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.

RECORD ON APPEAL

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Appellant, *Pro Se* Litigant

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STATE OF SOUTH CAROLINA)
) **IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND)

Ronald I. Paul,) Civil Action No. 2018-CP-40-5641

Plaintiff,

v.

South Carolina Department of Transportations; Paul D. de Holczer, individually and as a partner of the law firm of Moses, Koon & Brackett, PC; Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC; J. Charles Ormond, Jr. individually and as partner of the Law Finn of Holler, Dennis, Corbett, Ormond, Plante & Garner; Oscar K. Rucker, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation; Macie M. Gresham, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; Natalie J. Moore, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation,

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.

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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-PGJ

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

On October 26, 2018, the Plaintiff filed the current lawsuit in state court. This action, 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

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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."

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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.

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any other entity to confer authority on an agent. Rule 4(d)(1), SCRCP, 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), SCRCP, 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), SCRCP, 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.

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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.

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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."

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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

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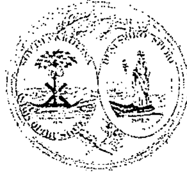


Richland Common Pleas

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

Electronically signed on 2019-06-07 11:44:02 page 10 of 10

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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 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.

CASE NO: 2018-CP-400-5641

ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER

ELECTRONICALLY FILED - 2019 Jun 28 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

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;

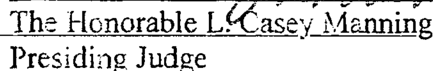
(5) Motion to Compel Discovery against the Defendants SCDOT, de Holczer, and Moore by the Plaintiff filed December 18, 2018; and

(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

ELECTRONICALLY FILED - 2019 Jun 28 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

ELECTRONICALLY FILED - 2019 Jul 30 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Ronald I. Paul, Plaintiff, v. South Carolina Department of Transportation, et al., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2018CP4005641 **SCHEDULING ORDER**

Having reviewed the procedural history of this action, the Court finds it necessary to impose certain deadlines for the resolution of this matter. The Court further finds that the re-hearing of certain motions is necessary pursuant to Rule 63, SCRCP, due to the retirement of the Honorable Doyet A. Early, III. Therefore, the parties shall adhere to the following schedule:

1. Pending motions in this action shall be heard on **Thursday, August 8, 2019, at 9:30 a.m.** Those motions include:
   - Defendant Quinn's Motion to Dismiss (filed on November 20, 2018);
   - Motion to Dismiss and for Summary Judgment (filed on November 26, 2018) on behalf of Defendant SCDOT (and others); and
   - Defendant Ormand's Motion to Dismiss (filed on November 27, 2018).
2. Mediation shall occur on or before **December 31, 2019.**

AND IT IS SO ORDERED.

JOCELYN T. NEWMAN
Chief Administrative Judge

July 23, 2019
Columbia, South Carolina.

Richland Common Pleas

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

Case Number: 2018CP4005641

Type: Order/Scheduling Order

So Ordered

Jocelyn Newman, Chief Judge for Administrative Purposes, Court of Common Pleas, 5th Judicial Circuit

Electronically signed on 2019-07-23 15:28:58 page 2 of 2

ELECTRONICALLY FILED - 2019 Jul 30 10:34 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4005641

Ronald I Paul
PLAINTIFF(S)

SC Department Of Transportation et al
DEFENDANT(S)

ELECTRONICALLY FILED - 2019 Aug 09 8:39 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

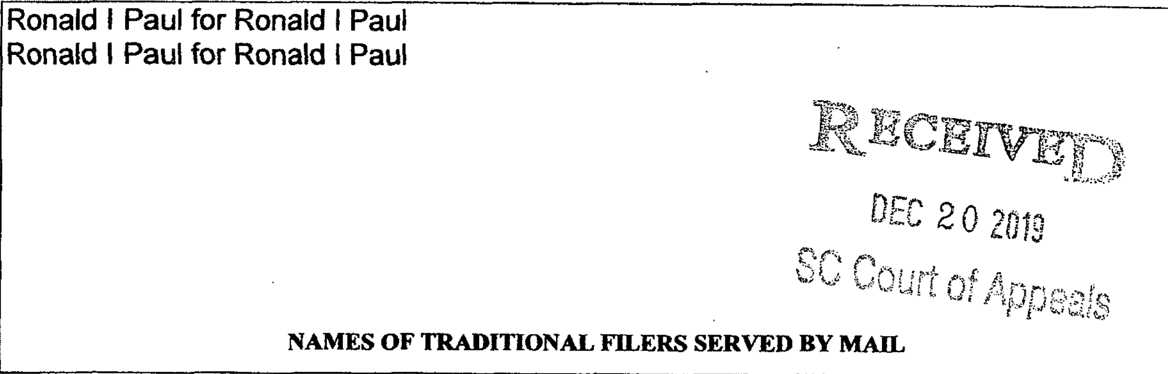
Defendant Quinn's Motion to Dismiss (filed on 11/20/18) is GRANTED.
Motion to Dismiss and for Summary Judgment (filed on 11/26/18) is GRANTED.
Defendant Ormond's Motion to Dismiss (filed on 11/27/18) is GRANTED.
Formal Order to follow.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

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


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

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SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

ELECTRONICALLY FILED - 2019 Aug 09 8:39 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

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Richland Common Pleas

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

Case Number: 2018CP4005641

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2019-08-08 14:40:21 page 3 of 3

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

STATE OF SOUTH CAROLINA)
) **IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND)

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

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").

