-187, 66 L.Ed.2d 185 (1980).

This is a 42 USC 1983 civil conspiracy case filed in state court, at this time or point federal law applies. Under Federal Law, according to the four corners of the

[4] It appears Defendant Quinn did not argue that he was not a state actor, in his motion to dismiss filed on November 20, 2018, in his memorandum is support of his motion to dismiss filed on January 31, 2019 nor during oral arguments. During the hearing on August 8, 2019, defendant Ormond told Quinn he was not a state actor, however, Quinn had no standing. In other words, on or about March 23, 2004, the landowners Buckles and defendant Quinn and Condemnors SCDOT, Rucker, Gresham, Moore and de Holczer agreed to a settlement between them, pursuant to Section 28-2-40, Code of Laws of South Carolina, 1976, as amended, and rule 43K SCRCP and, as reflected by the consent order of Judge James R. Barber, III, dated March 23, 2004, and entered on the court records on March 26, 2004. Therefore, defendant Quinn had no standing.

Complaint, on pages 25,26 paragraphs 108-110, the Defendants have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment rights of the United States Constitution,[5] in that defendants Ormond and Quinn jointly participates in constitutional wrongdoing with state official in "state action" which meets the requirement of § 1983, See Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984); Dennis v. Sparks, 449 U.S. 24, 27-28, 101 S.Ct. 183, 186-187, 66 L.Ed.2d 185 (1980).

> (a) in that the Defendants acted jointly in concert in February 2004, March 2004, September 7, 2004, October 14, 2004, October 20, 2004 and January 8, 2008, to deprive Paul of payment for his property taken in October 2002, pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*, in that all defendants, including Ormond took a position claiming and declaring case 4800 had settled for just compensation. This was an intentionally false statement, because all defendants knew without Paul's consent or approval, as a matter of law, defendants could not settle the case for just compensation,
>
> (b)in furtherance of the conspiracy the defendant Paul D. de Holczer stated that Paul have no right to have a jury trial which resulted in deprivation of a constitutional right, his rights to have a trial by jury and,
>
> (c)in furtherance of the conspiracy the defendant Michael H. Quinn threaten Paul's expert witnesses with criminal prosecution and threaten to have his expert witnesses arrested, if they testified. (additional evidence see exhibit F attached to Plaintiff's Combined Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11, 2019)

109. Because of the foregoing Paul has suffered a denial of its Constitutional rights, the inability to set forth all his evidences, before a jury, as otherwise allowed in

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[5] Alternatively, a claim of civil conspiracy may be established if plaintiff "can show some 'peculiar power of coercion' possessed by the conspirators by virtue of their combination, which an individual acting alone does not possess." Walters, 931 So. 2d at 140 (civil conspiracy was actionable against neighbors who posted "for sale" signs before their units making it appear that five units were for sale in the same condominium and driving down the value of plaintiffs' unit).

accordance with the State and Federal Constitutionally established and protected safeguards designed to prevent just such occurrences and, the resultant financial damages approximating $310,000.00.

110. Further, because of the foregoing actions the Defendants have deprived Paul of its property without just compensation and Paul has suffered a denial of its Constitutional rights, the right to payment for taking of his property as otherwise allowed in accordance with the Takings Clause of the Fifth Amendment, *in other words to be clearly, zero $0.00. dollars and cents,* and the resultant financial damages approximating $310,000.00.

In addition, see the District Judge Order in Paul III 3:13-cv-01852-CMC (ECF 43 p. 11) *"..that some statements may have been made in the proceedings that mischaracterized or misrepresented Plaintiff's actions or positions..";* Also see the district judge Order in Paul III 3:13-cv-01852-CMC (ECF 43 p. 12) *"They also suggest that Landlord and the SCDOT acted cooperatively in opposing Plaintiff's claims, consistent with their settlement agreement..."* [6]

Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

---

[6] The agreement to reach a predetermined outcome to enter the settlement as just compensation, with the goal of ruin Paul's cause of action, under The Takings Clause, against SCDOT based on the Highest and Best Use of his property as "Commercial Retail Property" appraised between 310,000.00 - 400,000.00 itself violated Paul's constitutional rights, independently of the subsequent state court decisions. See Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."); Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d at 159, 166 (3d Cir. 2010).

1983 includes private individuals, the term "person" in § 1983 includes private individuals and corporations acting under color of law, Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982), and local governmental entities and natural persons such as state, county, and municipal officials, Monell v. New York City Dep't of Social Servs., 436 U.S. 658 (1978).

During the hearing on August 8, 2019, Plaintiff believe Defendant Quinn appeared to argue the merits and make arguments outside of the four corners of the Complaint filed on October 26, 2018, that conflicted with arguments he made before The Honorable Edward B. Cottingham (Exhibit B and C).

EXCEPTION TO ELEVENTH AMENDMENT IMMUNITY

Defendant SCDOT claimed that SCDOT is not a "person" amenable to suit under 42 U.S.C. § 1983. Plaintiff concedes that SCDOT is not a "person" amenable to suit under 42 U.S.C. § 1983 for monetary damages. Plaintiff argues, however, that for purposes of declaratory relief, his claim may proceed despite the Eleventh Amendment or sovereign immunity because he is seeking declaratory relief a declaration relating to the future performance of official duties. See Ex parte Young, 209 U. S. 123 (1908) (recognizing exception to immunity where plaintiff seeks prospective relief against a state official in his official capacity to prevent future violations). In addition, Under the Uniform Declaratory Judgments Act. S.C. Code Ann. §§ 15-53-30; Rule 57, SCRCP. "Any person . whose rights, status or other legal relations are affected by a statute . may have determined any question of construction or validity arising under the . statute . and obtain a declaration of

rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30 (1976). This case presented a justiciable controversy. See Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 459 S.E.2d 844 (1995) (justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party).

