THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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.....Petitioner,

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.

PETITION FOR WRIT OF CERTIORARI

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

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CERTIFICATE OF COUNSEL

Pro Se Petitioner certifies that his Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on March 18, 2022.

QUESTIONS PRESENTED

I. Did the Court of Appeals erred in failing to consider or address that—count one— is a state law claim for equitable relief, in part under the doctrine of Ex parte Young, 209 U.S. 123 (1908), seeking prospective declaratory relief to address an ongoing or continuing violation of federal law in the future only "therefore" respondent's statute of limitations argument is without merit, as "statutes of limitations are not controlling measures of equitable relief." Holmberg v. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 584, 90 L.Ed. 743 (1946)?

a. Did the Courts erred in dismissing the Complaint with prejudice and without an opportunity to replead or amend?

II. Did the Court of Appeals erred in failing to determine whether "clearly established" precedent 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**, read in conjunction with the statute containing a provision allowing for an extension of the limitations period in S.C. Code Ann. §15-3-530(5) to be 'extended' by a maximum of twenty years S.C. Code Ann. § 15-3-520(b)?

III. Did the Court of Appeals erred in failing to determine whether a new limitations period is created with each overt act in furtherance of a civil conspiracy claim brought under federal section 42 USC 1983 overt acts that injures Paul, and the statute of limitations begins to run on the date of the last overt act?

a. Did the Courts erred in dismissing the Complaint with prejudice and without an opportunity to replead or amend?

IV. Did the Court of Appeals erred in failing to consider or address whether Knick v. Township of Scott, 588 U.S., 139 S. Ct. 2162 (2119) applied retroactively in this case under South Carolina common law tolling and rules, extending (equitable tolling) the start of the limitations period until the day the United States Supreme Court issued the opinion, on June 21, 2019?

STATEMENT OF THE CASE

This appeal involves the statutes of limitations that extend (or equitable tolling) the limitations period. For a State law claim for declaratory judgment (R432 lines 17-15, 433 lines 1-7) and a Federal claim for civil conspiracy under the civil rights' federal statute (42 USC 1983) seeking payment for property taken pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*, without payment of just compensation, *in other words to be clearly, zero $0.00. dollars and cents.* (R 31-59) Brought by the petitioner Ronald I. Paul against the respondents South Carolina Department of Transportations; Oscar K. Rucker; Macie M. Gresham; Natalie J. Moore; Paul d. de Holczer; Michael H. Quinn; J Charles Ormond, Jr. In his complaint, Paul asserted causes of action for declaratory judgment and civil conspiracy. (R 55-57) On June 7, 2019, Judge L. Casey Manning dismissed Defendants Oscar K. Rucker and Macie M. Gresham, in their individual capacity without prejudice for lack of personal jurisdiction. (R 9)

The Complaint shows that the source of Paul injury is the Respondents' conduct, that the Respondents' conduct caused the adverse state court orders, and their conduct is an independent claim. The Complaint did not seek to have the State Court judgments voided or reversed. (R 139-140, 151-152)

On or about November 2018, all Respondents filed a motion to dismiss Paul claim, under South Carolina Rules of civil procedure, Rule12 (b)(6) and Respondents

SCDOT, de Holzcer and Moore filed a motion for summary judgement under South Carolina Rules of civil procedure Rule 56. (R 60-80, 395 lines 1-6) Petitioner filed a combined memorandum in opposition to all motions on February 11, 2019 (R 204-252) and filed an amendment on August 5, 2019. (R255-391) As of today, Respondents have not filed answers to the Petitioner Complaint to this action. (R 261-262, 265)

The Respondents motion hearing was held on August 8, 2019, Judge Jocelyn Newman, granted the motions (R 445 lines 4-7) and on August 9, 2019, filed a form 4 Order. (R 15-17) The form 4 indicated that a formal order was to follow that was filed on November 13, 2019. (R 18-27)

On November 25, 2019, Paul filed a Rule 59(e) motion (R 280-391) which was denied by Judge Jocelyn Newman by order filed November 26, 2019. (R. 28-29).

