

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE L. CASEY MANNING
Circuit Court Judge
Fifth Judicial Circuit

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SC Court of Appeals

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.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,)
Plaintiff,)

Civil Action No. 2018-CP-40-5641

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,)
Defendants.)

ORDER

This matter is before this Court on several motions filed by the Plaintiff and the Defendants including the following:

- (1) Motion for Entry of Default and Default Judgment by the Plaintiff filed December 31, 2018;
- (2) Motion to Set Aside Entry of Default and Motion to Dismiss by the Defendants Rucker and Gresham filed January 31, 2019;

- (3) Motion for Stay of Discovery and/or Motion for Protective Order by the Defendants SCDOT, de Holczer, and Moore filed December 17, 2018;
- (4) Motion for Rule 26(c) Protective Order to Stay Discovery by Defendant Quinn filed December 19, 2018;
- (5) Motion to Compel Discovery against the Defendants SCDOT, de Holczer, and Moore by the Plaintiff filed December 18, 2018; and
- (6) Motion to Compel Discovery against the Defendant Quinn by the Plaintiff filed December 20, 2018.

A hearing was held on April 16, 2019, with the *pro se* Plaintiff and counsel for the Defendants present.

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. 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

¹ The pertinent pleadings and orders filed in the 2002 condemnation action and subsequent litigation commenced by the Plaintiff have been previously submitted into the record.

of limitations defense and other defenses. The Plaintiff appealed to the Court of Appeals which 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-PJG

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, like the others, includes federal Section 1983 civil conspiracy claims against the same Defendants. In lieu of filing Answers, the Defendants SCDOT, de Holczer, Moore, and Quinn

filed motions to dismiss which were heard by another judge on February 11, 2019, and those motions remain pending at this time.

Legal Analysis

I. Default Motions

The Defendants named in this action include Oscar K. Rucker and Macie M. Gresham, both former SCDOT employees. The Plaintiff alleges that he effected service of the Complaint in the current lawsuit on Rucker and Gresham by certified mail sent to the SCDOT Offices located at 955 Park Street, Columbia South Carolina. The record reflects that the certified mail directed to Gresham was not sent restricted delivery but that the certified mail directed to Rucker was apparently sent restricted delivery.² However, neither certified letter was received or signed for by Rucker or Gresham. The record reflects that neither Rucker nor Gresham was still employed by SCDOT in 2018. The record includes the affidavit of Sherrie S. Morey, who is employed by SCDOT in the Rights of Way Director's Office. Ms. Morey testified that the return receipts were signed by an SCDOT postal employee, and the certified letters were provided to her. Ms. Morey further testified that that after consulting with the SCDOT legal office, she handwrote "Return to Sender" on both envelopes and placed them back in the U.S. Mail to be returned to the Plaintiff. Oscar Rucker also submitted an affidavit in which he attests that he never authorized SCDOT or anyone employed by SCDOT to accept service of any legal process

² Attached to his default motion, the Plaintiff has provided the Court with the U.S. Mail receipt for both certified letters. The receipt for the mailing to Rucker shows a charge of \$8.55 for "Certified Mail Restricted Delivery," while the receipt for the mailing to Gresham shows no charge was paid for "Certified Mail Restricted Delivery." The USPS Tracking information, as also provided by the Plaintiff, verifies this. For Rucker, the USPS Tracking shows the "features" as "Certified Mail Restricted Delivery," but for Gresham, the USPS Tracking shows the "features" as "Certified Mail."

on his behalf, including this 2018 lawsuit.³ The Plaintiff filed no counter affidavits to dispute the information contained in the Rucker and Morey affidavits.

Under South Carolina law, “[t]he plaintiff has the burden to establish that the court has personal jurisdiction over the defendant.” *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64, 66 (Ct. App. 1996). “The plaintiff need only show compliance with the rules.” *Id.* “When the civil rules on service are followed, there is a presumption of proper service.” *Id.* “Once the plaintiff has demonstrated compliance with the rules, the defendant can rebut an inference that service was effected only by showing that the return receipt was signed by an unauthorized person.” *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430, 433 (2012).

Rule 4(d)(8), SCRCP, allows for service of process on an individual by certified mail; however, the service must be made “by registered or certified mail, return receipt requested, and delivery restricted to the addressee.” Rule 4(d)(8), SCRCP, further provides:

Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.

Rule 4(d)(8), SCRCP. In *Graham Law Firm, supra*, the Supreme Court held that “[a] rule permitting certain persons to receive service of process on behalf of others does not imply that ‘anyone who happens to pick up the mail’ can stand in for the defendant. As with corporations, the class of persons who may receive service of process on behalf of an individual is limited.” 721 S.E.2d at 434. The Supreme Court further explained that “an individual is as competent as

³ At the hearing, the Court was advised by Defendants’ counsel that Macie Gresham did not provide a similar affidavit because she is in poor health and he wanted to avoid upsetting her unnecessarily. Because Gresham was not served by restricted delivery and thus Rule 4(d)(8) was not complied with, there is no need for any affidavit from her.

any other entity to confer authority on an agent. Rule 4(d)(1), SCRCPP, itself contemplates service on the agent of an individual, permitting service “[u]pon an individual ... by delivering a copy to an agent authorized by appointment ... to receive service of process.” *Id.*

In applying this law to the facts presented in this case, the Court finds that the Plaintiff failed to comply with the requirements of Rule 4(d)(8), SCRCPP, with respect to the purported service by certified mail on the Defendant Macie Gresham. The record clearly shows that the Plaintiff did not restrict delivery to Gresham. Thus, for Gresham, no further analysis is needed. The Plaintiff cannot show compliance with Rule 4(d)(8) and has not otherwise demonstrated that the Complaint was received by Gresham nor any person authorized by Gresham to receive service of process on her behalf. As for the Defendant Oscar Rucker, the Plaintiff did restrict delivery to the addressee, but the certified mail was sent to Rucker’s former place of employment and was signed for by an SCDOT employee. Rucker attests in his affidavit that he did not authorize SCDOT or any employee of SCDOT to accept service of process for him. The Plaintiff has presented no evidence to dispute that testimony. Thus, the Plaintiff has not shown that effective service was made on either Rucker or Gresham.

For these reasons, the Plaintiff’s Motion for Entry of Default and Default Judgment is denied. The Motion to Set Aside Entry of Default and Motion to Dismiss by the Defendants Rucker and Gresham is granted, and the Complaint is dismissed without prejudice as to the Defendants Rucker and Gresham for lack of personal jurisdiction.⁴

⁴ The Court further recognizes that the Defendants Rucker and Gresham are being sued for their alleged conduct when they served as employees of SCDOT. However, Rule 55(e), SCRCPP, does not permit a default judgment to be entered “against the State of South Carolina or an officer or agency thereof ... unless the claimant establishes his claim to relief by evidence satisfactory to the Court.” The Plaintiff has made no such showing, and as a result, this is an additional basis for denying the Plaintiff’s request for a default judgment to be entered against Rucker and Gresham.

II. Discovery Motions

As indicated above, the Defendants SCDOT, de Holzcer, Moore, and Quinn all filed Motions to Dismiss in lieu of filing Answers to the Plaintiff's Complaint.⁵ The Motions to Dismiss raise numerous grounds including res judicata, statute of limitations, *Harlow* qualified immunity, quasi-judicial/prosecutorial immunity as well as immunity from suit by a third party arising from attorneys' professional activities in representing parties to the 2002 condemnation proceeding. Those Motions to Dismiss remaining pending for adjudication at this time.

After the Defendants filed their Motions to Dismiss, the Plaintiff served them with a set of requests for production seeking the production of the alleged settlement agreement between SCDOT and the Buckles in the 2002 condemnation action. The Defendants filed for a protective order thereby staying discovery until such time at their Motions to Dismiss made be adjudicated.

The Court recognizes that the Plaintiff's Complaint alleges only federal civil rights claims brought pursuant to 42 U.S.C. § 1983. As the Defendants have pointed out, federal courts, including the United States Supreme Court, have routinely recognized that discovery may be inappropriate while the issue of immunity is being resolved. *See, e.g., Siegert v. Gilley*, 500 U.S. 226, 231-32 (1991) (noting that immunity is a threshold issue and discovery should not be allowed while the issue is pending); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (same); *Workman v. Jordan*, 958 F.2d 332, 336 (10th Cir. 1992) (same); *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988) (stay of discovery until immunity defense is decided furthers the goal of efficiency for the court and litigants). *See also, Behrens v. Pelletier*, 516 U.S. 299, 308-310 (1996) (noting that discovery can be particularly disruptive when a dispositive motion regarding immunity is pending).

⁵ The Defendant Charles Ormond has also filed a Motion to Dismiss which remains pending at this time.

In *Cuyler v. Dept. of the Army*, 2009 WL 1749604 (D.S.C. 2009), the United States District Court granted a similar motion and stayed discovery until the Court decided a motion to dismiss. The Court explained that "Defendant could and should have avoided the discovery-related concerns by filing a motion to stay deadlines and discovery at the same time it filed its motion to dismiss." 2009 WL 1749604, *8. The Court also cited *Harlow* recognizing that "discovery may be stayed to determine the dispositive issue of immunity of government officials." 2009 WL 1749604, *2. The Court further cited to the Fifth Circuit case of *Petrus v. Bowen*, 833 F.2d 581 (5th Cir. 1987), where the Court stayed discovery during the pendency of a Rule 12(b)(6) motion. The Fifth Circuit explained that "[a] trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined." 833 F.2d at 583.

Based upon the foregoing authorities, the Court finds that it is appropriate and within this Court's discretion to stay discovery until the pending Motions to Dismiss are heard. Nonetheless, during the hearing, the Court was advised that the Defendants had conducted a search of available records from the 2002 litigation and did not locate a written settlement agreement. Counsel, including Michael H. Quinn, who represented the Buckles in the 2002 litigation, advised the Court that, from his recollection, the agreement as to just compensation as reached between SCDOT and the Buckles was confirmed and memorialized in the Order issued by Judge James R. Barber, III in Civil Action Number 2002-CP-40-4800 on March 23, 2004 (a copy of which is in the record),⁶ and, to the best belief of both counsel, there is no separate written settlement agreement to that effect.

⁶ In the Order of Judgment filed March 11, 2005 in the 2002 condemnation action, Judge Reginald Lloyd also acknowledged the agreement as to the amount of just compensation by the parties and further wrote: "During trial, counsel for Landowners and Condemnor confirmed such agreement."

Based upon counsel's representation, the Court finds that the Plaintiff's Motions to Compel are moot. The Court nonetheless will stay any further discovery in this litigation until the pending Motions to Dismiss are decided by the Court.

IT IS, THEREFORE, ORDERED that, based on the reasons stated herein, the Plaintiff's Motion for Entry of Default and Default Judgment is denied. The Motion to Set Aside Entry of Default and Motion to Dismiss by the Defendants Rucker and Gresham is granted, and the Complaint is dismissed without prejudice as to the Defendants Rucker and Gresham for lack of personal jurisdiction.

IT IS FURTHER ORDERED that the Plaintiff's two Motions to Compel Discovery are denied as moot.

IT IS FURTHER ORDERED that the Motions for Protective Order to Stay Discovery filed by the Defendants 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 Defendants which are currently pending.

AND IT IS SO ORDERED.

L. CASEY MANNING
Presiding Circuit Court Judge
Fifth Judicial Circuit

June __, 2019



Richland Common Pleas

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

Case Number: 2018CP4005641

Type: Order/Entry of Default

So Ordered

s/L. Casey Manning, 2061

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Ronald I. Paul,

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 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

CASE NO: 2018-CP-400-5641

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

THIS MATTER came before the Court on April 16, 2019 on several Motions of the
Plaintiff and Defendants including the following:

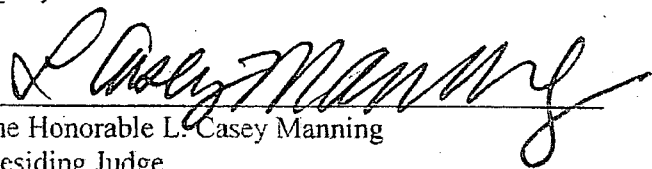
- (1) Motion for Entry of Default and Default Judgment by the Plaintiff filed
December 31, 2018;
- (2) Motion to Set Aside Entry of Default and Motion to Dismiss by the
Defendants Rucker and Gresham filed January 31, 2019;

- (3) Motion for Stay of Discovery and/or Motion for Protective Order by the Defendants SCDOT, de Holczer, and Moore filed December 17, 2018;
- (4) Motion for Rule 26(c) Protective Order to Stay Discovery by Defendant Quinn filed December 19, 2018;
- (5) Motion to Compel Discovery against the Defendants SCDOT, de Holczer, and Moore by the Plaintiff filed December 18, 2018; and
- (6) Motion to Compel Discovery against the Defendant Quinn by the Plaintiff filed December 20, 2018.

Following the hearing and review of arguments and pleadings submitted by the parties, this Court denied Plaintiff's Motions for Entry of Default and Default Judgment and found Plaintiff's Motions to Compel Discovery moot. The court further granted Defendants Motion to Set Aside Entry of Default, Motion to Dismiss and Motions to Stay Discovery detailed in two Orders filed June 7, 2019. Plaintiff filed a Motion to Reconsider on June 14, 2019, which was timely under Rule 59(e). After a review of the pleadings, the motion and arguments therein, and all the testimony including this Court's previous ruling, this Court denies Plaintiff's Motion to Reconsider without oral arguments presented.

Therefore, after reviewing Plaintiff's Motion and the arguments within being duly noted, Plaintiff's Motion to Reconsider this Court's ruling on Plaintiff's Motions for Entry of Default and Default Judgment, and Motions to Compel is **DENIED**.

IT IS SO ORDERED this 27 day of June 2019


The Honorable L. Casey Manning
Presiding Judge

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,)
Plaintiff,)

Civil Action No. 2018-CP-40-5641

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 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.)

**ORDER GRANTING
MOTIONS TO DISMISS**

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-PJG

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 as 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

ELECTRONICALLY FILED - 2019 Nov 13 4:28 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641



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

Electronically signed on 2019-11-13 16:01:04 page 10 of 10

ELECTRONICALLY FILED - 2019 Nov 13 4:28 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

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 a partner of the law firm of Holler,
Dennis, Corbett, Ormond, Plante & Garner;
OSCAR K. RUCKER, in his individually
capacity as Director, right of way South
Carolina of Transportations; MACIE M.
GRESHAM, in her individually capacity as
eastern region right of way Program Manger
South Carolina of Transportations;
NATALIE J. MOORE, in her individually
capacity as assistant chief counsel South
Carolina of Transportations.

Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO.

RICHLAND COUNTY
FILED
2018 OCT 26 AM 10:01
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE-NAMED:

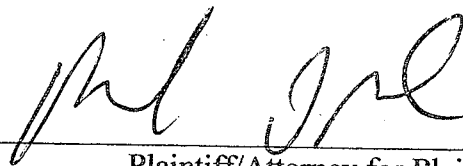
YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Columbia, South Carolina

Dated: October 26, 2018

Address:

RONALD I. PAUL
Post Office Box 4353
Columbia SC 29240-4353



Plaintiff/Attorney for Plaintiff

SCCA 401 (5/02)

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

CIVIL ACTION FILE NO.

COMPLAINT

CIVIL CONSPIRACY 42 U.S.C. § 1983

(JURY TRIAL DEMANDED)

2018 OCT 26 AM 10:01
JEANNETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

INTRODUCTION

1. The Plaintiff, RONALD I. PAUL, complaining of the Defendants, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATIONS; 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; 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 (hereinafter referred to collectively as "ALL Defendants or defendants"), would respectfully show onto the Court:

2. The state officials in this case are SCDOT; Oscar K. Rucker; Macie M. Gresham and Natalie J. Moore (hereinafter referred to collectively as "state officials")

3. The private individuals in this case are Paul D. de Holczer; Michael H. Quinn and J Charles Ormond, Jr., (hereinafter referred to collectively as "private individuals")

JURISDICTION AND VENUE (JURY DEMAND)

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the U.S. Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343, 1343 (3) and 1367(a) because this action seeks to redress the deprivation under color of state law of Plaintiffs' civil rights and secure equitable or other relief for violation of such rights.

5. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure Rule 57.

6. This action is brought pursuant to 42 U.S.C. Sections 1983 for the defendants SCDOT; Oscar K. Rucker; Macie M. Gresham; Natalie J. Moore; Paul D. de Holczer; Michael H. Quinn and J Charles Ormond violating the Plaintiff's rights while acting under color of state law.

7. The covert and overt acts or omissions of all defendants occurred in Richland County, State of South Carolina.

8. The Plaintiff demands trial by jury.

PARTIES

Plaintiff

9. The Plaintiff (hereinafter referred to as "Plaintiff or Paul") is a resident of the County of Richland, State of South Carolina.

Defendants

SCDOT

10. The Defendant South Carolina Department of Transportation (hereinafter referred to as "Defendant SCDOT") is a state governmental entity with offices located in County of Richland, State of South Carolina.

Oscar K. Rucker

11. The Defendant Oscar K. Rucker is the Director, Rights of Way for South Carolina Department of Transportation (hereinafter referred to as "Defendant Rucker") a state governmental entity with offices located in County of Richland, State of South Carolina. Defendant Rucker is sued in his individual capacity.

Macie M. Gresham

12. The Defendant Macie M. Gresham is the Eastern Region Right of Way Program Manager for South Carolina Department of Transportation (hereinafter referred to as "Defendant Gresham") a state governmental entity with offices located in County of Richland, State of South Carolina. Defendant Gresham is sued in her individual capacity.

Natalie J. Moore

13. The Defendant Natalie J. Moore is the Assistant Chief Counsel, South Carolina Department of Transportation (hereinafter referred to as "Defendant Moore") a state governmental entity with offices located in County of Richland, State of South Carolina. Defendant Moore is sued in her individual capacity.

Paul D. de Holczer

14. The Defendant, Paul D. de Holczer is, on information and belief, a resident of the County of Richland, State of South Carolina, and a partner of the Law Firm Moses, Koon & Brackett, P.C, organized and existing under the laws of the County of Richland, State of South Carolina.

15. Mr. de Holczer is sued as a State Actor, individually and as a partner in the Law Firm of Moses, Koon & Brackett, P.C, with its principal place of business in Richland County, State of South Carolina. (hereinafter referred to as "Defendant de Holczer or de Holczer")

Michael H. Quinn

16. The Defendant, Michael H. Quinn is, on information and belief, a resident of the County of Richland, State of South Carolina, and senior lawyer of the Law Firm

Quinn Law Firm, LLC, organized and existing under the laws of the County of Richland, State of South Carolina.

17. Mr. Quinn is sued as a State Actor and individually and as senior lawyer in the Law Firm of Quinn Law Firm, LLC, with its principal place of business in Richland County, State of South Carolina. (hereinafter referred to as "Defendant Quinn or Quinn")

J Charles Ormond

18. The Defendant, J Charles Ormond is, on information and belief, a resident of the County of Richland, State of South Carolina, and a partner of the Law Firm Holler, Dennis, Corbett, Ormond, Planter & Garner, organized and existing under the laws of the County of Richland, State of South Carolina.

19. Mr. Ormond is sued as a State Actor and individually and as a partner in the Law Firm of Holler, Dennis, Corbett, Ormond, Planter & Garner, with its principal place of business in Richland County, State of South Carolina and within this Division. (hereinafter referred to as "Defendant Ormond or Ormond")

Factual History

20. On July 3, 1985, the Plaintiff leased premises from Keith J. Buckles now deceased (Lessor) consisting of a concrete block/brick building previously designated as 2115 Two Notch Road in the City of Columbia, in the state and county aforesaid, together with the immediate parking area on its perimeter. (Record Book 00593-1478 and Renewal Record Book 00868-2723)

21. Plaintiff opened a retail liquor store on the property. The business was opened in September 1985 and had operated successfully for eighteen (18) years.

22. On or about September 7, 2002, Defendant Rucker mailed a certified letter to Paul. This letter informed Paul of the Two Notch Road widening project and that his building would be removed in its entirety and, in order to meet construction schedules, requested that he vacate the property. No payment of just compensation was offered to Paul in this letter, *in other words to be clearly, zero \$0.00. dollars and cents.* Therefore, Paul responded to the letter in writing and requested payment of damages.

23. On October 2, 2002, SCDOT, Rucker, Gresham, Moore and de Holczer filed an action against defendant Keith J. Buckles (now deceased) and G.L. Buckles (now deceased) pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*, (case # 2002-CP-400-4800) and condemned the property.

24. On October 14, 2002, Defendant Rucker, hand-delivered a letter to Paul via Mrs. Naomi W. Scipio. This letter informed Paul of the Two Notch Road widening project and that his building would be removed in its entirety and, in order to meet construction schedules, requested that he vacate the property. No payment of just compensation was offered to Paul in this letter, *in other words to be clearly, zero \$0.00. dollars and cents.* Therefore, Paul responded to the letter in writing and requested payment of damages.

25. On October 21, 2002, SCDOT/ Rucker/ Gresham/ Moore and de Holczer filed an amended condemnation action against Paul pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*, (case # 2002-CP-400-4800) and condemned Paul's property and property rights (commercial lease)

without payment of just compensation to Paul, *in other words to be clearly, zero \$0.00. dollars and cents.*

26. Also, one other party was named in this action (Sang Kim). Mr. Kim was later dismissed from case 4800 for failure to prosecute.

27. On November 19, 2002, Paul filed an Answer and Counterclaim, asserting an inverse condemnation action pursuant to his fifth and fourteenth amendment rights of the U.S. Constitution.

28. On December 18, 2002, SCDOT/ Rucker/ Gresham/ Moore and de Holczer filed Condemnor's answer to Condemnee Paul's Counterclaim. No payment of just compensation was offered to Paul in Condemnor's answer, *in other words to be clearly, zero \$0.00. dollars and cents.*

29. On or about April or May of 2003, Defendant Gresham called Paul and requested a time to inspect the property and talk about relocation. Paul told defendant Gresham he would be there (2115 Two Notch) all day. Later, that day defendant Gresham and Donald M. Liester arrived. Defendant Gresham told Paul that he would have to vacate the property and requested a date when he would vacate the property. No payment of just compensation was offered to Paul at this meeting, *in other words to be clearly, zero \$0.00. dollars and cents.*

30. Therefore, Paul asked defendant Gresham about payment of damages. Defendant Gresham told Paul "she would have to get with her legal department".

31. On or about June 21, 2003, Paul received an eviction notice from defendant de Holczer and defendant Gresham.

32. The eviction hearing was held before Judge Lloyd on October 13, 2003. Defendant Gresham and de Holczer stated to Judge Lloyd "SCDOT have a right to take the property pursuant to a "Quick-Take-Action".
33. Judge Lloyd agreed and therefore defendant Gresham and de Holczer had (Acquired the property) evicted Paul by court Order dated October 27, 2003 and filed on October 28, 2003, without payment of just compensation to Paul, *in other words to be clearly, zero \$0.00. dollars and cents.*
34. In response to the eviction, on or about November 12, 2003, Paul called the South Carolina bar referral service and requested an expert attorney in the area of South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*
35. Paul was referred to Mr. J. Charles Ormond, Jr., of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner. Paul called defendant Ormond on the same day to schedule an appointment. Paul met with defendant Ormond the same day and completely explained the case to defendant Ormond that only included Paul's damages against SCDOT.
36. In addition, the next day defendant Ormond told Paul he had reviewed the entire file and told Paul the Lease is property and that Paul is entitled to damages that must be paid by the state for this type of property, commercial lease. Ormond accepted the case and a written contract was signed.
37. In February of 2004, defendant Ormond called Paul and told him the state officials and defendants de Holczer and Quinn/Buckles had already settled the case for just compensation.

38. Defendant Ormond told Paul that defendant de Holczer and defendant Quinn told Ormond and Judge James R. Barber III this at a roster meeting this morning.

39. Therefore, in March of 2004, Judge Barber's issued an order of bifurcation in The Court of Common Pleas, for a separate proceeding, to address the separate issues of (1) just compensation, and (2) to whom and in what apportionment the just compensation should be paid.

40. Paul told defendant Ormond that he knows nothing about a settlement and, that defendants Rucker and Gresham had completely ignored Paul and, No payment of just compensation has been offered to Paul, *in other words to be clearly, zero \$0.00. dollars and cents.*

41. Then defendant Ormond told Paul that the landowners and SCDOT have a legal right to settle the case for just compensation, and further told Paul, "You have to sue the Buckles for a portion of that settlement". Paul told defendant Ormond "I have no claim against the Buckles and will not sue the Buckles for a portion of their settlement; my claim is against SCDOT for damages, please move forward with this claim only".

42. Later, in March of 2004, defendant Ormond legal advised Paul of the same, therefore, Paul responded via letters to defendant Ormond and, rejected the settlement as being just compensation. Paul told Ormond the total award must include his damages to fully compensate both the Lessee (Paul) and Lessor (Buckles).

43. In March or April of 2004, Keith J Buckles called Paul about the property at 2115 Two Notch Road. Mr. Buckles asked Paul to come over to his house this afternoon, he wants to talk about the property at 2115 Two Notch Road. Paul went over to Mr. Buckle's house that same afternoon.

44. Mr. Buckles told Paul he had settled the case with SCDOT. Mr. Buckles further told Paul his settlement did not include your (Paul) claim against SCDOT for the loss of your liquor license. Mr. Buckles showed Paul the appraisal of the property that only included the value of the land and two buildings. Mr. Buckles told Paul that he (Paul) was not entitled to any portion of his settlement, because it did not include the loss of your liquor license.

45. Mr. Buckles told Paul, that he had signed a written settlement agreement with SCDOT and as part of the settlement agreement with SCDOT; he was required to help SCDOT with any interests or rights that someone may claim they have in the property at 2115 Two Notch Road.

46. Therefore, Paul retained two expert witnesses Mr. David H. Blinder and Mr. Dewey M. Duckett, Jr. that appraised Paul's damages between \$310,000.00 - \$400,000.00 dollars, in written appraisals. Therefore, SCDOT, Rucker, Gresham, Moore and de Holczer requested depositions and, on or about October 8, 2004, deposed both expert witnesses.

47. On September 7, 2004, the state officials and the private individuals jointly told Judge Lee that a settlement was reached as to just compensation in case 4800

and that they want to have this put on the court records, all defendants had full knowledge Paul had rejected the settlement as being just compensation.

48. In addition, on September 7, 2004, the state officials and defendant de Holczer told Judge Lee, that Paul "have no rights to trial by jury in connection with the condemnation action, the right to trial by jury is not one of the rights Plaintiff Paul have, as only the Landowner and Condemnor can demand trial by the court without a jury", grounded on these statements Paul's rights to a jury trial was denied.

49. On September 8, 2004, Paul told Judge Lee, his cause of action was against SCDOT for damages, therefore, Judge Lee moved Paul right to claim damages against South Carolina Department of Transportation forwarded for trial.

50. On October 14, 2004, prior to the start of trial, in a status conference, the state officials and the private individuals told Judge Lloyd they had jointly agreed to hold a jointly trial on the issues Judge Barber's standing order had bifurcated.

51. On October 14, 2004, following opening statements by SCDOT and the state officials and private individuals. SCDOT called Derek John Piper as the first witness. Mr. Piper is a transportation engineer who manages the preparation of plans for road and bridge projects, including highway improvements, in South Carolina. He explained that the property which is the subject of the condemnation had two buildings on it prior to the condemnation and, Paul's lease was for an area that was completely removed and demolished because of the construction project.

52. Mr. Piper put forth no testimony or evidence about the value of the land,

buildings or Paul damages. SCDOT and the state officials and defendant de Holczer rested, without putting forth any testimony or evidence about the value of the land, buildings or Paul damages.

53. Next, on October 14, 2004, during Plaintiff Paul trial to determine his damages against SCDOT. Quinn and Buckles showed up at trial with two expert witnesses, Mr. Harvey Rosen and Mr. Anthony R. Martin, after they had settled their part of the case in March of 2004.

54. In addition, Quinn and Buckles talked about the value of the land and one building. Mr. Buckles had already told Paul in March or April of 2004, that he had signed a written settlement agreement with SCDOT for the value of the land and two buildings and as part of the settlement agreement with SCDOT; he was required to help SCDOT with any interests or rights that someone may claim they have in the property at 2115 Two Notch Road.

55. Next, defendant Ormond called Paul's first expert witness to the stand, Mr. Blinder. Mr. Blinder testified about his knowledge, skill, experience, training and education of this type of property, commercial lease. Subsequently, Quinn and Buckles objected claiming if he testified he would be "guilty of a misdemeanor and upon conviction must be fined not more than \$500 or imprisoned, I think, not more than six months or both". Subsequently, Judge Lloyd asked, "everyone except Mr. Blinder and Counsels to leave the courtroom for a short period of time—and we will let you back in very shortly", and then went off the court record. Then Judge Lloyd stated that he was going to allow the expert

witnesses to testify, then the state officials and defendant de holczer threaten criminal prosecution and threaten to have the expert witnesses arrested, if they testified — after this threat — Judge Lloyd decided to allow the expert witnesses to decide whether or not they want to testify and informed them of the threat made off the court record (first), then on the court record with less information, that bolstered defendants threats. The remarks effectively drove Mr. Blinder off the witness stand.

56. After these threats, expert witness, Mr. Blinder made the following statements while on the witness stand in case 4800:

THE WITNESS: Can I speak, Your Honor?

THE COURT: Yes, sir.

THE WITNESS: I would like to speak to my corporate counsel before I make a decision then. I will have to have my testimony postponed. I'm not going to risk going to jail or getting a criminal affair over this thing.

THE COURT: Is your corporal counsel local?

THE WITNESS: Yes.

THE COURT: Why don't we do this then. I will let you talk with Mr. Ormond first and give you a chance to call. You have got an appointment this afternoon; is that right?

THE WITNESS: I did, yes.

THE COURT: Counsel, how do you want to proceed?

MR. ORMOND: If I can talk to him for five minutes. I am not his attorney.

THE COURT: Yes, sir.

57. In addition, on October 15, 2007, Ormond and James J. Corbett told Judge L. Casey Manning the state officials and defendants de Holczer and Quinn threaten the expert witnesses with criminal prosecution and threaten to have them arrested if they testified.

58. Therefore, defendant Ormond called Paul to the witness stand. Paul testifies about his knowledge, skill, experience, training and education of this type of property, commercial lease. As part of Paul knowledge, skill and experience Paul testified that he had sold this type of property, commercial lease for "\$125,000.00" in the past. *Pro Se*, Paul testified his damages "the damage in a dollar amount caused by the condemnation action is \$310,000.00". Paul testimony is bolstered by one of the state top eminent domain lawyers, defendant Quinn. ((See prior related case 3:12-cv-01036-CMC-PJG (ECF 105-11))) Subsequently, Quinn and Buckles Motion the court to strike Paul testimony from the court records, the state officials and defendant de Holczer joined the Motion and, defendant Ormond refused to object to the Motion when questioned by Judge Lloyd. Judge Lloyd denied the Motion. Paul damages of \$310,000.00 were admitted into evidence by the trial judge.

59. After, the motion was denied and, Paul damages of \$310,000.00 were admitted into evidence by the trial judge. Defendant de Holczer made the following below statements to Judge Lloyd in case 4800:

MR. de HOLCZER: Your Honor, if it is Mr. Ormond's client's position that the amount of just compensation is not in dispute, even though he has testified that the leasehold value alone is \$310,000, which far exceeds what the stipulated agreement is of the total amount of just compensation, which would include that pie, there is some risk, I think, to my client that you have a \$310,000 figure, subject to any further rulings of the Court.

MR. de HOLCZER: That hangs out there and it's nearly double what the Department's position is as to the total amount of just compensation, not to mention that the Landowner would have some stake.

THE COURT: That may go as to the issue of -and that would have be conformed to -- because if he is agreeing it's the 164 or whatever was stipulated to between D.O.T. and the Landowner, then obviously --

MR. de HOLCZER: Your Honor, I would need to have him put that more clearly on the record because what we have now is some evidence presented by Mr. Paul that the pie, his piece of the pie, exceeds the size of the pie as agreed upon by the Landowner and the Department and also as will be testified to by the Department's appraiser.

MR. de HOLCZER: I think as long as that 310,000 hangs out there, then I really need to protect myself by putting on an appraiser who can give a basis for why the total amount of just compensation, is 156,000-plus, I believe.

MR. de HOLCZER: As long as there is a piece of pie that is larger than the pie, almost double the size of the pie, I think I have might have a problem.

THE COURT: Yes, sir. Mr. Quinn.

MR. QUINN: Your Honor, I think Mr. de Holczer is entitled to bring him up. I do think there is that risk that he talks about. That's his problem.

60. Therefore, in response, the state officials and defendant de Holczer (after they had rested) called Mr. Keith Batson who testified about the value of the land and one building.

61. Mr. Keith Batson put forth no testimony or evidence to rebut or dispute Paul damages of \$310,000.00 admitted into evidence.
62. The state officials and defendant de Holczer Motion the court to issue an order of the settlement agreement, that was previously rejected on September 7, 2004, during a Roster Hearing where the state officials and the private individuals had previously asked Judge Lee, to do the same.
63. Judge Lloyd decided to leave the motion open and give defendant Ormond a chance to think about it and ended court for the day. ¹
64. On October 20, 2004, after a drawn-out status conference the trial resumed, Judge Lloyd granted the Motion.
65. Plaintiff Paul file a Notice of Appeal on June 22, 2005, to dispute the order.
66. On October 23, 2006 The South Carolina Court of Appeals, affirm the order, that was a settlement agreement.
67. The South Carolina Supreme Court on October 18, 2007, denied Paul Petition for Writ of Certiorari, and on October 23, 2007, the South Carolina Court of Appeals remitted Judge Lloyd order to the lower court, that was a settlement agreement.
68. On October 10, 2007, Defendant Quinn and Buckles filed a motion to disburse the settlement agreement, also SCDOT/ Rucker/ Gresham/ Moore and de Holcrez agreed to this motion.
69. On January 8, 2008, at the motion hearing, Quinn and Buckles and SCDOT/ Rucker/ Gresham/ Moore and de Holcrez falsely claimed and declared that Paul had

¹ J. Charles Ormond had asked South Carolina Department of Transportation attorney (Paul D. de Holczer) to make this Motion to dismiss Paul damages of \$310,000.00 admitted into evidence by the trial Judge.

agreed and consented to the amount of the settlement agreement and allocation as set forth in Judge Lloyd order of the settlement agreement.

70. Therefore, on January 28, 2008, Judge Cooper filed an order to disburse the settlement agreement. This order forced Plaintiff Paul to file a Notice of Appeal on March 13, 2008, to dispute the order.

71. On May 27, 2009, The South Carolina Court of Appeals issued an unpublished opinion that dismissed the appeal and, on or about January 19, 2010, the South Carolina Supreme Court denied Plaintiff Petition for Writ of Certiorari.

72. On January 25, 2010, Paul filed a Rule 60 (b) Motion and, subsequently, on February 22, 2010, Paul filed an Amended Rule 60 (b) Motion to set aside Judge Cooper and Judge Lloyd orders. Defendants file no answer or defenses

73. On March 24, 2010, Judge Cooper entered an order denying Paul Motion to set aside Judge Cooper's and Judge Lloyd's orders. This forced Plaintiff Paul to file a Notice of Appeal on June 30, 2010, to dispute the orders.

74. In the South Carolina Court of Appeals, on July 23, 2010, Quinn and Buckles and SCDOT/Rucker/Gresham/Moore and de Holcrez filed injunctive and injunction relief motions to preclude Paul from taking further action in case 4800.

75. On January 19, 2011, The South Carolina Court of Appeals issued an order that dismissed the appeal and ignored the injunctive and injunction relief motions. On October 19, 2011, the South Carolina Supreme Court denied Plaintiff Petition for Writ of Certiorari. On February 21, 2012, the South Carolina Court of Appeals remitted to the lower court.

76. In the United States District Court of South Carolina, on June 7, 2012, South Carolina Department of Transportation, Oscar K. Rucker, Macie M. Gresham and Natalie J. Moore falsely stated – “Paul was evicted for failure to pay rent in October 2003.

77. In the United States District Court of South Carolina, on or about March of 2013, the state officials and defendants de Holczer and Quinn/ Buckles filings with the court “judicially admitted” Paul had rights to trial by jury, but he did not understand the law.

78. Paul discovered in August of 2014, on an unidentified date, defendant/s or unknown defendant/s alter the Condemnation Notice and Tender of payment filed on October 2, 2002. The hand-written alteration is a false statement. Paul never received \$154,300.00.

79. In April of 2016, South Carolina Department of Transportation, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore, Paul D. de Holczer, Michael H. Quinn, G.L. Buckles and J Charles Ormond filed documents continuing to reject Paul's claims.

80. This civil conspiracy continues to the day through cover-ups, defenses and tactics, in that defendants are claiming and declaring case 4800 had settled for just compensation, as of today. In class 4800 just compensation was never/not determined and paid to Paul for taking of his property, as of today.