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

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

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

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

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

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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

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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

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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

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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

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

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

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

---

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

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Quinn, Ormond, and their law firms.

AND IT IS SO ORDERED.

JOCELYN NEWMAN
Presiding Circuit Court Judge,
Fifth Judicial Circuit

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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

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4005641

Ronald I Paul
PLAINTIFF(S)

SC Department Of Transportation et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

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

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

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

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SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

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Richland Common Pleas

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

Case Number: 2018CP4005641

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

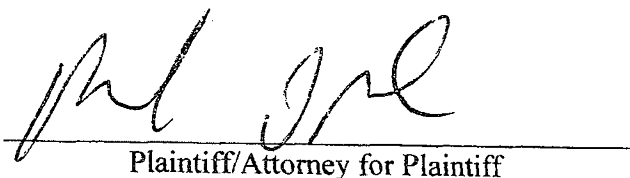
Electronically signed on 2019-11-26 12:24:18 page 3 of 3

ELECTRONICALLY FILED - 2019 Nov 26 12:37 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
RONALD I. PAUL Plaintiff,	)	SUMMONS
vs.	)	FILE NO.
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.	)	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

Plaintiff/Attorney for Plaintiff

Dated: October 26, 2018

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

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 USC 1983

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

(JURY TRIAL DEMANDED)

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;

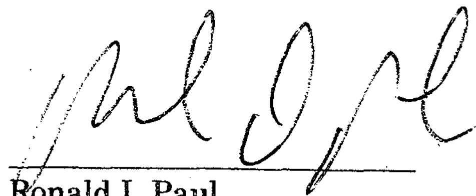
7. Grant Plaintiffs costs of suit and reasonable attorneys' fees and other expenses pursuant to 42 U.S.C. § 1988; and,

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,



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

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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 Ormand, 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.

MOTION TO DISMISS AND FOR RULE 11 SANCTIONS

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 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) SCRCP, on the following grounds:

(1) the allegations of Plaintiff's first cause of action, framed as Count One, Declaratory Judgment 42 U.S.C. 1983, and Plaintiff's second cause of action framed as Count Two, Civil Conspiracy 42 U.S.C. 1983, establish on their face affirmative defenses in favor of movant which entitle movant to an early dismissal of Plaintiff's Complaint. 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"; (iii) the doctrine of collateral estoppel; (iv) the doctrine of Res Judicata; (v) the doctrine of Laches; (vi) 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, SCRCP, 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, SCRCP.

These motions will be based on the pleadings, other matters of record, those matters of

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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.

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

Columbia, South Carolina

November 20, 2018

Rule 11 does not require consultation with the Pro Se Plaintiff for this Motion.

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

ELECTRONICALLY FILED - 2018 Nov 20 3:47 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

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 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.

Civil Action No. 2018-CP-40-5641

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, SCRCP, 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*

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 South Carolina Department of Transportation, Paul D. de Holczer, and Natalie J. Moore

November 26, 2018

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH CIRCUIT

Ronald I. Paul,) Civil Action No. 2018 CP 40 05641
)
Plaintiff,)
vs.)
)
South Carolina Department of Transportation;)
Paul D. De Holczer, Esq. . individually and as a Partner)
of Moses Koon & Brackett, PC.; Michael H. Quinn,)
Individually and as Senior lawyer of Quinn Law Firm,) MOTION TO DISMISS
LLC; J. Charles Ormond, Jr., Esq. Individually and as a) Defendants J. Charles Ormond, Jr./Firm
partner of the Law Firm of Holler, Dennis, Corbett,) (SCRCP 12 b (6))
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 Assistance Chief Counsel.)
)
Defendant/s.)
)

Defendant, J. Charles Ormond, Jr., Esq. as named in the suit above "Individually and as partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner," herein "Attorney" or "Ormond") moves this Honorable Court to Dismiss all causes of action set forth in the lawsuit above, as against Attorney Individually and as a former partner of the dissolved Law Firm named above pursuant to Rule 12(b)(1) and (6). Such motion is based on the following:

A) this claim has been adjudicated by the State and Federal Courts in South Carolina (res-judicata) in three prior actions;

B) Claims are outside the applicable statute of limitations on the face of the complaint;

C) Defendant Attorney is a private citizen, never having acted under color of state law and not

alleged to have so acted within the facts asserted in the lawsuit.

BACKGROUND:

The subject matter of this Complaint, as it relates to Defendant Attorney, was a non jury trial of a condemnation action in which Attorney represented Plaintiff, Ron Paul, in his action to recover a leasehold property interest he owned which was taken under eminent domain. The trial was held in October of 2004 in front of former Circuit Judge Reginald Lloyd. The property condemned was owned in fee by a third party "Buckles," and a portion of such property was being leased by Plaintiff for use as a liquor store. Plaintiff sought the value of the taken lease interest in the Buckles property.

The Plaintiff in the underlying action was awarded approximately $2,600.00 for the "taking" of the remainder of his leasehold interest in an Order dated March of 2005. Plaintiff dismissed Mr. Ormond from further representation in December of 2004, months prior to the entry of the Order. Plaintiff appealed the Order pro se and such Order was affirmed by the Court of Appeals.

In 2006, Plaintiff Paul filed a lawsuit against Defendant Ormond (Civil Case: 06 CP 40 6410) which was based on alleged negligence, breach of duty and other causes of action alleging that Defendant's actions and/or omissions in the litigation caused Plaintiff to receive a lower judgment than what Plaintiff believed was a just award in the 2004 trial. This action was dismissed by summary judgment. Plaintiff appealed to the Court of Appeals where it was affirmed and certiorari later denied by the South Carolina Supreme Court.