On December 20, 2019, Paul filed an appeal to the South Carolina Court of Appeals. On February 9, 2022, the Court of Appeals affirmed by issuance of an unpublished memorandum opinion pursuant to Rule 220(b), SCACR, that sets forth only a string of citations rather than providing legal analysis of the issues to be decided by the Court.

On February 14, 2022, Paul petitioned for rehearing and amended the petition for rehearing on February 22, 2022. The petition was summarily denied on March 18, 2022. No substitute opinion was issued. Paul now seeks review in the Supreme Court by way of a petition for writ of certiorari.

STATEMENT OF FACTS

See Complaint filed on October 26, 2018, for statement of the facts before October 26, 2018, **because Respondents have not filed answers.** (R 261-262, 265)

ARGUMENTS

I

ISSUE ONE

The Court of Appeals erred in failing to consider or address that—count one—is a state law claim for equitable relief, in part under the doctrine of Ex parte Young, 209 U.S. 123 (1908), seeking prospective declaratory relief to address an ongoing or continuing violation of federal law in the future only "therefore" respondent's statute of limitations argument is without merit, as "statutes of limitations are not controlling measures of equitable relief." Holmberg v. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 584, 90 L.Ed. 743 (1946)

On or about February - March 23, 2004, Quinn, Buckles, SCDOT, Rucker, Gresham, Moore and de Holczer agreed to a settlement between them, Paul was not a party to this settlement.[1] (R 266) then go to Judge Barber order (R 81-83) This settlement was under section 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". (R 71)

Subsequently, all Respondents, including Ormond took a position claiming and declaring eminent domain case # 2002-CP-400-4800 (hereinafter referred to as case 4800) had settled for just compensation. This was an intentionally false statement, because all Respondents knew without Paul's consent or approval, as a matter of law, Respondents could not settle the case for just compensation. See (Br. of Appellant

[1] However, Paul was a party in the lawsuit, because on October 21, 2002, SCDOT, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore and Paul D. de Holczer filed an Amended Condemnation Notice against Paul. On or about October 28, 2003, the state official (**NOT THE BUCKLES**) terminated Paul's commercial lease a sealed instrument, without payment of just compensation to Paul, *in other words to be clearly, zero $0.00. dollars and cents.* (R 39, 248-249)

p.16) then go to (R 434 lines 13-25) and (R 435 lines 1-25) then go to (R 55-56) then go to (R 57 prayer for relief #2)

FACTS

As of today, there exists an actual controversy between Petitioner and Respondents as to whether the settlement agreement in case 4800 between SCDOT and the Buckles applied equally to Paul, as just compensation.[2] (R 55)

LAW AND ARGUMENT

The Court overlooked that, "traditionally and for good reasons, statutes of limitation are not controlling measures of equitable relief. Such statutes have been drawn upon by equity solely for the light they may shed in determining that which is decisive for the chancellor's intervention, namely, whether the plaintiff has inexcusably slept on his rights so as to make a decree against the defendant unfair". Holmberg v. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 584, 90 L.Ed. 743 (1946); See Russell v. Todd, supra, 309 U.S. [280] at page 289, 60 S.Ct. [527] at page 532, 84

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[2] 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 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).

L.Ed. 754 [(1940)]; Prudential Lines, Inc. v. Exxon Corp., 704 F.2d 59, 65 (2d Cir. 1983)

Petitioner has not slept on his rights so as to make a decree against the defendant unfair," therefore, a statute of limitations defense may not be considered. Holmberg v. Armbrecht, 327 U.S. 392, 396 (1946). In this case, however, there is no suggestion Petitioner delayed seeking relief, in fact, the Record on Appeal shows, and it cannot be disputed that Paul has been pursuing his rights diligently to this present date and extraordinary circumstance (R 55-56) stood in his way [Pace v. DiGuglielmo, 544 U.S. 408, 418 (U.S. 2005)].

a. The Courts erred in dismissing the Complaint with prejudice and without an opportunity to replead or amend.