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CONSEQUENTIAL DAMAGES

Consequential damages

81. The circumstances that led to Plaintiff injuries were ordinary and expected consequences of income loss, and therefore were foreseeable to South Carolina Department of Transportation, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore, Paul D. de Holczer, Michael H. Quinn / G.L. Buckles, J Charles and Ormond as set forth below:

82. In October 1998 Plaintiff Ronald Paul entered into a written commercial lease agreement with now deceased Keith J. Buckles for a term of (5) five years beginning on January 1, 1999 with an option to renew for an additional (5) five years, previously designated as 2318 Two Notch Road in the City of Columbia, in the state and county aforesaid, together with the immediate parking area on its perimeter. This was a commercial "Triple Net" lease. (Record Book 00518, at page 2270)

83. The premises were leased (as is) consisting of a 30 x 60 concrete block building designated as 2318 Two Notch Road in the city of Columbia, in the state and County aforesaid, together with the immediate parking area on its perimeter.

84. This commercial lease authorized Plaintiff Ronald Paul to build a 30 x 40 foot tenant owned structure and other improvement upon the lot of property located at 2318 Two Notch Road.

85. Also, this commercial lease authorized the first option to buy to Ronald Paul if property was to be sold during the lease time; moreover these lease provisions were initialed by Mr. Keith J. Buckles.

86. Plaintiff Ronald Paul relied upon what was written in entering into the lease option and built the 30 x 40 tenant-owned structures and spent a considerable amount of money improving the entire lot of property.

87. On December 19, 2003 Plaintiff Ronald Paul, exercised his option to renew and renewed the commercial lease as provided for in said commercial lease for an additional (5) five years with a current expiration date of December 31, 2008. (Record Book 00887-0832)

88. In October and November 2004 Plaintiff Ronald Paul failed to pay rent due to a prior Eminent Domain condemnation action (2002-CP-400-4800) instituted by South Carolina Department of Transportation, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore and Paul D. de Holczer in October 2002.

89. This action (Case 4800) deprived Plaintiff Ronald Paul of his livelihood and income, lost business equipment at uncle bobs storage, future plans to extend his businesses, lost items of sentimental value, damaged Paul credit rating, medical issues and retirement nest egg, including loss of past, present and future earnings, mental anguish, embarrassment and humiliation.

90. On November 24, 2004, because of Plaintiff Ronald Paul failure to pay October and November rent, G. L. Buckles instituted legal action in Magistrate Court against Plaintiff Ronald Paul for eviction, collection of the past due rent and

insurance in the amount of \$5,536.00. (case # 20044683019) The attorney for Buckles was defendant Michael H. Quinn.

91. On December 9, 2004 Plaintiff Ronald Paul filed an answer in response

92. The case preceded the same as any other civil cases a hearing on the merits was scheduled and heard on December 15, 2004 before Richland County Magistrate Judge W. H. Womble, Jr.

93. First, Mr. G.L Buckles testified at trial that the rent and insurance was not paid and that he wanted Plaintiff Ronald Paul evicted from the property and that the Plaintiff Ronald Paul was liable for past due rent and insurance.

94. Next, Mr. Ronald Paul testified that he did not pay October and November rent for 2004 due to a prior Eminent Domain condemnation action instituted by South Carolina Department of Transportation that deprived him of his livelihood and income

95. On December 12, 2005, because of the 30 x 40 tenant-owned structures, G.L Buckles as personal representative of the estate of Keith J. Buckles instituted legal action against Plaintiff Ronald Paul in Circuit Court for collection of past due rent, taxes and insurance in the amount of \$10,800.13. (case # 2005-CP-400-6516) The attorney for Buckles was defendant Michael H. Quinn.

96. Also, seeking a declaratory judgment for judicial termination and improper recordation in Circuit Court to unlawful transfer Plaintiff Ronald Paul property (the 30 x 40 tenant-owned structures) to the Estate of Keith J. Buckles.

97. On February 13, 2006, G. L. Buckles filed an amended complaint instituted the same. On March 9, 2006 Plaintiff Ronald Paul filed an answer and counterclaims. On March 28, 2006 Defendant G.L Buckles filed a reply.

98. Plaintiff property was transferred to the Estate of Keith J. Buckles for failure to pay rent, taxes and insurance by Court Order filed May 4, 2007, and all defendants Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore, Paul D. de Holczer, Michael H. Quinn, J Charles and Ormond are liable for Plaintiff injures and losses in the amount of \$528,000.00.

99. Plaintiff would have had his property, property rights, goodwill, going concern value, livelihood and financial health for another twenty years until his retirement at age or between ages sixty-two to sixty-seven.

100. For property and property rights at 2318 two notch rd \$2,200.00 (monthly rental income) X 12 months = \$26,400.00 X 20 years = \$528,000.00

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COUNT ONE
DECLARATORY JUDGMENT 42 U.S.C. 1983

101. Paragraphs 1 through 100 above are set forth herein as if more fully stated in their entirety.

102. In that, in case 4800, on or about February - March 23, 2004 Quinn, Buckles, SCDOT, Rucker, Gresham, Moore and de Holczer agreed to a settlement between them.

103. 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,

104. Now, as set forth above, there exists an actual controversy between Plaintiff and Defendants as to whether the settlement agreement in case 4800 between SCDOT and the Buckles applied equally to Paul, as just compensation.

105. Therefore, Plaintiffs seek declaratory relief and a judicial determination pursuant to:

Section 28-2-10, *et seq* and 28-2-40. Compromise or settlement permit. At any time before or after commencement of an action, the parties may agree to and carry out, according to its terms, a compromise or settlement as to any matter, including all or any part of the compensation or other relief and, 28 U.S.C. § 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure as follows:

- (a) That Defendants are prohibited / barred from enforcing the settlement agreement between SCDOT and the Buckles as payment of just compensation against or/ to Paul, because the evidence shows Paul never agree to any settlement;
- (b) That Defendants are prohibited / barred for all time enforcement of the settlement agreement between SCDOT and Buckles as payment of just

compensation against or/ to Paul, because Paul was not a party to any settlement negotiations;

(c) That Defendants are prohibited / barred for all time enforcement of the settlement agreement between SCDOT and Buckles as payment of just compensation against or/ to Paul, because Paul did not sign the consent order to settle the case;

(d) That Defendants are prohibited / barred for all time enforcement of the settlement agreement between SCDOT and Buckles as payment of just compensation against or/ to Paul, because the settlement did not include an appraisal of Paul property (highest and best use).

106. Because of the foregoing 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.

COUNT TWO
CIVIL CONSPIRACY
42 U.S.C. 1983

107. Paragraphs 1 through 117 above are set forth herein as if more fully stated in their entirety.

108. In case 4800, the Defendants have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment of the United States Constitution;

(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.

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.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Paul requests the following relief:

1. A judgment for monetary damages for the losses suffered because of the actions of the Defendants in the violation of Paul's civil rights and for consequential damages, in an amount to be determined at trial, and approximating \$310,000.00;
2. Declaratory judgment ordering that the Defendants are prohibited from enforcing the settlement agreement between SCDOT and the Buckles against Paul

as payment of just compensation against or/ to Paul and, are barred for all time enforcement of the settlement agreement between SCDOT and Buckles as payment of just compensation against or/ to Paul;

3. An order of continuing jurisdiction of this Court for the purposes of enforcing any judgment so ordered;

4. A judgment for monetary damages Actual, Consequential and Special damages as a direct and proximate result of All Defendant's covert and overt acts and omissions, Plaintiff has been injured for which SCDOT/ Rucker/ Gresham/ Moore and de Holczer and Quinn and Ormond are liable, for property and property rights at 2115 two notch rd \$310,000.00 and for property and property rights at 2318 two notch rd \$528,000.00. Plaintiff would have had his property, property rights, goodwill, going concern value, livelihood and financial health for another twenty years until his retirement at age or between ages sixty-two to sixty-seven;

5. A judgment for monetary damages against SCDOT/ Rucker/ Gresham/ Moore and de Holczer and Quinn and Ormond for Actual, Consequential and Special Damages for \$838,000.00 Dollars, plus interest and prejudgment interest;

6. Punitive damages in an amount to be assessed by the jury as just and proper and in an amount enough to punish SCDOT/ Rucker/ Gresham/ Moore and de Holczer and Quinn and Ormond to deter future misconduct, for ALL defendants intentional, willful, wanton, and reckless covert and overt acts;

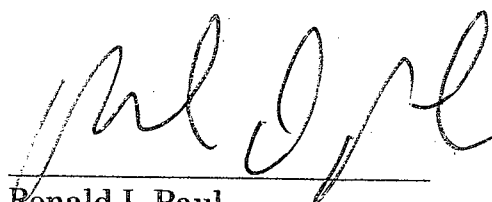
7. Grant Plaintiffs costs of suit and reasonable attorneys' fees and other expenses pursuant to 42 U.S.C. § 1988; and,

8. Grant such other relief as the Court may deem appropriate.

Jury Trial is demanded.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 26 day of October 2018, respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. I. Paul', written over a horizontal line.

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

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

RICHLAND COUNTY
FILED
2018 DEC 31 AM 9:10
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

NOTICE OF MOTION AND
MOTION FOR ENTRY OF DEFAULT
AND DEFAULT JUDGMENT

NOW COMES the Plaintiff and move this Honorable Court or Clerk of Court for entry of Default against Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity. Plaintiff further move this Honorable Court or Clerk of Court for an Order of Default Judgment against Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in

her individual capacity Rules 55(a) and 55(b)(1) South Carolina Rules of Civil Procedure. In support of this request plaintiff relies upon the record in this case and the Affidavit of Default submitted with this Motion:

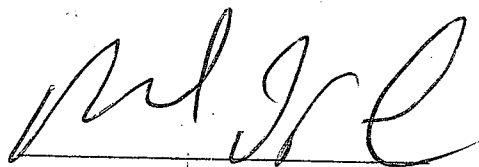
As stated in the Affidavit of Default filed with this Motion. The Summons and Complaint was filed on October 26, 2018 and, duly served on the Defendants, Oscar K. Rucker and Macie M. Gresham on the 29th day of October 2018, as shown by the Proof of Services (Exhibits A & B). Said Proof of Services having been filed with the Richland County Clerk of Court on November 1, 2018.

As stated in the Affidavit of Default filed with this Motion, that more than thirty (30) days exclusive of the day of service has elapsed since the service of said Civil Action Coversheet, Summons and Complaint; and no Answer, Notice of Appearance, Motion, or other pleading has been served on the Plaintiff's *Pro Se*, as required by said Summons and Complaint, and that said Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity are now in default and at this time any responsive pleading should be stricken from the record as untimely.

South Carolina courts have characterized the entry of default as a ministerial matter. "Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party." *Thynes v. Lloyd*, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the

default was made to appear by the affidavit" of the moving party). Furthermore, an Order entering default is not necessary for the default to be effective. See Stark Truss Co. v. Superior Const. Corp., 360 S.C. 503, 508-09, 602 S.E.2d 99, 102 (Ct. App. 2004).

THEREFORE, Plaintiff moves this Honorable Court or Clerk of Court for an Order adjudging the Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity to be in default for failure of an appearance, failed to "plead or otherwise defend" as provided by the South Carolina Rules of Civil Procedure, said defendants are in default, Rule 55(a) South Carolina Rules of Civil Procedure. In this action, inasmuch as damages are liquidated damages based upon the facts contained in the Verified Complaint, that Default Judgment be entered against Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity in the amount of eight hundred and thirty-eight thousand (\$838,000.00) dollars, Rule 55(b)(1) South Carolina Rules of Civil Procedure.



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

Columbia, South Carolina
December 31, 2018

Exhibit

A

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.

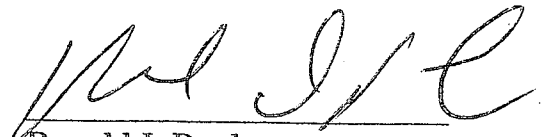
2018-CP-400-5641

PROOF OF SERVICE
OF
CIVIL ACTION COVERSHEET
SUMMONS AND COMPLAINT
BY CERTIFIED MAIL

RICHLAND COUNTY
FILED
2018 NOV - 1 AM 11:19
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I, the undersigned, Plaintiff in this case do hereby certify that I have served the Defendant, OSCAR K. RUCKER with a copy of the Civil Action Coversheet, Summons and Complaint regarding the above-captioned case, by depositing same in the United States Mail Certified, Return Receipt Requested and with sufficient postage affixed thereto, on the 27 day of October 2018 and that said pleading was

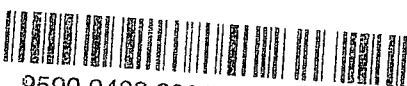
received and accepted on the 29 day of October 2018 as shown by the attached below receipt.



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

Columbia, South Carolina
October 31, 2018

RICHLAND COUNTY
FILED
2018 NOV -1 AM 11:20
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☒ Complete items 1, 2, and 3. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.		☒ A. Signature ☐ Agent ☐ Addressee	
1. Article Number (Transfer from service label) SCDOT ATT: Oscar K. Rucker 955 Park Street Post office Box 191 Columbia, SC 29202  9590 9402 3803 8032 6931 68		B. Received by (Printed Name) <i>[Signature]</i> C. Date of Delivery 10/29/18	
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
2. Article Number (Transfer from service label) 7018 0360 0001 7573 0860		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Registered Mail ☐ Registered Mail Restricted Delivery ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

USPS Tracking® FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Track Another Package +

Tracking Number: 70180360000175730860

Remove X

On Time

Expected Delivery on

MONDAY

29 OCTOBER 2018 ⓘ by **8:00pm** ⓘ

✓ **Delivered**

October 29, 2018 at 7:45 am

Delivered

COLUMBIA, SC 29202

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

COLUMBIA, SC 29202

Certified Mail Fee \$ 42.75

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$ 0.00
☐ Return Receipt (electronic)	\$ 0.55
☐ Certified Mail Restricted Delivery	\$ 0.00
☐ Adult Signature Required	\$ 0.00
☐ Adult Signature Restricted Delivery	\$ 0.00

Postage \$ 2.05

Total Postage and Fees \$ 13.35

Sent To **SCDOT - OSCAR K. RUCKER**

Street and Apt. No. or PO Box No. **955 PARK STREET**

City, State ZIP+4® **COLUMBIA SC 29202**

Postmark **OCT 27 2018**

NORTHEAST STATION

7018 0360 0001 7573 0860

Tracking History

October 29, 2018, 7:45 am

Delivered

COLUMBIA, SC 29202

Your item was delivered at 7:45 am on October 29, 2018 in COLUMBIA, SC 29202.

October 29, 2018, 1:53 am

Arrived at Unit

WEST COLUMBIA, SC 29172

October 28, 2018
In Transit to Next Facility

October 27, 2018, 10:04 pm
Arrived at USPS Regional Facility
COLUMBIA SC PROCESSING CENTER

October 27, 2018, 6:15 pm
Departed Post Office
COLUMBIA, SC 29223

October 27, 2018, 9:22 am
USPS in possession of item
COLUMBIA, SC 29223

Product Information

Feedback
^

Postal
Product: First-
Class
Mail®
Features: Certified Mail Restricted Delivery

See tracking for related item:
9590940238038032693168
(/go/TrackConfirmAction?
tLabels=9590940238038032693168)

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Exhibit B

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

PROOF OF SERVICE
OF
CIVIL ACTION COVERSHEET
SUMMONS AND COMPLAINT
BY CERTIFIED MAIL

LEANNETTE W. MCBRIDE
C.C.P. & C.S.

2018 NOV -1 AM 11:19

RICHLAND COUNTY
FILED

I, the undersigned, Plaintiff in this case do hereby certify that I have served the Defendant, MACIE M. GRESHAM with a copy of the Civil Action Coversheet, Summons and Complaint regarding the above-captioned case, by depositing same in the United States Mail Certified, Return Receipt Requested and with sufficient postage affixed thereto, on the 27 day of October 2018 and that said pleading was

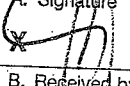
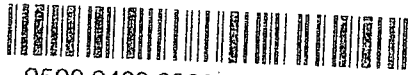
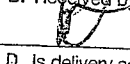
received and accepted on the 29 day of October 2018 as shown by the attached below receipt.



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

Columbia, South Carolina
October 31, 2018

RICHLAND COUNTY
FILED
2018 NOV -1 AM 11:19
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

SENDER COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY														
☒ Complete items 1, 2, and 3. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature  ☐ Agent ☐ Addressee														
1. A SCDOT ATT: Macie M. Gresham 955 Park Street Post office Box 191 Columbia, SC 29202  9590 9402 3803 8032 6931 44	B. Received by (Printed Name)  C. Date of Delivery 11/28/18 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No														
2. Article Number (Transfer from service label) 7018 0360 0001 7573 0884	3. Service Type <table border="0"><tr><td>☐ Adult Signature</td><td>☐ Priority Mail Express®</td></tr><tr><td>☐ Adult Signature Restricted Delivery</td><td>☐ Registered Mail™</td></tr><tr><td>☐ Certified Mail®</td><td>☐ Registered Mail Restricted Delivery</td></tr><tr><td>☐ Certified Mail Restricted Delivery</td><td>☐ Return Receipt for Merchandise</td></tr><tr><td>☐ Collect on Delivery</td><td>☐ Signature Confirmation™</td></tr><tr><td>☐ Collect on Delivery Restricted Delivery</td><td>☐ Signature Confirmation Restricted Delivery</td></tr><tr><td>☐ Registered Mail Restricted Delivery (\$500)</td><td></td></tr></table>	☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☐ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise	☐ Collect on Delivery	☐ Signature Confirmation™	☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery	☐ Registered Mail Restricted Delivery (\$500)	
☐ Adult Signature	☐ Priority Mail Express®														
☐ Adult Signature Restricted Delivery	☐ Registered Mail™														
☐ Certified Mail®	☐ Registered Mail Restricted Delivery														
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise														
☐ Collect on Delivery	☐ Signature Confirmation™														
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery														
☐ Registered Mail Restricted Delivery (\$500)															

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

USPS Tracking® FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Track Another Package +

Tracking Number: 70180360000175730884

Remove X

On Time

Expected Delivery on

MONDAY

29 OCTOBER 2018 ⓘ by **8:00pm** ⓘ

 **Delivered**

October 29, 2018 at 7:45 am
Delivered
COLUMBIA, SC 29202

7018 0360 0001 7573 0884

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

COLUMBIA, SC 29202

OFFICIAL USE

Postmark Here
OCT 27 2018
10/27/2018

CERTIFIED MAIL

Certified Mail Fee	\$3.45
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$2.75
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$2.05
Total Postage and Fees	\$8.25

Sent To: SC DOE-MACIE
Street and Apt. No. or PO Box No. 955 PARK STREET
City, State, ZIP+4® COLUMBIA SC 29202

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Tracking History

October 29, 2018, 7:45 am

Delivered

COLUMBIA, SC 29202

Your item was delivered at 7:45 am on October 29, 2018 in COLUMBIA, SC 29202.

October 29, 2018, 1:53 am

Arrived at Unit

WEST COLUMBIA, SC 29172

October 28, 2018
In Transit to Next Facility

October 27, 2018, 10:04 pm
Arrived at USPS Regional Facility
COLUMBIA SC PROCESSING CENTER

October 27, 2018, 6:15 pm
Departed Post Office
COLUMBIA, SC 29223

October 27, 2018, 9:27 am
USPS in possession of item
COLUMBIA, SC 29223

Product Information

Feedback
^

Postal	Features:	See tracking for related item: 9590940238038032693144
Product:	Certified Mail™	(/go/TrackConfirmAction?
First-		tLabels=9590940238038032693144)
Class		
Mail®		

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

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

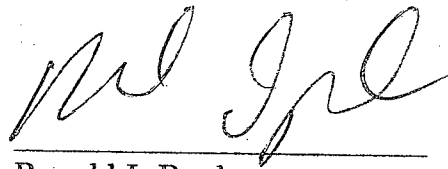
RICHLAND COUNTY
FILED
2018 DEC 31 AM 9:09
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

AFFIDAVIT OF DEFAULT

PERSONALLY, appeared before me the undersigned, Ronald I. Paul, who first being
duly sworn, deposes and says:

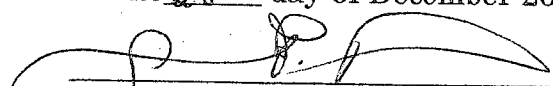
1. I am over 18 years of age. I am competent to make this affidavit, and I have personal
knowledge of the facts stated in this affidavit.

2. I am the Plaintiff *Pro Se* in the above-entitled action; that the Civil Action Coversheet, Summons and Complaint therein were filed on October 26, 2018 and, duly served on the Defendants Oscar K. Rucker and Macie M. Gresham on the 29th day of October 2018, as shown by the Proof of Services. Said Proof of Services having been filed with the Richland County Clerk of Court on November 1, 2018.
3. That more than thirty (30) days exclusive of the day of service has elapsed since the service of said Civil Action Coversheet, Summons and Complaint; and no Answer, Notice of Appearance, Motion, or other pleading has been served on the Plaintiff's *Pro Se*, as required by said Summons and Complaint, Defendants Rucker and Gresham have failed to plead or otherwise defend and that said Defendants Oscar K. Rucker and Macie M. Gresham are now in default of the complaint in this action.

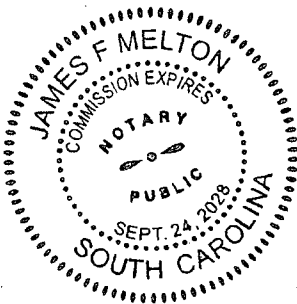


Ronald I. Paul
Post Office Box 4353
Columbia, South Carolina 29240
Plaintiff, *Pro se* (803) 414-2305

SWORN TO AND SUBSCRIBED BEFORE ME
on the 28th day of December 2018.



Notary Public for South Carolina
My Commission Expires: 9/24/28



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

RICHLAND COUNTY
FILED
2018 DEC 31 AM 9:10
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

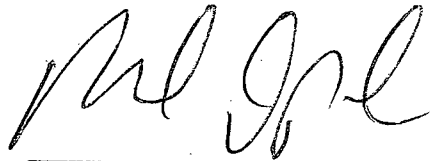
AFFIDAVIT
OF
NON- MILITARY SERVICE

PERSONALLY, appeared before me the undersigned, Ronald I. Paul, who first being
duly sworn, deposes and says:

1. That he is the Plaintiff *Pro Se* in the above-entitled action.

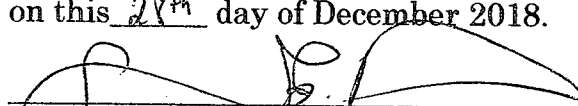
2. That said Defendants OSCAR K. RUCKER and MACIE M. GRESHAM is not members of the Armed Services of the United States, as is contemplated under the Servicemembers Civil Relief (Exhibits A and B).

3. That he is familiar with the provisions of 50 Ap. Section 520, Servicemembers Civil Relief Act, and to induce the Court to enter a default judgment against the Defendants OSCAR K. RUCKER and MACIE M. GRESHAM, represents to the Court that from review of his file in this matter, that the Defendants OSCAR K. RUCKER and MACIE M. GRESHAM are not in the Military Service of the United States of America and therefore is not entitled to the protection of the Servicemembers Civil Relief Act and any amendments thereto.



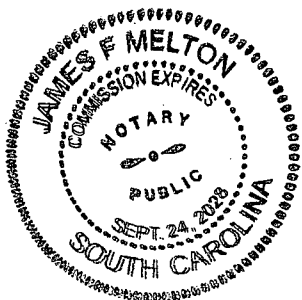
Ronald I. Paul
Post Office Box 4353
Columbia, South Carolina 29240
Plaintiff, *Pro se* (803) 414-2305

SWORN TO AND SUBSCRIBED BEFORE ME
on this 28th day of December 2018.



Notary Public for South Carolina

My Commission Expires: 9/24/28



Exhibit

A

**Status Report**
Pursuant to Servicemembers Civil Relief Act

SSN: Redacted
Birth Date: Redacted
Last Name: RUCKER
First Name: OSCAR
Middle Name: K
Status As Of: Dec-05-2018
Certificate ID: 3T1SKXLQP8Z4HKT

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Michael V. Sorrento, Director
Department of Defense - Manpower Data Center
400 Gigling Rd.
Seaside, CA 93955

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. ? 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service. Service contact information can be found on the SCRA website's FAQ page (Q33) via this URL: <https://scra.dmdc.osd.mil/faq.xhtml#Q33>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. ? 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC ? 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC ? 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC ? 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Exhibit B

**Status Report
Pursuant to Servicemembers Civil Relief Act**

SSN: Redacted
Birth Date: Redacted
Last Name: GRESHAM
First Name: MACIE
Middle Name: M
Status As Of: Dec-05-2018
Certificate ID: H5V8WPPZL6J6ZV3

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
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This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Michael V. Sorrento, Director
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Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

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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

ORDER OF DEFAULT JUDGMENT

IT APPEARING from the Affidavit of Default; Motion for Entry of Default and Motion for Default Judgment of Ronald I. Paul Plaintiff *Pro Se*, that Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity was served with the Summons and Complaint in this case on October 29, 2018 that more than thirty (30) days thereafter have elapsed and no Answer, Notice of Appearance, Motion, or other pleading in this matter has

been served by said Defendants Oscar K. Rucker and Macie M. Gresham in their individual capacity.

IT FURTHER APPEARING that the damages sought in Plaintiff's Verified Complaint are liquidated damages.

NOW, ON MOTION OF PLAINTIFF IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff is hereby GRANTED Entry of Default and a Default Judgment against Defendants Oscar K. Rucker and Macie M. Gresham in their individual capacity and, inasmuch as damages are liquidated damages based upon the facts contained in the Verified Complaint, that judgment is hereby entered against Defendants Oscar K. Rucker and Macie M. Gresham in their individual capacity in the amount of eight hundred and thirty-eight thousand (\$838,000.00) dollars, Rule 55 (a) (b) (1) South Carolina Rules of Civil Procedure.

IT IS FURTHER ORDERED that interest shall accrue in favor of Plaintiff against Defendants Oscar K. Rucker and Macie M. Gresham in their individual capacity on the entire amount of this Judgment hereafter at the post judgment legal rate as provided by law.

IT IS SO ORDERED.

Judge, Fifth Judicial Circuit
Or Clerk of Court for Richland County

_____, 2018
Richland County, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,)
)
Plaintiff,)

Civil Action No. 2018-CP-40-5641

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 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.)

**NOTICE OF MOTION AND
MOTION TO SET ASIDE ENTRY OF
DEFAULT AND MOTION TO DISMISS**

TO: RONALD I. PAUL, *PRO SE* PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Defendants Oscar K. Rucker and Macie M. Gresham will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, at such time and place as may be

set by the Court, pursuant to Rule 55(c), Rule 12(b)(2), and Rule 12(b)(5), SCRCPP, for an order setting aside any entry of default (if any) and dismissing the Plaintiff's Complaint as against the Defendants Rucker and Gresham for lack of personal jurisdiction and insufficient service of process.

This motion filed by the Defendants Rucker and Gresham is based on the following grounds:

1. On December 31, 2018, the Plaintiff filed a Motion for Entry of Default and Default Judgment against the Defendants Rucker and Gresham. It is unclear whether the Clerk of Court has made an entry of default against these Defendants; however, in the event an entry of default has been made, the Defendants Rucker and Gresham move for that entry to be set aside and the Complaint dismissed.

2. The service of process of the Summons and Complaint on the Defendants Rucker and Gresham was insufficient, and as a result, the Court also lacks personal jurisdiction over these Defendants. The Plaintiff attempted to serve the Defendants Rucker and Gresham by certified mail at their former place of employment, the South Carolina Department of Transportation (SCDOT), from which they have been retired for years (at least since 2010). The certified mail was received by SCDOT employees and then returned to sender. The Plaintiff is attempting to utilize the signed return receipts that were signed by an SCDOT mail employee to argue falsely to the Court that the Defendants Rucker and Gresham were properly served with the Summons and Complaint. The Defendants Rucker and Gresham have not been served, and the Plaintiff cannot satisfy his burden of proving proper service on the Defendants Rucker and Gresham. There is no evidence that the Defendants Rucker and Gresham have authorized or appointed anyone at SCDOT to accept service of process for them. In addition, the Plaintiff failed to comply with Rule 4(d)(8), SCRCPP, by failing to restrict the delivery to the addressee.

This motion is based upon the pleadings, motions, and orders previously filed in this case; the Affidavit of Oscar K. Rucker; the Affidavit of Sherrie S. Morey; and such other matters as may be presented to the Court at or before the time of the hearing.

LINDEMANN, DAVIS & HUGHES, P.A.

BY: s/ Andrew F. Lindemann

ANDREW F. LINDEMANN #13030

5 Calendar Court, Suite 202

Post Office Box 6923

Columbia, South Carolina 29260

T: 803-881-8920

Email: andrew@ldh-law.com

*Counsel for Defendants Oscar K. Rucker and
Macie M. Gresham*

January 31, 2019

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,

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 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 No. 2018-CP-40-5641

AFFIDAVIT OF OSCAR K. RUCKER

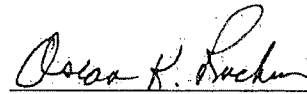
PERSONALLY APPEARED BEFORE ME, OSCAR K. RUCKER, who first being duly sworn, deposes and states as follows:

1. I am a former employee of the South Carolina Department of Transportation (SCDOT). I retired from SCDOT in 2010. At no time have I authorized SCDOT or anyone employed by SCDOT to accept service of any legal documents on my behalf, including this lawsuit filed by Ronald Paul against me and others.

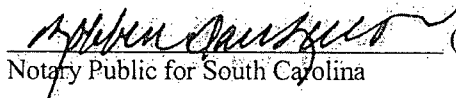
2. The attempted service of this lawsuit at the SCDOT address was not proper. I do not work at the SCDOT address to which the lawsuit was mailed by Mr. Paul. I was not made aware of any attempt to serve me with this lawsuit until after Mr. Paul filed his Motion for Entry of Default and Default Judgment.

3. I am also aware that Macie Gresham retired from SCDOT prior to my retirement in 2010. It is my understanding that she is presently in poor health.

FURTHER AFFIANT SAYETH NOT.


OSCAR K. RUCKER

Sworn to and subscribed before me this
the 31st day of January 2019.

 (SEAL)
Notary Public for South Carolina

Commission Expires: 02/21/2024

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,

Plaintiff,

v.

Civil Action No. 2018-CP-40-5641

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.

AFFIDAVIT OF SHERRIE S. MOREY

PERSONALLY APPEARED BEFORE ME, SHERRIE S. MOREY, who first being duly sworn, deposes and states as follows:

1. I am employed by the South Carolina Department of Transportation (SCDOT) in the Rights of Way Director's Office.

2. On or about October 28, 2018, I received two certified letters from Ronald Paul that were addressed to Oscar K. Rucker and Macie M. Gresham at the SCDOT address. Neither Mr.

Rucker nor Ms. Gresham were employed by SCDOT at that time or since that time. Mr. Rucker and Ms. Gresham both have been retired from SCDOT for several years. After consulting with the legal office, I handwrote "Return to Sender" on both envelopes and placed them in the U.S. Mail for their return to Mr. Paul.

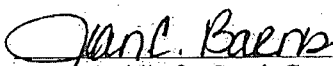
3. Neither I nor anyone with SCDOT accepted service of the lawsuit in this case for Oscar K. Rucker or Macie M. Gresham. I have never been authorized by Oscar K. Rucker or Macie M. Gresham to accept service of legal papers on their behalf.

4. From my review of the return receipts, it appears that John Furgess, who is a SCDOT Postal Specialist, signed both return receipts. Mr. Furgess has not been authorized by Oscar K. Rucker or Macie M. Gresham to accept service of legal papers on their behalf.

FURTHER AFFIANT SAYETH NOT.


SHERRIE S. MOREY

Sworn to and subscribed before me this
the 31st day of January 2019.

 (SEAL)
Notary Public for South Carolina

Commission Expires: 11/18/24

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)

RICHLAND COUNTY
FILED
2019 JUN 14 AM 9:00
JANETTE W. MOORE
C.C.P., G.S., 8

TO: THE HONORABLE L. CASEY MANNING AND DEFENDANTS OSCAR K.
RUCKER IN HIS INDIVIDUAL CAPACITY AND MACIE M. GRESHAM IN HER
INDIVIDUAL CAPACITY.

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, for a Motion to Reconsider Defendants Rucker and Gresham Motion to Set Aside Entry of Default 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:

BACKGROUND AND PROCEDURAL HISTORY

The Plaintiff instituted this action on October 26, 2018 by filing the Summons and Complaint in the Richland County Court of Common Pleas. See Complaint filed October 26, 2018 in this case (10/26/2018-10:03) for Background and Procedural History.

STANDARD OF REVIEW

“Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses.” Graham Law Firm, P.A. v. Makawi (2012). Brown v. South Carolina State Board of Education, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Goldberg v. Kelly, 397 U.S. 254 (1970)); see South Carolina Department of Social Services v. Holder, 319 S.C. 72, 459 S.E.2d 846 (1995) (right to confrontation applies in civil context).

Despite Rucker and Gresham assertions, that effective service was not made on either Rucker or Gresham by certified mail sent to the SCDOT Offices located at 955 Park Street, Columbia South Carolina, that certified mail directed to Gresham was not sent restricted delivery, that neither certified letter was received or signed for by Rucker or Gresham, that neither Rucker nor Gresham was still employed by SCDOT in 2018. Rule 4, SCRCP serves at

least two purposes. "It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995) **Exacting compliance with the rules is not required to effect service of process.** *Id.* at 209-10, 456 S.E.2d at 899 "Rather, (the court must) inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Id.* at 210, 456 S.E.2d at 899. (Emphasis added)

The effect of default is that Defaulting Defendants cannot contest the merits of the case until they are successful in lifting the default. For example, our Supreme Court has said, "If our courts were to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be no consequence of default." Limehouse v. Hulsey, 404 S.C. 93, 116, 744 S.E.2d 566, 578-79 (2013). "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., of Florence, 332, S.C. 75, 81, 504 S.E.2d 311, 314 (1998). "By defaulting, a defendant forfeits his right to answer or otherwise plead to the complaint. In essence, the defaulting defendant has conceded liability.

"A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court." McCall, 363 S.C. at 651, 611 S.E.2d at 317 (citing Griffin v. Capital Cash, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992)).

STANDARD FOR RELIEF

"Under S.C.R.Civ.P. 55(c) . . . the standard for granting relief from an entry of default is 'good cause.'" Wham v. Shearson Lehman Bros., 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct.

App. 1989). “The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court.” *Id.* Instead of the more rigorous standard of “excusable neglect” under Rule 60(b), SCRCP, when determining whether to set aside the entry of a default under Rule 55(c), SCRCP, the party seeking relief must “provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). “Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id.* at 607-08.

South Carolina courts have consistently demonstrated an aversion to allowing defendants to escape entry of default under Rule 55, SCRCP based on mistakes by the defendant. See *Id.*, 383 S.C. at 609, 681 S.E.2d at 889; *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994). An insurer’s misconduct is imputable to the defendants. *Williams*, 312 S.C. at 375, 440 S.E.2d at 409. Therefore, the negligence of an insurance company leading to default is imputable to the defaulting party. *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). Generally, South Carolina courts have found that defendants’ mistakes in similar situations did not constitute good cause. See *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995). However, in many of the aforementioned cases, the defendants failed to take actions necessary to assist their insurers in their defense and/or the insurers had insufficient excuses for good cause.

DEFAULT MOTION

On December 31, 2018, Plaintiff filed an Affidavit of Default explaining the basis for entry of default against the Defendants Oscar K. Rucker in his individual capacity and Macie M.

Gresham in her individual capacity. The record includes the affidavit of Sherrie S. Morey, who is employed by SCDOT in the Rights of Way Director's Office. Ms. Morey affidavit testified that the return receipts were signed by an SCDOT postal employee (John Furgess), and the certified letters were provided to her.¹ Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 509, 602 S.E.2d 99, 102 (Ct. App. 2004) (citing *Thynes v. Lloyd*, 294 S.C. 152, 153–54, 363 S.E.2d 122, 123 (Ct. App. 1987), which held that “whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit” of the moving party).

MOTION FOR CONTINUATION/CONTINUANCE.

On January 31, 2019 Defendants Rucker and Gresham filed a Motion to Set Aside Entry of Default with two attached affidavits from Oscar K. Rucker and Sherrie S. Morey. At the hearing on April 16, 2019, under Rule 7(b)(1), SCRCP, **in open Court Plaintiff Motion the Court for a CONTINUATION/ CONTINUANCE** of said Defendant's Motion to Set Aside Entry of Default to conduct discovery, because defendants would not cooperate with discovery requests and cross-examination of witnesses.