In other words, Plaintiff's Complaint ask the court to "declare" a number of facts and legal conclusions to be true or false, sufficient to convert the claim to one for declaratory relief, see Complaint pages 24-25.

Declaratory relief is the only remedy Plaintiff have against SCDOT. Plaintiff have standing to pursue declaratory relief against SCDOT. (See exhibits G, H, K and I page 9 attached to Plaintiff's Combined Memorandum and Amended Memorandum in opposition to all Defendants' Motions to Dismiss filed on February 11 and April 5, 2019) because Paul seeks only declaratory relief to end the ongoing violation of the Fifth Amendment of the United States Constitution, the provision known as the Takings Clause, which states that "private property [shall not] be taken for public use, without just compensation by state officials, there is no danger that the issuance of an declaratory relief or a declaration would disturb State sovereignty. See Bragg v. West Virginia Coal Ass'n, 248 F.3d 275, 292 (4th Cir. 2001) ("[T]he Eleventh Amendment does not preclude private individuals from bringing suit against State officials for declaratory relief designed to remedy ongoing violations of federal law.").

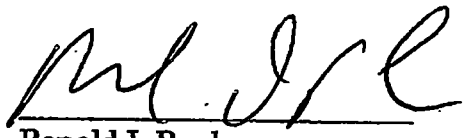
The Supreme Court has stated that "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The standing "inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Id.* The constitutional aspects of standing "import[] justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." *Id.* (citations omitted). Consequently, "at an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.'" *Valley Forge Christian Coll. v. Am.'s United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (citations omitted).

CONCLUSION

Plaintiff disagree and object to Defendant Quinn Statement of the Facts; Defendants Ormond, SCDOT, De holczer and Moore backgrounds that are misleading, to the extent they include factual inaccuracies, contested factual matter and arguments.

For the aforementioned reasons, the Court Order Granting defendants Motions to Dismiss filed on November 13, 2019 should be vacated/reversed and an order enter denying defendants Motions to Dismiss.

Respectfully submitted,



Ronald I. Paul
Post Office Box 4353
Columbia, South Carolina 29240
Plaintiff, *Pro se* (803) 414-2305

Columbia, South Carolina

November 25, 2019

Exhibit

E

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4005641

Ronald I Paul
PLAINTIFF(S)

SC Department Of Transportation et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Plaintiff's Motion for Reconsideration (filed on November 25, 2019) is DENIED without hearing in accordance with Rule 59(f), SCRCP.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/26/2019 .

Ronald I Paul for Ronald I Paul
Ronald I Paul for Ronald I Paul

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Richland Common Pleas

Case Caption: Ronald I Paul vs SC Department Of Transportation , defendant, et al

Case Number: 2018CP4005641

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE JOCELYN NEWMAN
Circuit Court Judge
Fifth Judicial Circuit

CASE NO: 2018-CP-400-5641

RONALD I. PAUL.....Appellant,

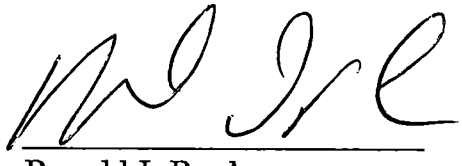
V.

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; PAUL D. DE HOLCZER, individually and as a partner of the law Firm of Moses, Koon & Brackett, PC; MICHAEL H. QUINN, individually and as senior lawyer of Quinn Law Firm, LLC; J. CHARLES ORMOND, JR., individually and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; OSCAR K. RUCKER, in his individual capacity as Director Rights of Way South Carolina Department of Transportation; MACIE M. GRESHAM, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; NATALIE J. MOORE, in her individual capacity as assistant chief counsel South Carolina Department of Transportation..... Respondents.

PROOF OF SERVICE

I, Ronald I. Paul hereby certify that I have served the **Motion for leave to file Rule 60(b) Motion and Motion for lack of Jurisdiction and Motion to Remand** on Respondents South Carolina Department of Transportation; Paul D. de Holczer individually, and as a partner of the law Firm of Moses, Koon & Brackett, P.C; Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC; J. Charles Ormond, Jr., individually

and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; Oscar K. Rucker, in his individual capacity as Director Rights of Way South Carolina Department of Transportation; Macie M. Gresham, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; Natalie J. Moore, in her individual capacity as assistant chief counsel South Carolina Department of Transportation by depositing a copy of it in the United State Mail, postage prepaid, on this date, February 24, 2020, addressed to the attorney of record or *Pro Se* Litigants.



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Appellant, *Pro Se* Litigant

Columbia, South Carolina

February 24, 2020

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ORMOND - DUNN
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Attroney for J. Charles Ormond, Jr., individually, and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner

Ronald I. Paul
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ronaldipaul@att.net
(803) 414-2305

February 24, 2020

HAND DELIVERY

The Honorable Jenny Abbot Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

Re: Ronald I. Paul v. SCDOT, et al
Court of Appeals Case No: 2019-002076
Civil Action Case Number: 2018-CP-400-5641

Dear Ms. Kitchings:

Hand delivered for filing the original and six copies of Appellant Motion for leave to file Rule 60(b) Motion and Motion for lack of Jurisdiction and Motion to Remand.

Very truly yours,

Ronald I. Paul, *Pro se*
Appellant

cc. Andrew F. Lindemann
Michael H. Quinn
J. Charles Ormand