THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2019-002076
Case No. 2018-CP-40-5641

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.

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STATEMENT OF THE CASE

This litigation arises from a condemnation action that was commenced in 2002 by the Respondent South Carolina Department of Transportation ("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 Appellant Ronald Paul as the just compensation payable for his leasehold interest. (R. 84-94).[1] That Order was subsequently appealed by the Appellant, and the Court of Appeals affirmed on October 23, 2006. (R. 95-97). The South Carolina Supreme Court later denied a petition for writ of certiorari. (R. 98-99).

On February 20, 2008, the Appellant 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, Quinn, and Ormond. That Complaint included causes of action for civil conspiracy in several

[1] The pertinent pleadings and orders filed in the 2002 condemnation action and subsequent litigation commenced by the Appellant were submitted into the record in support of Motions to Dismiss filed by the Respondents. The Circuit Court properly took judicial notice of those pleadings and orders. (R. 19). *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." *See also, Wise v. Wise*, 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011).

particulars. (R. 100-114). 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. (R. 118-125). The Appellant appealed to the Court of Appeals which affirmed the dismissal on November 19, 2010. (R. 126-128). On October 9, 2011, the Supreme Court denied a petition for writ of certiorari. (R. 129).

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

> *Paul v. South Carolina Department of Transportation*,
> Civil Action Number 3:12-1036-CMC-PJG
>
> *Paul v. South Carolina Department of Transportation*,
> Civil Action Number 3:13-367-CMC-PJG
>
> *Paul v. South Carolina Department of Transportation*,
> Civil Action Number 3:13-1852-CMC-PJG
>
> *Paul v. South Carolina Department of Transportation*,
> Civil Action Number 3:15-2178-CMC-PJG
>
> *Paul v. South Carolina Department of Transportation.*,
> Civil Action Number 3:16-1727-CMC-PGJ

In these federal lawsuits, the Appellant 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, United States District Judge Cameron M. Currie granted the Defendants' motions to dismiss without prejudice. (R. 147-154). The Appellant

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. (R. 166-178). In dismissing the 2016 action, Judge Currie imposed a pre-filing injunction on the Appellant. (R. 179-185). In those previous lawsuits, the Appellant alleged conspiracy claims under state and federal law against the current Respondents 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 Appellant filed the current lawsuit in state court. This action, like the others, includes federal Section 1983 civil conspiracy claims against the same Defendants. (R. 31-59). In lieu of filing Answers, the Respondents SCDOT, de Holczer, Moore, Quinn, and Ormond filed Motions to Dismiss which were granted by Circuit Court Judge Jocelyn Newman by Order filed November 13, 2019. (R. 18-27). Judge Newman granted a dismissal on several alternative grounds including statute of limitations, res judicata, and collateral estoppel defenses. The Appellant filed a Rule 59(e) Motion for

Reconsideration, which was denied by Judge Newman by Form Order entered on November 26, 2020. (R. 28-30).[2]

The Appellant then proceeded to file this appeal.

[2] The Appellant also named the Respondents Oscar K. Rucker and Macie M. Gresham in the 2018 lawsuit. In response to the Appellant's attempt to hold them in default, the Respondents Rucker and Gresham filed a Motion to Set Aside Entry of Default and Motion to Dismiss. Those motions were heard by Circuit Court Judge L. Casey Manning who issued an Order entered June 7, 2019, granting their Motion to Set Aside Entry of Default and Motion to Dismiss. (R. 1-10). That decision is the subject of another appeal that is currently pending.

STANDARD OF REVIEW

When reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494, 497 (2014). "If the facts alleged and inferences reasonably deducible from the allegations set forth in the complaint, viewed in the light most favorable to the plaintiff, entitle him to relief on any theory, dismissal under Rule 12(b)(6) is improper." *Id.*

"When reviewing a motion to dismiss for failure to state facts sufficient to constitute a cause of action, the pleadings must be construed liberally, and all well pled facts must be presumed true." *Doe*, 754 S.E.2d at 497-498. However, only "well pled facts" are to be presumed true. In contrast, issues of law -- which are not "well pled facts" -- are for the Court and are reviewed *de novo*. 754 S.E.2d at 498. This Court has previously explained that, on a Rule 12(b)(6) motion, "the court is required to presume all well pled *facts,* not propositions of law, to be true." *HHHunt Corp. v. Town of Lexington,* 389 S.C. 623, 699 S.E.2d 699, 705 (Ct. App. 2010). (Emphasis in original).