In the present case, Paul's claim of personal jurisdiction over Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity is not conclusory, frivolous, or attenuated. John Furgess, who signed the receipts for the summons and

¹ Rucker and Morey claimed in the affidavits that the person (John Furgess) who signed for the certified mail was not authorized to accept service of any legal documents or papers on behalf of Rucker or Gresham, but neither affidavit testified that John Furgess was unauthorized to receive and sign for their certified mail. Rucker and Gresham failed to present any credible evidence to meet their burden of proof that SCDOT Postal Specialist John Furgess who signed for restricted delivery, certified mail was unauthorized.

complaint sent to Rucker in his individual capacity and Gresham in her individual capacity, had apparent authority to accept them as an SCDOT Postal Specialist (PS Form 1093). As Paul presented evidence at the hearing that this was SCDOT practice. In other words, SCDOT Postal Specialist signed the receipts for the summons and complaint sent to former employees Rucker in his individual capacity and Gresham in her individual capacity, in the past (On May 18, 2012 Exhibit A). Ms. Sherrie S. Morey affidavit further testified that after consulting with the SCDOT LEGAL OFFICE, she handwrote "Return to Sender" on both envelopes and placed them back in the U.S. Mail to be returned to the Plaintiff.²

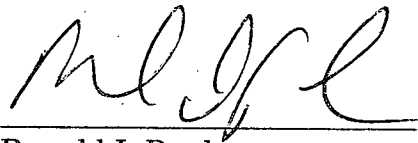
Paul is entitled to discovery on the issue of jurisdiction, entitled to receive a full and fair opportunity to be heard on the matter, because the findings with regard to service of process may determine the merits of the case in chief. *See Wetzel v. Woodside Development Limited Partnership*, 364 S.C. 589, 615 S.E.2d 437 (2005) (finding that an order granting a motion to set aside an entry of default for improper service effectively dismisses an improperly served party from the action); *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187 (Colo. 2005) (holding that a trial court's findings related to personal jurisdiction could later be preclusive). Because a finding that a party was not properly served for purposes of a motion to set aside an entry of default judgment is binding with regard to the remainder of the litigation, such a ruling may "in effect determine[] the action" or "strike[] out . . . [a] pleading in [an] action." S.C. Code Ann. § 14-3-330(a), (c).

² The Plaintiff presented evidence to dispute that testimony, in other words the USPS Tracking shows the Certified Mail was not placed back in the U.S. Mail to be return to the Plaintiff, the USPS Tracking dispute that testimony, see exhibit B. In addition, see Paul affidavit exhibit C.

CONCLUSION

For the reasons stated, Plaintiff's requests the Court to reverse its findings of ineffective service in the Order dated and entered June 7, 2019 (06/07/2019-15:32) and rule that service of the Summons and Complaint on Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity was valid and effective. In the alternative, Plaintiff requests the Court to permit deposition on John Furgess, Sherrie S. Morey and other material discovery before finally determining whether Rucker and Gresham are entitled to relief from default, and to hold the June 7, 2019 (06/07/2019-15:32) Order in suspense pending such discovery.

Dated: June 14th of 2019 respectfully submitted,



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

EXHIBIT

A

Civil Action No. 3:12-cv-01036-CMC-PJG

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Oscar K Rucker in his individual capacity as Director Rights was received by me on *(date)* 05/17/2012

☐ I personally served the summons on the individual at *(place)*

on *(date)*

; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there.

on *(date)*

and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)*

, who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)*

; or

☐ I returned the summons unexecuted because

; or

☒ Other *(specify)*: Via certified mail, return receipt requested, United States Postal Service, on May 17, 2012. See attached PS Form 3800, 3811 Article Number 7011 0110 0000 5280 5166.

My fees are \$ for travel and \$ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: 05/25/2012



Server's signature

Ronald I. Paul, Pro Se Plaintiff
Printed name and title

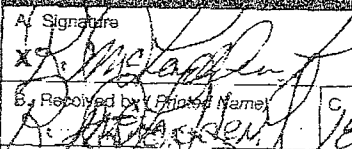
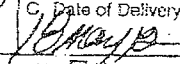
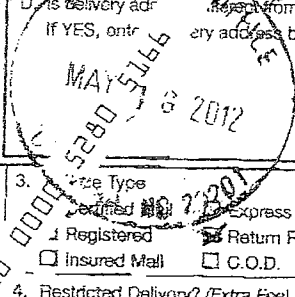
Post Office Box 4353
Columbia South Carolina 29240

Server's address

Additional information regarding attempted service, etc:

7011 0110 0000 5280 5166

U.S. Postal Service	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information, visit our website at www.usps.com	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (if endorsement required)	
Restricted Delivery Fee (if endorsement required)	
Total Postage & Fees \$	
Send To Oscar K. Rucker South Carolina Department of Transportation 955 Park Street Columbia, South Carolina 29201	
PS Form 3811, August 2006 See Reverse for Instructions	

SENDER - COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature  ☐ Agent ☐ Addressee B. Received by (Print Name)  C. Date of Delivery  D. Is delivery address same as item 1? ☐ Yes If YES, enter any address below: ☐ No
1. Article Addressed to: Oscar K. Rucker South Carolina Department of Transportation 955 Park Street Columbia, South Carolina 29201	
2. Article Number (Transfer from Service Label) 7011 011	3. Service Type ☒ Certified Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	

Civil Action No. 3:12-cv-01036-CMC-PJG

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Macie M Gresham in her individual capacity as Eastern
was received by me on *(date)* 05/17/2012

☐ I personally served the summons on the individual at *(place)*

on *(date)*

; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)*

, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)*

, who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)*

; or

☐ I returned the summons unexecuted because

; or

☒ Other *(specify)*: Via certified mail, return receipt requested, United States Postal Service, on May 17, 2012
See attached PS Form 3800, 3811 Article Number 7011 0110 0000 5280 5159.

My fees are \$

for travel and \$

for services, for a total of \$

0.00

I declare under penalty of perjury that this information is true.

Date: 05/25/2012



Server's signature

Ronald I. Paul, Pro Se Plaintiff
Printed name and title

Post Office Box 4353
Columbia South Carolina 29240

Server's address

Additional information regarding attempted service, etc:

7011 0110 0000 5280 5159

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information, visit our website at www.usps.com

Postage \$ _____

Certified Fee _____

Return Receipt Fee (Endorsement Required) _____

Restricted Delivery Fee (Endorsement Required) _____

Total Postage & Fees \$ _____

Postmark Here

Sent to: Macie M. Gresham
 Street, Apt. No., or PO Box No.: South Carolina Department of Transportation
 955 Park Street
 City, State, ZIP+4: Columbia, South Carolina 29201

PS Form 3800, August 2005 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
1. Article Addressed to: Macie M. Gresham South Carolina Department of Transportation 955 Park Street Columbia, South Carolina 29201	A. Signature <i>[Signature]</i> ☐ Agent B. Received by (Printed Name) <i>[Signature]</i> ☐ Addressee C. Date of Delivery <i>[Signature]</i> D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type <i>[Signature]</i> ☒ Certified Mail ☒ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D. 4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Trac) 7011 0110 0000 5280 5159

EXHIBIT

B

Track Another Package +

Tracking Number: 70180360000175730860

Remove X

On Time

Expected Delivery on

MONDAY

29 OCTOBER 2018 ⓘ by **8:00pm** ⓘ

✓ **Delivered**

October 29, 2018 at 7:45 am

Delivered

COLUMBIA, SC 29202

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

COLUMBIA, SC 29202

Certified Mail Fee	\$ 2.75
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$ 2.85
☐ Return Receipt (electronic)	\$ 0.00
☐ Certified Mail Restricted Delivery	\$ 0.00
☐ Adult Signature Required	\$ 0.00
☐ Adult Signature Restricted Delivery	\$ 0.00

Postage \$2.05

Total Postage and Fees \$13.35

Sent To **SCDOT - OSCAR K. RUCKER**

Street and Apt. No. or PO Box No. **955 PARK STREET**

City, State, ZIP+4® **COLUMBIA SC 29202**

Postmark OCT 27 2018

7018 0360 0001 7573 0860

Tracking History

October 29, 2018, 7:45 am

Delivered

COLUMBIA, SC 29202

Your item was delivered at 7:45 am on October 29, 2018 in COLUMBIA, SC 29202.

October 29, 2018, 1:53 am

Arrived at Unit

WEST COLUMBIA, SC 29172

October 28, 2018
In Transit to Next Facility

October 27, 2018, 10:04 pm
Arrived at USPS Regional Facility
COLUMBIA SC PROCESSING CENTER

October 27, 2018, 6:15 pm
Departed Post Office
COLUMBIA, SC 29223

October 27, 2018, 9:22 am
USPS in possession of item
COLUMBIA, SC 29223

Product Information

Feedback

Postal Features:
Product: Certified Mail Restricted Delivery
First-
Class
Mail®

See tracking for related item:
9590940238038032693168
(/go/TrackConfirmAction?
tLabels=9590940238038032693168)

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

USPS Tracking® FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Track Another Package +

Tracking Number: 70180360000175730884

Remove X

On Time

Expected Delivery on

MONDAY

29 OCTOBER 2018 ⓘ by **8:00pm** ⓘ

✓ **Delivered**

October 29, 2018 at 7:45 am
Delivered
COLUMBIA, SC 29202

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

COLUMBIA, SC 29202

Certified Mail Fee \$3.45

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00

Postage \$2.05

Total Postage and Fees \$8.25

Sent To: SC DOT - MARCIE MA Gresham

Street and Apt. No. or PO Box No. 955 PARK STREET

City, State, Zip+4® Columbia, SC 29202

Postmark Here OCT 27 2018

10/27/2018

2018 0360 0001 7573 0884

Tracking History

October 29, 2018, 7:45 am
Delivered

COLUMBIA, SC 29202

Your item was delivered at 7:45 am on October 29, 2018 in COLUMBIA, SC 29202.

October 29, 2018, 1:53 am

Arrived at Unit

WEST COLUMBIA, SC 29172

October 28, 2018
In Transit to Next Facility

October 27, 2018, 10:04 pm
Arrived at USPS Regional Facility
COLUMBIA SC PROCESSING CENTER

October 27, 2018, 6:15 pm
Departed Post Office
COLUMBIA, SC 29223

October 27, 2018, 9:27 am
USPS in possession of item
COLUMBIA, SC 29223

Product Information

Feedback
^

Postal	Features:	See tracking for related item: 9590940238038032693144
Product:	Certified Mail™	(/go/TrackConfirmAction?
First-		tLabels=9590940238038032693144)
Class		
Mail®		

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

EXHIBIT

C

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

JEANETTE W. MCBRIDE
C.C.P., G.S., & F.C.

2019 JUN 14 AM 9:00

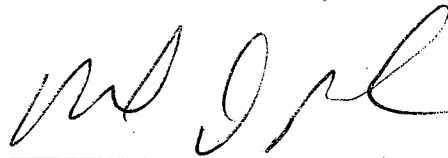
RICHLAND COUNTY
FILED

AFFIDAVIT
OF
RONALD I. PAUL

PERSONALLY, appeared before me the undersigned, Ronald I. Paul, who
first being duly sworn, deposes and says:

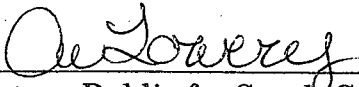
1. I am over 18 years of age. I am competent to make this affidavit, and I have
personal knowledge of the facts stated in this affidavit.

2. I am the Plaintiff *Pro Se* in the above-entitled action; that the Civil Action Coversheet, Summons and Complaint therein were filed on October 26, 2018 and, duly served on the Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity as explained in my Affidavit of Default filed on December 31, 2018.
3. The Civil Action Coversheet, Summons and Complaint was not return to me.

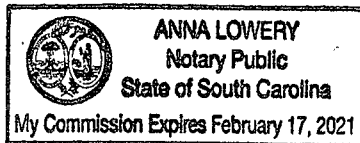


Ronald I. Paul
Post Office Box 4353
Columbia, South Carolina 29240
Plaintiff, *Pro se* (803) 414-2305

SWORN TO AND SUBSCRIBED BEFORE ME
on the 12th day of June 2019.



Notary Public for South Carolina
My Commission Expires: FEB 17, 2021



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,)
)
Plaintiff,)

Civil Action No. 2018-CP-40-5641

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 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.)

NOTICE OF MOTION AND
MOTION TO DISMISS AND/OR
MOTION FOR SUMMARY JUDGMENT

TO: RONALD I. PAUL, *PRO SE* PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the Defendants South Carolina Department of Transportation (SCDOT), Paul D. de Holczer, and Natalie J. Moore will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial

Center, Columbia, South Carolina, at such time and place as may be set by the Court, pursuant to Rule 12(b)(6), Rule 41(a) and/or Rule 56, SCRPC, dismissing this action or otherwise granting summary judgment to these Defendants.

This motion filed by the Defendants SCDOT, de Holczer and Moore is based on the following:

1. The Plaintiff's Complaint is barred by the applicable statute of limitations as well as the doctrine of laches.

2. The Plaintiff's Complaint is barred by operation of *res judicata* or claim preclusion based upon rulings in prior litigation brought by the Plaintiff including the following civil actions:

Paul v. South Carolina Department of Transportation, C/A No. 3:16-1727-CMC-PGJ
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. 3:13-1852-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. 3:12-1036-CMC-PJG
Paul v. South Carolina Department of Transportation, C/A No. 2008-CP-40-1259
South Carolina Department of Transportation v. Buckles, C/A No. 2002-CP-40-4800

3. The Plaintiff's Complaint is barred by operation of collateral estoppel or issue preclusion based upon rulings in prior litigation brought by the Plaintiff including the civil actions identified in paragraph #2 above.

4. The Plaintiff's Complaint is barred by operation of the "law of the case" doctrine based upon rulings in prior litigation brought by the Plaintiff including the civil actions identified in paragraph #2 above.

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

6. The Defendants de Holczer and Moore are entitled to an absolute privilege and quasi-judicial/prosecutorial immunity in their capacity as counsel for SCDOT. In addition, 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 of his client.

7. The Defendants de Holczer and Moore are entitled to *Harlow* qualified immunity.

This motion is based upon the pleadings filed in this case; the pleadings in and Orders ending prior lawsuits as identified in paragraph #2. above (to be filed); a memorandum of law as may be submitted at or prior to the hearing; and such other matters as may be presented to the Court.

LINDEMANN, DAVIS & HUGHES, P.A.



BY: s/ Andrew F. Lindemann

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*Counsel for Defendants South Carolina Department
of Transportation, Paul D. de Holczer, and Natalie
J. Moore*

November 26, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,)
)
Plaintiff,)

Civil Action No. 2018-CP-40-5641

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 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.)

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AND/OR
MOTION FOR SUMMARY JUDGMENT**

The Defendants South Carolina Department of Transportation ("SCDOT"), Paul D. de Holczer, and Natalie J. Moore submit this memorandum of law in support of their Motion to Dismiss and/or Motion for Summary Judgment.

BACKGROUND

This litigation arises from a condemnation action that was commenced in 2002 by the Defendant SCDOT and captioned *South Carolina Department of Transportation v. Buckles*, Civil Action Number 2002-CP-40-4800. The condemnation action was tried by former Circuit Court Judge Reginald I. Lloyd in October 2004. The Defendants de Holczer and Moore were two lawyers representing SCDOT in that litigation.

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. *See*, Quinn Mem., Ex. 2.¹ That Order was subsequently appealed by Paul, and the Court of Appeals affirmed on October 23, 2006. *See*, Quinn Mem., Ex. 3. The South Carolina Supreme Court later denied a petition for writ of certiorari. *See*, Quinn Mem., Ex. 4. Thus, the 2002 litigation was completed in October 2007.

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 and de Holczer. That Complaint included causes of action for civil conspiracy in several particulars. *See*, Quinn Mem., Ex. 5. 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. *See*, Quinn Mem., Ex. 7. The Plaintiff appealed to the Court of Appeals which affirmed the dismissal on November 19, 2010.

¹ The pertinent pleadings and orders filed in the 2002 condemnation action and subsequent litigation commenced by the Plaintiff Ronald Paul have already been filed in this action by the Defendant Michael Quinn in support of his Motion to Dismiss. Because those filings are already in the record, the SCDOT Defendants will refer to the documents by reference to the "Quinn memorandum exhibits."

See, Quinn Mem., Ex. 8. On October 9, 2011, the Supreme Court again denied a petition for writ of certiorari. *See*, Quinn Mem., Ex. 9.)

The Plaintiff thereafter began filing repetitive actions 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 addressed the merits and granted the Defendants' motions to dismiss without prejudice. *See*, Quinn Mem., Ex. 11. 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. *See*, Quinn Mem., Ex. 12-14. In dismissing the 2016 action, Judge Currie imposed a pre-filing injunction on the Plaintiff. *See*, Quinn Mem., Ex. 14.

The Plaintiff Paul's 2008 state court action and his federal court actions allege the same general facts and causes of action. In essence, Paul has alleged conspiracy claims under state and federal law against the existing Defendants, including SCDOT, de Holczer and Moore, 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 yet another lawsuit in state court. He was unable to file in federal court given the pre-filing injunction imposed by Judge Currie. This action, like

the others, includes federal Section 1983 civil conspiracy claims against the same Defendants. The Defendants SCDOT, de Holczer and Moore have filed a motion to dismiss, or alternatively motion for summary judgment, seeking the dismissal of this action on numerous grounds, including statute of limitations and res judicata defenses.

ARGUMENTS

I. The Plaintiff's current Complaint is barred by the statute of limitations.

The applicable statute of limitations for the Plaintiff's federal conspiracy claims is three years. 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,² clearly demonstrates that the Plaintiff's alleged claims accrued and were known to the Plaintiff prior to October 26, 2015. The allegations of the current Complaint itself

² *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").

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, the Plaintiff's current Complaint is clearly time-barred and should be dismissed with prejudice.

II. The Plaintiff's current Complaint is barred by the defense of res judicata or, at the very least, by the application of collateral estoppel.

"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).

The Plaintiff's current Complaint is clearly 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 Plaintiff's current Complaint should be dismissed based on the doctrine of collateral estoppel, which is also referred to as issue preclusion. 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 aptly 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.

See, Quinn Mem., Ex. 14. Therefore, in the alternative, in application of collateral estoppel, the current Complaint should be dismissed on the same bases that the identical (or virtually identical) prior Complaints have been dismissed.

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

The Defendant SCDOT is not a proper party in any action brought pursuant to 42 U.S.C. § 1983. 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 as 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).

Importantly, 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 should be dismissed on this additional basis.

IV. The Defendants de Holczer and Moore 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 of his client.

Under South Carolina law, "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 339 S.E.2d 887, 889 (Ct. App. 1986). The Supreme Court in *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995), explained that "an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client." 457 S.E.2d at 602.

In his current Complaint, the Plaintiff is suing the Defendants De Holczer and Moore only in their capacity as attorneys representing SCDOT. The Defendant Moore is identified in the Complaint as the Assistant Chief Counsel for SCDOT. The Defendant de Holczer is identified as a private attorney representing SCDOT in the 2002 condemnation action. The Plaintiff's factual allegations of wrongdoing against both De Holczer and Moore relate exclusively to their conduct as attorneys for SCDOT with respect to the 2002 condemnation action. The Plaintiff has not alleged that de Holczer or Moore owed him any independent duty outside the scope of their representation of SCDOT or that they acted in their own personal

interest. As a result, the Defendants de Holczer and Moore are entitled to immunity from suit for the civil conspiracy claims on this additional basis.

CONCLUSION

Based on the foregoing discussion, the Defendants South Carolina Department of Transportation, Paul D. de Holczer and Natalie J. Moore respectfully request that the Court grant their Motion to Dismiss and/or Motion for Summary Judgment and dismiss the Plaintiff's current Complaint with prejudice.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

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J. Moore*

February 6, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A No. 2018-CP-40-05641

Ronald I. Paul,)
)
Plaintiff,)
)
vs.)
)
South Carolina Department of Transportation;)
Paul D. deHolczer, 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, right 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.)

DEFENDANTS' MICHAEL H. QUINN
AND QUINN LAW FIRM, LCC
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS

This Memorandum is submitted in behalf of the Motion to Dismiss served and filed in behalf of Michael H. Quinn, Individually, and as Senior Lawyer of Quinn Law Firm, LLC, and Quinn Law Firm, LLC, to the extent Quinn Law Firm, LLC is named or intended to be named as a Defendant.

STATEMENT OF FACTS

On October 2, 2002, SCDOT condemned property owned by Keith Buckles (now deceased), and subsequently by G.L. Buckles (also now deceased). Paul was a lessee of the condemned property. Buckles and SCDOT agreed to settle, leaving open the determination of Paul's share of the condemnation proceeds, which would be determined at a subsequent trial. (Consent Order of Judge James R. Barber, III dated March 23, 2004,

and filed March 26, 2004. (**Exhibit 1**)

The trial relating to the agreement between SCDOT and Buckles as to just compensation, and allocation of the condemnation proceeds was tried before Circuit Court Judge Reginald I. Lloyd on October 14 and 20, 2004, resulting in Judge Lloyd's March 11, 2005 Court Order of just compensation of \$156,750.00, and an allocation of \$154,300.00 to Landowner Buckles and \$2,450.00 to tenant Paul. (**Exhibit 2**)

Paul appealed the Court's award of \$2,450.00, and the South Carolina Court of Appeals, in an unpublished opinion filed October 23, 2006, affirmed Judge Lloyd's Order (**Exhibit 3**). On October 18, 2007, the South Carolina Supreme Court denied Paul's Petition for a Writ of Certiorari (**Exhibit 4**). Judge Lloyd's Order thus became the "Law of the Case" for the legal holdings set forth therein.

Subsequently, on February 20, 2008 Paul, again, instituted legal action against the South Carolina Department of Transportation; Paul D. de Holczer, Esq., individually and as a partner of the law firm of Moses, Koon, and Brackett, PC; G.L. Buckles as Personal Representative of the Estate of Keith J. Buckles, and G.L. Buckles; Michael H. Quinn, individually and as Senior Lawyer of Quinn Law Firm, LLC; and J. Charles Ormond, Esq., individually and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante, and Garner (collectively "Defendants."). (Mr. Ormond represented Paul during the aforesaid condemnation trial.) Paul's Complaint alleged, among other matters, four counts of alleged civil conspiracy committed by the defendants (**Exhibit 5**).

Responding to Paul's Complaint, defendant Quinn, and the other defendants, filed motions to dismiss based on a number of affirmative defenses including the Statute of Limitations; the doctrine of Law of the Case; the doctrine of Privilege; and that the Complaint, in its entirety, failed to state facts sufficient to constitute a cause or causes of

action (**Exhibit 6**).

Defendants' Motions were heard by Special Circuit Court Judge Joseph M. Strickland on January 22, 2009. On March 25, 2009 Judge Strickland issued his Order dismissing Paul's Complaint (**Exhibit 7**).

Paul appealed, and the Court of Appeals, in an unpublished opinion filed November 19, 2010, affirmed Judge Strickland's Order (**Exhibit 8**).

On October 19, 2011, the South Carolina Supreme Court denied Paul's Petition for a Writ of Certiorari (**Exhibit 9**).

Subsequently, and notwithstanding the foregoing Orders of Judge Lloyd and Judge Strickland, both Law of the Case, on April 17, 2012 (3:12-CV-01036-CMC) and July 8, 2013 (3:13-CV-01852-CMC) Paul filed two Complaints with the Federal District Court of South Carolina, both of which, following motions to dismiss by Defendant Quinn and other defendants, were dismissed without prejudice (**See Exhibits 10, 11, 12, and 13 for the two United States Magistrate Judge's Orders and Reports and Recommendations, and subsequent two Opinions and Orders of District Court Judge Cameron McGowan Currie**). As noted hereafter, Paul filed three more Complaints in Federal Court which do not appear to have been accepted by the Court.

On November 8, 2016 Federal District Judge Cameron McGowan Currie issued an Order imposing a pre-filing injunction on Paul's ability to file any new actions in the Federal District Court relating to the subject matter of the lawsuits listed on page 7 of Judge Currie's Order, without first seeking permission of the Court (**Exhibit 14**).

PAUL'S CAUSES OF ACTION

Plaintiff's Count One titled Declaratory Judgment 42 USC 1983, seeks a Declaratory Judgment prohibiting and barring the "settlement agreement" entered into between the South

Carolina Department of Transportation (Condemnor) and Keith J. Buckles and G.L. Buckles (Landowners), and as referred to in the Order of Judge James R. Barber, III filed March 26, 2004 (Exhibit 1).

Plaintiff's Count Two Civil Conspiracy seeks damages in the amount of \$310,000.00 alleging defendants conspired to deny Paul his constitutional rights; and defendants the State officials, de Holczer, and Quinn, and Buckles threatened Paul's expert witnesses with criminal prosecution if they testified. (Complaint, Page 13, Paragraph 55; Page 14, Paragraph 57; Page 26, Paragraph 108)

As set forth hereafter, even if Paul's allegations were true, which are denied, Defendant Quinn is entitled to have his Motion to Dismiss granted pursuant to an Order of Dismissal with prejudice.

LEGAL AUTHORITIES

STATUTE OF LIMITATIONS; S.C. CODE ANN. §15-3-530

As clearly reflected by Paul's Complaint, and as specifically set forth in the Time Line provided by this defendant Quinn, Paul's causes of action are all based on alleged acts which occurred more than three years prior to the institution of the present action (Complaint filed October 26, 2018). As such, Plaintiff's causes of action are barred by the three-year statute of limitations. The Court is asked to take judicial notice of S.C. Code Ann. §15-3-530.

"...the general prohibition against pleading an affirmative defense in a motion to dismiss has been relaxed in modern practice. Most courts allow such defenses to be raised in a motion to dismiss under Rule 12(b) "when there is no disputed issue of fact raised by an affirmative defense or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense..." Wright and Miller, *supra*, § 1277. This view is in keeping with the pleading and discovery system established by the Rules of Civil Procedure, which allow a party to raise Rule 12(b) defenses in a pre-answer motion. See Rule 12(b), SCRP and accompanying notes (allowing certain defenses to be raised by pre-answer motion at option of pleader) and Rule 12(a), SCRP (altering deadline for defendant's answer when defendant serves a pre-answer motion). Spence v. Spence, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006)."

The Court, in Spence, held the affirmative defense of bona fide purchaser was properly asserted in a 12(b)(6) motion. Spence at S.E.2d 878.

The cause of action for civil conspiracy is a tort action. Moore v. Weinberg, 644 S.E.2d 740 (S.C.App. 2007). The statute of limitations for the tort of civil conspiracy requires that the action be commenced not later than three years after the date when a cause of action reasonably ought to have been discovered. S.C. Code Ann. §15-3-530.

The test for determining whether the statute of limitations begins to run is an objective test focused on whether there are sufficient facts so that a reasonable person would be put on notice that a claim may exist. Bayle v. South Carolina Dept. of Transp., 344 S.C. 115, S.E.2d 736 (Ct.App. 2001). South Carolina's statute of limitations requires "very little to start the clock." Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204, 208 (Ct.App. 1998). **Obviously Paul knew all of the circumstances resulting in the nonjury trial of his case in October of 2004** (emphasis added).

The allegations of Paul's Complaint clearly demonstrate the existence of the affirmative defense of the statute of limitations. Plaintiff's causes of action are all barred by the three-year statute of limitations, and must be dismissed pursuant to Rule 12(b)(6).

FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

Paul's causes of action fail to state facts sufficient to constitute a cause of action.

In Count One, Paul contends that the defendants conspired by agreeing to a settlement, and by having the action transferred to the non-jury docket. Both settlement and trial by non-jury are allowed under the Eminent Domain Procedure Act (S.C. Code Section 28-2-40; Section 28-2-310). Plaintiff's Count One, on its face, fails to state facts sufficient to constitute a cause of action, and must be dismissed.

Plaintiff's Count Two alleges threats by Defendants to Plaintiff's expert witnesses. In support, Plaintiff cites rules of Rule 407, Professional Conduct. S.C.A.R. While these allegations are specifically denied, the preamble to the Rules of Professional Conduct specifically provide that violation of a rule will not itself give rise to a cause of action, and that the rules are not designed to be a basis for civil liability. Additionally, and contrary to Paul's assertions, Judge Lloyd specifically told Paul's witnesses in open court "Nobody is threatening you with that or anything like that" - referring to criminal liability. October 14, 2004 transcript of record in case #02-CP-40-

4800 (p.139, ll 17-25; p.140, ll 6-20 (**Exhibit 15**).

As to Count Two, the repetitious and meritless allegations of Count Two are addressed as follows:

¶108(a). This paragraph of the complaint, referencing "settlement" has been addressed in response to Count One above. As noted, settlement and non-jury are allowed by S.C. Code Sections 28-2-40 and 28-2-310(B) of the Eminent Domain Procedure Act.

¶¶108(b) and 108(c) are contradicted by Judge Lloyd's statements during trial as set forth above.

Paul's allegations as to conspiracy are no more than a "bare claim of conspiracy" using "labels and conclusions." Loubser v. Thacker, 440 F.3d 449 (7th Cir. 2006) (a conspiracy claim differs from other claims in having a degree of vagueness that makes a bare claim of conspiracy wholly uninformative to the defendant); Bell Atlantic Corp. v. Twombly 127 S. Ct. 1955 (2007), (although a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions...) Beanal v. Freeport-McMoran, Inc., 197 F.3d 161 (5th Cir. 1999) (a bare bones allegation that a wrong occurred and which does not plead any of the facts giving rise to the injury does not provide adequate notice). Paul's allegations as to a conspiracy are insufficient, and fail to state a cause of action.

LAW OF THE CASE

Paul's present complaint filed October 26, 2018 is nothing more than a rehash of his prior 2008 complaint in Civil Action No. 2008-CP-40-1259. Paul's allegations of conspiracy, wrongful settlement, deprivation of Paul's "right to a jury trial"; witness threats; and inadequate consideration were all addressed in Judge Strickland's Order of March 25, 2009, granting all defendants' motions to dismiss. Judge Strickland's Order, affirmed on appeal, became "Law of the Case."

Under the Law of the Case Doctrine, "a party is precluded from relitigating, after an

appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Judy v. Martin, 381 S.C., 455, 458, 674 S.E.2d 151, 153 (2009).

The Law of the Case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case. Nelson v. Charleston & Western Carolina Railway Co., 231 S.C. 351, 357, 98 S.E.2d 798, 800 (1957).

"The rule of the law of the case is a rule of practice, based upon sound policy that when an issue is once litigated and decided, that should be the end of the matter." United States v. U.S. Smelting Ref. & Mining Co., 339 U.S. 186, 198, 70 S.Ct. 537, 94 L.Ed. 750 (1950)

RES JUDICATA

"Res Judicata is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties and their privies." Id. at 465, 659 S.E.2d at 81-82 (Ct. App. 2003). In order for Res Judicata to apply, the parties - or their privies - and subject matter must be identical, and the prior suit adjudicated the issue. 7 S.C. Jur. Estoppel and Waiver §27 (1991).

... "[r]es judicata precludes parties from subsequently relitigating issues actually litigated and those that might have been litigated in a prior action." Duckett v. Goforth, 374 S.C. 446, 464, 649 S.E. 2d 72, 81 (Ct.App. 2007).

COLLATERAL ESTOPPEL

"Collateral Estoppel prevents a party from relitigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action." Stone v. Roadway Express, 367 S.C. 575, 580, 627 S.E.2d 695, 698 (2006).

CLAIM PRECLUSION

Under the principles of claim preclusion, a final judgment on the merits in a prior action will absolutely bar parties and their privies from litigating in a subsequent action issues actually litigated and issues that could have been raised in the first action. Jaynes v. County of Fairfield, 303 S.C. 434, 401 S.E.2d 188 (Ct. App. 1981)

To raise the bar of claim preclusion, the following three elements must be shown: (1) identity of

the parties; (2) identity of the subject matter of the litigation; and (3) a final determination on the merits of the claim in the former proceeding, H.G. Hall Constr. v. J.E.P. Enterprises, 283 S.C. 196, 321 S.E.2d 267 (Ct. App 1984). The three elements are clearly shown by Paul's 2008 Complaint; the Orders of Judge Lloyd and Judge Strickland; and the subsequent Appellate Orders.

ISSUE PRECLUSION

The Doctrine of Issue Preclusion is also an applicable defense to Paul's action. Issue Preclusion refers to the effect of a judgment in precluding the relitigation of a matter actually litigated and decided.

Briggs v. The Newberry County School District, 838 F.S. 232 (1992)

In addition to the defenses of failure to state a cause of action and the statute of limitations, based on the facts of this case, any one of the aforesaid defenses entitles this defendant to an Order granting his motion to dismiss.

JUDICIAL NOTICE

Pursuant to SCRE Rule 201, and applicable case law, the Court is asked to take judicial notice of the lower court and appellate court decisions, pleadings, motions, and portions of the transcript of testimony in Court, all as herein referred to, and attached as exhibits, with an Index of Exhibits.

The undersigned respectfully submits Plaintiff's Complaint must be dismissed pursuant to Rule 12(b)(6).

QUINN LAW FIRM, LLC

/s/ Michael H. Quinn
S.C. Bar #4615
Post Office Box 6903
Columbia, SC 29260
(803) 779-6365

Attorney for Michael H. Quinn, Individually, and
as Senior Lawyer of Quinn Law Firm, LLC, and
Quinn Law Firm, LLC

Columbia, South Carolina

January 30, 2019

8623.QuinnMemorandum.1.30.19

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A No. 2018-CP-40-05641

Ronald I. Paul,)
)
Plaintiff,)
)
vs.)
)

South Carolina Department of Transportation;)
Paul D. deHolczer, 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, right 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.)

EXHIBIT LIST OF DEFENDANTS
MICHAEL H. QUINN
AND QUINN LAW FIRM, LCC

The following numbered exhibits are attached to Defendant Quinn's Memorandum of
Law in Support of Motion to Dismiss.

No. 1. Judge James R. Barber, III's Order dated March 23, 2004.

No. 2. Judge Reginald I. Lloyd's Order dated March 11, 2005.

No. 3. Court of Appeal's Order affirming Judge Lloyd's March 11, 2005 Order, dated
October 23, 2006.

No. 4. S.C. Supreme Court's Order denying Paul's Petition for a Writ of Certiorari, dated
October 18, 2007.

No. 5. Paul's Complaint filed February 20, 2008.

- No. 6. Defendant Quinn's Motion to Dismiss filed April 1, 2008.
- No. 7. Special Circuit Court Judge Joseph M. Strickland's Order dated March 25, 2009.
- No. 8. Court of Appeals Order (unpublished) filed November 19, 2010 affirming Judge Strickland's Order.
- No. 9. S.C. Supreme Court's Order dated October 19, 2011 denying Paul's Petition for a Writ of Certiorari.
- No. 10. United States Magistrate Judge Paige J. Gossett's Order and Report and Recommendation dated December 3, 2012.
- No. 11. United States District Judge Cameron McGowan Currie's Opinion and Order dated February 6, 2013.
- No. 12. United States Magistrate Judge Paige J. Gossett's Supplemental Report and Recommendation dated August 29, 2014.
- No. 13. Senior United States District Judge Cameron McGowan Currie's Opinion and Order dated October 8, 2014.
- No. 14. Order of Senior United States District Judge Cameron McGowan Currie dated November 8, 2016 imposing a pre-filing injunction on Paul's ability to file a new action.
- No. 15. Transcript of Record Cover Sheet, October 14, 2004, page 139 and page 140.

Respectfully submitted,

/s/ Michael H. Quinn
S.C. Bar #4615
QUINN LAW FIRM, LLC
2019 Park Street (29201)
Post Office Box 6903
Columbia, SC 29260

Columbia, SC

January 30, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A No.: 02-CP-40-4800

Route: U.S. Route 1 (Two Notch Road Widening Project)
Project/PIN: BST-COMB (013)/22871
Item/File: 400971/40.623A (00061.2009)
Tract(s): 32PCR

South Carolina Department of Transportation,

Condemnor,

vs.

Keith J. Buckles and G.L. Buckles,

Landowners,

and

Ronald Paul, Lessee and Sang Kim, Lessee,

Other Condemnees.

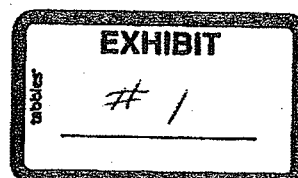
CONSENT ORDER

FILED
MAR 26 PM 2:05
BARBARA A. SCOTT
C.C.C. & G.S.

This matter comes before the court on the motion of Condemnor and Landowner for an order to remove this matter from the Jury Trial Roster and place it on the Nonjury Trial Roster and for an order giving this action precedence over other civil cases for trial.

