THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

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

Appellate Case No. 2019-002076
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.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

The Appellant Ronald I Paul of Richland County, has petitioned this Court for a rehearing of the recent decision in Paul v. SCDOT, Op. No. 2022-UP-051 (S.C. Ct. App. filed February 9, 2022). Appellant respectfully submits that the following points were overlooked or misapprehended and not address by this Court:

I

Issue two

It appears this Court overlooked or misapprehended and did not address "clearly established" precedents in Est. of Mims v. S.C. Dep't of Disabilities & Special Needs, 422 S.C. 388, 399, 811 S.E.2d 807, 813 ((Ct. App. 2018) Certiorari denied August 3, 2018)). The decision binds the Court of Appeals as precedents "therefore" as a matter of law, the applicable statute of limitations is 20 years. S.C. Code Ann. § 15-3-520(b).

This Court held Mims' 42 U.S.C. section 1983 claims are not time-barred by the three-year statute of limitations in S.C. Code Ann. § 15-3-530(5). Instead, this Court held that "Mims' 42 U.S.C. section 1983 claims are entitled to a five-year extension of the statute of limitations under section 15-3-40, we find Mims' § 1983 claims are not time-barred".

In this court opinion, in Mins, this court held that:

In South Carolina, § 1983 claims are subject to a three-year statute of limitations. See Wilson v. Garcia, 471 U.S. 261, 271 (1985) (holding that courts must adopt a "personal injury" statute of limitations period for § 1983 actions) abrogated on other grounds by Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369 (2004); S.C. Code Ann. § 15-3-530(5) (2005) (providing a three-year limitations period for personal injury actions). **Because Mims' lawsuit commenced on May 7, 2008, and he is entitled to a five-year extension of the statute of limitations under section 15-3-40, we find Mims' § 1983 claims are not time-barred unless they accrued before May 7, 2000.**

Est. of Mims v. S.C. Dep't of Disabilities & Special Needs, 422 S.C. 388, 399, 811 S.E.2d 807, 813 (Ct. App. 2018)

Applying this precedent; Because Paul' lawsuit commenced on October 26, 2018 (R 32) and he is entitled to a twenty-year statute of limitations under S.C. Code section 15-3-520(b) (Br. of Appellant p.18-19) the court should find Paul' § 1983 claims are not time-barred unless they accrued before October 26, 1998. See

Est. of Mims v. S.C. Dep't of Disabilities & Special Needs, 422 S.C. 388, 399, 811 S.E.2d 807, 813 (Ct. App. 2018)

It is important to recognize that the Respondents had received the Appellant Return Motion (Plaintiff's Combined Memorandum in Opposition to all Defendants Motions to Dismiss) filed on February 11, 2019 (R 205) which stated the "correct statute of limitations in the instant case is 20 years upon sealed instrument, S.C. Code Ann. § 15-3-520(b)". In addition, the first motion hearing was held on February 11, 2019 (R 300-328) which Appellant explained in detail the commercial lease was a sealed instrument. (R 316) The second motion hearing was not held *until more than six months later* on August 8, 2019. The Respondents had sufficient opportunity to dispute the sealed instrument, during that interim or at the motion hearing on August 8, 2019 (R 392-446) if they truly believed the commercial lease was not a sealed instrument. No attempt was made. [1]

[1] While inapplicable because the Commercial Lease is clearly a sealed instrument filed in the Richland County Register of Deeds office, the Court's attention is urged to S.C. Code Ann.§ 19-1-160 : "Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto." The intent of the parties is the guiding principle for the determination.

II

Issue three

This Court overlooked or misapprehended and did not address the issue of a new limitations period is created with each overt act in furtherance of the conspiracy, and the statute of limitations begins to run on the date of the last overt act. (Br. of Appellant p.20-22)

This court held in this case:

> As to issues two and three, we hold the circuit court properly granted Respondents' motions to dismiss because Paul's complaint reflects he pursued causes of action under 42 U.S.C. section 1983 for alleged conduct that occurred outside the applicable three-year statute of limitations.[2]

An overt act is an independent act that comes after the agreement or conspiracy and is performed to affect the objective of the conspiracy. The overt act "within itself" is not a cause of action under 1983 conspiracy claim; its sole function is to demonstrate that the conspiracy is operative and or continuing. (Br. of Appellant p.20-22) then go to (R 434 lines 13-25) and (R 435 lines 1-25) then go to (R 55-56) all read together, demonstrates overt acts done in furtherance of the object of the conspiracy.[3] A conspiracy ends when its principal objective is accomplished.