In 2008, Plaintiff Paul filed another action against Attorney and the other Defendants

above, Case No. 08-CP-40- 01259 alleging the identical facts as this matter has alleged and the cause of action set forth in that complaint was "civil conspiracy." Such case was dismissed under 12(b) (6) (complaint outside the statute of limitations on its face) and 12 (b)(8) as against Attorney as the 2006 case was pending and it alleged the identical issues as the 2006 case. The case was dismissed and Plaintiff (Ron Paul) appealed. The Court of Appeals affirmed and Mr. Paul requested certiorari to the South Carolina Supreme Court. Certiorari was denied.

Plaintiff, in 2012, then filed an identical action in the United States District Court against the same Defendants again as are named above. This action (3:12 cv 01036 CMC-PJG) was dismissed upon motion to dismiss, again based on several affirmative defenses including, among others, statute of limitations and res judicata. Ron Paul appealed to the Fourth Circuit and such dismissal was affirmed.

LEGAL ANALYSIS:

A) This claim has been adjudicated in three former separate actions in State and Federal Courts of South Carolina and is therefore barred by Res Judicata.

Mr. Paul has filed three separate lawsuits against Attorney Ormond and Firm alleging the identical facts and the same causes of action beginning in 2006 (Civil Action#: 2006 CP 40 6410); then in 2008 (Civil Action #: 2008-CP-40- 01259) and then in 2012 in Federal Court (3:12 cv 01036 CMC-PJG) See: Complaint The issues, subject matter and factual assertions in this case, as well as the Party Defendant/s, are the same as in the prior cases above. In essence, Mr. Paul, for the fourth time, has filed a lawsuit against his former attorney and for the third time filed the same lawsuit against the other Defendants as set forth above. The facts alleged, that the

judgment of the Court in a March 2005 Order in a condemnation action for the remaining leasehold interest owned by Mr. Paul was insufficient because of a conspiracy of the Defendants, has been litigated on two prior occasions. As such assertions and facts have been litigated and determined by final order, all the allegations in this case are res judicata and are precluded from subsequent litigation. Defendant Attorney would therefore request an order of dismissal, costs, fees under SCRCP Rule 11 and an injunction against Mr. Paul from bringing this matter up again in the Courts.

B) The Claims are well outside the applicable statute of limitations based on the allegations apparent on the face of the Complaint.

Plaintiff, Mr. Paul, alleges that he leased the "premises" in 1985 and operated a retail liquor store for 18 years: "until 2002." (Complaint ¶ 20). The property was condemned in late 2002 (Complaint ¶¶ 21-25) and he was evicted in 2003. (Complaint¶¶ 31) Trial was held in front of Judge Lloyd in late 2004. (Complaint ¶¶ 50-51) The Court issued an Order in March of 2005 awarding Mr. Paul an amount for the residual value of his remaining leasehold interest. Although Paul does not present all of the dates, Paul brought his first action against his Attorney in 2006. Paul then, although inaccurately, provides factual assertions of the subsequent cases and complaints he filed related to these facts prior to this action. (Complaint) Attorney Ormond has not been Mr. Paul's attorney since late 2004, fourteen years ago. (Complaint) The facts as set forth in the Complaint are alleged to have occurred during the trial in October of 2004 with the final Order signed in March of 2005. Plaintiff has alleged no actions or omissions or alleged the discovery of acts or omissions in his complaint occurring after 2005.

The statute of limitations for a common law tort or a 42 U.S.C. §1983 claim, as alleged in this Complaint, is three (3) years. Therefore, such complaint should be dismissed with prejudice as outside of the applicable statute of limitations on its face.

C) Defendant Attorney is a private citizen as is alleged in the Complaint and simply represented Mr. Paul in 2004 in the Condemnation action and is therefore not a state actor under the sole cause of action; Car occupant injured in collision with fixed or stationary object .

Plaintiff brings this case under the Statute 42 U.S.C. §1983. (Complaint ¶ 6) Paul represents that the attorney defendants in this case are private individuals but also alleges he/they are state actors in ¶19 of the Complaint. The remaining factual allegations also assert that Ormond was Paul's privately retained attorney (Plaintiff's Complaint) during the 2004 trial of the underlying subject matter of this case. Mr. Paul's private attorney was not and could not be a "state actor" and could not act under color of law under the Statute (42 U.S.C §1983) or any possible reading of the Statute.

Attorney for Plaintiff

November 27, 2018

Attorney for Plaintiff

s/J. Charles Ormond, Jr.
J. Charles Ormond, Jr.:

ORMOND--DUNN
301 STONERIDGE DRIVE
COLUMBIA, SC 29210
803 933-9000 / chuck@ormonddunn.com

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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

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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

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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)."

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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-

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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

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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

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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

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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

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

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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.

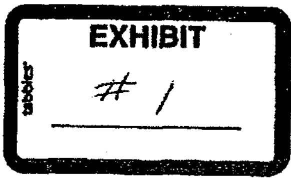
CONSENT ORDER

FILED
04 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.

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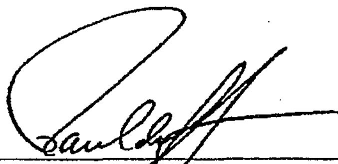
AND IT IS SO ORDERED.