In *Spence v. Spence,* 368 S.C. 106, 628 S.E.2d 869 (2006), the Supreme Court recognized that affirmative defenses may be raised in a motion to dismiss "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." 628 S.E.2d at 878. The Court is also allowed to take judicial notice of previously filed pleadings and court orders when ruling on a Rule 12(b)(6) motion. *Doe*, 754 S.E.2d at 497, n.2. *See also*, Rule 201(f), SCRE ("judicial notice may be taken at any stage of the proceeding").

ARGUMENT

I. The Circuit Court correctly ruled that the Appellant's current Complaint is barred by the three-year statute of limitations applicable to actions brought pursuant to 42 U.S.C. § 1983.

The Circuit Court dismissed the Appellant's Complaint because it is barred by the applicable three-year statute of limitations. The Appellant's current Complaint was filed on October 26, 2018, and as a result, all claims that arose prior to October 26, 2015 are time-barred. As the Circuit Court observed, "[t]he 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 [Appellant] prior to October 26, 2015." (R. 21). The Circuit Court also recognized 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." (R. 21-22). Moreover, the Circuit Court correctly found that the Appellant's 2008 litigation, which ended in October 2011, "raised the same facts and conspiracy claims as presently re-asserted in the 2018 action." (R. 22).

To challenge the statute of limitations rulings on appeal, the Appellant makes four arguments. First, the Appellant argues that his first cause of action for declaratory relief was brought under state law and not federal law, specifically 42

U.S.C. § 1983. Second, the Appellant contends that his claim for declaratory relief is equitable in nature, to which the statute of limitations is inapplicable. Third, the Appellant insists that his claims involve a sealed instrument, and as a result, the proper statute of limitations would be twenty years under S.C. Code Ann. § 15-3-520(b). Finally, the Appellant argues that the last overt act giving rise to his conspiracy claim occurred in April 2018, and as a result, the conspiracy claim was timely brought. Each argument lacks merit.

As indicated, the Appellant argues that his first cause of action for declaratory relief is a state law claim rather than one brought under 42 U.S.C. § 1983. A clear reading of the Appellant's Complaint does not support that assertion. "Count One" in the Complaint includes the sub-caption "Declaratory Judgment 42 U.S.C. § 1983." (R. 55). Indeed, the caption to the entire Complaint includes a reference to 42 U.S.C. § 1983. (R. 32). Moreover, the Appellant further pleads: "This action is brought pursuant to 42 U.S.C. Section[] 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." (R. 34). Finally, the Appellant seeks a declaration that his constitutional rights were violated, specifically his rights under the Takings Clause of the United States Constitution. (R. 56). Thus, there is

no question that the Circuit Court correctly construed the first cause of action for declaratory relief as being alleged under federal law, specifically 42 U.S.C. § 1983.

The Appellant is also incorrect in arguing that his first cause of action for declaratory relief is equitable in nature, and thus, a statute of limitations is inapplicable. As the South Carolina Supreme Court has held, "[a] suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781, 782 (1991). "An issue essentially one at law will not be transformed into one in equity simply because declaratory relief is sought." *Id*. Here, as indicated, the Appellant's claim for declaratory relief seeks a ruling that the Respondents violated the Appellant's constitutional rights under the Takings Clause of the United States Constitution, which is an action at law. In fact, in paragraph 106, which contains the prayer for that first cause of action, the Appellant specifically seeks the recovery of monetary relief, namely "the resultant financial damages approximating $310,000.00," which is further proof that the declaratory judgment action is one at law. (R. 56). As such, the three-year statute of limitations is a proper time bar on that claim.