If the Complaint was unclear, Respondents should have requested clarification and Petitioner would have clarified and Amended his Complaint if necessary.[3] Here, the courts erred in effectively preventing Petitioner 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).

[3] Greer v. McFadden , 295 S.C. 14, 17, 366 S.E.2d 263, 265 (Ct. App. 1988) (holding even if a pro se claim is not framed with expert precision, where the point is clear, the issue should be addressed); Additionally, "[a] document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007)

II

ISSUE TWO

The Court of Appeals erred in failing to determine whether "clearly established" precedent 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**, read in conjunction with the statute containing a provision allowing for an extension of the limitations period in S.C. Code Ann. §15-3-530(5) to be 'extended' by a maximum of twenty years S.C. Code Ann. § 15-3-520(b).

On August 8, 2019, Petitioner argued a section 1983 action borrow the State law statute of limitation for personal injury actions. 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) "an action for assault, battery, or any injury to the person or rights of another, **not arising on contract** and not enumerated by law, and those provided for in Section 15-3-545))".

In this matter, the particular facts of the case would lead to an expansion of the three-year statute of limitation period. Because Paul commercial lease, a sealed instrument **arising on contract** was a required part of the eminent domain transaction in case 4800-transferring property. The Court overlooked the language of section 15-3-530 (5) that expanded the statute, that S.C. Code section 15-3-520(b) applies within, and therefore is an arm of S.C. Code section 15-3-530 (5).

FACTS

Paul commercial lease is recorded in the Richland County Register of Deeds office, Record Book 00593-1478 and Renewal Record Book 00868-2723, pursuant to judicial notice of this fact as records of the Richland County Register of Deeds are

"generally known within the territorial jurisdiction of the trial court" and the "accuracy of which cannot be reasonably questioned." S.C. R. Evid. 201 (b); and in the state of South Carolina, "when land is occupied by a lessee, as in this case, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee." Byerly v. Connor, 307 S.C. 441, --- 415 S.E.2d 796, 798 (1992).")

On October 21, 2002, when SCDOT, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore and Paul D. de Holczer filed an Amended Condemnation Notice against Paul, as a matter of law, pursuant to the Eminent Domain Procedure Act, S.C. Code Ann. §28-2-10, *et seq.,* they inherited Paul's commercial lease a sealed instrument. (R 37-38)

On or about October 28, 2003, the state official **(NOT THE BUCKLES)** terminated Paul's commercial lease a sealed instrument, without payment of just compensation to Paul, *in other words to be clearly, zero $0.00. dollars and cents.* (R 39, 248-249)

RULING

The Court of Appeals 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.

LAW AND ARGUMENT

The Court of Appeals 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, the 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 Mins, the Court of Appeals 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) **certiorari denied August 3, 2018.**

Based on the court's decision in Mims, the courts erred in not applying this controlling 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. **Therefore, respondent's statute of limitations argument is without merit,** (("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) certiorari denied August 3, 2018. 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")). See Wilson v. Garcia, 471 U.S. 261, 275, 279, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). Courts apply that state's designated limitations period for general personal injury torts, see Owens v. Okure, 488 U.S. 235, 236, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989), **as well as its "coordinate tolling rules,"** see Board of Regents of University of N.Y. v. Tomanio, 446 U.S. 478, 484, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980). So, state law governs whether a state-determined statute of limitations for a 42 U.S.C. § 1983 plaintiff has been tolled, so long as the state tolling laws are not inconsistent with the United States Constitution and federal laws. 42 U.S.C. § 1988 (2018); Hardin v. Straub, 490 U.S. 536, 538-39, 109 S.Ct. 1998, 104 L.Ed.2d 582 (1989).

It is important to recognize that the Respondents had received the Petitioner 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 Petitioner 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.[4] No attempt was made.

Moreover, 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.

III

ISSUE THREE

The Court of Appeals erred in failing to determine whether a new limitations period is created with each overt act in furtherance of a civil conspiracy claim brought under federal section 42 USC 1983 overt acts that injures Paul, and the statute of limitations begins to run on the date of the last overt act.