S/ James R. Barber III

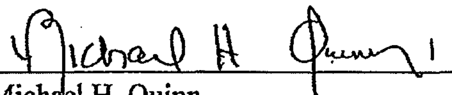
3/23/04

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

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

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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)
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South Carolina Department of Transportation,

Condemnor,

vs.

Keith J. Buckles and G.L. Buckles,

Landowners,

and

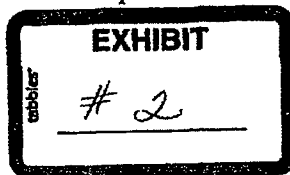
Ronald Paul, Lessee and Sang Kim, Lessee,

Other Condemnees.

ORDER OF JUDGMENT

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



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.

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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

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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,

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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.

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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,

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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.

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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

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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

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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.

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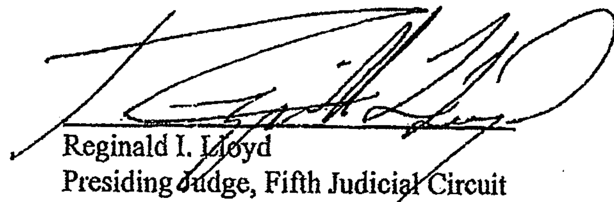
3. The Clerk of Court annotate the Notice of Condemnation in this case, transferring the realty to the South Carolina Department of Transportation, with the amount of the award as One Hundred Fifty-Six Thousand Seven Hundred Fifty and NO/100 ($156,750.00) Dollars; and file the Annotated Notice of Condemnation 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

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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

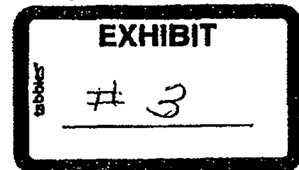
South Carolina Department of Transportation,	Respondent,
v.	
Keith Buckles and G.L. Buckles, Landowners, and Ronald Paul, Lessee and Sang Kim, Lessee,	Defendants,
Of Whom Ronald Paul is the	Appellant.

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.



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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 affirm[1] 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.

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

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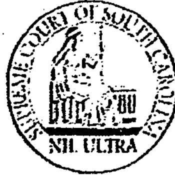


The Supreme Court of South Carolina

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 18, 2007

REGULAR AND CERTIFIED MAIL
Mr. Ronald I. Paul
P. O. Box 4353
Columbia, SC 29240

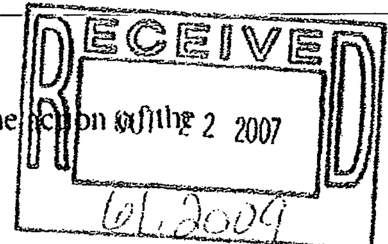
Re: SC DOT v. K. Buckles & R. Paul
2002-CP-40-04800

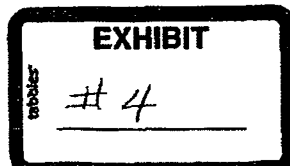
Dear Mr. Paul:

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 action of the Court in this matter.





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

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

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
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,)

IN THE COURT OF COMMON PLEAS

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

COMPLAINT
(Jury Trial Demanded)

FILED
2008 FEB 20 PM 12:21
BARBARA A. SCOTT
C.C.C. P. & G.S.

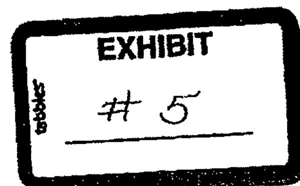
The Plaintiff, Ronald I. Paul, complaining of the Defendants, South Carolina Department of Transportation; Paul D. de Holczer, Esq., Individually, and as a partner of the law Firm of Moses, Koon & Brackett, P.C; G.L. Buckles, as Personal Representative of the Estate of Keith J. Buckles and G.L. Buckles; 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.



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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 ES40 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.

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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.

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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 Trail, 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 Holscer 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 trail 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

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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.

<u>Allocation of the condemnation funds</u>

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

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representation and both Defendants breached an independent duty owed to Plaintiff, by attepting 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)

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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)

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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 injures 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

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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.

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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:

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

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(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.

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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 Holctez 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).

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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,

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

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.

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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-eighty 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.

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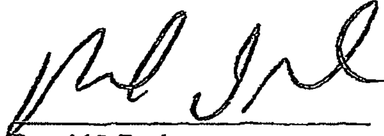
Very Respectfully Submitted,



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)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	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.

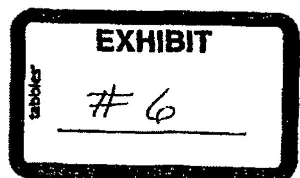
MOTION TO DISMISS AND FOR RULE 11 SANCTIONS

2008 APR -1 PM 4:33

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



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) SCRCP, 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, SCRCP, 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

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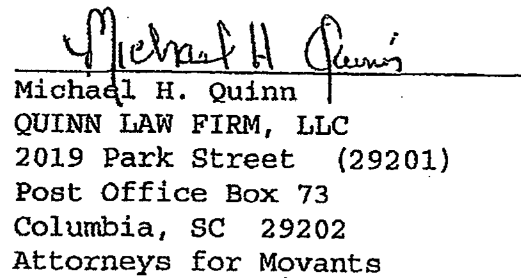
issues that have been tried, and finally determined, and violates the provisions of Rule 11, SCRCP.

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.