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[2] Here, it is to be remembered that this is an action for **civil conspiracy** under 42 U.S.C. section 1983. The complaint reflects, the last overt act in furtherance of the conspiracy was on April 19, 2016. The Complaint in this case was filed on October 26, 2018. (Br. of Appellant p.21)

[3] Under the doctrine of Ex parte Young, 209 U.S. 123 (1908), a plaintiff may seek prospective injunctive and declaratory relief to address an ongoing or continuing violation of federal law or a threat of a violation of federal law in the future. See In re Deposit Ins. Agency, 482 F.3d 612, 618 (2d Cir. 2007); Ward v. Thomas, 207 F.3d 114, 120 (2d Cir. 2000); See, e.g., Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 269-78, 117 S.Ct. 2028, 138 L.Ed.2d 438 (1997) (opinion of Kennedy, J.); id. at 291-96, 117 S.Ct. 2028 (O'Connor, J., concurring); Green v. Mansour, 474 U.S. 64, 68-70, 106 S.Ct. 423, 88 L.Ed.2d 371 (1985); Edelman, 415 U.S. at 663-68, 94 S.Ct. 1347; In re Dairy Mart Convenience Stores, Inc., 411 F.3d 367, 372 (2d Cir.2005). See generally 17 Charles Alan Wright, Arthur R. Miller Edward H. Cooper, Federal Practice and Procedure § 4231 (2d ed. 1988 Supp. 2005); Suffice it to say that the doctrine remains a land-mark of American constitutional jurisprudence that operates to end ongoing violations of federal law and vindicate the overriding "federal interest in assuring the supremacy of that law." Green, 474 U.S. at

United States v. McKinney, 954 F.2d 471, 475 (7th Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 662, 121 L.Ed.2d 587 (1992); see also Grunewald, 353 U.S. at 399-406, 77 S.Ct. at 971-75.

The statute of limitations for conspiracy "runs from the last overt act during the existence of the conspiracy." Fistwick v. United States, 329 U.S. 211, 216 (1946) (citing Brown v. Elliott, 225 U.S. 392, 401 (1912); United States v. Head, 641 F.2d 174, 177 (4th Cir. 1981) (citing United States v. Davis, 533 F.2d 921, 926 (5th Cir. 1976)); Grunewald v. United States, 353 U.S. 391, 396-97 (1957); United States v. Keohane, 918 F.2d 273, 275 (1st Cir. 1990); United States v. Curley, 55 F.3d 254, 257 (7th Cir. 1995), pet. for cert. filed, No. 95-216, 64 U.S.L.W. 3103 (Aug. 7, 1995); United States v. Doherty, 867 F.2d 47, 60-61 (1st Cir.), cert. denied, 492 U.S. 918, 109 S.Ct. 3243, 106 L.Ed.2d 590 (1989).

If the Complaint was unclear, Respondents should have requested clarification and Appellant would have clarified and Amended his Complaint if necessary. Here, the circuit court erred in effectively preventing Appellant from litigating a post-ruling motion to amend by immediately dismissing the claims "with prejudice." *Skydive Myrtle Beach, Inc. v. Horry Cnty*. 426 S.C. 175 (S.C. 2019) • 826 S.E.2d 585 (Decided Mar 13, 2019). (Br. of Appellant p.29)

68, 106 S.Ct. 423; see Pennhurst State Sch. Hosp. v. Halderman, 465 U.S. 89, 105-06, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984).

III

Issues two, three and six

This Court overlooked or misapprehended and did not address the issue of Knick v. Township of Scott, 139 S. Ct. 2162 (2119) applied retroactively in this case, law in effect at this time. (Br. of Appellant p.28-29). Therefore, the statute of limitations contained in S.C. Code section 15-3-530 (5), begins from the day the United States Supreme Court issued the opinion, on June 21, 2019.

While this case was pending in the lower Circuit Court, on June 21, 2019, the United States Supreme Court's decided Knick v. Township of Scott, 139 S. Ct. 2162 (2119), that overruled, in part, Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985) 34-year-old precedent that established a federal claim was not ripe until a state takings plaintiff exhausted its remedies under state law.[4] (Br. of Appellant p.28-29).

The general rule is that when the Supreme Court construes a statute, it is explaining what that statute has always meant; thus, the interpretation applies retroactively. (Br. of Appellant p.28-29). See Rivers v. Roadway Express, 511 U.S. 298, 312-13 (1994) ("A judicial construct of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.")