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

[4] The Respondents argues in their brief (Br. of Respondents p 9-10) "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".

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.

FACTS

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. (R 49) The Complaint in this case was filed on October 26, 2018. (R 31-32) Both the actionable conduct (refusal to pay Paul for his property) and resulting damage occurred within the applicable three-year statute of limitations period. According to the four corners of the Complaint, in this case.

RULING

The court of appeals 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.

LAW AND ARGUMENT

For a conspiracy claim brought under section 1983, the accrual date is determined by the "last overt act doctrine." Pearce v. Romeo, 299 Fed. App'x. at 655(9th Cir. 2008) (quoting Gibson v. United States, 781 F.2d 1334, 1340 (9th Cir. 1986); see Hanover Shoe, Inc. v. United Shoe Mach. Corp., 392 U.S. 481, 502 n.15 (1968) held that the statute of limitations began anew each time the defendant refused to sell; "[E]ach overt act that is part of the violation and that injures the

plaintiff . . . starts the statutory [limitations] period running again, **regardless of the plaintiff's knowledge of the alleged illegality at much earlier times.** . . . Klehr v. A. O. Smith Corp., 521 U.S. 179, 189 (1997) (citations omitted).

A conspiracy ends when its principal objective is accomplished. 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; see **also similar civil cases** Venegas v. Wagner, 704 F.2d 1144 (9th Cir. 1983); Cline v. Brusett, 661 F.2d 108 (9th Cir. 1981); Robinson v. Maruffi 895 F.2d 649 (10th Cir. 1990); Rose v. Bartle, 871 F.2d 331, 348-350 (3rd Cir. 1989); McCune v. City of Grand Rapids, 842 F.2d 903, 907 (6th Cir. 1988); Singleton v. City of New York, 632 F.2d 185, 198 (2d Cir. 1980), cert. denied, 450 U.S. 920, 101 S.Ct. 1368, 67 L.Ed.2d 347 (1981); cf. Morrison v. Jones, 551 F.2d 939, 940-41 (4th Cir. 1977).

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 a civil case** 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).

a. The Courts erred in dismissing the Complaint with prejudice and without an opportunity to replead or amend.

If the Complaint was unclear, Respondents should have requested clarification and Petitioner would have clarified and Amended his Complaint if necessary.[5] Here, the courts erred in effectively preventing Petitioner 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)

IV

ISSUES TWO, THREE AND SIX

The Court of Appeals erred in failing to consider or address whether Knick v. Township of Scott, 588 U.S., 139 S. Ct. 2162 (2119) applied retroactively in this case under South Carolina common law tolling and rules, extending (equitable tolling) the start of the limitations period until the day the United States Supreme Court issued the opinion, on June 21, 2019.

The Record on Appeal shows, and it cannot be disputed that Paul has been pursuing his rights diligently from about October 28, 2003,[6] to this present date and some extraordinary circumstance stood in his way: (1) complex case (2) all Respondents, including Ormond took a position claiming and declaring case 4800 had settled for just compensation. This was an intentionally false statement, because all

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[5] Greer v. McFadden , 295 S.C. 14, 17, 366 S.E.2d 263, 265 (Ct. App. 1988) (holding even if a pro se claim is not framed with expert precision, where the point is clear, the issue should be addressed); Additionally, "[a] document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007)

[6] This is the date the state official (**NOT THE BUCKLES**) terminated Paul's commercial lease a sealed instrument, without payment of just compensation to Paul, *in other words to be clearly, zero $0.00. dollars and cents.* (R 39, 248-249)

Respondents knew without Paul's consent or approval, as a matter of law, Respondents could not settle the case for just compensation. (R 55-59, a civil conspiracy) (3) Williamson County. [Pace v. DiGuglielmo, 544 U.S. 408, 418 (U.S. 2005)].