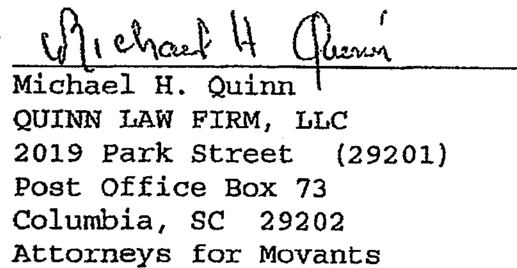


Michael H. Quinn
QUINN LAW FIRM, LLC
2019 Park Street (29201)
Post Office Box 73
Columbia, SC 29202
Attorneys for Movants

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

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STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND | 2008-CP-40-01259

RICHLAND COUNTY
FILED
2009 MAR 25 PM 4: 03
JEANETTE W. McBRIDE
C.C.P. & G.S.

Ronald I. Paul,

Plaintiff,

v.

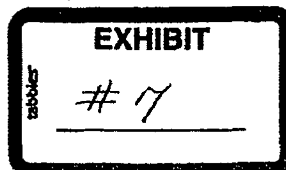
South Carolina Department of Transportation; Paul D. de Holczer, Esq., Individually and as a partner of the law Firm of Moses Koon & Brackett, PC; G.L. Buckles, as Personal Representative of the Estate of Keith J. Buckles and G.L. Buckles; Michael H. Quinn, Individually and as Senior lawyer of Quinn 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.

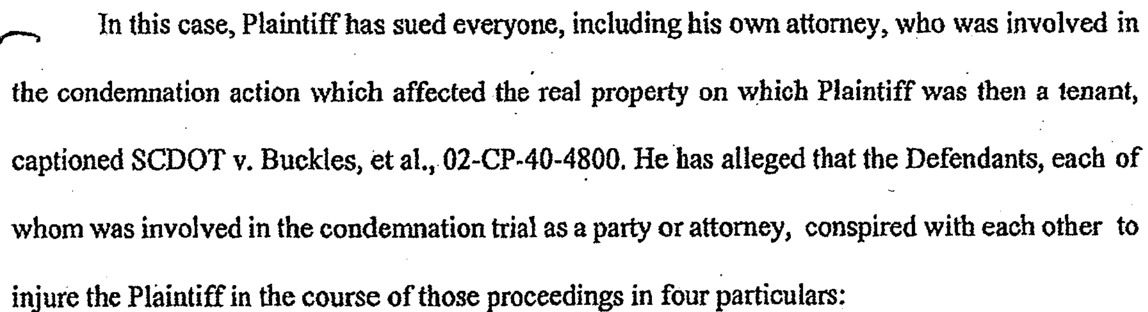
ORDER GRANTING MOTIONS TO DISMISS

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



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

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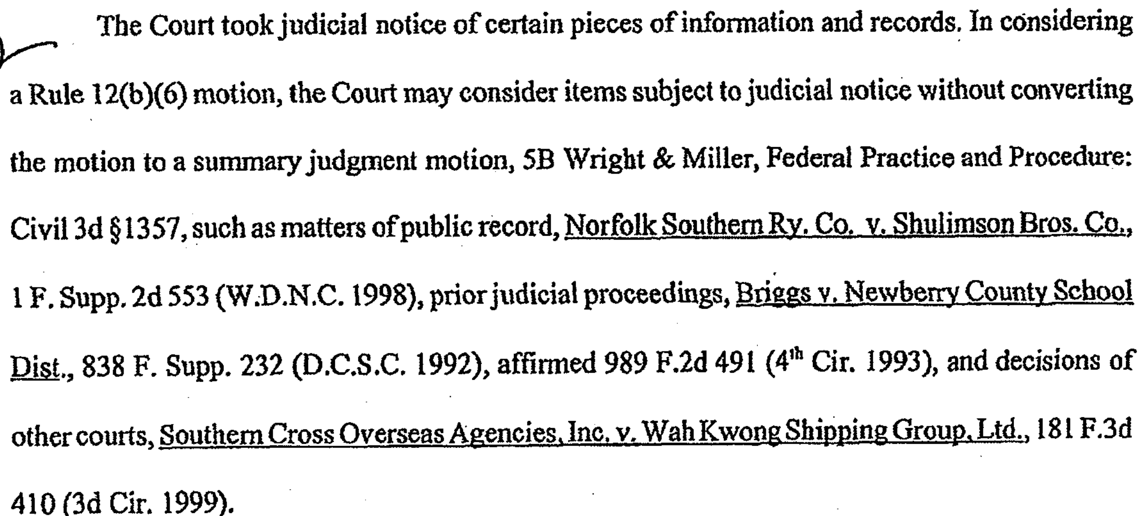
committing fraudulent acts, the particulars of which, as argued by the Defendants, are not clearly alleged (Complaint ¶ 65-74); and

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

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20, 2008, more than three years from the alleged conspiratorial conduct. Hence, the argument that, notwithstanding the defendants' oral denials of the allegations[1], 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.

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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 case[2] 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

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[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.