Next, the Appellant insists that the applicable statute of limitations is twenty years under S.C. Code Ann. § 15-3-520(b) because the original condemnation action in 2002 involved property on which he had a commercial lease, which he

claims -- without proof -- was a sealed instrument. Nonetheless, it makes no difference whether the lease was a sealed instrument or not. Both of the Appellant's causes of action are brought pursuant to 42 U.S.C. § 1983, and as the Circuit Court correctly ruled, the only appropriate statute of limitations for a Section 1983 action 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). In *Owens v. Okure*, 488 U.S. 235 (1989), the Supreme Court further explained that "where state law provides multiple statutes of limitations for personal injury actions, courts considering § 1983 claims should borrow the general or residual statute for personal injury actions." 488 U.S. at 249-250. 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, this Court has held that "[i]n South Carolina, § 1983 claims are subject to a three-year statute of limitations." *Estate of Mims v. South Carolina Department of Disabilities and Special Needs*, 422 S.C. 388, 811 S.E.2d 807, 813 (Ct. App. 2018). *See also, Simmons v. South Carolina State Ports Authority*, 694 F.2d 64 (4th Cir. 1982). Thus, the Circuit Court was correct in applying a three-year statute of limitations to the Appellant's Section 1983 claims.

Finally, the Appellant argues that his second cause of action for conspiracy under 42 U.S.C. § 1983 was timely brought because the last overt act occurred on April 19, 2016. Specifically, the Appellant points to paragraph 79 of his Complaint, which reads: "In April of 2016, South Carolina Department of Transportation, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore, Paul D. de Holczer, Michael Quinn, G.L. Buckles, and J. Charles Ormond filed documents continuing to reject Paul's claims." (R. 49). That is a reference to filings made in the last of the federal lawsuits, specifically Civil Action Number 3:16-1727-CMC-PGJ.

At the motion hearing, the Appellant explained to the Circuit Court that the "overt acts" that he was claiming to be timely are filings made to the federal or state courts or arguments made by the Respondents in the defense of the lawsuits that he has brought. (R. 441-443). Otherwise, as the Appellant conceded to the Circuit Court, the overt acts in furtherance of the alleged conspiracy occurred in the 2002 to 2008 time frame (R. 440-441), and certainly long before October 26, 2015. In his brief, the Appellant goes so far as to now argue that pleadings or motions filed *in this very case* are "overt acts" giving rise to the "continuing conspiracy" that began in 2002. *See*, Appellant's Brief, p. 22.

Yet, it is well settled that measures taken to defend litigation brought by a plaintiff alleging a conspiracy, including the filing of pleadings in defense of the

action, cannot be treated as the "overt act" giving rise to the conspiracy. If that were the case, as the Appellant seems to argue without any supporting authority, practically speaking there would be no statute of limitations for a conspiracy claim. In that case, a plaintiff could, as the Appellant does here, file a lawsuit long after the alleged conspiracy was completed and then claim that the defendant's denial of the conspiracy in its answer or other actions taken in defense of that lawsuit are the "overt act" giving rise to the "continuing conspiracy." In *Thompson v. California Fair Plan Assn.*, 221 Cal.App.3d 760, 270 Cal.Rptr. 590 (1990), the California Court of Appeals held that "the defense of the suit cannot serve as an overt act sufficient to revive an otherwise time-barred claim on a conspiracy theory." 270 Cal.Rptr. at 594. The court explained that the defense of an earlier lawsuit is not an overt act that can be considered "wrongful because it is absolutely privileged based on considerations of public policy encouraging free access to the courts." *Id*. The United States Supreme Court has similarly held that the defense of litigation, specifically "the filing of the alleged libelous matter as part of the defendants' answer in the mandamus action," cannot be considered the overt act giving rise to an actionable conspiracy claim. *Nalle v. Oyster*, 230 U.S. 165, 183 (1913). *See also, United States v. Craft*, 105 F.3d 1123 (6th Cir. 1997) (court recognized that "filing the Notice of Appeal could not constitute an overt act in furtherance of the conspiracy"); *McLean v. International Harvester Co.*, 817 F.2d 1214, 1220, n.8

(5th Cir. 1987) (stating that privileged statements made in litigation cannot form the overt act required to prove a civil conspiracy).[3] Therefore, in the case at bar, the Circuit Court was correct in its analysis that the last "overt act" alleged by the Appellant occurred long before October 26, 2015, and therefore, the Appellant's conspiracy claim was time-barred.