FACTS

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, 588 U.S., 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)[7] 34-year-old precedent that established a federal claim was not ripe until a state takings plaintiff exhausted its remedies under state law.[8]

LAW AND ARGUMENTS

Specifically, as to takings claims, under federal law a property owner has a claim for a violation of the Takings Clause "as soon as a government takes his property for public use without paying for it." Knick v. Township of Scott, 588 U.S., 139 S.Ct. 2162, 2170, 204 L.Ed.2d 558 (2019). That date was on October 21,

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[7] Williamson was argued before the lower Court in a strong and forceful manner by the plaintiff in oral argument (R 425 lines 24-25, p.426 lines 1-25, p.441 lines 9-13) against the statute of limitations contained in S.C. Code section 15-3-530 (5).

[8] 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)

2002, when SCDOT, Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore and Paul D. de Holczer filed an Amended Condemnation Notice against Paul or on October 28, 2003, the date the state official **(NOT THE BUCKLES)** terminated Paul's commercial lease a sealed instrument, without payment of just compensation to Paul, *in other words to be clearly, zero $0.00. dollars and cents.* (R 39, 248-249)

State equitable tolling of the statute of limitations

In actions where the federal court borrows the state statute of limitations, courts apply the forum state's equitable tolling provisions to the extent they are not inconsistent with federal law. See Fink v. Shedler, 192 F.3d 911, 916 (9th Cir. 1999). See Wilson v. Garcia, 471 U.S. 261, 275, 279, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). Courts apply that state's designated limitations period for general personal injury torts, see Owens v. Okure, 488 U.S. 235, 236, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989), **as well as its "coordinate tolling rules,"** see Board of Regents of University of N.Y. v. Tomanio, 446 U.S. 478, 484, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980). So state law governs whether a state-determined statute of limitations for a 42 U.S.C. § 1983 plaintiff has been tolled, so long as the state tolling laws are not inconsistent with the United States Constitution and federal laws. 42 U.S.C. § 1988 (2018); Hardin v. Straub, 490 U.S. 536, 538-39, 109 S.Ct. 1998, 104 L.Ed.2d 582 (1989).

In South Carolina, "[t]he general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively." Carolina Chloride, Inc. v. S.C. Dep't of Transp., 391 S.C. 429, 433, 706 S.E.2d 501, 503 (2011) (citation omitted). See Carolina Chloride, Inc., 391

S.C. at 433-34, 706 S.E.2d at 503 (finding judicial decision should be applied retroactively when it created no new right or cause of action; rather, it abandoned former test and restated the focus for what a landowner must prove to entitle him to damages in an inverse condemnation action. "Prospective application is required when liability is created where formerly none existed." Id. at 433–34, 706 S.E.2d at 503. "As a common rule, judicial decisions in civil cases are presumptively retroactive." Miranda C. v. Nissan Motor Co., 402 S.C. 577, 586, 741 S.E.2d 34, 39 (Ct.App.2013); Lucero v. State 777 S.E.2d 409 (S.C. Ct. App. 2015) 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.").

In this instant case Knick 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, June 21, 2019.

In this post- Knick world, the court erred in dismissing Petitioner Complaint with prejudice and without an opportunity to replead or amend.

Lastly, the circuit court erred in effectively preventing Petitioner 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). (R 25)

Federal equitable tolling of the statute of limitations

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.")

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)

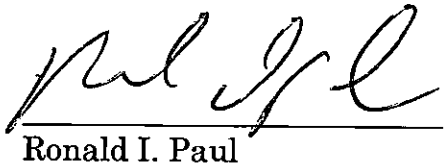
Stated differently, the Court of Appeals overlooked or misapprehended and did not address Petitioner position that, while this case was pending in the lower Circuit Court, on June 21, 2019, the United States Supreme Court's decided Knick that overruled, in part, Williamson County 34-year-old precedent that established a federal claim was not ripe until a state takings plaintiff exhausted its remedies under state law, 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, the Petitioner Ronald I. Paul respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,



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April 14, 2022

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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..... Petitioner,

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.

CERTIFICATE OF SERVICE

I, Ronald I. Paul hereby certify that I have served a copy of the **PETITION FOR WRIT OF CERTIORARI** 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, April 14, 2022, addressed to the attorney of record or *Pro Se* Litigants and others as listed below.

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