IT APPEARS the Condemnor has commenced a condemnation action, by filing a Notice of Condemnation now pending in the Court of Common Pleas of Richland County, to condemn and acquire a portion of the property described in the aforementioned Notice of Condemnation; and,

IT APPEARS the Condemnor and Landowner demand, pursuant to § 28-2-310(B), Code of Laws of South Carolina, 1976, as amended, trial by the court without a jury; and,



IT APPEARS the Condemnor and Landowner demand, pursuant to § 28-2-310(C), Code of Laws of South Carolina, 1976, as amended, that this action be given precedence over other civil cases for trial; and,

IT APPEARS the hearing on just compensation should be followed by a hearing for the Court, acting in equity, to determine to whom and in what apportionment the just compensation should be paid., pursuant to § 28-2-460, Code of Laws of South Carolina, 1976, as amended; and,

IT APPEARS the Condemnor and Landowner agree that just compensation is One Hundred Fifty-Six Thousand Seven Hundred Fifty and No/100 (\$156,750.00) Dollars; and,

IT APPEARS the Condemnor and Landowner agree that the matter should be transferred to the Nonjury Trial Roster for a determination as to (1) the amount that would constitute just compensation, and (2) to whom and in what apportionment the just compensation should be paid.

IT IS, THEREFORE, ORDERED:

1. That this matter be transferred to the Nonjury Trial Roster for a determination as to (1) the amount that would constitute just compensation, and (2) to whom and in what apportionment the just compensation should be paid.
2. That this action be given precedence over other civil cases for trial.
3. The hearing on the matter will be bifurcated to addresses the separate issues of (1) just compensation, and (2) to whom and in what apportionment the just compensation should be paid.

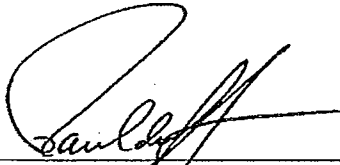
AND IT IS SO ORDERED.

S/ James R. Barber III

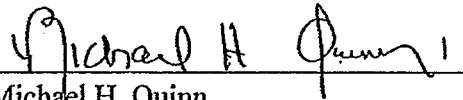
James R. Barber, III
Presiding Judge, Fifth Judicial Circuit

3/23/04

WE SO MOVE AND CONSENT:



Paul D. de Holczer
Moses Koon & Brackett, PC
Attorney for Condemnor



Michael H. Quinn
Quinn Law Firm, LLC
Attorney for Landowner

258866

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

C/A No.: 02-CP-40-4800

Route: U.S. Route 1 (Two Notch Road Widening Project)
 Project/PIN: BST-COMB (013)/22871
 Item/File: 400971/40.623A (00061.2009)
 Tract(s): 32PCR

South Carolina Department of Transportation,

Condemnor,

vs.

ORDER OF JUDGMENT

Keith J. Buckles and G.L. Buckles,

Landowners,

and

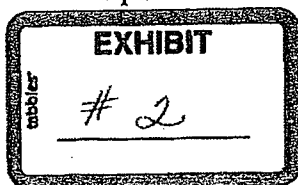
Ronald Paul, Lessee and Sang Kim, Lessee,

Other Condemnees.

This case came before this Court for a nonjury trial on the 14th day of October, 2004 and, after several days' recess, was concluded on the 20th day of October, 2004. Appearing before the Court was Paul D. de Holczer, for the Condemnor; Michael H. Quinn, and Michael H. Quinn, Jr., for the Landowners; and J. Charles Ormond, Jr., for Ronald Paul, Lessee. Sang Kim, Lessee, did not appear and, upon motion of counsel for Landowners, and upon good cause shown, Sang Kim was dismissed from this action.

Pursuant to § 28-2-310(B), Code of Laws of South Carolina, 1976, as amended, Condemnor and Landowners demanded trial by the court without a jury; and, pursuant to § 28-2-310(C), Code of

- 1 -



Laws of South Carolina, 1976, as amended, Condemnor and Landowners demanded that this action be given precedence over other civil cases for trial.

Pursuant to § 28-2-460, Code of Laws of South Carolina, 1976, as amended the hearing on just compensation should be followed by a hearing for the Court, acting in equity, to determine to whom and in what apportionment the just compensation should be paid. In the interest of judicial economy and with the consent of the parties, the issue of just compensation for the Condemnor's acquisition of the above-referenced property was tried together with the issue of the apportionment of the just compensation.

The issues before the Court were (1) the amount of just compensation owed by the Condemnor for the property acquired by condemnation, plus damages, if any, to the remainder of Landowners' property, and (2) the allocation of the condemnation proceeds between the Landowners and Ronald Paul, named as Other Condemnee.

As reflected by the Order of James R. Barber, III dated March 23, 2004, Landowners and Condemnor agreed that just compensation was One Hundred Fifty-Six Thousand Seven Hundred Fifty and No/100 (\$156,750.00) Dollars. During trial, counsel for Landowners and Condemnor confirmed such agreement. As reflected hereafter, and upon Condemnor's Motion for a directed verdict as to just compensation, with the consent of Landowners' counsels, and counsel for Ron Paul advising the Court that Condemnor was entitled to have its Motion for a directed verdict granted, Condemnor's Motion is granted, and just compensation is determined to be One Hundred Fifty-Six Thousand Seven Hundred Fifty and No/100 (\$156,750.00) Dollars.

During trial, counsel for the Landowners informed the Court that two individuals believed to be witnesses who would be offered in Paul's behalf to testify as to the value of Paul's leasehold interest were not licensed to appraise real estate in South Carolina; and as such, were not qualified to testify as to the value of Paul's leasehold interest pursuant to the South Carolina Real Estate Appraiser's License and Certification Act, South Carolina Code Section 40-60-2, et. seq.

In conference with counsel for all parties, the Court expressed concern about either testifying as to the value of the leasehold interest, in view of the South Carolina Real Estate Appraisers License and Certification Act, and S.C. Code Section 40-60-2, and specifically Sections 40-60-3 and 40-60-210. The Court made it clear to counsel that the Court did not intend to indicate to witness Blinder or witness Duckett that either would be in violation of the Act, but only that both should be aware of the Act.

Subsequently, the Court informed Blinder of the aforesaid Code section. Blinder requested the opportunity to consult with his personal attorney, and decide whether to testify when the case resumed.

On October 20, 2004, the trial resumed as scheduled. While counsel for Paul advised the Court that Blinder would testify, the Court was later informed that Blinder was not available for trial. Counsel for Paul also advised the Court that Paul's other witness, Dewey Duckett, would not testify as to the value of the leasehold interest. Duckett, however, was not called to testify.

The Court heard the testimony of Derek Piper, P.E., AICP, Project Manager and engineer on behalf of South Carolina Department of Transportation. Piper explained the Condemnor's plans, testified about the condition of Two Notch Road both as it exists prior to the new construction and as

it will exist after the new construction and improvement. The court recognized Piper as an engineer licensed by the State of South Carolina, an expert transportation engineering witness and found Piper to be knowledgeable about the project construction, and further found his testimony to be credible and convincing. By consent, the Condemnor's plans and Condemnation Notice for the above-referenced project are specifically made a part hereof by reference, which plans and Notice reflect and describe the property of the Landowners and the portion acquired by Condemnor. It was stipulated by the parties that the date of condemnation was October 2, 2002, that the Department's acquisition is 0.075 of an acre (or 3,271 square feet) of land, that the area of the Landowners' property before the taking was 0.180 acres (or 7,698.00 square feet) of land, and that the area of the Landowners' property after the taking is 0.105 acres (or 4,427.00 square feet) of land.

Landowner G. L. Buckles, Harvey Rosen, and Tony Martin, independent fee appraisers testified for the Landowners. Both Rosen and Martin are licensed to appraise real estate in South Carolina, and based on their training and experience, were duly qualified as expert witnesses in the area of commercial real estate and leasehold interest valuations.

Rosen testified that the economic or market rent for the property leased to Paul was equal to the contract (lease) rent, and testified Paul did not have a leasehold value as of October 2, 2002. Martin testified that the economic or market rent for the leased property was slightly higher than the contract (lease) rent, testifying that as of October 2, 2004, the present worth of Paul's leasehold interest was Two Thousand Nine Hundred Seven and 82/100 (\$2,907.82) Dollars.

Counsel for Lessee Paul proffered the testimony of Dewey Duckett and David Blinder, neither of whom are licensed real estate appraisers in the State of South Carolina. Assuming,

without deciding, that the proffer was appropriate, since neither witness testified, nor are they licensed real estate appraisers, the Court does not find the proffered testimony persuasive.

Condemnor offered the testimony of Keith Batson, independent fee appraiser, on behalf of The South Carolina Department of Transportation. Batson holds the MAI designation, and based on his training and experience was qualified as an expert witness in the appraisal of commercial real estate, and leasehold interest valuations. Batson testified regarding his appraisal of the property, the before and after value of the property, and his opinion of just compensation. During cross examination by counsel for the Landowners, Batson also testified that the leasehold interest of Paul had a present worth value as of October 2, 2002 of Three Thousand Six Hundred Twenty-Five and No/100 (\$3,625.00) Dollars. The Court found Batson to be knowledgeable about the value of the property, and of the leasehold value.

The Court further found the testimony of the expert witnesses, Rosen, Martin and Batson credible and persuasive, each of whom testified as to the basis for their opinion.

Ronald Paul testified in his behalf with respect to the subject property, the business he operated on the property, how long he had operated such business, the physical characteristics of his leasehold interest, and what he believed to the value of his leasehold interest. The Court did not find Paul's testimony as to the value of his leasehold interest credible or convincing, in that among other reasons, Paul did not testify as to the market rent of comparable properties. The Court also notes Paul's testimony, during cross examination, that he only paid approximately Two Thousand and No/100 (\$2,000.00) Dollars in income tax during the year of condemnation.¹

¹ Paul did not cease doing business until a year after the date of condemnation.

With the foregoing as background, and from the testimony and other evidence presented to this Court, I make the following Findings of Fact.

FINDINGS OF FACT

This Court has jurisdiction of the parties, and the subject matter of this action.

Landowners are the owners of the property which is the subject of this action, and as of the date of condemnation, October 2, 2002, Landowners were the lessor, and Ronald Paul was the lessee under a Lease Agreement covering approximately 540 square feet of the property condemned. The Lease is dated January 5, 1999, was for an initial term of five (5) years, expiring January 4, 2004, and with an applicable renewal option for an additional five (5) years. The lease rental was Five Hundred Twenty-Five and No/100 (\$525.00) Dollars per month. The condemnation resulted in the acquisition of the property under lease to Paul.

The date of valuation for the purposes of determining just compensation due the Landowners, and for the purpose of determining the value of the leasehold interest of Paul is October 2, 2002.

The Condemnor's acquisition is 0.075 of an acre (or 3,271 square feet) of land, as reflected by the Condemnor's plans and condemnation notice. The area of the Landowners' property before the taking was 0.1080 acres (or 7,698 square feet) of land, and the area of the Landowner's property after the taking is 0.105 acres (or 4,427 square feet) of land.

Neither Dewey Duckett, nor David Blinder are licensed real estate appraisers under the laws of this State.

Witnesses Harvey Rosen, Anthony Martin, and Keith Batson are all licensed real estate appraisers in South Carolina, and are duly qualified experts in the field of real estate appraisals,

including the appraisal of leasehold interests. The experience and training of the expert witnesses, their familiarity with the property, and the similarity of comparable properties used by them are all proper factors for the Court to consider. See Hamilton v. Martin, 270 S.C. 223, 241 S.E.2d 569 (1978).

The testimony of Rosen, Martin, and Batson as to the value of Paul's leasehold interest was based on valid comparable rental properties, and the Court found their testimony credible and, each in its own right, convincing.

The total amount of just compensation for the Condemnor's acquisition and special damages, including damages to the remainder of Landowners' property is One Hundred Fifty-Six Thousand Seven Hundred Fifty and No/100 (\$156,750.00) Dollars, and that sum equals just compensation. In valuing a leasehold interest, the measure of damages is the use and occupancy of the leasehold for the remainder of the tenant's term, plus the value of the right to renew the lease, less the rent which the tenant would pay for such use and occupancy, brought to a present value. Gray v. South Carolina Department of Highway and Public Transportation, 311 S.C. 144, 427 S.E.2d 899, 904 (S.C. App. 1992); Hamilton v. Martin, 270 S.C. 223, 241 S.E.2d 569 (1978). The Court is cognizant of the principle that the business being operated on the property condemned should be considered if the business enhances the property's value, and the leasehold value, however, in this case, the credible and convincing expert testimony was that the operation of the liquor store on the leased property did not increase the value of the property, nor of the leasehold interest. Accordingly, the Court is of the opinion, and I so hold, that the operation of the liquor store did not enhance the value of the property, nor of the leasehold interest.

Having considered the competent evidence and testimony, I am of the further opinion, and so hold that the value of Paul's leasehold interest, considering the term of the lease, the renewal term, and its present value, is a total of Two Thousand Four Hundred Fifty and No/100 (\$2,450.00) Dollars as of October 2, 2002.

At the Conclusion of the Condemnor's case and after Condemnor was dismissed from this action, Lessee's attorney raised the issue of the Answer and Counterclaim of Ronald Paul, Lessee and Other Condemnee, filed November 19, 2002. Condemnor filed its "Answer to Counterclaim of Ronald Paul, Lessee" on December 18, 2002. Thereafter, on October 21, 2003 Ronald Paul, Lessee and Other Condemnee, appearing Pro Se, filed his "Notice of Dismissal of Condemnee Ronald Paul Counterclaim Against South Carolina Department of Transportation." On October 24, 2003 Ronald Paul, Lessee and Other Condemnee, appearing Pro Se, attempted to revive his counterclaim by filing his "Notice of Reinstatement of Condemnee Ronald Paul's Counterclaim Against Condemnor South Carolina Department of Transportation And Vacate The Notice of Dismissal." Lessee did not move to amend the pleadings to reinstate the counterclaim, however, and Condemnor did not consent to the purported reinstatement of the counterclaim.

Even if Lessee's Notice of Reinstatement were effective to revive the counterclaim, a counterclaim in a condemnation action is not appropriate. First, as Condemnor's filed Summons in this case plainly states, "Responsive pleadings to the Amended Condemnation Notice and Tender of Payment are not necessary." Indeed, as is common practice, Landowners' attorneys did not file any answer or counterclaim. Pursuant to § 28-2-280, Code of Laws of South Carolina, 1976, as amended, Condemnor's Amended Condemnation Notice and Tender of Payment states in Paragraph

Sixteen, "... if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid." The rejection of the Tender at the time of filing by the Landowner and Other Condemnees served to move this case onto the trial docket. The only recognized responsive pleading in a condemnation action is an independent action filed under its own docket number, the "challenge action" provided for by § 28-2-470, Code of Laws of South Carolina, 1976, as amended.

Furthermore, the gravamen of the rights and remedies sought by Lessee in his counterclaim is the sole issue in a condemnation action, that is, the determination of what amount of money constitutes just compensation to the Landowner and Other Condemnees. Pursuant to § 28-2-370, Code of Laws of South Carolina, 1976, as amended, "In determining just compensation, only the value of the property to be taken, any diminution in the value of the landowner's remaining property, and any benefits as provided in § 28-2-360 may be considered." The higher courts of this State have consistently held that just compensation does not include other rights and remedies sought by Lessee in his counterclaim, specifically, "goodwill, going concern value, private business ... livelihood and financial health" This Court finds and holds that Lessee dismissed his Counterclaim Against South Carolina Department of Transportation and that his "Notice of Reinstatement of Condemnee Ronald Paul's Counterclaim Against Condemnor South Carolina Department of Transportation And Vacate The Notice of Dismissal" did not revive the counterclaim. The Court also finds and holds that Lessee fully exercised his right to participate in the trial to determine just compensation and that he was afforded an opportunity to present evidence and testimony as to the amount of just compensation. Lessee testified himself, was able to call his own witnesses, and was afforded an

opportunity to cross examine the Condemnor's two witnesses and the Landowners' three witnesses. Lessee suffered no prejudice from the failure of his counterclaim. If his counterclaim against Condemnor were revived, it would not have expanded either his rights to participate in the trial of the action or those elements of just compensation to which he is entitled by law.

CONCLUSIONS OF LAW

Based on the foregoing, this Court concludes that just compensation for the Condemnor's acquisition and condemnation is One Hundred Fifty-Six Thousand Seven Hundred Fifty and No/100 (\$156,750.00) Dollars, that the leasehold value of Ronald Paul is Two Thousand Four Hundred Fifty and No/100 (\$2,450.00) Dollars, and that the One Hundred Fifty-Six Thousand Seven Hundred Fifty and No/100 (\$156,750.00) Dollars should be paid in the following apportionment: One Hundred Fifty-Four Thousand Three Hundred and No/100 (\$154,300.00) Dollars to the Landowners Keith J. Buckles and G.L. Buckles, and Two Thousand Four Hundred Fifty and No1/00 (\$2,450.00) Dollars to Ronald Paul.

ACCORDINGLY, IT IS ORDERED THAT:

1. Just compensation in this case is One Hundred Fifty-Six Thousand Seven Hundred Fifty and NO/100 (\$156,750.00) Dollars.
2. Condemnor South Carolina Department of Transportation, upon payment into the Court of a sum, which with the original Tender deposited with the Clerk of Court equals the total award of just compensation, be and is dismissed from this action, having satisfied and fulfilled its statutory duties and responsibilities.

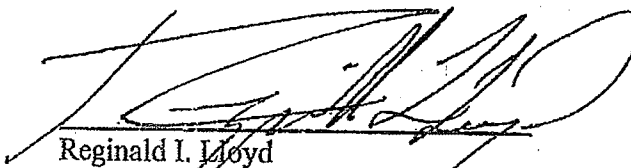
3. The Clerk of Court annotate the Notice of Condemnation in this case, transferring the realty to the South Carolina Department of Transportation, with the amount of the award as One Hundred Fifty-Six Thousand Seven Hundred Fifty and NO/100 (\$156,750.00) Dollars; and file the Annotated Notice of Condemnation with the Register of Deeds Office of Richland County, duly indexed, as provided by law for the recording and indexing of deeds, and exempt from filing fees as provided under Code of Laws of South Carolina, § 12-24-40 (1976, as amended).

4. The Clerk of Court mail the recorded Annotated Notice of Condemnation to Paul D. de Holczer, Attorney for Condemnor, at Post Office Box 100261, Columbia, SC 29202-3261.

5. The Clerk of Court disburse the total award of just compensation of One Hundred Fifty-Six Thousand Seven Hundred Fifty and No/100 (\$156,750.00) Dollars by check made payable to Landowners Keith J. Buckles and G.L. Buckles in the amount of One Hundred and Fifty-Four Thousand Three Hundred and No/100 (\$154,300.00) Dollars and by check made payable to Lessee Ronald Paul in the amount of Two Thousand Four Hundred and Fifty and NO/100 (\$2,450.00) Dollars.

AND IT IS SO ORDERED.

Columbia, South Carolina
March 11, 2005


Reginald I. Lloyd
Presiding Judge, Fifth Judicial Circuit

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Department of
Transportation, Respondent,

v.

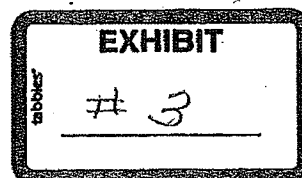
Keith Buckles and G.L.
Buckles, Landowners, and
Ronald Paul, Lessee and Sang
Kim, Lessee, Defendants,
Of Whom Ronald Paul is the Appellant.

Appeal From Richland County
Reginald I. Lloyd, Circuit Court Judge

Unpublished Opinion No. 2006-UP-360
Submitted September 1, 2006 -- Filed October 23, 2006

AFFIRMED

Ronald I. Paul, of Columbia, for Appellant.



Mary Frances Jowers; Clifford O. Koon, Jr.; Paul D.
de Holczer, of Columbia, for Respondent.

PER CURIAM: In this condemnation proceeding, Ronald Paul, a lessee of condemned land, appeals the circuit court's award of \$2,450.00 for the taking of his leasehold interest. We affirm¹ pursuant to Rule 220, SCACR, and the following authorities:

Issues I, III, IV, and V: Gray v. S. C. Dep't of Hwys. & Pub. Transp., 311 S.C. 144, 153, 427 S.E.2d 899, 904 (Ct. App. 1993) (stating the business conducted upon the condemned property may not be considered as a component of the market value, unless the business enhances the value of the real estate and that in valuing a leasehold interest, "the measure of damages is the value of the use and occupancy of the leasehold for the remainder of the tenant's term, plus the value of the right to renew the lease, less the rent which the tenant would pay for such use and occupancy."); McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct.App.1987). ("Whatever doesn't make any difference, doesn't matter.");

Issue II: Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.");

Issue VI: Hillman v. Pinion, 347 S.C. 253, 257, 554 S.E.2d 427, 430 (Ct. App. 2001) ("The general rule is that the neglect of the attorney is the neglect of the client, and no mistake attributable to an attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client."); Greenville Income Partners v. Holman, 308 S.C. 105, 107, 417 S.E.2d 107, 108 (Ct. App. 1992) (stating the acts of an attorney are directly attributable to and binding on his client).

AFFIRMED.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

HEARN, C.J. and HUFF and STILWELL, JJ. concur.

ELECTRONICALLY FILED - 2019 Jan 31 9:15 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11320
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080
FAX (803) 734-1499

October 18, 2007

REGULAR AND CERTIFIED MAIL

Mr. Ronald I. Paul
P. O. Box 4353
Columbia, SC 29240

Re: SC DOT v. K. Buckles & R. Paul
2002-CP-40-04800

Dear Mr. Paul:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

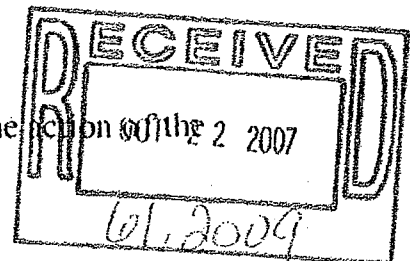
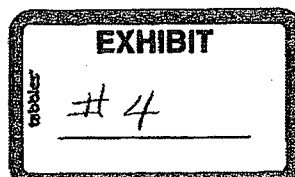
"Petition for Writ of
Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

Justice Donald W. Beatty,
not participating.

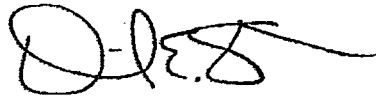
October 18, 2007."

By copy of this letter we are advising all interested parties of the Court in this matter.



Mr. Ronald I. Paul
Page Two
October 18, 2007

Very truly yours,



CLERK

DES/dmh

cc: Clifford O. Koon, Jr., Esquire
Paul D. DeHolczer, Esquire
Mary Frances Jowers, Esquire
The Honorable Barbara A. Scott
The Honorable Kenneth A. Richstad

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

CIVIL ACTION NO.
2008-CP-400- 2008-CP-40-1259

Ronald I. Paul)

Plaintiff,)

Vs.)

South Carolina Department of)
Transportation; Paul D. de Holczer, Esq.,)
Individually, and as a partner of the law)
Firm of Moses, Koon & Brackett, P.C;)
G.L. Buckles, as Personal Representative)
of the Estate of Keith J. Buckles and G.L.)
Buckles; Michael H. Quinn, Individually,)
and as Senior lawyer of Quinn Law Firm,)
LLC; J. Charles Ormond, Jr., Esq.,)
Individually, and as a partner of the)
Law Firm of Holler, Dennis, Corbett,)
Ormond, Plante & Garner.)

Defendants,)

COMPLAINT
(Jury Trial Demanded)

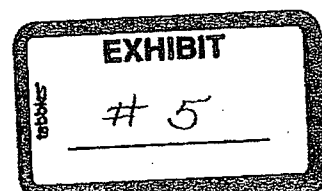
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C.C.C. & G.S.

The Plaintiff, Ronald I. Paul, complaining of the Defendants, South Carolina Department of Transportation; Paul D. de Holczer, Esq., Individually, and as a partner of the law Firm of Moses, Koon & Brackett, P.C; G.L. Buckles, as Personal Representative of the Estate of Keith J. Buckles and G.L. Buckles; Michael H. Quinn, Individually, and as senior lawyer of Quinn Law Firm, LLC; J Charles Ormond, Jr., Esq., Individually, and as a partner of the Law Firm of Holler, Dennis, Corbett Ormond, Plante & Garner, would respectfully show onto the Court:

I.

JURISDICTION/VENUE
(JURY DEMAND)

1. The Plaintiff is a resident of the County of Richland, State of South Carolina
2. The Defendant, South Carolina Department of Transportation is a state governmental entity with offices located in Country of Richland, State of South Carolina.



3. The Defendant, Paul D. de Holczer is, on information and belief, a resident of the Country of Richland, State of South Carolina, and a partner of the Law Firm Moses, Koon & Brackett, P.C, organized and existing under the laws of the County of Richland, State of South Carolina.

4. Mr. de Holczer is sued individually and as a partner in the Law Firm of Moses, Koon & Brackett, P.C, with its principal place of business in Richland County, State of South Carolina.

5. The Defendants, G.L. Buckles, as Personal Representative of the Estate of Keith J. Buckles and G.L. Buckles, on information and belief, is resident of the Country of Richland, State of South Carolina, and G.L. Buckles, is the Personal Representative of the Estate of Keith J. Buckles currently open in Richland County Probate Court, State of South Carolina. (case# 2005 BS40 00388)

6. Mr. G.L. Buckles, as Personal Representative of the Estate of Keith J. Buckles is sued individually and as Personal Representative of the Estate of Keith J. Buckles which is currently open in Richland County Probate Court, State of South Carolina.(case # 2005 BS40 00388)

7. The Defendant, Michael H. Quinn is, on information and belief, a resident of the Country of Richland, State of South Carolina, and senior lawyer of the Law Firm Quinn Law Firm, LLC, organized and existing under the laws of the County of Richland, State of South Carolina.

8. Mr. Quinn is sued individually and as senior lawyer in the Law Firm of Quinn Law Firm, LLC, with its principal place of business in Richland County, State of South Carolina.

9. The Defendant, J Charles Ormond is, on information and belief, a resident of the Country of Richland, State of South Carolina, and a partner of the Law Firm Holler, Dennis, Corbett, Ormond, Planter & Garner, organized and existing under the laws of the County of Richland, State of South Carolina.

10. Mr. Ormond is sued individually and as a partner in the Law Firm of Holler, Dennis, Corbett, Ormond, Planter & Garner, with its principal place of business in Richland County, State of South Carolina.

11. The covert and overt acts or omissions of the Defendants occurred in Richland County, State of South Carolina.

12. The Plaintiff demands trial by jury on all issues.

II.

BACKGROUND

13. On July 3, 1985, the Plaintiff leased premises from Keith J. Buckles now deceased (Lessor) consisting of a concrete block/brick building previously designated as 2115 Two Notch Road in the City of Columbia, in the state and county aforesaid, together with the immediate parking area on its perimeter.(Record Book 00593-1478 and Renewal Record Book 00868-2723)

14. Plaintiff opened a retail liquor store on the property. The business was opened in September 1985 and had operated successfully for eighteen (18) years.

15. On October 2, 2002, the Defendant SCDOT/de Holczer filed an action against Plaintiff pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*, (case # 2002-CP-400-4800) and condemned the Plaintiff's entire leased property without payment of just compensation. Also, two other parties were named in this action, Keith J. Buckles now deceased and G.L. Buckles, Landowners, and Sang Kim, Lessee.

16. On November 19, 2002, Plaintiff's filed a Counterclaim, asserting an inverse condemnation action for his constitutional right to just compensation for damages and demanded for a jury trial.

17. On December 18, 2002, Defendant SCDOT/de Holczer filed Condemnor's answer to Condemnee Paul's Counterclaim.

18. On March 23, 2004, the landowners, Defendants Quinn/Buckles (Keith J. Buckles and G.L. Buckles) and Condemnor (Defendant SCDOT) agreed to a settlement.

19. Plaintiff's rights were not affected by a settlement between the Landowners (Defendant Quinn/Buckles) and the Condemnor (Defendant SCDOT/de Holczer).

20.. Thereafter All Defendant's covert and overt conspired to deprive Plaintiff Paul out of his statutory rights to a Jury Trial, by conspiring to have the Plaintiff cause of action transferred to the Non-Jury Roster.

21. Defendant SCDOT had a valid and enforceable duty to compensate Plaintiff, wherein Plaintiff sought damages against South Carolina Department of Transportation.

22. Defendant SCDOT/de Holczer conspired with Defendant Quinn/Buckles and whose actions were outside the scope of their client's representation to transfer Plaintiff cause of actions to the non-jury roster and all Defendants breached an independent duty owed to Plaintiff.

23. Plaintiff Paul asserted the total award must include the Plaintiff damages to fully compensate both the Lessee and Lessor.

24. Plaintiff was deprived of the property's highest and best use (liquor store) for a remaining period of seventy-four (74) months and twenty-nine (29) days on his current Commercial Lease dated January 5, 1999.

25. Plaintiff had compensable rights for damages and demanded trial by trial.

26. On the 14th day of October 2004, and the 20th day of October 2004, this matter was before the Court pursuant to Plaintiff Paul Counterclaim, inverse condemnation action and

constitutional rights for damages, filed on November 19, 2002, wherein Plaintiff sought damages.

27. During trial, Defendant SCDOT/de Holczer conspired with Defendant Quinn/Buckles and Defendant Ormond whose actions were outside the scope of thier client's representation and all Defendants breached an independent duty owed to Plaintiff, by planning to and intimidated Plaintiff Paul expert witnesses by threatening criminal prosecution.

28. On irrelevant and unlawful arguments, on March 11, 2005, an Order of Judgment was filed, denying the Plaintiff's counterclaim, inverse condemnation action and constitutional rights for damages. This Order was received by Plaintiff on March 19, 2005, and Motions to Reconsider was filed by Plaintiff on March 24, 2005. On May 5, 2005, the Court heard Plaintiff Motions to Reconsider. On May 27, 2005, the Court entered an order denying Plaintiff Motions for Reconsideration. Plaintiff Paul filed its Notice of Appeal on June 22, 2005. The Court of Appeals issued an opinion affirming the Order on October 23, 2006 and on October 18, 2008 the Supreme Court denying Plaintiff Petition for Writ of Certiorari.

Allocation of the condemnation funds

29. On October 10, 2007, Landowners filed a Motion to Disburse the Condemnation Proceeds and intentionally ignored Plaintiff Ronald Paul statutory allocation rights provided by statutory authority.

30. Judge Lloyd's Order pertaining to allocation of the condemnation funds is undisputable invalid. Because subject matter jurisdiction was lacking, Judge Lloyd, had No Authority to hear and determine allocation of the condemnation funds between Landowners and Plaintiff Paul and therefore the ruling was/is improper and must be voided.

31. On January 8, 2008, During the motion hearing, Defendant Quinn/Buckles conspired with Defendant SCDOT/de Holczer whose actions were outside the scope of his client's

representation and both Defendants breached an independent duty owed to Plaintiff, by attempting to deprived Plaintiff Paul out of his Statutory rights provided by S.C. Code of laws 28-2-460.

Consequence damages

32. In October 1998 Plaintiff Ronald Paul entered into a written commercial lease agreement with now deceased Keith J. Buckles for a term of (5) five years beginning on January 1, 1999 with an option to renew for an additional (5) five years, previously designated as 2318 Two Notch Road in the City of Columbia, in the state and county aforesaid, together with the immediate parking area on its perimeter. (Record Book 00518, at page 2270)

33. The premises was leased (as is) consisting of a 30 x 60 concrete block building designated as 2318 Two Notch Road in the city of Columbia, in the state and County aforesaid, together with the immediate parking area on its perimeter.

34. This commercial lease authorized Plaintiff Ronald Paul to build a 30 x 40 foot tenant owned structure and other improvement upon the lot of property located at 2318 Two Notch Road.

35. Also, this commercial lease authorized the first option to buy to Ronald Paul if property was to be sold during the lease time; moreover, these lease provisions were initialed by Mr. Keith J. Buckles.

36. Plaintiff Ronald Paul relied upon what was written in entering into the lease option and built the 30 x 40 tenant-owned structures and spent a considerable amount of money improving the entire lot of property.

37. On December 19, 2003 Plaintiff Ronald Paul, exercised his option to renew and renewed the commercial lease as provided for in said commercial lease for an additional (5) five years with a current expiration date December 31, 2008. (Record Book 00887-0832)

38. In October and November 2004 Plaintiff Ronald Paul failed to pay rent due to a prior Eminent Domain condemnation action instituted by South Carolina Department of Transportation on October 2, 2002.

39. This action deprived Plaintiff Ronald Paul of his livelihood and income.

40. As a result of Plaintiff Ronald Paul failure to pay October and November rent, G. L. Buckles instituted legal action in Magistrate Court against Plaintiff Ronald Paul for eviction, collection of the past due rent and insurance in the amount of \$5,536.00.(case # 20044683019)

41. On December 9, 2004 Plaintiff Ronald Paul filed an answer in response.

42. The case preceded the same as any other civil cases; a hearing on the merits was scheduled and heard on December 15, 2004 before Richland County Magistrate Judge W. H. Womble, Jr.

43. First, Mr. G.L Buckles testified at trial that the rent and insurance was not paid and that he wanted Plaintiff Ronald Paul evicted from the property and that the Plaintiff Ronald Paul was liable for past due rent and insurance.

44. Next, Mr. Ronald Paul testified that he did not pay October and November rent for 2004 due to a prior Eminent Domain condemnation action instituted by South Carolina Department of Transportation that deprived him of his livelihood and income.

45. Lastly on December 12, 2005 G.L Buckles as personal representative of the estate of Keith J. Buckles instituted legal action against Plaintiff Ronald Paul in Circuit Court for collection of past due rent, taxes and insurance in the amount of \$10,800.13.(case # 2005-CP-400-6516)

46. Also, seeking a declaratory judgment for judicial termination and improper recordation in Circuit Court to unlawful transfer Plaintiff Ronald Paul property to the Estate of Keith J. Buckles.

47. On February 13, 2006 he filed an amended complaint instituted the same. On March 9, 2006 Plaintiff Ronald Paul filed an answer and counterclaims. On March 28, 2006 Defendant G.L. Buckles filed a reply.

48. Plaintiff property was transferred to the Estate of Keith J. Buckles for failure to pay rent, taxes and insurance by Court Order filed May 4, 2007, and all defendants are liable for Plaintiff injuries and losses.

III

FIRST CAUSE OF ACTION (Civil Conspiracy)

49. Plaintiff incorporates the foregoing allegations herein to the extent required by, but not inconsistent with, the following allegations.

Conspiracy one: jury trial

50. On March 23, 2004, Defendant Quinn/Buckles, landowners (Keith J. Buckles and G.L. Buckles) and Condemnor (Defendant SCDOT/de Holczer) agreed to a settlement. Plaintiff's rights were not affected by a settlement between the Landowners (Defendant Quinn/Buckles) and the Condemnor (Defendant SCDOT/de Holczer).

51. Then All Defendant's covert and overt conspired to deprive Plaintiff Paul out of his statutory rights to a Jury Trial, by conspiring to have the Plaintiff cause of action transferred to the Non-Jury Roster constitutes violation of a clear mandate of public policy. See Cobb v. SCDOT," Despite the fact there is no constitutional right to a jury in an eminent domain case, such a right is provided by statute. South Carolina Code Ann. § 28-2-310 (1991) provides in an

eminent domain action a property owner or the condemnor may elect a jury trial on the issue of compensation. In light of the historical treatment of an inverse condemnation action as equivalent to an eminent domain case, we conclude this statutory right to a jury trial on the issue of compensation applies as well in inverse condemnation actions. See State v. Bridgers, 329 S.C. 11, 495 S.E.2d 196 (1997) (General Assembly is presumed to be aware of the common law when enacting legislation); accord Brock v. State Hwy. Comm'n, 404 P.2d 934 (Kan. 1965) (in inverse condemnation action same rules apply as in condemnation proceeding)."

52. Defendant SCDOT had a valid and enforceable duty to compensate Plaintiff, wherein Plaintiff sought damages against South Carolina Department of Transportation.

53. Defendants SCDOT/de Holcrez conspired with Defendants Quinn/Buckles and Defendant Ormond whose actions were outside the scope of their client's representation and all Defendants breached an independent duty owed to Plaintiff Paul, a duty based on S.C. Code Ann. section 16-17-10, the barratry statute and acted in their own personal interest and all Defendants covert and overt acts and omissions in one-way or another had no direct or substantial interest in the relief thereby sought, thereby seeks to defraud or mislead the court, brings such action with intent to distress or harass Plaintiff.

Conspiracy two: threatening expert witnesses with criminal prosecution

54. On the 14th day of October 2004, and the 20th day of October 2004, this matter was before the Court pursuant to Plaintiff, Paul constitutional rights for damages, wherein Plaintiff sought damages against Defendant SCDOT.

55. During trial Defendants Conspired to intimidated Plaintiff's expert witnesses by threatening criminal prosecution in view of the South Carolina Real Estate Appraisers License and Certification Act.

56. But, pursuant to S.C. Eminent Domain procedures act that clear and unambiguous reads (§ 28-2-20, Code of Laws of South Carolina, 1976, as amended). This act amends the law of this State relating to procedures for acquisitions of property and to the exercise of the power of eminent domain. It is the intention of the General Assembly that this act is designed to create a uniform procedure for all exercise of eminent domain power in this State. It is not intended by the creation of this act to alter the substantive law of condemnation, and any uncertainty as to construction which might arise must be resolved in a manner consistent with this declaration.