In sum, the Circuit Court correctly ruled that the Appellant's Section 1983 claims are time-barred by application of a three-year statute of limitations. The orders and pleadings from the prior 2008, 2012, 2013, 2015, and 2016 lawsuits clearly demonstrate that the Appellant's alleged claims accrued and were known to the Appellant prior to October 26, 2015. In fact, the very same facts and conspiracy claims were asserted in the 2008 action that was dismissed with prejudice. Thus, there is no question that the Appellant's current Complaint is time-barred and was properly dismissed with prejudice.

[3] The foregoing authorities recognize that arguments made in defense of litigation, including the filing of pleadings that deny the occurrence of a conspiracy, are privileged and thus cannot constitute the "overt act" giving rise to the conspiracy. South Carolina law also recognizes that the filing of court pleadings is absolutely privileged. *See, Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002); *McKesson & Robbins*, 206 S.C. 269, 33 S.E.2d 585 (1945).

II. The Circuit Court correctly ruled that the Appellant's current Complaint is barred by the defense of res judicata or alternatively by the application of collateral estoppel.

The Circuit Court also ruled that the Appellant's current Complaint is barred by the defense of res judicata or alternatively by the application of collateral estoppel. On appeal, the Appellant contests that ruling by arguing only that his numerous federal court actions were dismissed by Judge Currie without prejudice and thus cannot be considered a decision on the merits. Nonetheless, the Appellant overlooks and fails to address the fact that the Circuit Court based its res judicata ruling on the 2008 *state court* action which was dismissed by Judge Strickland with prejudice, and not the various federal court cases. The Circuit Court ruled as follows:

> 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.

(R. 22-23). In his brief, the Appellant does not even address this ruling and rather focuses only on the preclusive effect of Judge Currie's rulings in the federal

lawsuits. Thus, the Appellant's appeal is barred by application of the two-issue rule.[4]

Nonetheless, even if properly preserved, the Circuit Court's ruling based on res judicata is correct and should be affirmed. "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*. Here, as the Circuit Court ruled, the prior judgment issued in the 2008 action was final, valid, and on the merits. (R. 118-125). That judgment was affirmed in 2010 by this Court. (R. 126-128). Thereafter, the Supreme Court denied the Appellant's petition for writ of certiorari in 2011. (R. 129). Likewise, the 2008 action involved the same parties and includes the same allegations and

[4] In applying the "two-issue" rule, the Supreme Court has explained that "where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900, 903 (2010). Similarly, in *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986), this Court held that "[a]n alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal." 348 S.E.2d at 845.

claims as asserted in this action. Consequently, the defense of res judicata was properly applied by the Circuit Court, and that ruling should be affirmed.

Alternatively, the Circuit Court found that the defense of collateral estoppel bars the relitigation of the same issues adjudicated in the 2008 action. The Appellant likewise did not address that issue, focusing instead on the federal lawsuits. The Circuit Court's dismissal of the current Complaint should be affirmed on the collateral estoppel defense as well.

III. The Circuit Court correctly ruled that the Respondents Quinn, Ormond, and their law firms are not state actors who may be held liable under 42 U.S.C. § 1983.

The Circuit Court also ruled as "an additional basis for dismissal" that "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." (R. 24). This Court need not reach this issue because the foregoing statute of limitations, res judicata, and collateral estoppel rulings are already dispositive. However, in the event the Court reaches this issue, the Circuit Court's ruling is correct.