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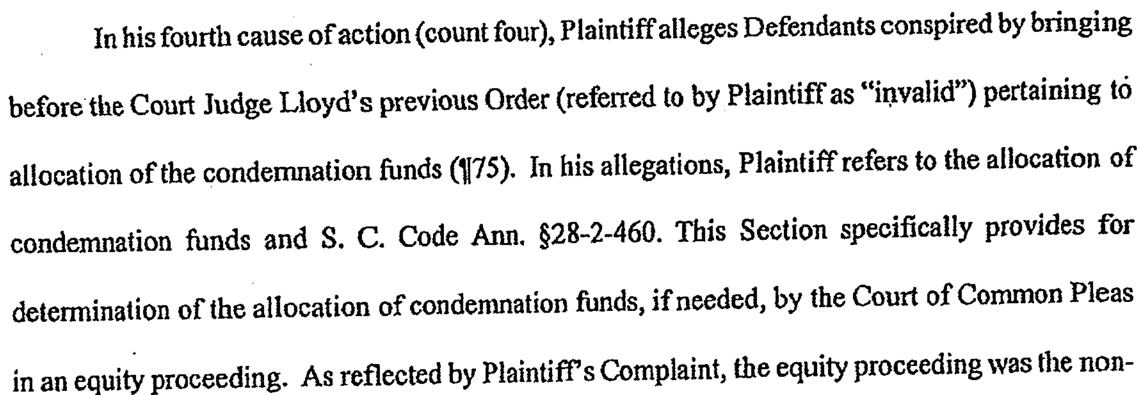
limitations period. Id. Accordingly, it is Ordered that the first, second and third causes of action are dismissed because they were not commenced within the applicable statute of limitations.

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.

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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 property 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.

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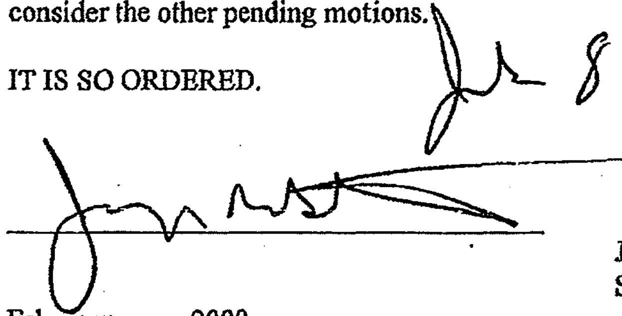
Based upon the dismissals granted by this order, it is unnecessary for the Court to hear and consider the other pending motions.

IT IS SO ORDERED.



Joseph M. Strickland
Special Circuit Judge

~~February~~ March 25, 2009

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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.

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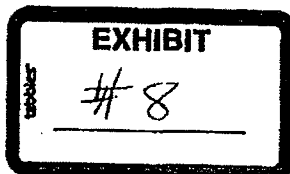
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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; 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 affirm[1] 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.

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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.

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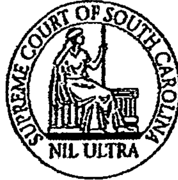


The Supreme Court of South Carolina

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."

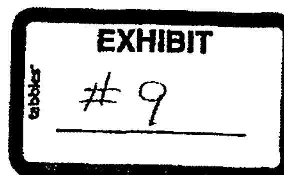
By copy of this letter we are advising all interested parties of the action of the Court in this matter.

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



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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

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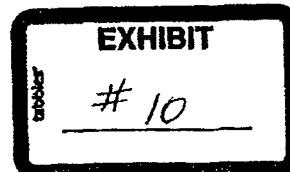
EXHIBIT
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dismissal procedures and the possible consequences if he failed to respond adequately to the defendants' motions. (ECF Nos. 20, 29, & 39.) Paul responded in opposition. (ECF Nos. 48, 50, 51, 52, & 57.) Also pending before the court are motions 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

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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.

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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.

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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

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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.

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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)).

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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."

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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-Feldman[4] 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.,

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[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.").

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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., Kovacic 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

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court orders, their conduct is an independent claim.[6] See Great W. Mining & Mineral Co., 615 F.3d at 166; Cormick 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 Volkswagon 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.

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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.

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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 Holzcer was SCDOT's outside counsel is not sufficient to transform de Holzcer 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

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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.

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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).

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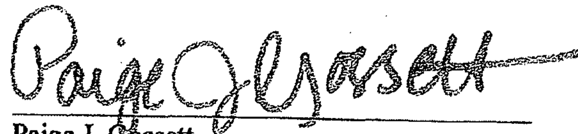
ORDER AND RECOMMENDATION

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.

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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).

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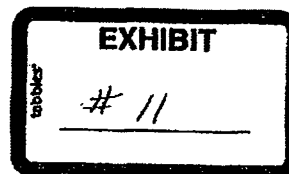
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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



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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

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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

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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

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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.

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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

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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.

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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

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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; Iiene A. Buckles, as Personal Representative of the Estate of G.L. Buckles individually and Iiene 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**

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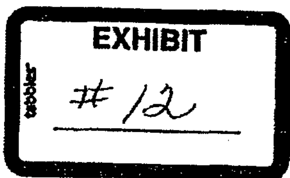

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This matter is before the court following remand from the United States Court of Appeals for the Fourth Circuit for consideration and review of Paul's Amended Complaint filed on June 5, 2014. This matter has been referred to the assigned magistrate 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).

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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: Iiene A. Buckles and Reginald I. Lloyd. (ECF No. 30 at 1.) Paul identifies Iiene 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

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[2] Although Defendant Lloyd has resigned from the bench, he was a state circuit judge at all times relevant to Paul's Amended Complaint.

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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

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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, 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.

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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(e).

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b. Reginald I. Lloyd

Paul's allegations against Reginald I. Loyd 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–Iiene A. Buckles

To the extent Paul sues Iiene 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 Iiene 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.

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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

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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).

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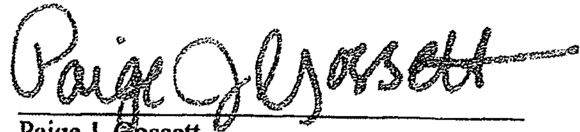
III. Recommendation

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.