57. In the event of conflict between this act and any other law with respect to any subject governed by this act, this act shall prevail. (Emphasis) and Pursuant to § 28-2-30, Code of Laws of South Carolina, 1976, as amended.

58. Appraisal" means an opinion as to the value of compensation payable for property, prepared by or under the direction of an individual qualified by knowledge, skill, experience, training, or education to express an opinion as to the value of the compensation.

59. An appraisal includes the assessment of general and specific benefits to the owner as offsets against any damages to the property.

60. Defendants violated Rule 8.4 and Rule 4.5 to obtain an advantage. South Carolina Department of Transportation and Paul D. De Holczer engaged in a defense of Civil Conspiracy with other Defendants who in fact supported and agreed to this defense of Civil Conspiracy to violate Article I, Section 17 of the State Constitution which provides that private property shall not be taken for public use without just compensation, its statutory duties and responsibilities.¹

61. These covert and overt act constitutes violation of a clear mandate of public policy.

Under Rule 8.4: Misconduct – it is professional misconduct for a lawyer to:

¹Harrington v. Mikell, 469 S.E.2d 627, 321 S.C. 518 (S.C. App. 1996).

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(e) engage in conduct that is prejudicial to the administration of justice.

Under Rule 4.5: Threatening Criminal Prosecution -- a lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter.

62. Defendant SCDOT had a valid and enforceable duty to compensate Plaintiff, wherein Plaintiff sought damages against South Carolina Department of Transportation.

63. Defendants SCDOT/de Holcrez conspired with Defendants Quinn/Buckles and Defendant Ormond whose actions were outside the scope of their client's representation and all Defendants breached an independent duty owed to Plaintiff Paul, a duty based on S.C. Code Ann. section 16-17-10, the barratry statute and acted in their own personal interest to extend the case for additional attorney fee's.

64. Defendants covert and overt acts and omissions in one-way or another had No direct or substantial interest in the relief thereby sought, thereby seeks to defraud or mislead the court, and brings such action with intent to distress or harass Plaintiff and Plaintiff expert witnesses.

Conspiracy three: fraudulent acts

65. Pursuant to Section 28-2-40, Code of Laws of South Carolina, 1976, as amended, and as reflected by the Order of James R. Barber, III, dated March 23, 2004, Landowners and SCDOT agreed to settlement between them.

66. It is well settled that a settlement between parties is irrelevant and inadmissible.

67. Because a consent judgment has substantially the same effect as any other judgment rendered in the ordinary course, it is generally entitled to the defense of res judicata; *Nelson v. QHG of South Carolina Inc.*, 580 S.E.2d 171, 354 S.C. 290, rehearing denied. 66.

68. Therefore, on the 14th day of October 2004, and the 20th day of October 2004, this matter was before the Court pursuant to Plaintiff, Paul constitutional rights for damages, wherein Plaintiff sought damages against Defendant SCDOT.

69. Defendant SCDOT/de Holcreez conspired with Defendants Quinn/Buckles and Defendant Ormond whose actions were outside the scope of their client's representation and all Defendants breached an independent duty owed to Plaintiff Paul, a duty based on S.C. Code Ann. section 16-17-10, the barratry statute and acted in their own personal interest to extend the case for additional attorney fee's, but moreover arguing a irrelevant issue to deprive Plaintiff out of his property without payment of just compensation.

70. Defendants had no duty as lawyers and their covert and overt acts and omissions weren't tied to what their responsibilities were to their clients, because subject matter jurisdiction was lacking, Judge Lloyd, in Circuit Court had No Authority to hear and determine allocation of the condemnation funds between Landowners and Plaintiff Paul.

71. During trial defendant's conspiracies were intentional, willful, wanton, and reckless or directed at the Plaintiff such that the Defendants were certain or substantially certain that Plaintiff would not be awarded damages based upon the highest and best use (liquor store) against SCDOT for damages. In valuing property, South Carolina law requires an appraiser to consider the property's highest and best use.²

²*South Carolina Power & Light v. Copeland*, 258 S.C. 206, 188 S.E.2d 188 (1972).

72. Defendant SCDOT had a valid and enforceable duty to compensate Plaintiff, wherein Plaintiff sought damages against South Carolina Department of Transportation.

73. Defendants SCDOT/de Holcrez conspired with Defendants Quinn/Buckles and Defendant Ormond whose actions were outside the scope of their client's representation and all Defendants breached an independent duty owed to Plaintiff Paul, a duty based on S.C. Code Ann. section 16-17-10, the barratry statute and acted in their own personal interest to extend the case for additional attorney fee's.

74. Defendants covert and overt acts and omissions in one-way or another had no direct or substantial interest in the relief thereby sought, thereby seeks to defraud or mislead the court, brings such action with intent to distress or harass Plaintiff and constitutes violation of a clear mandate of public policy,

Conspiracy four: deprive Plaintiff Paul out of his statutory rights provided by S.C. Code of laws 28-2-460.

75. On January 8, 2008, during the motion hearing, Defendants Quinn/Buckles conspired with Defendants SCDOT/de Holcrez whose actions were outside the scope of their client's representation and all Defendants breached an independent duty owed to Plaintiff Paul, a duty based on S.C. Code Ann. section 16-17-10, the barratry statute and acted in their own personal interest to extend the case for additional attorney fee's and by attempting to deprive Plaintiff Paul out of his statutory rights by attempting to mislead the court and the Plaintiff to bring Judge Lloyd's invalid Order pertaining to allocation of the condemnation funds online with S.C. Code of laws 28-2-460.

76. Defendants covert and overt acts and omissions in one-way or another had No direct or substantial interest in the relief thereby sought, thereby seeks to defraud or mislead the court, and brings such action with intent to distress or harass Plaintiff.

WHEREFORE, the Plaintiff prays for judgment against the Defendants as follows:

1. For Actual, Consequences and Special damages as a direct and proximate result of Defendant's covert and overt acts and omissions, Plaintiff has been injured for which defendants are liable, for property and property rights at 2115 two notch rd \$5,000.00 X 12 months X 20 years = 1,200,000.00 and for property and property rights at 2318 two notch rd \$2,200.00 X 12 months X 20 years = \$528,000.00. Plaintiff would have had his property, property rights, goodwill, going concern value, livelihood and financial health for another twenty years until his retirement at age or between ages sixty-two to sixty-five.
2. Plaintiff is entitled to judgment against Defendants for Actual, Consequences and Special Damages in the amount of One Million Seven Hundred Twenty-eight Thousand dollars and No/100 (\$1,728,000.00) Dollars plus interest, prejudgment interest, liquidated damages, attorney's fees, cost and such further relief this Court deems just and proper.
3. Plaintiff is entitled to judgment against Defendants for Punitive damages in the amount of ten times for Defendants intentional, willful, wanton, and reckless covert and overt acts and omissions equals Seventeen Million Two Hundred Eighty Thousand dollars and No/100 (\$17,280,000.00) or amount that a jury may determine.

CONCLUSION

The Plaintiff, Ronald I. Paul, would assert and show, in satisfaction of Rule 11, that consultation with opposing counsels and Defendants regarding this summons and complaint would serve no useful purpose.

Very Respectfully Submitted,



Ronald I. Paul
Post Office Box 4353
Columbia, South Carolina 29240
Plaintiff, *Pro se*
(803) 462-9818
Cell (803) 414-2305

Columbia, South Carolina

February 20, 2008

ELECTRONICALLY FILED - 2019 Jan 31 9:15 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2008-CP-40-1259

Ronald I. Paul,
Plaintiff,

vs.

South Carolina Department of
Transportation, Paul D. de
Holczer, Esq., Individually,
and as a Partner of the Law
Firm of Moses, Koon &
Brackett, P.C.; G. L. Buckles,
as Personal Representative of
the Estate of Keith J. Buckles
and G. L. Buckles; Michael H.
Quinn, Individually, and as
Senior lawyer of Quinn Law
Firm, LLC; J. Charles Ormand,
Jr., Esq., Individually, and
as a partner of the Law Firm
of Holler, Dennis, Corbett,
Ormond, Plante & Garner.

Defendants.

MOTION TO DISMISS AND FOR
RULE 11 SANCTIONS

2008 APR - 1 PM 4:33
CLERK OF COURT
C.C.C. 2008

TO: THE ABOVE-NAMED PLAINTIFF

MOTION TO DISMISS:

You will please take notice that the Defendant Michael H. Quinn, Individually, and as Senior lawyer of Quinn Law Firm, LLC, and Quinn Law Firm, LLC to the extent Quinn Law Firm, LLC is named or intended to be named as a defendant (herein collectively referred to as "Defendants Quinn") will move before the presiding judge of the Richland County Court of Common Pleas

EXHIBIT

6

at the Richland County Courthouse, Columbia, South Carolina, or at such other place as may be convenient to the presiding judge as soon after service hereof as the Court shall schedule a Hearing for an Order dismissing Plaintiff's Complaint in its entirety as to Defendants Quinn pursuant to Rule 12(b)(6) SCRCF, on the following grounds:

(1) the allegations of Plaintiff's First Cause of Action, framed as conspiracy one, conspiracy two, conspiracy three, and conspiracy four establish on their face affirmative defenses in favor of movant which entitle movant to an early dismissal of conspiracy counts one, two, three and four. Such affirmative defenses which bar Plaintiff's cause of action and causes of action, include, but are not limited to (i) the statute of limitations; (ii) the doctrine of "law of the case"; and (iii) the doctrine of "privilege"; and

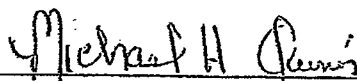
(2) Plaintiff's Complaint, in its entirety, fails to state facts sufficient to constitute a cause of action or causes of action against Defendants Quinn.

MOTION FOR RULE 11 SANCTIONS:

Defendants Quinn will also move the Court at the time and place as aforesaid for sanctions against Plaintiff pursuant to Rule 11, SCRCF, including, but not limited to reasonable attorneys fees and costs, on the following grounds: Plaintiff's complaint is frivolous, without merit, attempts to re-litigate

issues that have been tried, and finally determined, and violates the provisions of Rule 11, SCRPC.

These motions will be based on the pleadings, other matters of record, those matters of which the Court may take judicial notice, the South Carolina Rules of Civil Procedure, applicable case law, and a memorandum of authorities to be submitted in support of this Motion.

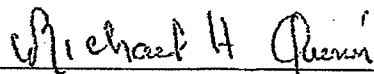


Michael H. Quinn
QUINN LAW FIRM, LLC
2019 Park Street (29201)
Post Office Box 73
Columbia, SC 29202
Attorneys for Movants

Columbia, South Carolina

April 1, 2008

Rule 11 does not require consultation with the pro se Plaintiff for this motion.



Michael H. Quinn
QUINN LAW FIRM, LLC
2019 Park Street (29201)
Post Office Box 73
Columbia, SC 29202
Attorneys for Movants

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
2008-CP-40-01259

Ronald I. Paul,

Plaintiff,

v.

South Carolina Department of Transportation;
Paul D. de Holczer, Esq., Individually and as
a partner of the law Firm of Moses Koon &
Brackett, PC; G.L. Buckles, as Personal
Representative of the Estate of Keith J. Buckles
and G.L. Buckles; Michael H. Quinn, Individually
and as Senior lawyer of Quinn Law Firm, LLC;
J. Charles Ormond, Jr., Esq., Individually, and
as a partner of the Law Firm of Holler, Dennis,
Corbett, Ormond, Plante & Garner;

Defendants.

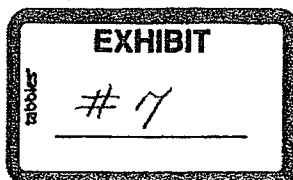
ORDER GRANTING MOTIONS
TO DISMISS

RICHLAND COUNTY
FILED
2009 MAR 25 PM 4:09
JEANETTE W. McBRIDE
C.C.P. & G.S.

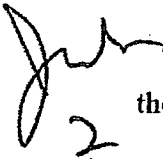
The undersigned, as a Special Circuit Judge, presided at a hearing on January 22, 2009 to hear oral arguments on all pending motions. The Plaintiff appeared *pro se*. All Defendants were either present or represented by counsel. The Court determined that it was most efficient that the Defendants' Motions to Dismiss be heard first.

At the outset of the hearing, attorney Mike Brackett, attorney for Defendants de Holczer and Moses Koon & Brackett, PC, notified the Court that his memorandum of law and affidavit of Paul de Holczer had been mailed to the Clerk of Court for filing on Monday, January 19, 2009 and identical copies were served by mail on all parties and /or attorneys and a copy mailed to the undersigned. The envelope addressed to the Plaintiff had been returned by the Post Office on

Page 1 of 8



January 22, 2009 with the notation that the envelope was too thick and that it should have been mailed flat and with additional postage. However, it was made to appear to the Court that all envelopes mailed to the judge and to the parties/attorneys on January 19, 2009 were of equal weight and thickness and the same postage was affixed to each. None other than the envelope addressed to the Plaintiff was returned by the Post Office as undeliverable. Mr. Brackett hand delivered the envelope and its contents to the Plaintiff at the outset of the hearing. The Plaintiff objected that the service was untimely. The Court gave the Plaintiff the opportunity to request a continuance of the hearing if he needed time to study and respond to the materials served by Mr. Brackett. The Plaintiff stated that he did not want to continue the hearing. Accordingly, Plaintiff's objection was overruled, and the hearing proceeded. None of the Defendants objected to the hearing going forward, and other than his objection to the timeliness of the service of the de Holczer affidavit and the Brackett memorandum of law, the Plaintiff did not object to the hearing going forward.

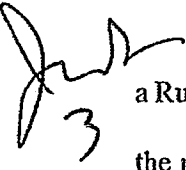
 In this case, Plaintiff has sued everyone, including his own attorney, who was involved in the condemnation action which affected the real property on which Plaintiff was then a tenant, captioned SCDOT v. Buckles, et al., 02-CP-40-4800. He has alleged that the Defendants, each of whom was involved in the condemnation trial as a party or attorney, conspired with each other to injure the Plaintiff in the course of those proceedings in four particulars:

1. on October 14 and 20, 2004, during the condemnation trial, Defendants conspired to deprive the Plaintiff of his right to a jury trial (Complaint ¶51);
2. on October 14 and 20, 2004, during the condemnation trial, Defendants conspired to intimidate Plaintiff's expert witnesses (Complaint ¶ 54-55);
3. on October 14 and 20, 2004, during the condemnation trial, Defendants conspired by

committing fraudulent acts, the particulars of which, as argued by the Defendants, are not clearly alleged (Complaint ¶ 65-74); and

4. on January 8, 2008, during a post-trial hearing, Defendants conspired in some way, not made clear by the allegations (Complaint ¶ 75-76). Plaintiff apparently contends that Judge Lloyd's previous Order as to the allocation of condemnation funds was invalid, not applicable to S. C. Code Ann. §28-2-460 which provides for the allocation of condemnation funds, and that the Defendants conspired by asserting the applicability of that Code section.

All Defendants filed Motions to Dismiss pursuant to Rule 12(b), SCRCP. The motions were grounded on the Statute of Limitations, the doctrine of "law of the case," another action pending between the same parties for the same claim and failure to state facts sufficient to constitute a claim. Not all grounds apply to each Defendant.

 The Court took judicial notice of certain pieces of information and records. In considering a Rule 12(b)(6) motion, the Court may consider items subject to judicial notice without converting the motion to a summary judgment motion, 5B Wright & Miller, Federal Practice and Procedure: Civil 3d §1357, such as matters of public record, Norfolk Southern Ry. Co. v. Shulimson Bros. Co., 1 F. Supp. 2d 553 (W.D.N.C. 1998), prior judicial proceedings, Briggs v. Newberry County School Dist., 838 F. Supp. 232 (D.C.S.C. 1992), affirmed 989 F.2d 491 (4th Cir. 1993), and decisions of other courts, Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group, Ltd., 181 F.3d 410 (3d Cir. 1999).

Plaintiff's first, second and third causes of action, referred to as "counts" in the Complaint, allege on the face of the Complaint actionable conduct on the part of the defendants during the condemnation trial on October 14 and 20, 2004. The above-captioned action was filed on February

20, 2008, more than three years from the alleged conspiratorial conduct. Hence, the argument that, notwithstanding the defendants' oral denials of the allegations¹, the Complaint itself establishes the defense of the Statute of Limitations.

Rule 12(b)(6) promotes the early and simultaneous presentation and determination of preliminary defenses. Wright & Miller, Federal Practice and Procedure: Civil 3d §1349. A complaint is subject to dismissal under Rule 12(b)(6) when its allegations indicate the existence of an affirmative defense, but the defense clearly must appear on the face of the pleading. McCalden v. California Library Ass'n, 955 F.2d 1214 (9th Cir 1990), cert denied 504 U.S. 957 (1992); Wright & Miller, Federal Practice and Procedure: Civil 2d §1357; Dean v. Pilgrim's Pride Corp., 395 F.3d 471, 474 (4th Cir. 2005). South Carolina has followed this procedure. Spence v. Spence, 628 S.E.2d 869 (S.C. 2006). Spence makes clear that affirmative defenses may be raised in a rule 12(b)(6) motion "when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense . . ."

A cause of action for civil conspiracy sounds in tort. Moore v. Weinberg, 644 S.E.2d 740 (S.C. App. 2007). The statute of limitations for the tort of civil conspiracy requires that the action be commenced not later than three years after the date when a cause of action reasonably ought to have been discovered. S.C. Code Ann. §15-3-530; Rumph v. Massachusetts Mut. Life Ins. Co., 593 S.E.2d 183 (S.C. App. 2004). The date on which the discovery of the cause of action should have been made is an objective, rather than subjective, question. Id. Whether the Plaintiff actually knew he had a claim is not the test, rather, the court must decide whether the circumstances of the case

¹ Defendants have not served Answers.

would put a person of common knowledge and experience on notice that some claim against another person might exist. Id.

Plaintiff argues that the Statute of Limitations was not triggered until March 2005 when the trial judge issued his trial order, and that the action herein was commenced within three years of the March 2005 Order. He cites True v. Monteith, 489 S.E.2d 615 (S.C. 1997) for the principle set forth therein that "knowledge of injury alone does not, *a fortiori*, give rise to a suspicion of any impropriety by her attorney." How this principle applies to the case *sub judice* is not explained by the Plaintiff. True was a legal malpractice action in which the Plaintiff client knew of his injury (the absence of a provision in a lease) but did not discover until much later that the Defendant attorney may have committed legal malfeasance with respect to the missing provision. The case now before this court is not an attorney malpractice case² but rather the counts to which the Statute of Limitations applies allege a conspiracy based on conduct occurring during a trial at which the Plaintiff was present and represented by counsel. In this scenario, Plaintiff had knowledge of the alleged conspiratorial conduct at the time it occurred but did not know until later the extent of his alleged injury; exactly the opposite of the situation in True. The statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. Dorman v. Campbell, 500 S.E.2d 786 (S.C. App. 1998). And, the fact that the injured party may not then comprehend the full extent of the damage is immaterial to the question of the commencement of the

² Plaintiff has already sued his trial attorney, Defendant Ormond, for legal malpractice and the case was dismissed on summary judgment, a matter known to the court with regard to Defendant Ormond's Rule 12(b)(8) motion.

limitations period. Id. Accordingly, it is Ordered that the first, second and third causes of action are dismissed because they were not commenced within the applicable statute of limitations.

The Defendants also move for dismissal of all four causes of action on the ground that the causes of action fail to state sufficient facts to satisfy the pleading requirements for civil conspiracy. A Plaintiff must allege more than a "bare claim of conspiracy" using "labels and conclusions." Loubser v. Thacker, 440 F.3d 449 (7th Cir. 2006) (a conspiracy claim differs from other claims in having a degree of vagueness that makes a bare claim of conspiracy wholly uninformative to the defendant); Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955 (2007), (although a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions. . .); Beanal v. Freeport-McMoran, Inc., 197 F.3d 161 (5th Cir. 1999) (a bare bones allegation that a wrong occurred and which does not plead any of the facts giving rise to the injury does not provide adequate notice).³

In his fourth cause of action (count four), Plaintiff alleges Defendants conspired by bringing before the Court Judge Lloyd's previous Order (referred to by Plaintiff as "invalid") pertaining to allocation of the condemnation funds (§75). In his allegations, Plaintiff refers to the allocation of condemnation funds and S. C. Code Ann. §28-2-460. This Section specifically provides for determination of the allocation of condemnation funds, if needed, by the Court of Common Pleas in an equity proceeding. As reflected by Plaintiff's Complaint, the equity proceeding was the non-

³ Because South Carolina cases have not specifically focused on the pleading requirements for civil conspiracy under the Rules of Civil Procedure, South Carolina courts may seek guidance from federal cases. Gardner v. Newsome Chevrolet-Buick, Inc., 404 S.E.2d 200 (S.C. 1991). The opinion in Stiles v. Onorato, 457 S.E.2d 601 (S.C. 1995) can be read to require additional facts to be pled in alleging conspiracy.

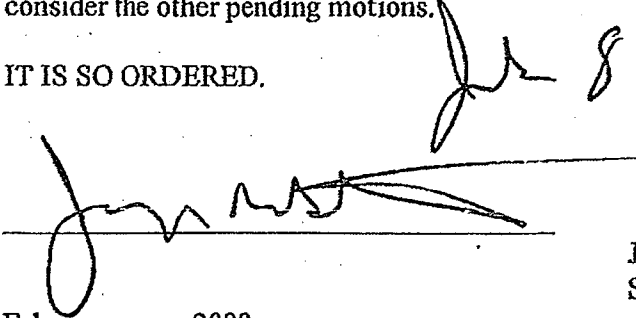
jury trial before judge Lloyd, whose Order was affirmed by the Court of Appeals. Plaintiff's allegations, on their face, defeat his fourth cause of action.

In addition to Plaintiff's first three causes of action being barred by the Statute of Limitations, the Court also concludes that the conspiracy allegations in each of Plaintiff's four causes of action fail to satisfy the pleading standards set forth above and, accordingly, it is Ordered that said causes of action are dismissed.

Regarding Defendant Ormond, the Complaint is dismissed on the additional and alternative ground that it involves the same facts and circumstances as a prior legal malpractice case brought by Plaintiff against Defendant Ormond in 2006. A court should dismiss a complaint or action if the claim involves the same parties and is based on the same facts and circumstances as a prior action. Corbett v. City of Myrtle Beach, 521 S.E.2d 276, 284 (S.C. App. 1999)(Court properly dismissed action against defendant for claim in which the same parties were involved and which involved the same "facts and circumstances" as in the initial complaint) Plaintiff's case against Ormond in 2006, styled Ron Paul v. J. Charles Ormond, Jr. Individually and as Partner of the Law Firm of Holler Dennis Corbett Ormond Plante and Garner, made allegations and claims for damages against Ormond also based on the result of the condemnation action in which Paul was a condemnee/lessee. The Complaint in issue here also is based on the results and alleged actions in that condemnation action. Judge Manning dismissed the claim in summary judgement and the Order was appealed by Plaintiff in October of 2007.

Based upon the dismissals granted by this order, it is unnecessary for the Court to hear and consider the other pending motions.

IT IS SO ORDERED.


February, 2009
march 25

Joseph M. Strickland
Special Circuit Judge

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Ronald I. Paul,

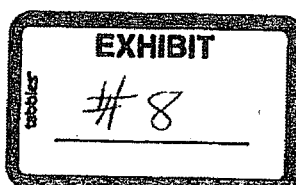
Appellant,

v.

South Carolina Department of
Transportation; Paul D. de
Holezer, Individually and as a
Partner of the Law Firm of
Moses Koon & Brackett, PC;
G.L. Buckles, as Personal
Representative of the Estate of
Keith J. Buckles and G.L.
Buckles; 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,

Respondents.

Appeal From Richland County
Joseph M. Strickland, Special Circuit Court Judge



Unpublished Opinion No. 2010-UP-504
Submitted November 1, 2010 – Filed November 19, 2010

AFFIRMED

Ronald I. Paul, pro se, of Columbia, for Appellant.

B. Michael Brackett, J. Charles Ormond, Jr., Mark
Weston Hardee, Michael H. Quinn, Sr., and Natalie J.
Moore, all of Columbia, for Respondents.

PER CURIAM: Ronald I. Paul appeals the order of the circuit court granting the Respondents' motion to dismiss arguing the circuit court erred in (1) finding the statute of limitations barred his cause of action for civil conspiracy; (2) finding his complaint failed to state a cause of action for civil conspiracy; (3) finding he was attempting to litigate claims previously litigated in a previous suit between the same parties; (4) failing to consider his motion to strike; and (5) not considering his motion for summary judgment. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in determining the statute of limitations barred Paul's claim for civil conspiracy: S.C. Code Ann. § 15-3-530 (5) (2005) (providing the statute of limitations for an action sounding in tort is three years); Gibson v. Bank of Am. N.A., 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009) ("The standard as to when the limitations period begins to run is objective rather than subjective. Therefore, the limitations period 'begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might

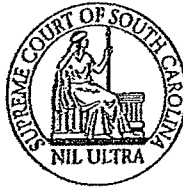
¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." (emphasis omitted)).

2. As to the remaining issues: Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit.").

AFFIRMED.

FEW, C.J., HUFF, J., and CURETON, A.J., concur.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 19, 2011

Mr. Ronald I. Paul
PO Box 4353
Columbia, SC 29240

Re: Paul, Ronald I. v. SCDOT
Trial Court Case No. 2008-CP-40-1259

Dear Mr. Paul:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

October 19, 2011."

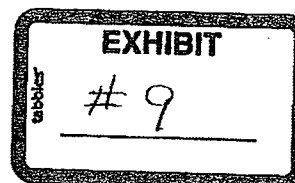
By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,


CLERK

DES/lda

cc: B. Michael Brackett, Esquire
John Charles Ormond, Jr, Esquire
Mark Weston Hardee, Esquire
Michael H. Quinn, Esquire
Natalie Jean Moore, Esquire
The Honorable Jeanette W. McBride
The Honorable Tanya Gee



ELECTRONICALLY FILED - 2019 Jan 31 9:15 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Ronald I. Paul,

Plaintiff,

v.

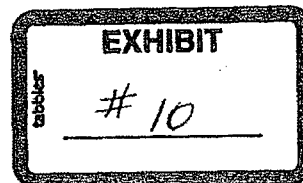
South Carolina Department of Transportation;
Paul D. De Holczer, Esq., individually and as a
partner of the law firm of Moses, Koon &
Brackett P.C.; G.L. Buckles, as personal
representative of the estate of Keith J. Buckles
and G.L. Buckles; Michael H. Quinn,
individually and as senior lawyer of Quinn
Law Firm LLC; J. Charles Ormond, Jr., Esq.,
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,
Defendants.

C/A No. 3:12-1036-CMC-PJG

**ORDER AND
REPORT AND RECOMMENDATION**

The plaintiff, Ronald I. Paul ("Paul"), who is self-represented, filed this action alleging claims of civil conspiracy under 42 U.S.C. § 1983 and state law. This matter stems from a state condemnation of land that Paul was leasing. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC for a Report and Recommendation on various motions to dismiss filed by the defendants. (ECF Nos. 18, 24, 27, 33, & 38.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Paul of the summary judgment and

PJG



dismissal procedures and the possible consequences if he failed to respond adequately to the defendants' motions. (ECF Nos. 20, 29, & 39.) Paul responded in opposition. (ECF Nos. 48, 50, 51, 52, & 57.) Also pending before the court are motions for sanctions (ECF Nos. 19, 27, & 38), a motion to disclose Paul's alleged ghost writer (ECF No. 38), and Paul's motion to amend his Amended Complaint (ECF No. 45). Having carefully reviewed the parties' submissions and the applicable law, the court finds that the defendants' motions to dismiss should be granted and Paul's motion to amend should be denied.

BACKGROUND

The following background and facts are either undisputed or taken in the light most favorable to Paul, to the extent they find support in the record. Paul's claims arise out of the 2002 condemnation of land that Paul was renting and the subsequent litigation. Paul filed this action against the above defendants alleging six separate claims of conspiracy based on the defendants' involvement in the condemnation litigation. Paul describes the defendants as follows: South Carolina Department of Transportation ("SCDOT," for suing Paul in state court to obtain Paul's property pursuant to the South Carolina Eminent Domain Procedures Act, S.C. Code Ann. § 28-2-10, et seq.); Defendant Rucker (individually, as Director of Rights of Way for SCDOT for delegating his authority to Defendant de Holczer and de Holczer's law firm, which performed unconstitutional acts); Defendant Gresham (individually, as the Eastern Region Right of Way Program Manager for SCDOT for delegating her authority to Defendant de Holczer and de Holczer's law firm, which performed unconstitutional acts); Defendant Moore (individually, as the Assistant Chief Counsel for SCDOT for delegating her authority to Defendant de Holczer and de Holczer's law firm, which performed unconstitutional acts); Defendant de Holczer (official capacity as "an officer of the court" and as a partner of the law firm of Moses, Koon & Brackett, P.C. and individually for his action in

representing SCDOT); Defendant Buckles (individually and as personal representative of the Estate of Keith J. Buckles, who was the owner of the condemned land, for settling the condemnation action); Defendant Quinn (official capacity as "an officer of the court" and as senior lawyer for Quinn Law Firm, LLC, and individually for his action in representing Defendant Buckles and settling the condemnation action); Defendant Ormond (official capacity as "an officer of the court" and a partner of Holler, Dennis, Corbett, Ormond, Planter & Garner and individually for his action in representing Paul but arguing for SCDOT).

Paul alleges that he began leasing the property located at 2115 Two Notch Rd. in 1985 from Keith J. Buckles, who is now deceased. Upon leasing the property, Paul opened a retail liquor store. Paul asserts that in 2002, Defendant Rucker requested via letters that Paul vacate the property. Later that year, Defendants SCDOT and de Holczer filed an action pursuant to the South Carolina Eminent Domain Procedures Act against Keith J. Buckles and Defendant Buckles, and amended that action to include Paul. Paul alleges that he filed a counterclaim asserting an inverse condemnation claim in violation of his rights under the Fifth and Fourteenth Amendments. In 2003, Paul asserts that Defendant Gresham inspected the property and had Paul evicted by court order without just compensation. Paul alleges that in 2004 Defendants Quinn and Buckles reached a settlement agreement with Defendants SCDOT and de Holczer, which was approved by the Honorable James R. Barber, III on March 23, 2004. Paul states that he, via his attorney Defendant Ormond, rejected settlement offers. Paul alleges that he retained expert witnesses, which Defendants SCDOT and de Holczer deposed, that valued his damages between \$300,000 and \$400,000.

On March 11, 2005, the Honorable Reginald I. Lloyd determined and awarded Paul \$2,450 for his leasehold interest in the property.¹ (See C/A No. 2002-CP-40-4800.) Paul's appeals of this Order were rejected. On January 28, 2008, following a motion hearing, the court approved the disbursement of the condemnation proceeds. Paul's appeals of this Order were also rejected. Paul next filed a Rule 60(b)(4) motion for relief, which was denied, and a motion for reconsideration, which was denied. Paul's appeal of this Order was dismissed. In February 2008, Paul filed a civil action in state court (2008-CP-40-1259) alleging four causes of action for civil conspiracy against the same defendants named in this action. That action was dismissed, in part based on a determination that the claims were time-barred under the applicable statute of limitations. Paul then filed the instant action.

Paul first claims that Defendants SCDOT, de Holczer, Quinn, and Buckles conspired to deprive him of his constitutional and/or statutory right to a jury trial on his counterclaim in 2004.

Paul next appears to allege that Defendants SCDOT, de Holczer, Quinn, and Buckles conspired to intimidate and threaten his expert witnesses, including threatening criminal prosecution, and that Defendant Ormond, who was then Paul's attorney, failed to object.

Third, Paul alleges that these defendants conspired during Paul's trial to violate his constitutional rights. In this allegation, Paul appears to argue that the defendants presented issues that were not before the court, outside the court's jurisdiction, or were intended to mislead or defraud

¹ It appears that Paul also alleges that in 2005 Defendant Buckles instituted an eviction proceeding against Paul for a second piece of property located at 2318 Two Notch Rd. for failure to pay rent. Paul argues that he was unable to pay the rent due to the condemnation proceedings involving the property located at 2115 Two Notch Rd. In 2007, the property located at 2318 Two Notch Rd. was transferred to the Estate of Keith J. Buckles based on Paul's failure to pay rent, taxes, and insurance. Paul also seeks damages for the loss of this property.

the court. Paul alleges that as a result, a void judgment was entered by Judge Lloyd, which Paul challenged in the state appellate courts.

Fourth, Paul alleges that Defendants Quinn, Buckles, SCDOT, and de Holczer conspired to have the proceeds disbursed pursuant to the allegedly void judgment and attempted to mislead the court and validate this judgment during a 2008 motion hearing. Paul disputes the statement contained in the 2008 Order, which disbursed the funds, indicating that Paul agreed to the amount of compensation listed in Judge Lloyd's order. Paul subsequently appealed this order in the state appellate courts. After the South Carolina Supreme Court denied his petition for certiorari in 2010, Paul filed a motion pursuant to Rule 60(b), that he amended, seeking to set aside the orders of Judge Cooper and Judge Lloyd. Judge Cooper denied this motion without requiring the defendants to respond. Paul alleges that he appealed this order as well.

Fifth, Paul alleges that in 2010 Defendants Quinn, Buckles, SCDOT, and de Holczer conspired against Paul's rights by seeking an injunction from the South Carolina Court of Appeals, enjoining Paul from filing further actions regarding this matter.

Sixth, Paul alleges that from in or about March 2004 through in or about July 2010 the defendants conspired to take Paul's property in violation of his rights under the Fifth and Fourteenth Amendments. Paul appears to allege that Defendants Rucker, Gresham, and Moore took part in the conspiracy by delegating their state authority to Defendant de Holczer.

As part of his prayer for relief, Paul seeks declaratory judgments, including that Judge Lloyd's order be declared void and that evidence of his damages be admitted. Paul also requests that he be awarded the damages he sought in state court for 2115 Two Notch Rd., as well as damages for

the loss of his property interest in 2318 Two Notch Rd., and that he be awarded punitive damages, fees, and expenses.²

DISCUSSION

A. Dismissal Standards

Dismissal under Federal Rule of Civil Procedure 12(b)(1) examines whether the complaint fails to state facts upon which jurisdiction can be founded. It is the plaintiff's burden to prove jurisdiction, and the court is to "regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." Richmond, Fredericksburg & Potomac R.R. Co. v. United States, 945 F.2d 765, 768 (4th Cir. 1991).

To resolve a jurisdictional challenge under Rule 12(b)(1), the court may consider undisputed facts and any jurisdictional facts that it determines. The court may dismiss a case for lack of subject matter jurisdiction on any of the following bases: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." Johnson v. United States, 534 F.3d 958, 962 (8th Cir. 2008) (quoting Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir. 1981)).

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) examines the legal sufficiency of the facts alleged on the face of the plaintiff's complaint. Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The "complaint must contain sufficient factual matter,

² Although Paul also seeks relief in the form of having the state eminent domain statutes declared unconstitutional, Paul's Complaint only raises claims of conspiracy.

accepted as true, to 'state a claim to relief that is plausible on its face.' " Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). A claim is facially plausible when the factual content allows the court to reasonably infer that the defendant is liable for the misconduct alleged. Id. When considering a motion to dismiss, the court must accept as true all of the factual allegations contained in the complaint. Erickson v. Pardus, 551 U.S. 89, 94 (2007). A court may consider "documents attached or incorporated into the complaint" without converting a motion to dismiss into a motion for summary judgment. E.I. du Pont de Nemours and Co. v. Kolon Indus., Inc., 637 F.3d 435, 448 (4th Cir. 2011). Further, "when a defendant attaches a document to its motion to dismiss, 'a court may consider it in determining whether to dismiss the complaint [if] it was integral to and explicitly relied on in the complaint and [if] the plaintiffs do not challenge its authenticity.' " American Chiropractic Ass'n v. Trigon Healthcare, Inc., 367 F.3d 212, 234 (4th Cir. 2004) (quoting Phillips v. LCI Int'l Inc., 190 F.3d 609, 618 (4th Cir. 1999)).