The Circuit Court's decision is supported by numerous federal cases. In *Marcantoni v. Bealefeld*, 734 Fed. Appx. 198 (4th Cir. 2018), the Fourth Circuit explained that "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." 734 Fed. Appx. at 199. A federal district court recently explained: "Overwhelmingly, courts, including the Supreme Court, have found that 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." *Loved Ones in Home Care, LLC v. Toor*, 2019 WL 2708459, *3 (S.D. W.Va. 2019). *See also*, *Mason v. Department of Justice*, 39 Fed. Appx. 205, 207 (6th Cir. 2002) ("private attorneys do not act under color of law in the representation of their individual clients").

In sum, the Circuit Court correctly ruled that the Respondents Quinn, Ormond, and their law firms are not proper parties and were properly dismissed on this additional basis.

IV. The Circuit Court correctly ruled that the Appellant was not entitled to an opportunity to file an amended complaint where the dismissal was on the merits based on legal defenses and not on pleading deficiencies that could be corrected.

Lastly, the Appellant argues that the Circuit Court erred in denying him the opportunity to replead or amend his Complaint. However, as the Circuit Court recognized, 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*. In this case, the Circuit Court ruled that "the Plaintiff's federal claims are dismissed on the merits and not because of any correctable pleading deficiency." (R. 25). That decision is in accordance with the Supreme Court's decision in *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019), and should be affirmed. The Appellant, in fact, has not even proposed how he could replead or amend his current Complaint to correct the fatal deficiencies found by the Circuit Court. This issue is without merit.[5]

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[5] The Appellant also includes a discussion of the United States Supreme Court's decision in *Knick v. Township of Scott*, 139 S.Ct. 2162 (2019), which overruled *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). The Appellant seems to argue that the decision in *Knick* should be applied retroactively to resurrect his untimely Section 1983 claims. In addition to this issue not being preserved, it lacks all merit. A federal district court disposed of a similar issue raised in the case of *Thomas v. Tennessee*, 451 F.Supp.3d (W.D. Tenn. 2020). The court explained:

> If Thomas were to assert a new § 1983 Takings Clause claim following *Knick*, he would not be required to exhaust his Tennessee administrative remedies before coming to federal court. *Knick*, however, does not retroactively apply to Thomas's prior takings claim. *See Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993) ("When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases *still open on direct review*...." (emphasis added)); *see also Déjà vu v. Metro Gov't of Nashville and Davidson Cty*, 421 F.3d 417, 420-21 (6th Cir. 2005) (explaining that changes in law announced by the Supreme Court do not apply retroactively to collateral attacks on

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents respectfully request that this Court affirm the orders issued by Judge Jocelyn Newman granting their Motions to Dismiss and dismissing this action with prejudice.

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> final judgments, to cases in which the parties have exhausted all appellate options, and to cases in which the deadline for filing a timely appeal has lapsed). Even if *Knick* retroactively applied to Thomas's claims, his takings claims would still be time-barred.

451 F.Supp.3d at 866. The same is true in this case. The Appellant's federal claims, including any takings claims, have been litigated and resolved years ago. The decision in *Knick* does not resurrect those claims and grant the Appellant a new statute of limitations.

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondents certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondents certifies that the Final Brief of Respondents complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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January 25, 2021

CERTIFICATE OF SERVICE

Pursuant to Section (c)(6) of the Supreme Court's Amended Order Re: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), the undersigned employee of Lindemann & Davis, P.A., does hereby certify that service of the **Final Brief of Respondents** was made upon the *pro se* Appellant by email and U.S. Mail and upon all other counsel of record by email only this this the 25th day of January 2021:

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RE: Ronald I. Paul v. South Carolina Department of Transportations; *et al.*
Court of Appeals Case Number: 2019-002076
Civil Action Number: 2018-CP-40-5641
Our File Number: 79.20087

Dear Ms. Kitchings:

Pursuant to Section (c)(6) of the Supreme Court's Amended Order Re: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), please find enclosed for filing by email only the **Final Brief of Respondents** in the above referenced matter. By copy of this letter, I am serving copies on the *pro se* Appellant by U.S. Mail and email, and on all other counsel of record by email only.

Thank you for your assistance in this matter. If you have any questions, please advise.

Sincerely,

LINDEMANN & DAVIS, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: (w/ Enclosures)

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