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.

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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).

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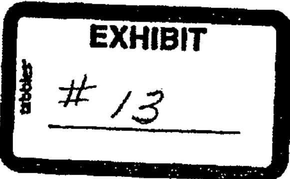
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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; IIENE A. BUCKLES, as personal representative of the Estate of G.L. Buckles individually and Iiene 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

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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

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[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.

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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

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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.

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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

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[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*).

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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, Iiene 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.

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"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 Iiene 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.

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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]

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[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).

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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 "nudg[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.'").

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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 Iiene 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.

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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.

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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.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
October 8, 2014

[8] The sole correction relates to the reference to "evidence" rather than "allegations." *See supra* n. 3.

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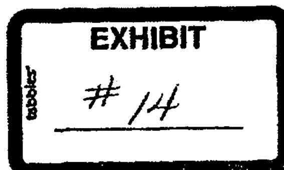
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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 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.	Civil Action No. 3:16-cv-1727-CMC **OPINION AND ORDER**

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.



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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

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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).

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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.

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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

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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.

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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

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

1 STATE OF SOUTH CAROLINA
IN THE CIVIL COURT
2 COUNTY OF RICHLAND

3

4 SOUTH CAROLINA DEPARTMENT)
OF TRANSPORTATION,)
5)
Condemnor,)
6 -vs-)
) TRANSCRIPT OF RECORD
7 KEITH J. BUCKLES)
AND G.L. BUCKLES,) 02-CP-40-4800
8)
Landowners.)
9)
AND RONALD PAUL, LESSEE, AND)
10 SANG KIM, LESSEE,)
)
11 Other Condemnees.)

12

13 October 14, 2004
Columbia, South Carolina
14

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
Attorney. for the Condemnor
20
MICHAEL H. QUINN, Esquire
21 MICHAEL H. QUINN, Jr., Esquire
Attorneys for the Landowners
22
J. CHARLES ORMOND, Esquire
23 Attorney for the Other Condemnee Paul

24

EXHIBIT
#15

25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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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.

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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

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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.

DEFENDANT QUINN'S TIME LINE OF RELEVANT DATES BASED ON PLAINTIFF'S COMPLAINT

The following time line, based on Plaintiff's Complaint filed October 26, 2018 clearly reflects Plaintiff's action is barred by the South Carolina Statute of Limitations, and the Doctrine of Laches.

(1) **October 2, 2002** the South Carolina Department of Transportation filed a condemnation action against Defendant Keith J. Buckles (now deceased) and G.L. Buckles (now deceased). Certified copies of the death certificate for both Buckles are provided the Court and counsel herewith. (Complaint, p.6, ¶23)

(2) **February 2004** Defendant Ormond (Paul's counsel) tells Paul the State officials and Defendants de Holczer and Quinn/Buckles had already settled the case for just compensation. (Complaint, p.8, ¶ 37)

(3) **March 2004** Defendant Ormond tells Paul the landowners and SCDOT have a legal right to settle the case for just compensation, and Paul must sue the Buckles for a portion of their claim. (Complaint, p.9, ¶41)

(4) **March 2004** Judge Barber issued an Order of bifurcation for a separate proceeding to address the separate issues of (1) Just Compensation and (2) in what apportionment the just compensation should be paid. (Complaint, p.9, ¶39)

(5) **October 14, 2004** Condemnation Trial before Judge Reginald Lloyd begins (Complaint, p11, ¶¶50, 51) (one day), with trial to resume on October 20, 2004 (Complaint, p.16, ¶64)

(6) **October 14 or 20, 2004** Judge Lloyd allows Paul's alleged damages of $310,000.00 into evidence, subject to Defendant Quinn's and Defendant de Holczer's objections. (Complaint, p.15, ¶59)

(7) **October 20, 2004** Trial resumes, and is concluded October 20, 2004. (Complaint, p.16, ¶64)

(8) **March 11, 2005** Judge Lloyd issued his Order awarding landowner Keith J. Buckles and G.L. Buckles $154,300.00 and Ronald Paul $2,450.00.

(9) **June 22, 2005** Paul appeals Judge Lloyd's Order. (Complaint, p.16, ¶65)

(10) **October 23, 2006** the South Carolina Court of Appeals affirms Judge Lloyd's Order. (Complaint, p.16, ¶66)

(11) **October 10, 2007** Quinn and Buckles file a motion to disburse the condemnation proceeds (Complaint, p16, ¶68)

(12) **October 18, 2007** the South Carolina Supreme Court denies Paul's Petition for Writ of Certiorari. (Complaint, p.16, ¶67)

(13) **January 28, 2008** Judge Thomas Cooper issued an Order to disburse the condemnation proceeds. Paul appeals the Order. (Complaint, p.17, ¶70)

(14) **May 27, 2009** South Carolina Court of Appeals issued an unpublished Order dismissing Paul's appeal of Judge Cooper's Order. (Complaint, p.17, ¶71)

(15) **January 19, 2010** the South Carolina Supreme Court denied Paul's Petition for Writ of Certiorari. (Complaint, p.17, ¶71)

(16) **January 25, 2010** Paul files a Rule 60(b) Motion, amended on February 22, 2010 to set aside Judge Cooper's and Judge Lloyd's Orders.

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(17) **March 24, 2010** Judge Cooper enters an Order denying Paul's 60(b) Motion.

(18) **June 20, 2010** Paul appeals Judge Cooper's Orders.