The court observes that it is required to liberally construe *pro se* complaints.³ Id. Such *pro se* complaints are held to a less stringent standard than those drafted by attorneys, id.; Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious

³ Although *pro se* Complaints are entitled to liberal construction, it appears that the pleadings in this matter may have been "ghost written" by an attorney. At least one court in this district has prohibited the ghost-writing of pleadings and motions, in part based on the court's observation that it violated local court rules, the federal rules of civil procedure, and the South Carolina Rules of Professional Responsibility and that it granted latitude that should not be afforded to a litigant who actually has the benefit of legal counsel. In re Mungo, 305 B.R. 762, 768-70 (Bankr. D.S.C. 2003). Other courts within the Fourth Circuit have "admonish[ed] Plaintiff[s] that 'the practice of ghost-writing legal documents to be filed with the Court by litigants designated as proceeding *pro se* is inconsistent with the procedural, ethical and substantive rules of this Court.' " Sejas v. MortgageIT, Inc., No. 1:11cv469(JCC), 2011 WL 2471205 (E.D. Va. June 20, 2011) (quoting Laremont-Lopez v. Se. Tidewater Opportunity Ctr., 968 F. Supp. 1075, 1080-81 (E.D. Va. 1997)).

case. Hughes v. Rowe, 449 U.S. 5, 9 (1980); Cruz v. Beto, 405 U.S. 319 (1972). When a federal court is evaluating a *pro se* complaint, the plaintiff's factual allegations are assumed to be true. Erickson, 551 U.S. at 93 (citing Twombly, 550 U.S. 544, 555-56 (2007)). The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a district court may not rewrite a complaint to include claims that were never presented, Barnett v. Hargett, 174 F.3d 1128 (10th Cir. 1999), construct the plaintiff's legal arguments for him, Small v. Endicott, 998 F.2d 411 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

Moreover, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Iqbal, 556 U.S. at 684 (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions"). Although the court must liberally construe a *pro se* complaint, the United States Supreme Court has made clear that, under Rule 8 of the Federal Rules of Civil Procedure, a plaintiff in any civil action must do more than make mere conclusory statements to state a claim. See Iqbal, 556 U.S. at 677-78; Twombly, 550 U.S. at 555. Expounding on its decision in Twombly, the United States Supreme Court stated in Iqbal:

[T]he pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement."

Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555, 556, 557, 570) (citations omitted); see also Bass v. Dupont, 324 F.3d 761, 765 (4th Cir. 2003).

B. The Rooker-Feldman Doctrine

The Rooker-Feldman⁴ doctrine prevents a federal district court from exercising jurisdiction over a case brought by a “state court loser” challenging a state court judgment rendered before the district court proceedings commenced. Lance v. Dennis, 546 U.S. 459, 460 (2006); Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005). Implicit in the doctrine is the recognition that only the United States Supreme Court has jurisdiction over appeals from final state court judgments. Lance, 546 U.S. at 463; Exxon, 544 U.S. at 283; see also 28 U.S.C. § 1257. In recent years the Supreme Court has emphasized the narrowness of the doctrine. See Lance, 546 U.S. at 464 (listing examples of when the Rooker-Feldman doctrine does not apply); see also Exxon, 544 U.S. at 284. Reacting to the Supreme Court’s instruction in such cases as Exxon, the United States Court of Appeals for the Fourth Circuit has rejected its prior test for determining whether the Rooker-Feldman doctrine applies, which, in reliance on Feldman, examined whether the issues raised in the federal lawsuit were so “inextricably intertwined” with the claims presented to the state court that they could have been raised in the state proceedings.⁵ Davani v. Virginia Dep’t of Transp.,

⁴ The name originates from two United States Supreme Court cases: Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

⁵ Recent cases warn courts not to confuse the Rooker-Feldman doctrine, which is jurisdictional, with the concept of claim preclusion, which is an affirmative defense. See Davani v. Virginia Dep’t of Transp., 434 F.3d 712, 717-18 (4th Cir. 2006) (observing that the Fourth Circuit’s pre-Exxon interpretation of Rooker-Feldman essentially and improperly became a jurisdictional doctrine of *res judicata*); see also Lance, 546 U.S. at 466 (“The District Court erroneously conflated preclusion law with Rooker-Feldman. . . . Rooker-Feldman is not simply preclusion by another name.”).

434 F.3d 712, 716 (4th Cir. 2006). Post-Exxon, the Fourth Circuit identifies the pertinent inquiry as whether the plaintiff's injury is *caused by* the state court judgment itself. Id. at 718. Other courts have adopted a similar test. See, e.g., Kovacac v. Cuyahoga County Dep't of Children & Family Servs., 606 F.3d 301, 309-310 (6th Cir. 2010); Hoblock v. Albany County Bd. of Elections, 422 F.3d 77, 87-88 (2d Cir. 2005); Galibois v. Fisher, 174 F. App'x 579, 580 (1st Cir. 2006); cf. Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010) (identifying this inquiry as one of four elements that must be met for the Rooker-Feldman doctrine to apply). Thus, after Exxon, the proper inquiry examines the source of the plaintiff's injury: if the state court judgment caused the plaintiff's injury, the claim is barred, but a claim alleging another source of injury is an independent claim.

Post-Exxon cases applying the Rooker-Feldman doctrine provide some guidance as to the types of cases that are not jurisdictionally barred. A federal case that parallels one pending in state court, for example, is not barred by the Rooker-Feldman doctrine. See Exxon, 544 U.S. at 292. Nor is a federal case raising a claim arising under federal anti-discrimination laws barred by Rooker-Feldman simply because the plaintiff lost an administrative appeal against his state-agency employer in the state appellate courts. Davani, 434 F.3d at 719. Further, a facial challenge to a state statute or rule that seeks prospective relief regarding its application in a future case is not barred. See Skinner v. Switzer, 131 S. Ct. 1289, 1298 (2011) (concluding that subject matter jurisdiction existed because Skinner was not challenging the adverse decisions, but the constitutionality of the statute that was authoritatively construed).

An examination of Paul's Complaint shows that the source of his alleged injury is the defendants' conduct, and although he alleges that the defendants' conduct caused the adverse state

court orders, their conduct is an independent claim.⁶ See Great W. Mining & Mineral Co., 615 F.3d at 166; Cornick v. Braverman, 451 F.3d 382, 392-93 (6th Cir. 2006). Paul appears to allege that the defendants conspired to violate an independent right—his right to due process. Therefore, the court finds that the Rooker Feldman doctrine does not require dismissal of this action.

C. Rule 12(b)(6) Motions

The defendants also argue that Paul's Complaint fails to state a claim upon which relief may be granted. To prevail on any claim pursuant to § 1983, a plaintiff must show: (1) that he or she was injured; (2) by the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States; (3) by a person acting under color of state law. See 42 U.S.C. § 1983. "To establish a conspiracy under [42 U.S.C.] § 1983, [a plaintiff] must present evidence that the [defendants] acted jointly in concert and that some overt act was done in furtherance of the conspiracy, which resulted in [the] deprivation of a constitutional right." Glassman v. Arlington County, Va., 628 F.3d 140 (4th Cir. 2010) (alterations in original) (quoting Hinkle v. City of Clarksburg, 81 F.3d 416, 421 (4th Cir. 1996)). The plaintiff "must come forward with specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective." Id. Further, the "[i]ndependent acts of two [or more] wrongdoers do not make a conspiracy." Murdaugh Volkswagen v. First Nat'l Bank, 639 F.2d 1073, 1075-76 (4th Cir. 1981). When a plaintiff makes only conclusory allegations of a conspiracy and fails to demonstrate any agreement or meeting of the minds among the defendants, no claim will lie. See Woodrum v. Woodward Cnty., Okla., 866 F.2d 1121, 1126-27 (9th Cir. 1989); Ruttenberg v. Jones, 283 F. App'x 121, 131-32 (4th Cir. 2008).

⁶ However, to the extent that Paul's seeks to have the state court judgments voided or reversed, the defendants correctly argue that the court does not have jurisdiction to grant such relief.

Moreover, “[t]o avoid evisceration of the purposes of qualified immunity, courts have [] required that plaintiffs alleging unlawful intent in conspiracy claims under . . . § 1983 plead specific facts in a nonconclusory fashion to survive a motion to dismiss.” Gooden v. Howard Cnty., 954 F.2d 960, 969-70 (4th Cir. 1992). A plaintiff must plead facts amounting to more than “parallel conduct and a bare assertion of conspiracy Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality.” Twombly, 550 U.S. at 556-57. “The factual allegations must plausibly suggest agreement, rather than being merely consistent with agreement.” A Society Without A Name v. Virginia, 655 F.3d 342, 346 (4th Cir. 2011) (citing Twombly, 550 U.S. at 557).

As an initial matter, liberally construed, Paul’s Complaint contains only conclusory allegations of a conspiracy. His “formulaic recitation” of the elements of conspiracy is insufficient to state a plausible claim. Iqbal, 556 U.S. at 678. For example, Paul has failed to allege sufficient facts to demonstrate an agreement or meeting of the minds among the defendants. Cf. Dennis v. Sparks, 449 U.S. 24 (1980) (finding that allegations that the private party defendants bribed the state-court judge causing him to issue a ruling in their favor were sufficient to survive a motion to dismiss).

1. Defendants de Holczer, Buckles, Quinn, and Ormond

Moreover, Defendants de Holczer, Buckles, Quinn, and Ormond correctly argue that as non-state actors, they are not subject to suit under § 1983. Although a private individual who jointly participates in alleged constitutional wrongdoing with a state or local official may be said to have engaged in “state action” which meets the requirement of § 1983, Paul has failed to allege sufficient facts to demonstrate an agreement between these defendants and the state actors. See Dennis, 449 U.S. at 27-28.

Further, contrary to Paul's argument that as officers of the court Defendants de Holczer, Quinn, and Ormond are state actors, "[a] lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law' within the meaning of § 1983." Polk Cnty. v. Dodson, 454 U.S. 312, 318 (1981). "Although lawyers are generally licensed by the States, 'they are not officials of government by virtue of being lawyers.'" Id. at 319 n.9 (quoting In re Griffiths, 413 U.S. 717, 729 (1973)). Paul's allegations that Defendant de Holczer was SCDOT's outside counsel is not sufficient to transform de Holczer from a private attorney or individual into a state actor. See O'Bradovich v. Village of Tuckahoe, 325 F. Supp. 2d 413 (S.D.N.Y. 2004) ("No § 1983 action lies against a lawyer or law firm for representing public officials and entities in lawsuits."); Raines v. Indianapolis Pub. Sch., 52 F. App'x 828, 830 (7th Cir. 2002) (affirming that a lawyer representing a school board in contract matters is not a state actor).

2. Defendants SCDOT, Rucker, Gresham, and Moore

Although Paul alleges that he is only suing Defendants Rucker, Gresham, and Moore in their individual capacities, he also explicitly alleges that he is suing them based on their respective positions with SCDOT. These defendants correctly point out that SCDOT and Defendants Rucker, Gresham, and Moore in their official capacities are immune from suit for monetary damages under § 1983. The Eleventh Amendment states that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. art. XI. Sovereign immunity protects both the State itself and its agencies, divisions, departments, officials, and other "arms of the State." See Will v. Michigan Dep't of State Police, 491 U.S. 58, 70 (1989); see also Regents of the Univ. of California v. Doe, 519 U.S. 425, 429 (1997) ("[I]t has long been settled that the reference [in the Eleventh Amendment] to actions 'against one

of the United States' encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities." As arms of the state, they are entitled to sovereign immunity and cannot constitute "persons" under § 1983 in that capacity. Will, 491 U.S. at 70-71; see also Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139 (1993) (stating that absent waiver of Eleventh Amendment immunity, "neither a State nor agencies acting under its control may be subject to suit in federal court") (quotations and citations omitted). Although a State may waive sovereign immunity, Lapides v. Board of Regents, 535 U.S. 613 (2002), the State of South Carolina has specifically denied this waiver for suit in federal district court. See S.C. Code Ann. § 15-78-20(e). Accordingly, to the extent that Defendants Rucker, Gresham, and Moore are sued in their official capacities, they are immune from suit. Will, 491 U.S. at 70-71; see also Quern v. Jordan, 440 U.S. 332, 343 (1979) (recognizing that Congress did not override the Eleventh Amendment when it created the remedy found in 42 U.S.C. § 1983 for civil rights violations).

Moreover, Paul has failed to allege any personal participation by these defendants in alleged violation of his rights. Delegation of their authority is insufficient as the doctrine of respondeat superior cannot support liability under § 1983. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691-94 (1978). The law is clear that personal participation of a defendant is a necessary element of a § 1983 claim against a government official in his individual capacity. See Trulock v. Freeh, 275 F.3d 391, 402 (4th Cir. 2001). "Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." Iqbal, 556 U.S. at 676. Mere knowledge is not sufficient to establish personal participation. Id.

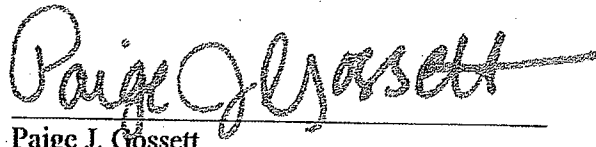
D. Paul's Motion to Amend

Paul has moved to amend his Amended Complaint in response to the defendants' motions. However, the court finds that this motion should be denied as futile. The proposed Second Amended Complaint fails to cure any of the deficiencies discussed above. Furthermore, as argued by several of the defendants, several, if not all, of Paul's claims of conspiracy are barred under the doctrine of *res judicata* as his claims of conspiracy have already been unsuccessfully litigated in state court. See Orca Yachts, L.L.C. v. Mollicam, Inc., 287 F.3d 316, 318 (4th Cir. 2002) (discussing that under the doctrine of *res judicata*, "if the later litigation arises from the same cause of action as the first, then the judgment in the prior action bars litigation 'not only of every matter actually adjudicated in the earlier case, but also of every claim that might have been presented' ") (quoting In re Varat Enters., 81 F.3d 1310, 1315 (4th Cir. 1996)). Additionally, Paul's First through Fourth Causes of Actions are clearly time-barred under the applicable statute of limitations. See Wilson v. Garcia, 471 U.S. 261, 265-80 (1985); see also Owens v. Okure, 488 U.S. 235 (1989); S.C. Code Ann. § 15-3-530(5) (providing South Carolina's general or residual personal injury statute of limitations of three years).

Paul appears to allege in his Second Amended Complaint that the defendants also violated 42 U.S.C. § 1985(3) or § 1986. Paul has similarly failed to state a plausible claim under either of these statutes for the reasons discussed above and additionally because there is no allegation that the defendants are "motivated by a specific class-based, invidiously discriminatory animus." Simmons v. Poe, 47 F.3d 1370, 1376 (4th Cir. 1995); see also A Society Without A Name v. Virginia, 655 F.3d 342, 346 (4th Cir. 2011).

ORDER AND RECOMMENDATION

Based on the foregoing, the court recommends that the defendants' motions to dismiss (ECF Nos. 18, 24, 27, 33, & 38) be granted. Paul's motion to amend his Amended Complaint (ECF No. 45) is denied as futile and because the proposed amendment does not alter this court's recommendation on the defendants' motions to dismiss. Further, in light of these recommendations, the remaining motions, including Paul's recently filed motion for summary judgment, should be terminated.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

December 3, 2012
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Ronald I. Paul,

Plaintiff,

v.

South Carolina Department of
Transportation; Paul D. De Holczer, Esq.,
individually and as a partner of the law
firm of Moses, Koon & Brackett P.C.;
G.L. Buckles, as personal representative of
the estate of Keith J. Buckles and G.L.
Buckles; Michael H. Quinn, individually
and as senior lawyer of Quinn Law Firm
LLC; J. Charles Ormond, Jr., Esq.,
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,

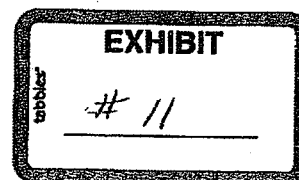
Defendants.

C/A NO. 3:12-1036-CMC-PJG

OPINION and ORDER

This matter is before the court on Plaintiff's *pro se* complaint. In accordance with 28 U.S.C.

§ 636(b) and Local Civil Rule 73.02(B)(2)(e), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation. On December 3, 2012, the Magistrate Judge issued a Report recommending that the Defendants' various



motions to dismiss be granted under Rule 12(b)(6) for failure to state a claim, Plaintiff's motion to amend his Amended Complaint be denied as futile, and all remaining motions be terminated. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on December 10, 2012. Dkt. No. 122. Defendant de Holczer filed objections on December 19, 2012, objecting to the Report's conclusion that this action is not barred by the *Rooker-Feldman* doctrine and that his motions for sanctions be terminated. Dkt. No. 123.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'") (quoting Fed. R. Civ. P. 72 advisory committee's note).

I. Plaintiff's Objections.

Meeting of the Minds. Plaintiff objects to the Report's conclusion that Plaintiff failed to state a claim upon which relief can be granted. The Report explains that the Amended Complaint only contains conclusory allegation of a conspiracy and fails, for example, "to allege sufficient facts

to demonstrate an agreement or meeting of the minds among the defendants.” Report at 12. Plaintiff argues that “the Magistrate Judge has ‘erred’ by adding a fifth element to establish a conspiracy under [42 U.S.C.] § 1983.” Dkt. No. 122 at 8 (alteration in original). There is a meeting of the minds element to a § 1983 conspiracy claim. *Hinkle v. City of Clarksburg*, 81 F.3d 416, 421 (4th Cir. 1996) (explaining that to prove § 1983 conspiracy, plaintiff must produce evidence that “at least, reasonably lead[s] to the inference that [defendants] positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan”). *See also Smith v. McCarthy*, 349 Fed. Appx. 851, 2009 WL 3451714 (4th Cir. Oct. 28, 2009) (discussing that meeting of the minds is a necessary element of § 1983 conspiracy); *Ruttenberg v. Jones*, 283 Fed.Appx. 121, 2008 WL 2436157 (4th Cir. June 17, 2008) (affirming dismissal of § 1983 conspiracy claim because plaintiff did not “plead facts that would ‘reasonably lead to the inference that [defendants] positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan’”) (citing *Hinkle*). Plaintiff’s conclusory allegations fail to allege facts which would reasonably lead to an inference that Defendants reached an agreement or had a meeting of the minds to accomplish a common and unlawful plan against Plaintiff. The court, therefore, rejects Plaintiff’s objection.

Agreement between Private Individuals and State Actors. The Report also concludes that Plaintiff failed to allege an agreement between the private individuals (de Holczer, Buckles, Quinn, and Ormond) and the state actors to convert otherwise private action into state action for purposes of § 1983. Report at 12. Plaintiff argues that “the Magistrate Judge has ‘erred’ by adding a sixth element” to a § 1983 conspiracy claim. Dkt. No. 122 at 11. This is not a sixth element, but rather a part of the third element of any § 1983 claim: “(3) by a person acting under color of state law.” Report at 11. As explained by the United States Supreme Court, one way to establish that a private

individual is acting under color of state law is to show that he conspired with a state actor. The court, therefore, rejects Plaintiff's objection.

Waiver. Plaintiff also contends that none of Defendants argued that Plaintiff failed to plead a meeting of the minds or an agreement between the private Defendants and state actors. Plaintiff argues that, Defendants, therefore, waived these "affirmative defense[s]." The court rejects this argument because Defendants argued that Plaintiff failed to plead a § 1983 conspiracy claim, including that Plaintiff's allegations were conclusory and that certain Defendants are not state actors. *See, e.g.*, Dkt. No. 18 at 11-13 (arguing that Plaintiff's allegations are conclusory); Dkt. No. 33 at 3 (arguing that Ormond is not a state actor); Dkt. No. 38 at 11 (arguing that de Holczer is not a state actor).

Allegations. Plaintiff attempts to supplement his Amended Complaint by arguing that the Amended Complaint, the motion for summary judgment, and admissions show that Defendants "agreed to 'Obstruct' and 'Block' Plaintiff Paul[']s rights to claim damages against South Carolina Department of Transportation." Dkt. No. 122. Plaintiff also contends that certain filings indicate that the SCDOT "communicated by letters and conferred" with Defendant de Holczer and his law firm. The court, however, rejects Plaintiff's objection and finds that Plaintiff did not allege in his Amended Complaint that there was an agreement or meeting of the minds between Defendants, including the private individual actors and state actors.

Declaratory Judgment. Plaintiff also argues that although "[i]t appears monetary damages are unavailable against defendant SCDOT," his Amended Complaint seeks prospective injunctive or declaratory relief. Dkt. No. 122 at 13. As noted in the Report, "[a]lthough Paul seeks relief in the form of having the state eminent domain statutes declared unconstitutional, Paul's Complaint

only raises claims of conspiracy.” Report at 6 n.2. Plaintiff argues that his Amended Complaint contains “a harmless error” in that his first claim is labeled as “Conspiracy one; jury trial.” Instead, Plaintiff contends that it should be labeled “Declaratory relief.” The court interprets Plaintiff’s claim for declaratory relief as seeking a declaration that S.C. Code Ann. § 28-2-310(B) is unconstitutional “by attempting to regulate the right of trial by jury to determine damages – a function that is constitutionally guarantee[d].” Am. Compl. ¶ 90. As part of the Eminent Domain Procedure Act, S.C. Code Ann. § 28-2-310(B) provides, “If the condemnor and the landowner have demanded trial by the court without a jury, the clerk shall place the action on the nonjury trial roster. Otherwise, the action must be placed on the jury trial roster.” Nothing in the text of § 28-2-310(B) suggests that Plaintiff’s right to jury trial is compromised. This statute states that unless both the condemnor and landowner consent to a non-jury trial, an eminent domain action would be a jury trial. Plaintiff, however, was not the landowner, but rather a renter, of the property that was condemned. It is unclear on what basis Plaintiff challenges S.C. Code Ann. § 28-2-310(B), as the remainder of the allegations under the first claim relate to the alleged conspiracy. Plaintiff has, therefore, failed to allege standing to challenge § 28-2-310(B) under the Declaratory Judgment Act.

The court overrules Plaintiff’s objections to the Report, and therefore adopts the Report.¹

II. Defendant de Holczer’s Objection.

Rooker-Feldman Doctrine. Defendant de Holczer objects to the Report’s finding that this action is not barred by the *Rooker-Feldman* doctrine. As explained in the Report, “[t]he *Rooker-*

¹ At the end of Plaintiff’s objections, he states that “in the interest of judicial economy[,] . . . Plaintiff Paul withdraw[s] his Motion for Leave (ECF No. 45) without prejudice.” Dkt. No. 122 at 19. Having considering the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds that the Report’s determination of Plaintiff’s motion to amend his Amended Complaint is free from clear error.

Feldman doctrine prevents a federal district court from exercising jurisdiction over a case brought by a 'state court loser' challenging a state court judgment rendered before the district court proceedings commenced." Report at 9 (citing *Lance v. Dennis*, 546 U.S. 459, 460 (2006); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005)). The Report found that post-*Exxon*, the proper inquiry focuses on the source of Plaintiff's injury: "if the state judgment caused the plaintiff's injury, the claim is barred, but a claim alleging another source of injury is an independent claim." Report at 10. In *Lance*, the United States Supreme Court explained that the *Rooker-Feldman* doctrine "is a narrow doctrine, confined to 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" 546 U.S. at 464 (citing *Exxon*, 544 U.S. at 284).

The Report concluded that "the source of [Plaintiff's] alleged injury is the defendants' conduct, and although he alleges that the defendants' conduct caused the adverse state court orders, their conduct is an independent claim." Report at 11. The Report also noted that "to the extent that Paul[] seeks to have the state court judgments voided or reversed, the defendants correctly argue that the court does not have jurisdiction to grant such relief." *Id.* at n.6. Defendant de Holczer argues that this case is substantially similar to one brought by Plaintiff against Defendants in state court in 2008, which "was also all about alleged conspiracies." Dkt. No. 123 at 2. That case was dismissed and unsuccessfully appealed. According to de Holczer, this case is "nothing more than Plaintiff trying to get a second bite of the conspiracy apple." *Id.*

The Amended Complaint contains allegations after 2008 and is not a complete duplication of the state court action. The court agrees with the Report's conclusion that this action is not barred

by the *Rooker-Feldman* doctrine, except to the extent that Plaintiff seeks to reverse or void the state court judgments. The court, therefore, rejects Defendant de Holczer's objection.

Motions for Sanctions. Defendant de Holczer objects to the Report "insofar as it recommended that this Defendant's motions for sanctions be terminated." Dkr. No. 123 at 2. He also objects to the Report "insofar as it recommended that this Defendant's supplemental motion for sanctions be terminated." *Id.* The court has reviewed Defendant de Holczer's motions for sanctions and finds that it is appropriate to terminate such motions in light of the court's dismissal of the Amended Complaint. Defendant de Holczer has not shown a pattern of frivolous litigation in this court. Although Plaintiff continued filing motions to compel discovery and other discovery-related motions after the court suspended discovery based on the Report's recommendations, the court declines to impose sanctions, in part based on Plaintiff's status as a *pro-se* litigant. Plaintiff, however, is forewarned that the court may impose sanctions against *pro-se* litigants for failing to comply with court orders, filing frivolous actions, and engaging in malicious litigation tactics. The court, therefore, rejects Defendant de Holczer's objection to the Report's recommendation to termination his motions for sanctions.

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

CONCLUSION

For reasons stated in the Report, Defendants' motions to dismiss (Dkt. Nos. 18, 24, 27, 33 & 38) are granted, Plaintiff's motion to amend the Amended Complaint (Dkt. No. 45) is denied, and the remaining motions are terminated.

IT IS SO ORDERED.

S/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
February 6, 2013

ELECTRONICALLY FILED - 2019 Jan 31 9:15 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Ronald I. Paul,

Plaintiff,

v.

South Carolina Department of
Transportation; Paul D. de Holczer,
individually and as a partner of the law
Firm of Moses Koon & Brackett PC;
Irene A. Buckles, as Personal
Representative of the Estate of G.L.
Buckles individually and Irene A. Buckles
Individually, G.L. Buckles, as Personal
Representative of the Estate of Keith J.
Buckles and G.L. Buckles individually
personal representative Keith J. Buckles;
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; Reginald I. Lloyd, in his
individual capacity as Circuit Court Judge,
Richland County Court of Common Pleas
5th Circuit,

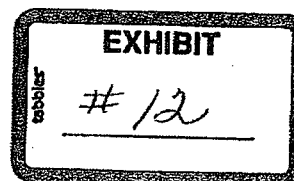
Defendants.

C/A No. 3:13-1852-CMC-PJG

**SUPPLEMENTAL
REPORT AND RECOMMENDATION**

ELECTRONICALLY FILED - 2019 Jan 31 9:15 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

PJG



This matter is before the court following remand from the United States Court of Appeals for the Fourth Circuit for consideration and review of Paul's Amended Complaint filed on June 5, 2014. This matter has been referred to the assigned magistrate judge pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC. For the reasons that follow, the court concludes that the Amended Complaint in this matter should be summarily dismissed without prejudice and without issuance and service of process.

I. Factual and Procedural Background

The Complaint in this case alleged nearly identical claims to those raised by Paul in Civil Action Nos. 3:12-1036-CMC-PJG [hereinafter Paul I] and 3:13-367-CMC-PJG [hereinafter Paul II], which were both dismissed without prejudice for failure to state a claim.¹ As explained in the previous cases, Paul's claims arise out of the 2002 condemnation of land that Paul was renting and the subsequent litigation. Paul filed this action against the above defendants alleging that their actions in the condemnation litigation constituted a civil conspiracy to violate Paul's constitutional rights. The court issued an order dismissing Paul's Complaint on October 21, 2013, without prejudice and without issuance and service of process for failure to state a claim upon which relief could be granted. (ECF No. 15.) Paul filed a motion for reconsideration of the court's order with leave to amend the Complaint. (ECF No. 19.) The court denied Paul's motion for reconsideration with leave to amend and found that the proposed amendments were futile because Paul still failed to state a claim upon which relief could be granted. (ECF No. 21.) Paul filed a notice of appeal and

¹ A court may take judicial notice of its own books and records. Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir.1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'") (citation omitted).

the United States Court of Appeals for the Fourth Circuit issued the following opinion on May 14, 2014:

Because Paul may proceed with this action in the district court by amending his complaint to provide specific facts showing his entitlement to the relief he seeks, see Fed. R. Civ. P. 8(a), the orders he seeks to appeal are neither final orders nor appealable interlocutory or collateral orders. See Domino Sugar Corp. v. Sugar Workers Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993).

Accordingly, we dismiss the appeal for lack of jurisdiction. We grant Paul's motions to file supplemental briefs and deny his motion for summary reversal, as amended.

(ECF No. 28.) The Fourth Circuit issued the mandate in this action on June 5, 2014, and Paul filed an Amended Complaint on that same date. (ECF Nos. 29, 30.) The assigned district judge directed the Clerk of Court to reopen the matter and again referred the case to the assigned magistrate judge for pre-trial proceedings.

Paul's Amended Complaint adds two defendants to this case: Liene A. Buckles and Reginald I. Lloyd. (ECF No. 30 at 1.) Paul identifies Liene A. Buckles as personal representative of the estate of G.L. Buckles, who is now deceased. (Id. at 7, 11.) Defendant Lloyd is identified as a South Carolina Circuit Court Judge.² (Id. at 10.) As in the original Complaint, Paul's Amended Complaint alleges that: (1) he suffered loss in that he was not paid just compensation for his property; (2) he was deprived of his constitutional right to due process because state officials and private individuals failed to follow statutorily established and controlled procedural guidelines; (3) he was deprived of his federal and state rights to trial by jury and to have expert witnesses testify in his behalf; (4) the defendants bribed Judge Lloyd; and (5) the defendants conspired to deprive Paul of the equal protection of the laws. (Id. at 57-68.) Paul's Amended Complaint further alleges a violation of his

² Although Defendant Lloyd has resigned from the bench, he was a state circuit judge at all times relevant to Paul's Amended Complaint.

right to due process based on perjured testimony presented by the defendants in state court and their alleged attempts to mislead Judge Lloyd. (*Id.* at 59.) Paul also appears to assert that his *pro se* status, property, and property rights render him “a distinct ‘class-based subject’ of the Court” and that the allegations show that the defendants acted with “a class-based, invidiously discriminatory animus.” (*Id.* at 60.) He seeks declaratory judgments and asks this court to award actual, consequential, special and punitive damages, fees and expenses. (*Id.* at 70-73.)

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* complaint. This court is required to liberally construe *pro se* complaints. Erickson v. Pardus, 551 U.S. 89, 94 (2007). Such *pro se* complaints are held to a less stringent standard than those drafted by attorneys, *id.*; Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. Hughes v. Rowe, 449 U.S. 5, 9 (1980); Cruz v. Beto, 405 U.S. 319 (1972). When a federal court is evaluating a *pro se* complaint, the plaintiff’s allegations are assumed to be true. Erickson, 551 U.S. at 93 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)).

Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for “all civil actions”). The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which

the plaintiff could prevail, it should do so; however, a district court may not rewrite a complaint to include claims that were never presented, Barnett v. Hargett, 174 F.3d 1128 (10th Cir. 1999), construct the plaintiff's legal arguments for him, Small v. Endicott, 998 F.2d 411 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, Beandett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

Moreover, even when the filing fee is paid, the court possesses the inherent authority to ensure that a plaintiff has standing, that federal jurisdiction exists, and that a case is not frivolous. See Ross v. Baron, No. 12-1272, 2012 WL 3590914, at *1 (4th Cir. Aug. 22, 2012); see also Mallard v. U.S. Dist. Court, 490 U.S. 296, 307-08 (1989) ("Section 1915(d) . . . authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision.").

B. Analysis

As in Paul I, Paul II, and Paul's originally filed Complaint in this action, the Amended Complaint alleges that the defendants conspired to deprive him of the subject property without just compensation. To prevail on any claim pursuant to § 1983, a plaintiff must show: (1) that he was injured; (2) by the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States; (3) by a person acting under color of state law. See 42 U.S.C. § 1983. It appears that Paul's Amended Complaint attempts to cure the defects of his Complaint and the defects in the Complaints filed in Paul's previous cases. However, as discussed below, Paul has again failed to state a claim upon which this court can grant relief.

1. Immune Defendants

a. South Carolina Department of Transportation ("SCDOT")

As Paul was advised in Paul I and the originally issued Report and Recommendation in this case, SCDOT is immune from suit in federal court. The Eleventh Amendment states that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. Sovereign immunity protects both the State itself and its agencies, divisions, departments, officials, and other "arms of the State." See Will v. Michigan Dep't of State Police, 491 U.S. 58, 70 (1989); see also Regents of the Univ. of Cal. v. Doe, 519 U.S. 425, 429 (1997) ("It has long been settled that the reference [in the Eleventh Amendment] to actions 'against one of the United States' encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities."). As an arm of the State, SCDOT is entitled to sovereign immunity and cannot constitute a "person" under § 1983. Will, 491 U.S. at 70-71; see also Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993) (stating that absent waiver of Eleventh Amendment immunity, "neither a State nor agencies acting under its control may be subject to suit in federal court") (quotations and citations omitted). Although a State may waive sovereign immunity, Lapides v. Board of Regents, 535 U.S. 613 (2002), the State of South Carolina has specifically denied this waiver for suit in federal district court. See S.C. Code Ann. § 15-78-20(c).

b. Reginald I. Lloyd

Paul's allegations against Reginald I. Lloyd stem from actions taken by this defendant as a state judge in Paul's state condemnation proceedings. (ECF No. 30 at 10, 38-40.) It is well settled that judges have absolute immunity from a claim for damages arising out of their judicial actions. Mireless v. Waco, 502 U.S. 9, 12 (1991); Chu v. Griffith, 771 F.2d 79, 81 (4th Cir. 1985). Judicial immunity is not pierced by allegations of corruption or bad faith, nor will a judge "be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). Because judicial immunity is a protection from suit, not just from ultimate assessment of damages, Mireless, 502 U.S. at 11, Defendant Lloyd is entitled to summary dismissal from the instant case for claims associated with his judicial rulings in Paul's state court proceedings.

2. Insufficient Factual Allegations-Ilene A. Buckles

To the extent Paul sues Ilene A. Buckles as the personal representative of the estate of G.L. Buckles, the Amended Complaint provides no additional facts to state a cognizable § 1983 claim against this defendant. Further, the Amended Complaint fails to assert any factual allegations to demonstrate that Ilene A. Buckles personally participated in the violation of Paul's constitutional rights. See Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977) (finding that a plaintiff must affirmatively show that a defendant acted personally in the deprivation of his constitutional rights). Therefore, this defendant is entitled to summary dismissal from this case.

3. Conspiracy/Equal Protection Claims

Paul alleges that the defendants conspired to violate his right to due process under the Fourteenth Amendment. Conduct under color of state law may be extended to private individuals who conspire with state officials to violate an individual's constitutional rights. See Tower v.

Glover, 467 U.S. 914, 920 (1984). “To establish a conspiracy under [42 U.S.C.] § 1983, [a plaintiff] must present evidence that the [defendants] acted jointly in concert and that some overt act was done in furtherance of the conspiracy, which resulted in [the] deprivation of a constitutional right.” Glassman v. Arlington Cnty., 628 F.3d 140, 150 (4th Cir. 2010) (alterations in original) (quoting Hinkle v. City of Clarksburg, 81 F.3d 416, 421 (4th Cir. 1996)). The plaintiff “must come forward with specific circumstantial evidence that each member of the alleged conspiracy shared the same conspiratorial objective.” Hinkle, 81 F.3d at 421. His factual allegations must reasonably lead to the inference that the defendants came to a mutual understanding to try to “accomplish a common and unlawful plan,” and must amount to more than “rank speculation and conjecture,” especially when the actions are capable of innocent interpretation. Id. at 422.

Paul has attempted to address the court’s concern about his Complaint’s conclusory allegations by summarizing his conspiracy claims. (ECF No. 30 at 51-52.) The Amended Complaint appears to assert that the defendants could not have achieved success in the state court condemnation proceedings without participating in a conspiracy to deprive Paul of his constitutional rights. (Id.) Paul further claims that the overt actions of the defendants during litigation of the state court condemnation case, which are essentially the same actions discussed in the Complaint, constitute evidence that the defendants conspired against him. (Id.) However, as indicated in the previous Report and Recommendation entered in this case, the defendants’ actions show only that the parties attempted to accomplish the goal of acquiring a property for use by the State and the court “need not accept the [plaintiff’s] legal conclusions drawn from the facts,” nor need it “accept as true unwarranted inferences, unreasonable conclusions, or arguments.” Kloth v. Microsoft Corp., 444 F.3d 312, 319 (4th Cir. 2006); see also Walker v. Prince George’s Cnty., 575 F.3d 426, 431 (4th

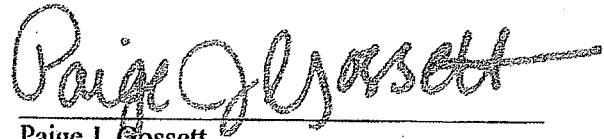
Cir. 2009). As Paul has again failed to demonstrate that the defendants conspired to violate his right to due process, such claims are subject to summary dismissal.

Moreover, Paul has failed to adequately allege that the defendants have deprived him of equal protection of the laws. A plaintiff alleging a violation of the Equal Protection Clause of the Fourteenth Amendment "must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001). While the Amended Complaint alleges that the defendants acted with a "class-based, invidiously discriminatory animus" and that Paul is a "class-based subject"³ of the court, the Amended Complaint still contains no allegations to show that he has been treated differently from other similarly situated individuals. These conclusory statements are insufficient to plead an equal protection violation. See Iqbal, 556 U.S. at 680-81. Thus, Paul's equal protection claim has no merit and should be summarily dismissed.