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[4] The ABA Model Rules of Professional Conduct and South Carolina Appellate Court Rule 407 provides a clear requirement: Attorneys must cite directly adverse legal authority controlling in the court's jurisdiction. The duty applies even when the attorney on the other side fails to cite such authority. Labeled under the title "Candor Toward the Tribunal," Model Rule 3.3(a)(2) reads that "a lawyer shall not knowingly ... fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. Also *See Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue,* 358 S.C. 647,650,595 S.E.2d 890, 892 (Ct. App. 2004); *Riley v. Dorton* 93 F.3d 113 (4th Cir. 1996)

Retroactive Application: "When [the Supreme 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 and as to all events, regardless of whether such events predate or postdate our announcement of the rule." Harper v. Virginia Dep't of Taxation, 509 U.S. 86, 97 (1993); see also Reynoldsville Casket Co. v. Hyde, 514 U.S. 749, 752 (1995); Hajro v. United States Citizenship & Immigration Servs., 811 F.3d 1086, 1099 (9th Cir. 2016). When the Supreme Court "does not 'reserve the question whether its holding should be applied to the parties before it,' however, an opinion that announces a rule of federal law 'is properly understood to have followed the normal rule of retroactive application' and must be 'read to hold . . . that its rule should apply retroactively to the litigants then before the Court.'" Harper, 509 U.S. at 97-98 (quoting James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 539 (1991) (Souter, J)). Thus, "[s]ilence on the issue [of retroactivity] indicates that the decision is to be given retroactive effect." Hajro, 811 F.3d at 1099. When the Supreme Court announces a retroactive rule of federal law, the rule must be applied retroactively by all courts. See Reynoldsville Casket, 514 U.S. at 752; Hajro, 811 F.3d at 1099; Judicial decisions operate retroactively. Courts apply settled precedent and legal principles to the disputes before them, and litigants typically have no basis to argue that they are exempt from already-decided legal rules. See James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 534, 111 S.Ct. 2439, 115 L.Ed.2d 481 (1991)

As a common rule, judicial decisions in civil cases are presumptively retroactive; *See* *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 95-96, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993) (discussing the "presumptively retroactive effect" of civil decisions); *see also* 20 Am.Jur.2d *Courts* § 150 (2013) ("[I]t is said that, unlike legislation, which is presumptively prospective in operation, judicial decisions are presumptively retrospective.").

While it is not entirely clear, but it appears issues two, three and six, are under Rule 12(b)(6) SCRCP for failure to state facts sufficient to constitute a cause of action under S.C. Code Ann. § 15-3-530(5) (2005) (providing a three-year limitation period) (R 25 fn 2)

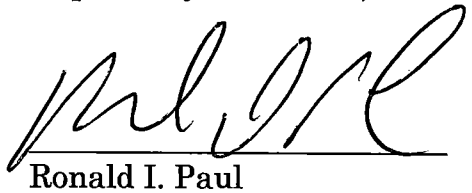
Stated differently, this Court overlooked or misapprehended and did not address Appellant position that the law in effect at the time was "*Knick*" that applied retroactively, therefore, the statute of limitations contained in S.C. Code section 15-3-530 (5), begins from the day the United States Supreme Court issued the opinion, on June 21, 2019. An appellate court must apply the law in effect at the time it renders its decision, Thorpe v. Housing Authority of the City of Durham, 393 U.S. 268,89 S.Ct. 518, 21 L.Ed.2d 474 (1969); The United States Supreme Court stated "[t]he general rule ... is that an appellate court must apply the law in effect at the time it renders its decision" (id. at 281, 89 S.Ct. 518); Bradley v. School Board of City of Richmond, 416 U.S. 696, 711 (1974), "[a] court or administrative tribunal is generally bound 'to apply the law in effect at the time it renders its

decision, unless doing so would result in manifest injustice or there is statutory or legislative history to the contrary.

CONCLUSION

Based on the foregoing discussion, Appellant respectfully requests that the Court rehear its decision in this case and reverse the decision of the trial court and remand for further proceedings.

Respectfully submitted,



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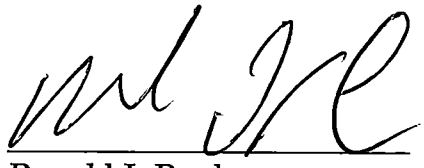
CERTIFICATE OF SERVICE

I, Ronald I. Paul hereby certify that I have served a copy of the **Petition for Rehearing** and **Memorandum in Support of Petition for Rehearing** on all Respondents South Carolina Department of Transportation; Paul D. de Holczer individually, and as a partner of the law Firm of Moses, Koon & Brackett, P.C; Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC; J. Charles Ormond, Jr., individually

and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, 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 by depositing a copy of it in the United State Mail, postage prepaid, on this date, February 14, 2022, addressed to the attorney of record or *Pro Se* Litigants and others as listed below.



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The South Carolina Court of Appeals

Ronald Paul

02/14/2022

RECEIPT #95573

Case No:	2019-002076
Case Short Title:	Ronald I. Paul v. SCDOT (2)
Event:	
Fee Type:	Motion Fee Filed After 10-15-18
Amount:	$50.00
Payment Type:	Cash
Reference No:	
Check/Money Order Date:	02/14/2022
Comments:	