³ The court notes that Paul fails to provide factual allegations to demonstrate that he is a member of a protected class. To the extent Paul alleges that litigating *pro se* renders him a member of a protected class, he cites no authority to support this proposition. Further, courts addressing the issue have generally found that *pro se* litigants are not a class subject to protection under the Civil Rights Act. See Roden v. Diah, C/A No. 7:07CV00252, 2008 WL 5334309, at *9 (W.D. Va. Dec. 19, 2008) (collecting cases).

III. Recommendation

Accordingly, the court recommends that the Amended Complaint (ECF No. 30) in the above-captioned case be summarily dismissed without prejudice and without issuance and service of process.

A handwritten signature in dark ink, reading "Paige J. Gossett", with a horizontal line drawn underneath the name.

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

August 29, 2014
Columbia, South Carolina

Plaintiff's attention is directed to the important notice on the next page.

ELECTRONICALLY FILED - 2019 Jan 31 9:15 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation, 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation, 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Ronald I. Paul,

Plaintiff,

v.

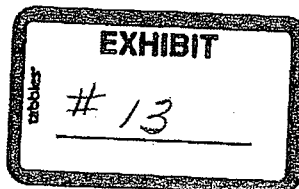
SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION; PAUL D. DE HOLCZER,
individually and as a partner of the law Firm of
Moses Koon & Brackett PC; IENE A.
BUCKLES, as personal representative of the Estate
of G.L. Buckles individually and Iene A. Buckles
individually, G.L. BUCKLES, as Personal
Representative of the Estate of Keith J. Buckles
and G.L. Buckles individually personal
representative Keith J. Buckles;
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;
REGINALD I. LLOYD, in his individual capacity
as Circuit Court Judge, Richland County Court of
Common Pleas,
5th Circuit,

Defendants.

C/A NO. 3:13-1852-CMC-PJG

OPINION and ORDER

This matter ("*Paul III*") is the third action Plaintiff has filed in this court relating to the same underlying dispute: claims arising from a state condemnation proceeding. See ECF No. 10 at 2



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(explaining history of related actions, C. A. No. 3:12-1036-CMC-PJG ("*Paul I*"), and C.A. No. 3:13-367-CMC-PJG ("*Paul II*"). The underlying condemnation proceeding related to a commercial property Plaintiff leased from Keith J. Buckles. ECF No. 10 at 3.

Defendants. Defendants named in the Original Complaint in this action, *Paul I* and *Paul II*, include the state entity that pursued the condemnation (South Carolina Department of Transportation ("the SCDOT")), three employees of the SCDOT (one identified as Assistant Chief Counsel) (collectively with the SCDOT "SCDOT Defendants"), G.L. Buckles, the personal representative of Keith J. Buckles' estate ("Landowner"), and three private attorneys who were involved in the proceeding, including Plaintiff's own attorney (collectively "Attorney Defendants"). *Id.* at 2. The Amended Complaint adds two new Defendants, Ilene A. Buckles, the personal representative of the estate of G.L. Buckles (included within the designation "Landlord"), and Reginald I. Lloyd, Esq., who served as a state court judge at times relevant to the allegations against him ("Judge Lloyd").

Dismissal of Earlier Actions. *Paul I* and *Paul II* were dismissed without prejudice for failure to state a claim, the first after service and on motion of Defendants, the second based on pre-service review. *See Paul I*, ECF Nos. 116, 127; *Paul II*, ECF Nos. 14, 19, 23. Both of the prior dismissals were reduced to judgment of dismissal without prejudice. *Paul I*, ECF No. 128; *Paul II*, ECF No. 20. Neither judgment was appealed.

Although the earlier dismissals were, ultimately, without prejudice, certain determinations in those actions are entitled to preclusive effect in light of Plaintiff's failure to appeal. This includes a determination that the SCDOT and the individual SCDOT Defendants were entitled to immunity from suit to the extent sued in their official capacities. Likewise, the determinations that the

allegations found in the prior complaints were insufficient to state a claim are entitled to preclusive effect. The review in this action, therefore, focuses on the extent to which allegations (most critically in the Amended Complaint) offer greater specificity or otherwise cure deficiencies noted in the orders dismissing *Paul I* and *Paul II*.¹

Prior Proceedings in this Action. The Original Complaint in the current action was also dismissed after a pre-service review and that dismissal was reduced to judgment of dismissal without prejudice. ECF Nos. 10 (“Original Report”), 15 (Order), 16 (Judgment). After an unsuccessful motion to alter or amend judgment (ECF Nos. 19, 21), Plaintiff appealed the dismissal. ECF No. 23. Despite this court’s entry of judgment, the Court of Appeals dismissed the appeal and remanded the matter based on its conclusion that Plaintiff could still “proceed with *this action* in the district court by amending his complaint to provide specific facts showing his entitlement to the relief he

¹ As noted in the report recommending and order granting dismissal of *Paul I*, Plaintiff’s claims are not necessarily precluded by the *Rooker-Feldman* doctrine. See *Paul I*, ECF No. 116 at 9-11 (Report) & ECF No. 127 at 5-7; see also *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159 (3rd Cir. 2010) (finding *Rooker-Feldman* doctrine did not bar § 1983 claim for alleged conspiracy between litigants and judge, although claim failed on other grounds). This does not, however, mean that the *Rooker-Feldman* doctrine does not *limit* Plaintiff’s claims. See *Paul I*, ECF No. 127 at 6-7 (order adopting recommendation that the court find the action was “not barred by the *Rooker-Feldman* doctrine, except to the extent that Plaintiff seeks to reverse or void the state court judgments.”) (emphasis added); see also *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) (clarifying that *Rooker-Feldman* doctrine applies to federal court actions “brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced”). Other aspects of Plaintiff’s claim may well be foreclosed by claim preclusion doctrines based on the state court proceedings (the condemnation proceeding, related appeals, and state court tort actions raising claims similar to those here) or earlier proceedings in this court. *Id.* This court need not, however, resolve the extent to which Plaintiff’s claims may be barred by *Rooker-Feldman* or claim-preclusion because, as discussed below, Plaintiff has again failed to allege facts that support a reasonable inference of bribery or any conspiracy to violate Plaintiff’s rights.

seeks.” *Paul v. S.C. Dept. of Transportation*, Slip Op. No. 13-2431 (4th Cir. May 14, 2014) (emphasis added).

After remand, Plaintiff filed an Amended Complaint. ECF No. 30 (ECF No. 30). In light of the Fourth Circuit’s remand and in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e), DSC, the undersigned again referred the matter to United States Magistrate Judge Paige J. Gossett for pretrial proceedings. In particular, the court sought a Report and Recommendation (“Report”) addressing whether Plaintiff’s post-remand amendments cured the deficiencies noted in the prior order of dismissal and in *Paul I* and *Paul II*.

On August 29, 2014, the Magistrate Judge issued a Report recommending that Plaintiff’s Amended Complaint be dismissed without prejudice and without issuance and service of process because the Amended Complaint, like earlier versions of the complaint in this and related actions, fails to state a claim on which relief may be granted. ECF No. 38 (“Supplemental Report”). The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Supplemental Report on September 2, 2014. ECF No. 40.

STANDARD

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with

instructions. See 28 U.S.C. § 636(b). The court reviews only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

PRIOR REPORTS AND RULINGS IN THIS ACTION

Original Report in *Paul III*. As explained in the Original Report (ECF No. 10), the allegations in Plaintiff’s Original Complaint in this action are almost identical to those raised in *Paul I* and *Paul II*, both of which were dismissed without prejudice for failure to state a claim. ECF No. 10 at 2.² In his Original Complaint in this action, Plaintiff attempted to address the concerns raised in *Paul I* and *Paul II* by pointing to (1) allegations that Keith Buckles was required, as part of his settlement with the SCDOT, to aid the SCDOT in its claims against the premises and (2) allegations that Defendants schemed and conspired to mislead and bribe Judge Allison Lee and Judge Lloyd. ECF No. 10 at 9-10.

Plaintiff also construed advice his own attorney, J. Charles Ormand Jr., Esq., (“Ormond”) gave him and Ormand’s motion to withdraw as counsel as evidence that Ormond was a co-conspirator. ECF No. 10 at 9. In addition, Plaintiff alleged that Defendants furthered the conspiracy by seeking approval of the settlement agreement between the SCDOT and Landlord and misrepresenting that Paul agreed with its terms. *Id.* at 10 (Plaintiff described this order as void and predetermined). Plaintiff suggested that Judge Lloyd’s decision to grant a motion approving the

² As noted above, *Paul I* was dismissed on Defendants’ motion. *Paul II* was dismissed based on pre-service review.

settlement is evidence of bribery. *Id.* Finally, Plaintiff suggests the existence of a conspiracy is supported by Defendants' joint actions in seeking disbursement of the settlement proceeds and in seeking an injunction against further action by Plaintiff during the pendency of his third appeal in the course of the condemnation proceeding. *Id.*

The Original Report noted that "[a]ll of these actions . . . show only that the parties attempted to accomplish the goal of acquiring a property for use by the State." *Id.* at 10. It also noted the absence of allegations of any improper motivation on Ormond's part.³ *Id.* Referring, *inter alia*, to the inference of bribery Paul would draw from the fact a state court judge ruled in favor of opposing parties, the Original Report noted that the court "need not accept the [plaintiff's] legal conclusions drawn from the facts," nor "unwarranted inferences, unreasonable conclusions, or arguments[.]" *Id.*⁴ The Original Report also noted various legal roadblocks to Paul's claims against the SCDOT itself and the remaining SCDOT (employee) Defendants to the extent sued in their official capacity. *Id.* at 11-12 (addressing Eleventh Amendment immunity, sovereign immunity, and inapplicability of Section 1983 to a state).

Order Adopting Original Report. The undersigned adopted the Original Report, finding that the Original Complaint in this action "once again fails to state a claim upon which relief can be granted." ECF No. 15 at 3. With respect to the allegations of bribery, the court noted that Plaintiff

³ In at least two places, the Original Report refers to an absence of "evidence." ECF No. 10, 11. In context, the references are clearly to an absence of factual *allegations* as the review at issue is review of a complaint.

⁴ The Original Report also noted that Plaintiff had and availed himself of an opportunity to challenge the state court's decision through motions and appeals in the state courts and was, in fact, awarded compensation, though far less than he believed was warranted. *Id.* at 11. It also noted that Paul pursued a state tort case for civil conspiracy relating to the same underlying condemnation proceeding. *Id.* at 6 n.4 (quoting a document filed in *Paul I*).

had “not pleaded with any specificity the nature of the bribe” and that Plaintiff’s “allegations do not suggest bribery.” *Id.* at 3-4. For example, the order noted that allegations that Defendants met prior to a hearing and, at the hearing, “told Judge Lee that a settlement had been reached” suggested “that the parties were working towards a settlement, not that [they] bribed Judge Lee.” *Id.* The order also noted that “alleg[ations] that Judge Lloyd granted a motion” did not raise an inference of bribery. For reasons explained in more detail below, the court reaches the same conclusion as to the allegations in the Amended Complaint.

SUPPLEMENTAL REPORT

Supplemental Report. As the Supplemental Report explains, the Amended Complaint adds two Defendants, Ilene A. Buckles, personal representative of the estate of G.L. Buckles (the originally-named personal representative of the estate of Keith Buckles (all referred to collectively here as “Landlord”)), and Reginald I. Lloyd, Esq. whose connection to this case is limited to his role as a state court judge. ECF No. 38 at 3. It also includes allegations (largely duplicative of allegations found in the Original Complaint) that various Defendants violated Plaintiff’s right to due process by offering perjured testimony in state court and misleading and bribing Judge Lloyd. *Id.* The Amended Complaint also appears to allege that Plaintiff is a member of a protected class because he is proceeding *pro se* and was subjected to class-based, invidious discrimination based on his *pro se* status.⁵ *Id.* at 3-4.

After review of the added allegations, the Supplemental Report recommends dismissal noting, in particular, that (1) the SCDOT is not only immune from suit in this court but is not a

⁵ Plaintiff asserts that he should be treated as a *pro se* litigant throughout his state court proceedings, even though he was represented by Ormond (at least through the non-jury trial), because (per Plaintiff) Ormond was a co-conspirator with the remaining Defendants.

“person” subject to suit under 42 U.S.C. § 1983 (ECF No. 38 at 6); (2) Defendant Lloyd is entitled to absolute immunity because the allegations against him relate solely to his role as a state court judge (ECF No. 38 at 7); (3) the allegations against Defendant liene A. Buckles fail to allege facts suggesting personal participation in a violation of Plaintiff’s constitutional rights (ECF No. 38 at 7); and (4) the factual allegations in support of Plaintiff’s claim of conspiracy to violate due process or equal protection suggest only lawful participation in proceedings intended to allow the state to acquire property rather than raising a reasonable inference of an illegal conspiracy, including one involving bribery (ECF No. 38 at 7-9).

DISCUSSION

The Fourth Circuit gave Plaintiff the opportunity to “proceed with this action in the district court by amending his complaint to provide specific facts showing his entitlement to the relief he seeks[.]” This he has not done.

Effect of Remand. Repeatedly in his objection memorandum, Plaintiff relies on the Fourth Circuit Court of Appeals’ remand as precluding this court from considering certain grounds for dismissal, at least at this stage in the proceedings. *See* ECF No. 40 at 6-7 (addressing immunities available to the SCDOT); *id.* at 9-10 (addressing immunities available to Judge Lloyd); *id.* at 14-15 (addressing sufficiency of his conspiracy allegations). These arguments ignore the jurisdictional, rather than substantive, basis for the remand. Thus, the court finds no merit in any argument that the Fourth Circuit’s remand forecloses any of the bases on which the Original or Supplemental Reports recommend pre-service dismissal.

Declaratory Relief. As to the SCDOT, Plaintiff also argues that his claim may proceed despite the Eleventh Amendment or sovereign immunity because he is seeking declaratory relief.

While Plaintiff's Amended Complaint does ask the court to "declare" a number of facts and legal conclusions to be true (ECF No. 30 ¶¶ 205 a-m), he does not seek declaratory relief in the legal sense because he does not seek 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*). Instead, Plaintiff seeks an award of actual, consequential and special damages (*id.* ¶¶ 206 n-p). That these damages are sought based on the requested declarations of fact and law is not sufficient to convert the claim to one for declaratory relief.

Bribery (and Conspiracy) Allegations. Plaintiff notes, correctly, that, even if Judge Lloyd is immune from suit for the alleged bribery, that immunity would not extend to other Defendants.

The critical distinction was explained in *Dennis v. Sparks*, as follows:

Private persons, jointly engaged with state officials in the challenged action, are acting . . . "under color" of law for purposes of § 1983 actions. . . . Of course, merely resorting to the courts and being on the winning side of the lawsuit does not make a party a co-conspirator or a joint actor with the judge. But here the allegations were that an official act of the defendant judge was the product of a corrupt conspiracy involving bribery of the judge. Under these allegations, the private parties conspiring with the judge were acting under color of state law; and it is of no consequence in this respect that the judge himself is immune from damages liability.

Dennis, 449 U.S. at 27-28.⁶

⁶ Plaintiff argues that the absolute immunity defense cannot be considered as to Judge Lloyd because this is an affirmative defense that has not (yet) been raised. ECF No. 40 at 11. It is, however, beyond doubt that Judge Lloyd is entitled to absolute immunity because the alleged misdeeds were, even if the result of bribery, acts within his jurisdiction (issuance of orders in a case properly before him). *Dennis v. Sparks*, 449 U. S. 24, 27 (1980) (noting that, since 1872, the Court had "consistently adhered to the rule that judges defending against § 1983 actions enjoy absolute immunity for damages liability for acts performed in their judicial capacities" (internal quotation marks and citations omitted)). Such defenses are, moreover, frequently relied on as a basis for pre-service dismissal. *See, e.g., Coleman v. Rock Hill Municipal Court*, 550 Fed. Appx. 166 (4th Cir. 2014) (affirming pre-service dismissal of claim against a judge under 28 U.S.C. § 1915(e)(2)(B) based on absolute judicial immunity).

Thus, proper factual allegations of a conspiracy, including a conspiracy involving bribery of a judge, would suffice to state a claim against the non-judicial Defendants. Here, however, the allegations are not sufficient under current pleading standards. See *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (statements of bare legal conclusions “are not entitled to the assumption of truth” and are insufficient to state a claim); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“Factual allegations must be enough to raise a right to relief above the speculative level,” thereby “nudge[ing] [the] claims across the line from conceivable to plausible.”); *Robertson v. Sea Pines Real Estate Cos.*, 679 F.3d 278, 288 (4th Cir. 2012) (“Plausibility requires that the factual allegations be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true.” (internal quotation marks and alteration omitted)); see also *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (noting “naked assertions of wrongdoing necessitate some factual enhancement within the complaint to cross the line between possibility and plausibility of entitlement to relief” and that determining whether a claim is sufficient is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense”) (internal quotation marks omitted). Bald allegations of bribery are not sufficient without facts supporting an inference that bribery is a plausible, as opposed to a merely possible, explanation for the challenged action. *Mikhail v. Kahn*, 2014 WL 3309172 * 2 (3d Cir. 2014) (finding bald allegations of conspiracy between opposing party and judicial officials insufficient because plaintiff “failed to allege plausible facts sufficient to support a claim of joint activity” and noting that, post *Iqbal*, a plaintiff must “assert facts from which a conspiratorial agreement can be inferred”); *Stokes v. Lusker*, 425 Fed. Appx. 18, 22 (2d Cir. 2011) (finding “speculation about bribes [of board members] cannot ‘nudge[] . . . claims across the line from conceivable to plausible.’”).

In arguing that his allegations of conspiracy and bribery suffice, Plaintiff asserts that the “sequence of events . . . shows that defendants attempted to accomplish the goal of acquiring the property . . . without payment of just compensation to Paul, a SCDOT Scheme” and “none of the parties challenged the state officials’ right to condemn or objected to the State (SCDOT) acquiring the property.” ECF No. 50 at 15. These and related allegations do not raise an inference of conspiracy to deprive Plaintiff of any legal right, much less a conspiracy achieved through bribery of judicial officers. Instead, they suggest that Defendants (other than Ormond) took a litigation position contrary to the position taken by Plaintiff and that the court ultimately accepted these Defendants’ position rather than Plaintiff’s position.⁷ That some statements may have been made in the proceedings that mischaracterized or misrepresented Plaintiff’s actions or positions was a matter for correction in the state court proceedings. While not necessary to this court’s ruling, it is clear from Plaintiff’s allegations that he had an opportunity to and did offer contrary argument (in the state trial court and on appeal). That Plaintiff was unsuccessful in those arguments does not raise an inference of conspiracy (including one involving bribery) because it does not move such an inference into the realm of plausible as opposed to merely possible malfeasance.

Personal Representative of Estate. As to Lienc A. Buckles, Plaintiff argues the allegations in the Amended Complaint show personal participation in a conspiracy because Plaintiff made a claim against the estate which the estate denied. ECF No. 40 at 13. This argument misses the mark because, even if it suggests some action by this Defendant (or the estate she represents), it does not

⁷ Plaintiff’s allegations relating to his own attorney, Ormond, suggest a disagreement between counsel and client regarding legal strategy, quite possibly based on differences regarding what was legally permissible. Even if the attorney violated some duty to the client as a result of such disagreements (and the court is not suggesting that any such violation occurred), it would not suffice to support a claim that the attorney engaged in a conspiracy with opposing parties.

raise an inference that the alleged action was part of a conspiracy to violate Plaintiff's constitutional rights.

De Novo Review. As noted above, this court has conducted a detailed, *de novo* review of Plaintiff's Amended Complaint. This review confirms that Plaintiff's allegations of conspiracy and bribery rest on unwarranted inferences drawn from his disagreement with his attorney's advice and handling of the case, motions filed and actions taken by opposing counsel and parties *within the judicial proceedings*, and judicial rulings.

The allegations relating to the parties and their counsel suggest the parties engaged in settlement and similar negotiations as is typical in legal proceedings. They also suggest that Landlord and the SCDOT acted cooperatively in opposing Plaintiff's claims, consistent with their settlement agreement. Nothing in these actions or the cooperation provision in the settlement agreement between the SCDOT and Landlord suggests the existence of a conspiracy to deprive Plaintiff of his constitutional rights to due process or equal protection. The same is true as to any alleged misstatements of Plaintiff's position in the course of the proceedings, which Plaintiff, in any event, had the opportunity to and did address in the state court proceedings.

As to judicial rulings, Plaintiff makes various allegations that Defendants attempted to mislead and bribe three state court judges and, in fact, did mislead and bribe Judge Lloyd, and possibly misled a third judge, Judge Thomas Cooper. Plaintiff offers nothing other than speculation in support of these allegations, based on the judges' granting of motions Plaintiff opposed and believes were improperly granted. These allegations do not give rise to a reasonable inference of bribery.

In sum, after conducting a *de novo* review of the Amended Complaint and Plaintiff's objections to the Report, and considering the record and applicable law, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order as corrected and supplemented above and dismisses this action.⁸

CONCLUSION

For reasons stated in the Report, the court dismisses the action without prejudice and without issuance and service of process. The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

Columbia, South Carolina
October 8, 2014

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

⁸ The sole correction relates to the reference to "evidence" rather than "allegations." See *supra* n. 3.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

RONALD I. PAUL,

Civil Action No. 3:16-cv-1727-CMC

Plaintiff,

vs.

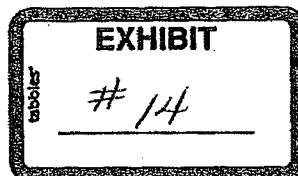
OPINION AND ORDER

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 a 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,

Defendants.

This matter is before the court on Plaintiff's *pro se* complaint, requesting
declaratory judgment and money damages based on his claims of civil conspiracy, denial of due
process, denial of equal protection, and inverse condemnation against the above captioned
defendants (collectively, "Defendants"). ECF No. 1.



In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(e), DSC, this matter was referred to United States Magistrate Paige J. Gossett for pre-trial proceedings. On September 13, 2016, the Magistrate Judge issued a Report and Recommendation ("Report"). ECF No. 10. The Report recommends summary dismissal of Plaintiff's Complaint because the instant Complaint, providing the same factual allegations as his previous four, fails to adequately allege facts in support of any of his claims. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. On September 26, 2016, Plaintiff filed objections to the Report. ECF No. 12.

For reasons set forth below, the court overrules Plaintiff's objections and adopts the Report as supplemented here. The court, therefore, dismisses the action without prejudice and without issuance and service of process.

STANDARD

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a

de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation'" (quoting Fed. R. Civ. P. 72 advisory committee's note).

DISCUSSION

As explained in the Report, this is the fifth civil action brought in this court by Plaintiff, Ronald I. Paul ("Paul"), challenging events surrounding a 2002 condemnation of commercial property in which Paul held a leasehold interest. The complaints in the five actions vary in some respects, but allege nearly identical facts in support of Paul's central allegations: that various individuals involved in the condemnation proceedings conspired to deprive Paul of his constitutional rights to due process, equal protection, jury trial, and to present an expert witness, resulting in the taking of Paul's leasehold property without just compensation.

All prior actions were dismissed without prejudice, the first on Defendants' motion and the remainder *sua sponte* prior to service. *Paul v. De Holczer*, C/A No. 3:15-2178-CMC-PJG, 2015 WL 4545974 (D.S.C. July 28, 2015) ("Paul IV"); *Paul v. S.C. Dep't of Transp.*, C/A No. 3:13-1852-CMC-PJG, 2014 WL 5025815 (D.S.C. Oct. 8, 2014) ("Paul III"); *Paul v. S.C. Dep't. of Transp.*, C/A No. 3:13-367-CMC-PJG, 2013 WL 2180736 (D.S.C. May 20, 2013) ("Paul II"); *Paul v. S.C. Dep't of Transp.*, C/A No. 3:12-1036-CMC-PJG, 2013 WL 461349 (D.S.C. Feb. 6, 2013) ("Paul I"). The most recent two dismissals were summarily affirmed by the Fourth Circuit Court of Appeals. *Paul IV*, *aff'd*, 631 F. App'x 197 (4th Cir. 2016); *Paul III*, *aff'd*, 599 F. App'x 108 (4th Cir. 2015).

In light of this history and the detailed nature of the Reports and corresponding Orders in Paul's prior cases, the court overrules Paul's objections to the extent they challenge the Report's failure to set out the reasons for dismissal of repetitive allegations and claims in any greater detail.

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.

Specifically, Paul's objections request remand to the Magistrate Judge for specific rulings or ask the district judge to "clearly address and clearly rule on the elements of a civil conspiracy." ECF No. 12 at 5. However, the Magistrate Judge did set out the elements of a civil conspiracy, and found that Paul's conclusory factual allegations did not plausibly set forth a claim for conspiracy. ECF No. 10 at 4-5. This court agrees with the Magistrate Judge and overrules Paul's objection as to this claim.

Paul then objects to the Report as he argues that the Magistrate Judge did not address and rule "on Plaintiff's first cause of action seeking a declaratory judgment," ECF No. 12 at 12. However, as noted above, the Magistrate Judge has previously ruled on Paul's allegations that form the basis for his requested declaratory judgment, and explained her ruling regarding the civil conspiracy (which forms the basis of Paul's declaratory judgment claim) in this Report. In addition, this court specifically addressed the declaratory judgment claim in its Order in Paul IV, dismissing the claim on two alternative grounds: as it relied on the legal theories advanced in Paul's other claims, or as an unstated contract-based theory. See Paul IV, ECF No. 15. Paul's current Complaint shows that he intends to rely on his civil conspiracy claim to support a declaratory judgment. That theory has been considered and ruled upon by this court. Therefore, the court overrules Paul's objection to the recommended dismissal of his declaratory judgment claim.

Paul also objects to dismissal of his inverse condemnation claim. However named, this claim rests on the same factual allegations as his other claims and has been previously argued and ruled upon, though differently presented, in the previous cases, specifically in Paul IV. Any claim under the Fifth Amendment Takings Clause has been previously ruled upon and dismissed; therefore, this objection is overruled.

The balance of Paul's additional objections raise arguments regarding claims that have, multiple times, been dismissed. Contrary to Paul's objections, the Magistrate Judge's Report did address his claims of denial of substantive and procedural due process and denial of equal

protection (including his race-based claim). In addition, these claims have been addressed in previous Orders and Reports. Therefore, the court finds those objections to be without merit.

Lastly, Paul objects to the Report's recommendation that this court issue an injunction against Paul so that he is unable to file further frivolous and repetitive claims based on the 2002 condemnation action. Paul argues that his previous lawsuits have been dismissed without prejudice which, although true, does not mean that his suits are not frivolous (as explained above). This court finds that Paul's "continuous abuse of the judicial process by filing meritless and repetitive actions" constitutes exigent circumstances required to issue a pre-filing injunction. See *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004). The Report adequately addresses the *Cromer* factors, and this court agrees that they are met. Further, Paul was notified of the possibility of a pre-filing injunction and filed objections, as noted above, which have been considered by the court. However, his objection regarding this issue is, in large part, a recitation of his objections regarding his substantive claims and does not provide authority for the proposition that a pre-filing injunction is improper here.

CONCLUSION

The court adopts the Report as supplemented above and dismisses this action without prejudice. Based on the foregoing, the court finds imposition of a pre-filing injunction in this District is warranted.

Accordingly, the court hereby imposes a pre-filing injunction on Paul's ability to file any new action in this District relating to the subject matter of the following lawsuits, i.e., the condemnation of the property located at 2115 Two Notch Road, Columbia, South Carolina, formerly leased by Paul:

Paul v. S.C. Dep't of Transp., C/A No. 3:16-1727-CMC-PGJ;

Paul v. De Holczer, C/A No. 3:15-2178-CMC-PJG;

Paul v. S.C. Dep't of Transp., C/A No. 3:13-1852-CMC-PJG;

Paul v. S.C. Dep't. of Transp., C/A No. 3:13-367-CMC-PJG;

Paul v. S.C. Dep't of Transp., C/A No. 3:12-1036-CMC-PJG.

Before any filings are made in any new civil action, Paul is required to seek permission of the court. This pre-filing injunction does not preclude Paul's ability to file or defend lawsuits in this District unrelated to Paul I-V. The Clerk of Court is directed to enter judgment accordingly.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
November 8, 2016

1 STATE OF SOUTH CAROLINA

IN THE CIVIL COURT

2 COUNTY OF RICHLAND

3
4 SOUTH CAROLINA DEPARTMENT
5 OF TRANSPORTATION,

6 Condemnor,

-vs-

TRANSCRIPT OF RECORD

7 KEITH J. BUCKLES
8 AND G.L. BUCKLES,

02-CP-40-4800

9 Landowners.

10 AND RONALD PAUL, LESSEE, AND
11 SANG KIM, LESSEE,

Other Condemnees.

12
13 October 14, 2004
14 Columbia, South Carolina

15 B E F O R E:

16 HONORABLE REGINALD I. LLOYD, Judge.

17
18 A P P E A R A N C E S:

19 PAUL de HOLCZER, Esquire
20 Attorney. for the Condemnor

21 MICHAEL H. QUINN, Esquire
22 MICHAEL H. QUINN, Jr., Esquire
23 Attorneys for the Landowners

24 J. CHARLES ORMOND, Esquire
25 Attorney for the Other Condemnee Paul

EXHIBIT

#15

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

105

1 the past ten years, less?

2 A Guessing, more.

3 MR. ORMOND: Your Honor, I would like to offer
4 Mr. Blinder as an expert in the area of valuing a lease
5 or the use and occupancy of a leasehold interest by a
6 current business owner, which is smack dab right in Gray
7 versus the South Carolina Department of Transportation.

8 THE COURT: Let's go off the record for a
9 second. Let me ask counsel to step out in the hall for
10 a second.

11 (Whereupon there was a recess).

12 THE COURT: I will ask everyone except
13 Mr. Blinder -- and obviously counsel can leave the room,
14 the courtroom for a short period of time -- and we will
15 let you back in very shortly.

16 (Pause).

17 THE COURT: Back on the record, counsel and
18 the Court had a discussion outside the courtroom. I
19 just want to put something on the record.

20 Mr. Blinder, let me explain this to you, and I
21 think you were here this morning and heard our
22 discussion about the statutes that govern real estate
23 appraisals in South Carolina and what that may or may
24 not entail in terms of the definition of appraisals.

25 Let me preface anything I tell you with this.

1 This doesn't affect my opinion as to whether I'm going
2 to hear your testimony. I am glad to hear your
3 testimony. Those are legal argument as to whether I
4 should consider it or not, but I will deal with the
5 lawyers later.

6 The one thing that does concern me though,
7 sir, and this is simply not to tell you that there is
8 criminal liability or that there isn't criminal
9 liability, but to bring to your attention that the
10 statute does potentially indicate that the testimony you
11 might give here might fall within the purview of this
12 statute and this act.

13 I am sitting here telling you today, sir, I
14 can't tell you for certain it does. I can't tell you
15 for certain it does not. Therefore, your testimony
16 might subject you to some criminal liability.

17 Obviously somebody would have to file a
18 complaint before anything is started, but the potential
19 is always out there. Nobody is threatening you with
20 that or anything like that.

21 But before I let you sit there and testify,
22 what I need to do is take a little break and let you
23 talk with Mr. Ormond and decide what else you might or
24 might not need to do as it relates to your testimony.

25 What I do not want to have happen here though

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2018-CP-40-5641

Ronald I. Paul,)
Plaintiff,)
vs.)
The South Carolina Department)
of Transportation, et al.,)
Defendants.)
_____)

Transcript of Record

April 16, 2019
Columbia, South Carolina

B E F O R E:

The Honorable L. Casey Manning, Judge

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

Ronald I. Paul
Self-represented Litigant

Andrew F. Lindemann, Esquire
Attorney for Defendant SCDOT, et al.

Michael B. Brackett, Esquire
Attorney for Defendant Moses, Koon and Brackett

Michael H. Quinn, Esquire
Attorney for Defendant Quinn Law Firm

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page.	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
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No exhibits introduced.

1 THE COURT: This is a compel, compel, set aside.

2 MR. PAUL: Yes, Your Honor. I have four motions.

3 THE COURT: All right. Relax. Calm down. What is
4 your name, sir?

5 MR. PAUL: Ronald Paul.

6 THE COURT: All right, and you are pro se?

7 MR. PAUL: Yes, sir.

8 THE COURT: All right, and you are suing South
9 Carolina Department of Transportation?

10 MR. PAUL: Yes, sir.

11 THE COURT: And how many lawyers does the Department
12 of Transportation have? Thirty or forty?

13 MR. LINDEMANN: Your Honor, Andrew Lindemann for the
14 Department of Transportation. I'm the only one who's
15 actually representing the DOT.

16 THE COURT: Well, what are these other two guys doing
17 here?

18 MR. LINDEMANN: There are a lot of other parties, Your
19 Honor.

20 THE COURT: Are there really?

21 MR. LINDEMANN: Yes.

22 THE COURT: All right, but this is not them, just you
23 with Mr. Paul today?

24 MR. LINDEMANN: No. I, I think some of the, some of
25 the motions you're going to hear, you know, covers all of

1 us in one way or another. And, Your Honor, if I can give
2 you some procedural background?

3 THE COURT: Yes. Please do. Please do.

4 MR. LINDEMANN: There are, there are a number of
5 motions that were already argued in front of Judge Early
6 back in February. Actually his, I think that was his last
7 week of hearing nonjury.

8 THE COURT: I remember very well.

9 MR. LINDEMANN: He, he indicated to us he would get
10 us ---

11 THE COURT: He moved to Charleston with his grandkids.
12 Go ahead.

13 MR. LINDEMANN: Indicated to us he would get us a
14 ruling by the end of that week, but we have not gotten one
15 as of, as of ---

16 THE COURT: Say that?

17 MR. LINDEMANN: He indicated to the parties that he
18 would get us a ruling on the motions he heard with all
19 these motions by the end of the week, and we have not
20 gotten a ruling from him yet. What he did hear, Your
21 Honor, is each of the defendants who were properly served
22 and made an appearance -- there are some default matters
23 that Mr. Paul has asserted -- each of the parties that have
24 made an appearance filed motions to dismiss under Rule
25 12(b). And those are the motions that Judge Early did

1 hear, and they are still under advisement at this point.

2 But there are some default motions. There are motions
3 to compel. There's a motion for protective order that my
4 client filed relative to the motion to compel, and then of
5 course there are motions to set aside default as well that
6 go hand in hand with Mr. Paul's request for a default, for
7 entry of default on default judgment. So, that's where we
8 are there. So, there are dispositive motions for certain
9 of the defendants that have been argued and are under
10 advisement, Your Honor.

11 THE COURT: Did Judge Newman have anything to do with
12 this?

13 MR. LINDEMANN: Not that I'm aware of. No, Judge
14 Newman hasn't heard any motions.

15 THE COURT: Okay. I guess this was sent to her as the
16 chief judge. Have you seen a copy of this from Mr. Paul?
17 I think your name is on it.

18 MR. LINDEMANN: I'm not sure what you're referring to.
19 I know he has filed a memorandum in the past. If he filed
20 something in the last week or so, I have not seen it. What
21 you may be referring to, I think he sent a letter to -- and
22 I didn't grab a copy of ---

23 THE COURT: It says Notice of Motion and Entry of
24 Default and Default Judgment. You have a copy of that?

25 MR. LINDEMANN: I have a copy of his motion for entry

1 of default.

2 THE COURT: Okay. That's what I have.

3 So, Mr. Paul, you are the moving party. I'll be happy
4 to hear from you, sir. What is your motion, sir?

5 MR. PAUL: Your Honor, I have a total of four motions.

6 THE COURT: All right. Just start with number one.

7 MR. PAUL: Okay. My first motion, Your Honor, deals
8 with compel. It contains a little background. I filed a
9 complaint on October 26, 2018, in response to defendants
10 filed a motion to dismiss and for summary judgment raising
11 the settlement agreement between the South Carolina
12 Department of Transportation and the Buckles, and let me
13 explain. In other words, Your Honor, when they say that
14 just compensation was paid in case 4800, or they say I was
15 paid, or when they say the plaintiff, which is me, is paid,
16 they are talking about the settlement agreement even though
17 they don't say the word settlement agreement, but that's
18 what they are talking about because the only thing was paid
19 in case ---

20 THE COURT: What are you asking me to make them give
21 you? That's the motion to compel. What are you requesting
22 from them, sir?

23 MR. PAUL: Well, I'm requesting a copy of the
24 settlement agreement, Your Honor, between the South
25 Carolina Department of Transportation and the Buckles or

1 any other settlement in case 4800.

2 THE COURT: Say that again now.

3 MR. PAUL: I'm requesting a copy of the settlement
4 agreement between ---

5 THE COURT: Settlement agreement between whom?

6 MR. PAUL: South Carolina Department of
7 Transportation.

8 THE COURT: Thank you.

9 MR. PAUL: And the Buckles.

10 THE COURT: And the who?

11 MR. PAUL: The Buckles in case 4800. It's explained
12 in my complaint. Case 4800 is a 2002 eminent domain case
13 that I was a party of, but I guess I have to give you a
14 little background information so I can...

15 THE COURT: I'm not going to stop you, sir. You may
16 proceed.

17 MR. PAUL: Okay. Well, Your Honor, when I filed the
18 complaint in October 26, 2018, in response, defendants
19 filed a motion to dismiss and for summary judgement raising
20 the settlement agreement between the South Carolina
21 Department of Transportation and the Buckles, not -- Your
22 Honor, when they say -- when they're talking about the
23 settlement agreement, they're talking about -- when they,
24 when they say that -- when they're talking about the
25 settlement agreement, they're talking about the payment.

1 In other words, when they say that just compensation was
2 paid in case 4800, they're talking about the settlement
3 agreement. Now, the highest and best use, Your Honor, I
4 got -- the highest and best use was only based on the
5 Buckles' property. It wasn't based on my property. So,
6 therefore, I filed ---

7 THE COURT: Is this a condemnation case we're talking
8 about? Does it have anything to do with condemnation?

9 MR. LINDEMANN: A long time ago, Your Honor. It was a
10 2002 condemnation case that got this whole thing started.

11 THE COURT: All right.

12 MR. LINDEMANN: It's been litigated numerous times
13 since then. I'll give you that background when I get a
14 chance, Your Honor.

15 THE COURT: All right.

16 MR. PAUL: Yeah. That's what I'm trying to give you a
17 little background.

18 THE COURT: That's fine. You may continue, sir.

19 MR. PAUL: Yeah. So, therefore, Your Honor, I filed a
20 discovery request for a copy of the settlement agreement
21 between South Carolina Department of Transportation ---

22 THE COURT: And, that's what you want me to compel them
23 to give you?

24 MR. PAUL: Right, Your Honor.

25 THE COURT: That's number one.

1 MR. PAUL: That's number one.

2 THE COURT: What's number two?

3 MR. PAUL: Number two, Your Honor -- well, both
4 motions to compel are based on the same thing.

5 THE COURT: All right.

6 MR. PAUL: And my arguments are in both -- I got two
7 of the motions right here to compel, and my argument is in
8 the motions.

9 THE COURT: Okay.

10 MR. PAUL: Requesting they -- because -- well,
11 basically what I'm saying is they are arguing in support of
12 their motion to dismiss. They have raised the settlement
13 agreement between South Carolina Department of
14 Transportation. They're using that in support. So, I
15 requested a copy of that, and what they did was, what they
16 did was before the response time expired, defendants filed
17 a motion to stay discovery and for protection. In
18 response, I filed a motion to compel combined sort of with
19 a response.

20 THE COURT: All right.

21 MR. PAUL: Now after response time expired, which is
22 thirty days, defendants served an objection, objection.
23 Because of the period, the court ignored the motion to stay
24 the discovery or for protection, for. In response I filed
25 motion to compel, and that's the two motions I have here,

1 Your Honor.

2 THE COURT: All right.

3 MR. PAUL: And my arguments are in these two motions
4 here.

5 THE COURT: Okay.

6 MR. PAUL: I'm asking for a copy of the settlement
7 agreement between South Carolina Department of
8 Transportation and any other settlement agreement in case
9 4800.

10 THE COURT: Okay.

11 MR. PAUL: Because they're using that argument in
12 their motions to dismiss, even though they might not say
13 the word. I think one of the motions say the word, but the
14 ~~other motions don't say the word~~, but when they say any
15 type of payment, the only thing was paid in there was the
16 settlement agreement by South Carolina Department of
17 Transportation. But any time they raise the word payment,
18 they're talking about the settlement agreement.

19 Next, Your Honor, I have my first motion for default
20 judgment. Your Honor, on December 31, 2018, I filed a
21 default package against defendants Rucker and Gresham. It
22 consisted of a affidavit of default, motion for entry of
23 default and default judgment, affidavit of nonservice,
24 proposed order of default judgment, and certificate of
25 service. Your Honor, because entry of default is, like, an

1 administrative act, I'm requesting that the court enter
2 default judgment against these defendants. Now, my
3 argument's for entering default package that I filed
4 against these defendants, South Carolina -- I mean, these
5 defendants Rucker and Graham [sic].

6 Next, Your Honor, my last motion is against -- on
7 January 28, 2019, I filed default package against defendant
8 Moses, Koon, and Brackett, which consist of affidavit of
9 default, motion for entry of default and default judgment,
10 affidavit of nonmilitary service, and certificate of
11 service. Because entry of default is an administrative
12 act, I'm requesting or asking that the court enter default
13 judgment against this defendant. Your Honor, my argument
14 are in my default package that I filed on January the 28th.
15 Thank you, Your Honor.

16 THE COURT: All right. Thank you, sir.

17 Mr. Lindemann.

18 MR. LINDEMANN: Thank you.

19 THE COURT: Let me ask you this, Mr. Paul. Where are
20 you originally from?

21 MR. PAUL: I'm originally from Florida, Your Honor.

22 THE COURT: Florida.

23 MR. PAUL: Small country town, DeFuniak Springs,
24 Florida.

25 THE COURT: Where?

1 MR. PAUL: DeFuniak Springs, Florida. It's up in the
2 Panhandle close to ---

3 THE COURT: Is it north Florida? Near Jacksonville?
4 Where is it?

5 MR. PAUL: Not, it's not -- well, it's in the Pan --
6 it's way up. It's almost in Alabama.

7 THE COURT: You might as well be from Alabama.

8 MR. PAUL: Yeah, way up there, almost in ---

9 THE COURT: That's all right, Mr. Paul.

10 MR. PAUL: Yeah.

11 THE COURT: I was just curious. Thank you, sir.

12 All right, Mr. Lindemann, you ready to proceed?

13 MR. LINDEMANN: Thank you, Your Honor. Again, may it
14 please court?

15 THE COURT: Yes, sir.

16 MR. LINDEMANN: I represent the Department of
17 Transportation, Paul deHolczer, and Natalie Moore, who are
18 currently employees of the Department, as well we ---

19 THE COURT: Natalie Moore?

20 MR. LINDEMANN: Natalie Moore.

21 THE COURT: The lawyer from Nelson Mullins or is that
22 somebody else?

23 MR. LINDEMANN: I think it's somebody else.

24 THE COURT: Okay. Fine.

25 MR. LINDEMANN: Am I getting the name wrong? I hope

1 I'm not.

2 THE COURT: Okay.

3 MR. LINDEMANN: No, I'm not. And then, Your Honor,
4 on the default matters, I came in and represented and am
5 now representing Mr. Rucker and Ms. Gresham, who are former
6 employees of DOT.

7 THE COURT: Okay.

8 MR. LINDEMANN: And as I'll point out to the court,
9 they haven't been employed by the DOT for -- since 2010 or
10 earlier. So, but I'll -- let me, let me give you some
11 background and take the motions in the order that Mr. Paul
12 has presented them to Your Honor.

13 THE COURT: Okay.

14 MR. LINDEMANN: This case has a very tortured past,
15 Your Honor.

16 THE COURT: And apparently a tortured future.

17 MR. LINDEMANN: Just to give you a little bit of
18 background.

19 THE COURT: Go ahead.

20 MR. LINDEMANN: This is more relevant to the motions
21 pending in front of Judge Early, but I think it's important
22 for you to take a look at the motion to compel and to have
23 this background.

24 THE COURT: All right.

25 MR. LINDEMANN: The lawsuit originates from a

1 condemnation action that was brought in 2002, Your Honor.

2 Actually ---

3 THE COURT: That's the last time was Tiger Woods won a
4 major.

5 MR. LINDEMANN: Pretty close. Pretty close. And in
6 2002, Paul deHolczer was actually in private practice with
7 Moses, Koon, and Brackett and -- but he represented DOT in
8 that condemnation action.

9 THE COURT: That's why Mr. Brackett is here. Okay.

10 MR. LINDEMANN: That's correct, and of course he's got
11 a -- he's made them a party, or their predecessor firm.

12 THE COURT: All right.

13 MR. LINDEMANN: I'll let him worry about how that's
14 described.

15 THE COURT: That's fair enough.

16 MR. LINDEMANN: But the bottom line is he's also sued
17 Mr. Quinn, who's here today representing himself. Mr.
18 Quinn represented the Buckles, who were the landowners in
19 that condemnation action. Mr. Paul was an alleged lessee
20 who was making a claim for some of those condemnation
21 proceeds. Your Honor, to take you through it very quickly.

22 THE COURT: Yes, sir.

23 MR. LINDEMANN: There was an agreement as to the value
24 of the condemned property that was reached. To my
25 knowledge, I don't believe it was ever put into writing.

1 Mr. Quinn and I had that discussion earlier, but it is
2 referenced in the court orders from both Judge ---

3 THE COURT: Early as well?

4 MR. LINDEMANN: No, not Judge Early. Judge Lloyd.
5 That's how old this case is.

6 THE COURT: Meaning Reggie Lloyd?

7 MR. LINDEMANN: Reggie Lloyd. Reggie Lloyd tried this
8 case back in 2004 -- 2005.

9 THE COURT: Was Eisenhower still in the White House?
10 Go ahead.

11 MR. LINDEMANN: I think he, I think he had just left
12 office, Your Honor. Anyway, in 2005 Judge Lloyd tried this
13 case. Issued an order. Ultimately, Mr. Paul was given
14 \$2,450 as just compensation for his leasehold interest. He
15 subsequently appealed that. The Court of Appeals affirmed;
16 the Supreme Court denied cert. That was the 2002 original
17 2002 condemnation action. It was over in October 2007.

18 In February 2008, Mr. Paul filed a lawsuit in state
19 court raising the same allegations that he's made with this
20 case except under state law claims. It was dismissed by
21 Judge Strickland. Went to the Court of Appeals. It was
22 affirmed. Went to the Supreme Court. They denied cert.

23 After that point, Mr. Paul subsequently turned to the
24 federal courts. He brought a total of five different
25 lawsuits in federal court: in 2012, two of them in 2013,

1 2015, and 2016. They were all heard and adjudicated by
2 Judge Cameron Currie. Ultimately they were all dismissed
3 without prejudice, but they were all dismissed as
4 frivolous. And, and this history, incidentally, is in the
5 memorandum in support of the motion to dismiss.

6 THE COURT: All right.

7 MR. LINDEMANN: That's on the record but, Your Honor,
8 Judge Currie placed him under a prefiling injunction in
9 federal court. So, he was not able to refile the same
10 lawsuit again in federal court. So, he refiled it in state
11 court, and that's what brings us here today.

12 Believe it or not, this is a section 1983 case. There
13 are no state law claims before Your Honor; it's purely
14 federal claims. It's identical to the lawsuits that he
15 brought in federal court, or largely adapted.

16 THE COURT: Well, you know, the people in this state
17 never thought much of the federal government.

18 MR. LINDEMANN: That's where we are, Your Honor.
19 That's where this 2018 case, how -- its original basis.

20 THE COURT: All right.

21 MR. LINDEMANN: We have moved for dismiss. All the
22 parties have a number of grounds: *res judicata*, statute of
23 limitation, various immunities.

24 THE COURT: All right.

25 MR. LINDEMANN: Those are the motions that have been

1 heard by Judge Early and are under advisement.

2 THE COURT: Those are the motions he's yet to rule on?

3 MR. LINDEMANN: Yet to rule on. So, the motion to
4 compel, Your Honor, after we filed a motion to dismiss --
5 and I do dispute what Mr. Paul said. I know, am bound to
6 my clients. I haven't relied on any type of settlement
7 agreement between the Buckles and DOT from back -- the 2002
8 litigation. But he served some discovery, and what I ended
9 up doing, Your Honor -- and that's one of the motions that
10 should be before you -- is I filed a motion for a stay of
11 discovery or a motion for protective order. Just allow
12 this Rule 12(b)(6) motions to be heard before we start
13 going to the tremendous expense of discovery.

14 I have cited in that motion which is in the file --
15 and I can hand up a copy, Your Honor -- a number of federal
16 court cases, since federal law is going to govern this
17 case, that establish that particularly when you have
18 immunity defenses that you're raising, including qualified
19 immunity in this case -- we're also raising the immunity
20 that lawyers can't be sued by third parties. And I'm
21 representing two lawyers in this particular case, and that
22 also obviously applies to Mr. deHolczer.

23 THE COURT: You're getting paid, aren't you?

24 MR. LINDEMANN: I am getting paid, yes, Your Honor.
25 I'm not representing to the court this is pro bono by any

1 means.

2 THE COURT: All right.

3 MR. LINDEMANN: But, but, Your Honor, bottom line is
4 we ask for a stay of discovery and a protective order
5 preventing any type of discovery going forward until
6 there's a decision on those (12) (b) motions.

7 THE COURT: Okay. That's fair.

8 MR. LINDEMANN: So, that's our response to his motion
9 to compel. I served him with an objection to his motion --
10 to his request for production, citing the motion that we
11 had already filed requesting a stay or protective order.

12 THE COURT: All right.

13 MR. LINDEMANN: We also don't agree that the
14 agreement, to the extent there's one in writing, and I
15 don't believe that there is. And I'll probably let Mr.
16 Quinn touch on that since he was involved in the 2002
17 litigation. I was not. In fact, I haven't gotten involved
18 until the 2018 litigation.

19 THE COURT: All right.

20 MR. LINDEMANN: But I'm not aware of there being even
21 a, a written agreement. I think the agreement is what's
22 expressed in the various orders that were issued.

23 THE COURT: Okay. That fine.

24 MR. LINDEMANN: So, that's the response, Your Honor,
25 to the motion to compel. We believe that the court should

1 at least wait until after there's rulings on the 12(b)
2 motions before any type of discovery is ordered in this
3 case.

4 As far as the motions for default judgment, as I
5 indicated, I originally was defending DOT and their current
6 employees Paul deHolczer and Natalie Moore. Subsequently,
7 we received or I received Mr. Paul's motion for default
8 judgment where he was claiming that he had effected service
9 on former employees Oscar Rucker and Macie Gresham, neither
10 of which have been employed since 2010, Your Honor.

11 THE COURT: '10.

12 MR. LINDEMANN: You know, they were employed back in
13 2002 when the condemnation was going on, but they haven't
14 been employed since.

15 If you look at Mr. Paul's default package, as he put
16 it, he has included two green return receipts that he
17 claimed effected service on Ms. Gresham and Mr. Rucker.
18 They were sent, Your Honor, to SCDOT. That's even the way
19 he addressed it -- SCDOT, attention Macie Gresham -- and
20 gave the Park Street address, which is obviously the
21 headquarters for DOT.

22 THE COURT: Remind me to send Judge Newman a thank
23 you. Go ahead.

24 MR. LINDEMANN: And Mr. Rucker's appears the exact
25 same way. A mail room employee signed those green cards,

1 okay? We have presented the court with affidavits of
2 Sherrie Morry, who's an employee of SCDOT who has explained
3 why those cards got, got signed and what she did with them.
4 When she realized that they were lawsuits, she mailed them
5 back to Mr. Paul and said return to sender. Ultimately --
6 I've also included an affidavit in the record of Mr.
7 Rucker.

8 Mr. Rucker has indicated that he was unaware of this
9 lawsuit. He didn't give anybody at DOT permission or
10 authority to accept service of process on his behalf.

11 Just so the court is aware, I have not gone out and
12 tried to find Macie Gresham. The information that I was
13 provided -- and is, in fact, in Mr. Rucker's deposition --
14 is that she is in very poor health. There is some belief
15 that she even may be in a nursing home at this point, and I
16 certainly did not want to go and disturb her and try to
17 worry her about a default judgment where the plaintiff's
18 claiming \$800,000 against her.

19 THE COURT: All right, sir.

20 MR. LINDEMANN: I don't believe that that's necessary
21 for the court to rule on these motions, but I would ask the
22 court for leave. If you think that that is necessary, I
23 will go through those steps. I just don't think that's
24 fair to this woman to do that.

25 THE COURT: All right, sir.

1 MR. LINDEMANN: We have -- as I indicated, the
2 plaintiff did not follow proper procedure to serve these
3 two individuals. He served them by certified mail sent to
4 their former employer, SCDOT. They hadn't worked there in
5 years. It signed for by a mail room employee.

6 In addition, a very important point: it was not sent
7 restricted delivery, at least according to the green cards
8 that have been put into evidence. It was not sent
9 restricted delivery and as I indicated, the actual way the
10 address was done on the envelope that mimics what was on
11 the green cards doesn't even show that it was being sent to
12 an individual. It was being sent to SCDOT, attention to
13 two -- those two employees, former employees.

14 THE COURT: All right.

15 MR. LINDEMANN: So, our position is, Your Honor, on
16 his motion asking for a default judgment, we have filed a
17 motion to set aside the entry of default, should the clerk
18 have already entered default. I don't believe the clerk
19 has. We are asking this court to not enter default or set
20 aside entry of default if that's occurred because of not
21 proper service.

22 THE COURT: All right.

23 MR. LINDEMANN: In addition, we included a 12(b)(2)
24 and a 12(b)(5) motion to dismiss in the same motion, Your
25 Honor. That's before you asking the court to dismiss the

1 complaint as against Mr. Rucker and Ms. Gresham for lack of
2 personal service and also lack of personal jurisdiction.

3 THE COURT: All right.

4 MR. LINDEMANN: Thank you, Your Honor.

5 (A PAUSE.)

6 THE COURT: Thank you, Mr. Lindemann.

7 Any response? Oh, I'm sorry.

8 MR. QUINN: Your Honor.

9 THE COURT: I apologize.

10 MR. QUINN: First of all, I, I join in with what Mr.
11 Lindemann's told the court. I was representing the Buckles
12 when this matter started with the condemnation. The
13 history real briefly is that Mr. deHolczer was representing
14 DOT. He and I on behalf of our clients agreed upon a
15 settlement of \$156,750. I do not recall -- it's been
16 fourteen years, but I don't recall an agreement, a written
17 agreement with respect to settlement.

18 We went before Judge Barber -- I have a copy of Judge
19 Barber's order here -- asking Judge Barber to, one ---

20 THE COURT: It was a consent order, was it not?

21 MR. QUINN: It was a -- you're exactly right.

22 THE COURT: I'm guessing.

23 MR. QUINN: It was a consent order. In referring to
24 the consent order, and I'm not really sure -- Your Honor,
25 you're, you're -- it sounds to me like you're obviously

1 familiar with it, but I'll just, I'll briefly refer to --
2 as reflected -- let me back up.

3 It appears to the condemnor, the landowner and
4 condemnor -- it appeared to the court condemnor and
5 landowner agreed to just compensation of \$156,750. It also
6 appears the condemnor and landowner agreed the matter
7 should be transferred to the nonjury trial roster for
8 determination as to the amount that would constitute just
9 compensation, and to whom and in what apportionment the
10 just compensation be paid in the order that, as Your Honor
11 just said, by a consent order.

12 It was tried before Judge Lloyd in 2004. Judge Lloyd,
13 incidentally, was also at one point in time named as a
14 party defendant; he was also sued along with everybody else
15 by Mr. Paul.

16 THE COURT: Well, I can understand why somebody would
17 want to sue Judge Lloyd. Go ahead.

18 MR. QUINN: Well, he got sued, but I don't know that
19 he ever knew that. In his order, in, in Judge Lloyd's
20 order, he did say:

21 As reflected by the order of James Barber, III,
22 dated March 23, 2004, landowners and condemnor
23 agree just compensation was \$156,750. During
24 counsel -- during trial, counsel for landowner
25 and condemnor confirmed such agreement. As

1 reflected thereafter, and upon condemnor's motion
2 for directed verdict, as to just compensation
3 with the consents of landowner's counsel and
4 counsel for Ron Paul advising that -- the court
5 -- the condemnor is entitled to have a motion for
6 directed motion granted. Condemnor's motion is
7 granted, and just compensation is determined to
8 be \$156,750.

9 THE COURT: All right, sir.

10 MR. QUINN: I, I just don't -- there's not any merit
11 at all to Mr. Paul's position with respect to the just
12 compensation.

13 THE COURT: All right.

14 MR. QUINN: And, and I will represent to the court
15 frankly I, I don't recall a written agreement. I think I
16 would recall, but it has been fourteen years. I don't have
17 one in my file. It's not unusual to settle, as Your Honor
18 knows, to settle a case ---

19 THE COURT: They didn't send it to your brother, did
20 they?

21 MR. QUINN: Sir?

22 THE COURT: Never mind.

23 MR. QUINN: But I will tell you basically what
24 happened is Mr. Paul didn't like the order of Judge Lloyd.
25 So, he turns around, as Mr. Brackett put in a brief, and he

1 sued everybody. He sued the highway department, he sued
2 his lawyer, he sued me, he sued Oscar Rucker, he sued Ms.
3 Gresham, and he sued at some point in time Judge Lloyd.

4 THE COURT: All right.

5 MR. QUINN: I'd be happy to answer any questions the
6 court might have.

7 THE COURT: Thank you for your presentation.

8 MR. QUINN: Thank you.

9 THE COURT: Mr. Brackett, anything?

10 MR. BRACKETT: Your Honor.

11 THE COURT: You're in the same position as Mr. Quinn,
12 I assume, to a certain extent.

13 MR. BRACKETT: Well, no, sir. My, my position is a
14 little different. I'm here on a separate special
15 appearance challenging jurisdiction. We got a notice of
16 his motion to enter default and, by the way, I'm here on
17 behalf of Moses, Koon, and Brackett, the law firm now known
18 as Moses and Brackett. Changed names in 2011.

19 THE COURT: Is that John Koon?

20 MR. BRACKETT: No, sir. Cliff Koon.

21 THE COURT: Oh, Cliff is still around, is he?

22 MR. BRACKETT: He's, he's over in Lexington, yes, sir.

23 THE COURT: We worked together in the AG's office
24 forty years ago. Long time ago.

25 MR. BRACKETT: Well, the basis, basis for our special

1 appearance return, Your Honor -- and it is of record; it's
2 on file -- is that the firm was not named as a defendant.
3 We're not a party to this action. We're, we're apparently
4 the only party he didn't actually sue. We're not named in
5 the caption. I say we. The firm Moses and Brackett or
6 Moses, Koon, and Brackett. Not named in the caption as a
7 defendant in any of the -- in the body of the complaint, in
8 the various substantive allegations where he speaks of the
9 parties, of the statutory basis, the damages he seeks
10 against various defendants. The firm's not named. So,
11 he's seeking a default judgment against a nonparty, which
12 you can't do.

13 THE COURT: All right.

14 MR. BRACKETT: And so we're asking that his motion
15 simply be denied for lack of jurisdiction, and that's it
16 for us.

17 THE COURT: Anything further, gentlemen?

18 All right, any response?

19 MR. PAUL: Yes. Yes, Your Honor. Your Honor, I think
20 the defendants, in my opinion, tried to reargue the motions
21 that's before Judge Early which he's -- which was argued
22 two months ago, which the defendants tried to get the case
23 dismissed on the statute of limitations. I think it was
24 *res judicata*, issue of persuasion claims, persuasion law
25 case. And I put in evidence. I studied the law, and I

1 found out that I got arguments against the statute of
2 limitations, which they wanted Judge Early to dismiss it
3 from the bench. He wouldn't do it once I had made my
4 arguments to him and presented my case law on all the stuff
5 they brought up. And that's why he probably still got it
6 for two, for two, for two months.

7 Now, on, on, Your Honor, on the settlement agreement,
8 now I think that defendants are barred by judicial estoppel
9 from claiming that there was no settlement agreement, no
10 written settlement agreement because Judge Currie have
11 ruled on the settlement agreement. She's put in her order,
12 the federal judge put in her order that they protested my
13 claim consistent with the settlement agreement, with a
14 provision in the settlement agreement. Now, Judge Currie
15 put that in the order, like she have looked at the order.
16 So, they have got benefits from claiming that.

17 In addition, it's totally inconsistent with what they
18 have been saying. Now, far as I know, it's always been a
19 settlement agreement. I don't know if the words written
20 settlement agreement was used, but it's always been, it's
21 been agreement. Now I heard it's no agreement since I
22 requested the agreement. Now it's no agreement. So, they
23 got benefits from it. I don't know if they misled the
24 court before or trying to mislead the court now, but I know
25 that they -- this always been about the settlement

1 agreement.

2 THE COURT: All right, sir.

3 MR. PAUL: And that's why I requested a copy because
4 they used that settlement agreement in order to support
5 their motion to dismiss. In other words, they didn't use
6 -- they didn't say settlement agreement, like I argued
7 before. They just said that just compensation was paid in
8 case 4800, which the only thing that was paid was the
9 settlement agreement. Nothing else was paid by South
10 Carolina Department of Transportation.

11 There's one more issue I got here, Your Honor. On
12 defendants Rucker and Graham -- Rucker and Gresham motion
13 to set aside default judgment, I'm going to request a
14 continuation on that, Your Honor, to do some discovery
15 cross-examination. One reason is because the affidavits,
16 one of the affidavits I think that -- and the motions say
17 that after 2010 -- I think I got it here -- that, that they
18 was un -- they retired after 2010. Now, I got here where I
19 served paperwork on them in 2012. The exact date, it was
20 May 2012 where I'm going to give these -- if I could give
21 the court a copy and give these defendants a copy? Give
22 the court a copy.

23 Your Honor, you'll see on here where I served a
24 summons and complaint on these defendants in May 18, 2012,
25 and they was retired at that time. So, wasn't no problem

1 at that time. They accepted service and signed for it and
2 the postal clerk signed for it, which I think is standard
3 procedure for South Carolina Department of Transportation.
4 And so the postal clerk signed for it in 2012, but in 2010
5 they retired. So, they already -- I already have served
6 them a summons and complaint in the past and they'll sign
7 for it. There was no issue then. They didn't raise this
8 issue this time. The only reason they're raising the issue
9 this time, because they're in default, but they'll sign for
10 it before.

11 But anyway, Your Honor, I'm going to request a
12 continuation on the *Graham Law Firm, PA, vs. Muhammad*. I'm
13 going to give the court a copy of this, too, and give the
14 defendants a copy. But I'm requesting continuation, Your
15 Honor, because I need to do discovery because they won't
16 participate in discovery. As they have argued, they want a
17 stay. So, I can't do discovery on these affidavits they
18 got.

19 One of the affidavits say they put the mail -- I think
20 it's from Sherrie -- say she put the package back in the
21 mail. Now, I checked with the post office, and they say if
22 she would have put it back in the mail, since it's
23 certified they would have scanned it in. It would have
24 been scanned, and why did they give it back to the mail
25 clerk? Why they don't have the affidavit from the mail

1 clerk who signed for the packages? Why they don't have
2 that information? I can't see the post office going down
3 there, picking up mail by an unauthorized person, pick up
4 certified mail.

5 So, I'm requesting a continuation on their motion to
6 set aside the judgment, and I need to be able to do
7 discovery on that. I need to talk to this Sherrie; I need
8 to talk to the post office. I need to do some admissions
9 on them to find out the procedures of South Carolina
10 Department of Transportation because the default package is
11 correct. All the I's are dotted.

12 One thing I want to show to you, too, Your Honor. He
13 raised the issue of -- I'll show this to the defendants,
14 too, but they already got this package. He raised the
15 issue it wasn't certified, and you can see right there
16 where it was -- right there where it says certified mail,
17 restricted delivery.

18 THE COURT: Yes, sir.

19 MR. PAUL: That's to Mr. Oscar Rucker.

20 THE COURT: All right, you may go take your seat, sir.

21 MR. PAUL: Okay.

22 THE COURT: Go ahead and sit down.

23 MR. PAUL: Oh, I need to get that copy back, Your
24 Honor. I didn't know if you needed it or not.

25 THE COURT: It's okay.

1 MR. PAUL: But it's a copy in the file. That's what I
2 was waiting on.

3 So, it -- so -- but then again precise procedures with
4 the -- are not required according to the law. I think I
5 read that somewhere. The precise procedure is not
6 required. So, Your Honor, I'm requesting a continuation on
7 that.

8 Moving over to the next motion for default, Mr. Moses,
9 Koon, and Brackett, let me get my notes on that, Your
10 Honor.

11 THE COURT: All right, sir.

12 MR. PAUL: Now, Your Honor, in the past I filed this
13 against Moses, Koon, and Brackett and they have responded.
14 Now, basically Mr. Moses, Koon, and Brackett argument is,
15 basically is that he is not a party defendant. He is not
16 listed in the complaint but, Your Honor, he is listed in
17 the complaint. On page 1, you go on over to paragraph 1.
18 You got to the end of paragraph 1, which is on page 2,
19 introduction, it list all the defendants and then say:
20 Hereinafter referred to collective as defendants are
21 defendants.

22 I think that's the standard procedure. So, I don't
23 have to go through and list him every single time. So,
24 every time you say defendants are defendants, we are
25 talking about Moses, Koon, and Brackett and they are surely

1 listed.

2 Now, if you go over to page -- on the complaint if you
3 go to page 4, paragraph 5, Moses, Koon, and Brackett is
4 listed there again, and then it say again: Hereinafter
5 referred to as defendant deHolczer, deHolczer. So, when
6 you mention deHolczer, deHolczer, we're talking about
7 Moses, Koon, and Brackett, too, Your Honor.

8 In addition, Your Honor, Mr. Brackett should have
9 filed his special appearance before the thirty days expired
10 because at this time, I filed the affidavit of default and
11 once I filed the affidavit of default, this defendant was
12 in default. And so the proper procedure at this time is
13 for him to file a motion to set aside default, saying the
14 service was not proper, wrong person signed for the
15 summons, but he have not did that. He have argued
16 something that's past time now. He should have filed that
17 before the thirty days expired. Thank you, Your Honor.

18 THE COURT: Thank you, sir.

19 Mr. Lindemann, anything further?

20 MR. LINDEMANN: Just real quick, Your Honor. His
21 motion for a continuance, we object to that, oppose that.
22 It was not made obviously until just now on reply what he
23 made -- you know, he argued his motion. You know, bottom
24 line is an oral motion for a continuance under these
25 circumstances to conduct discovery is just not appropriate.

1 We, we object to that.

2 THE COURT: I think it's left to or at the discretion
3 of the trial judge, Mr. Lindemann.

4 MR. LINDEMANN: Well, it probably is, Your Honor. We,
5 we certainly wanted to state our objection.

6 THE COURT: Your position ---

7 MR. LINDEMANN: And I, I ---

8 THE COURT: I note your position.

9 MR. LINDEMANN: I, I think there's enough information
10 in the record for the court to make a determination that
11 there wasn't proper service by serving the mail room. The
12 fact that somebody in the mail room may have signed for one
13 of the federal cases in 2012 doesn't make it proper
14 service.

15 THE COURT: I understand.

16 MR. LINDEMANN: Thank you.

17 THE COURT: Anything further, Mr. Quinn?

18 MR. QUINN: Your Honor, only this. To the extent that
19 what Mr. Paul would argue applies to me, that I would join
20 Mr. Lindemann in his objection.

21 THE COURT: All right.

22 MR. QUINN: I'm sure it does apply.

23 THE COURT: Mr. Brackett.

24 MR. QUINN: But just for the record.

25 THE COURT: Mr. Brackett.

1 MR. BRACKETT: Your Honor, the references to Moses,
2 Koon, and Brackett in the complaint are strictly related to
3 Paul deHolczer, defendant Paul deHolczer, who has been sued
4 individually and as a partner of the law firm of Moses,
5 Koon, and Brackett. It is simply a descriptive term to, to
6 describe the status of defendant deHolczer. The firm
7 itself is not named as a party.

8 THE COURT: I understand.

9 Well, gentlemen, thank you for your lively
10 presentation. I will take everything into account, review
11 the file, let you know my decision in due course. Good
12 luck everybody.

13 Mr. Paul, good luck to you, sir.

14 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 16TH DAY OF APRIL, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 4TH, 2019

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

JEANETTE W. MCBRIDE
C.C.P., G.S., & F.C.

2019 JUN 14 AM 9:00

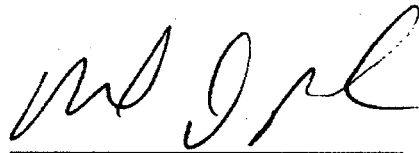
RICHLAND COUNTY
FILED

AFFIDAVIT
OF
RONALD I. PAUL

PERSONALLY, appeared before me the undersigned, Ronald I. Paul, who
first being duly sworn, deposes and says:

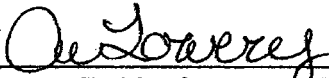
1. I am over 18 years of age. I am competent to make this affidavit, and I have
personal knowledge of the facts stated in this affidavit.

2. I am the Plaintiff *Pro Se* in the above-entitled action; that the Civil Action Coversheet, Summons and Complaint therein were filed on October 26, 2018 and, duly served on the Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity as explained in my Affidavit of Default filed on December 31, 2018.
3. The Civil Action Coversheet, Summons and Complaint was not return to me.



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

SWORN TO AND SUBSCRIBED BEFORE ME
on the 12th day of June 2019.



Notary Public for South Carolina
My Commission Expires: FEB 17, 2021



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,)

Plaintiff,)

Civil Action No. 2018-CP-40-5641

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 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,)

AFFIDAVIT OF OSCAR K. RUCKER

Defendants.)

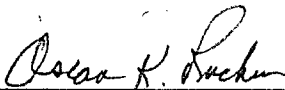
PERSONALLY APPEARED BEFORE ME, OSCAR K. RUCKER, who first being duly sworn, deposes and states as follows:

1. I am a former employee of the South Carolina Department of Transportation (SCDOT). I retired from SCDOT in 2010. At no time have I authorized SCDOT or anyone employed by SCDOT to accept service of any legal documents on my behalf, including this lawsuit filed by Ronald Paul against me and others.

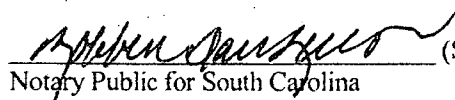
2. The attempted service of this lawsuit at the SCDOT address was not proper. I do not work at the SCDOT address to which the lawsuit was mailed by Mr. Paul. I was not made aware of any attempt to serve me with this lawsuit until after Mr. Paul filed his Motion for Entry of Default and Default Judgment.

3. I am also aware that Macie Gresham retired from SCDOT prior to my retirement) in 2010. It is my understanding that she is presently in poor health.

FURTHER AFFIANT SAYETH NOT.


OSCAR K. RUCKER

Sworn to and subscribed before me this
the 31st day of January 2019.

 (SEAL)
Notary Public for South Carolina

Commission Expires: 02/21/2024

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ronald I. Paul,)
Plaintiff,)

Civil Action No. 2018-CP-40-5641

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 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.)

AFFIDAVIT OF SHERRIE S. MOREY

PERSONALLY APPEARED BEFORE ME, SHERRIE S. MOREY, who first being duly sworn, deposes and states as follows:

1. I am employed by the South Carolina Department of Transportation (SCDOT) in the Rights of Way Director's Office.

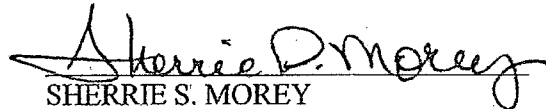
2. On or about October 28, 2018, I received two certified letters from Ronald Paul that were addressed to Oscar K. Rucker and Macie M. Gresham at the SCDOT address. Neither Mr.

Rucker nor Ms. Gresham were employed by SCDOT at that time or since that time. Mr. Rucker and Ms. Gresham both have been retired from SCDOT for several years. After consulting with the legal office, I handwrote "Return to Sender" on both envelopes and placed them in the U.S. Mail for their return to Mr. Paul.

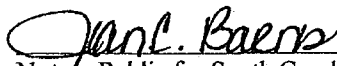
3. Neither I nor anyone with SCDOT accepted service of the lawsuit in this case for Oscar K. Rucker or Macie M. Gresham. I have never been authorized by Oscar K. Rucker or Macie M. Gresham to accept service of legal papers on their behalf.

4. From my review of the return receipts, it appears that John Furgess, who is a SCDOT Postal Specialist, signed both return receipts. Mr. Furgess has not been authorized by Oscar K. Rucker or Macie M. Gresham to accept service of legal papers on their behalf.

FURTHER AFFIANT SAYETH NOT.


SHERRIE S. MOREY

Sworn to and subscribed before me this
the 31st day of January 2019.

 (SEAL)
Notary Public for South Carolina

Commission Expires: 11/18/24

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE L. CASEY MANNING
Circuit Court Judge
Fifth Judicial Circuit

CASE NO: 2018-CP-400-5641

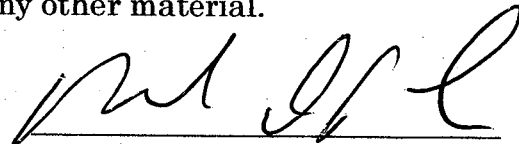
RONALD I. PAUL.....Appellant,

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, Plant & 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.

CERTIFICATE OF COUNSEL

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



RONALD I. PAUL
Post Office Box 4353
Columbia, South Carolina 29240
(803) 414-2305
Appellant, *Pro Se* Litigant

February 10, 2020
Columbia, South Carolina

RECEIVED
FEB 11 2020
SC Court of Appeals