(19) **January 19, 2011** the South Carolina Court of Appeals dismissed Paul's appeal. Judge Few, speaking for the Court, stated, "The issues presented in this appeal have been thoroughly litigated and final judgment has been issued many times over. Accordingly, the motion to dismiss is granted."

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

(21) **October 26, 2018** Paul files present Complaint.

UNITED STATES DISTRICT COURT PROCEEDINGS

Paul filed five Complaints in the United States District Court for South Carolina. As noted below, two of the Complaints were dismissed by District Court Judge Cameron McGowan Currie. The Court refused to accept three of the Complaints Paul attempted to file. The Reports of United States Magistrate Judge Paige J. Gossett and Opinions, and Orders of Judge Cameron McGowan Currie of the United States District Court are included in Defendant's List of Exhibits.

Filing Date Of Complaint	
April 17, 2012	Paul v. South Carolina Department of Transportation, Michael H. Quinn, individually and as Senior Lawyer of Quinn Law Firm, LLC, et al., *C/A* No. 3:12-1036-CMC-PJG; **Dismissed by Order dated February 6, 2013**
February 11, 2013	Paul v. South Carolina Depal iment of Transportation, Michael H. Quinn, individually and as Senior Lawyer of Quinn Law Firm, LLC, et al., *C/A* No. 3:13-367-CMC-PJG; **Court Refused to Accept**
July 8, 2013	Paul v. South Carolina Department of Transportation, Michael H. Quinn, individually and as Senior Lawyer of Quinn Law Firm, LLC, et al., *C/A* No. 3:13-1852-CMC-PJG; **Dismissed by Order dated October 21, 2013**
May 29, 2015	Paul v. Paul D. de Holczer, etc., Michael H. Quinn, etc., et al.,

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CIA No.3:15-2178-CMC-PJG; **Court Refused to Accept**

May 31, 2016 Paul v. South Carolina Department of Transportation, Michael H. Quinn, etc., et al., CIA No. 3:16-cv-1727-CMC; **Court Refused to Accept**

November 8, 2016 Order of Judge Cameron McGowan Currie, imposing a pre-filing injunction on Paul's ability to file any new action in the South Carolina District Court relating to the subject matter of the five (5) lawsuits listed, requires Paul to seek permission of the Court before filing any new action.

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

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ELECTRONICALLY FILED - 2019 Feb 05 4:00 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

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, LLC FIRST AMENDMENT TO MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendants Michael H. Quinn and Quinn Law Firm, LLC, by this First Amendment, amend their Memorandum in Support of Motion to Dismiss electronically filed with the Court on January 31, 2019 as follows: The last sentence on page 8 is deleted in its entirety, and the

following is substituted in lieu thereof: "The undersigned respectfully submits Paul's Complaint and causes of action must be dismissed with prejudice."[1]

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

February 5, 2019

[1] Note the following language in the second full paragraph on page 4: "As set forth hereinafter, 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."

ELECTRONICALLY FILED - 2019 Feb 05 4:00 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	

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

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 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.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
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Counsel for Defendants South Carolina Department of Transportation, Paul D. de Holczer, and Natalie J. Moore

February 6, 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

PLAINTIFF'S COMBINED MEMORANDUM IN OPPOSITION TO ALL DEFENDANTS MOTIONS TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
AM 8:41

Plaintiff, Ronald I. Paul *Pro se* responds to all Defendants Motion to Dismiss and/ or Motion for Summary Judgment as follows:

BACKGROUND

See Complaint filed on October 26, 2018

THE STATUTE OF LIMITATIONS

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

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

Last, while the conspiracy exists, the statute of limitations does not commence to run until the "cessation of the wrongful acts committed in furtherance of the conspiracy. Conspiracy is a continuing offense. For statutes such as 18 U.S.C. § 371, which require an overt act in furtherance of the conspiracy, the statute of limitations begins to run on the date of the last overt act. *See* *Fiswick v. United*

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

According to the Complaint, on page 18 paragraph 80 the civil conspiracy continues to the day through cover-ups, defenses and tactics.

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

On April 17, 2012, Plaintiff Filed a civil rights lawsuit in the U.S. District Court of South Carolina (Columbia) against the same defendants, the civil rights lawsuit was dismissed without prejudice. **(Exhibits A-E)** Defendants file no appeal. Now, in this case Defendant Quinn attempt to rely upon the defenses of res judicata, collateral estoppels, issue preclusion, claim preclusion and law of the case, but only put forward the definition of these affirmative defenses.[1] Defendants de Holczer and Moore attempt to rely upon the defenses of res judicata and collateral

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

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

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

---

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

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

FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION OR CAUSES OF ACTION AGAINST DEFENDANT QUINN.

According to the Complaint, on pages 25,26 paragraphs 108-110, the Defendants have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment rights of the United States Constitution;[3]

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

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.

---

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

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

In addition, see the District Judge Order in Paul III 3:13-cv-01852-CMC (ECF 43 p. 11) *"..that some statements may have been made in the proceedings that mischaracterized or misrepresented Plaintiff's actions or positions.."*; Also see the district judge Order in Paul III 3:13-cv-01852-CMC (ECF 43 p. 12) *"They also suggest that Landlord and the SCDOT acted cooperatively in opposing Plaintiff's claims, consistent with their settlement agreement..."*. [4]

THE DEFENDANTS DE HOLCZER AND MOORE ARE Not 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.

According to the Complaint, on page 3 paragraph 6 this action is brought pursuant to 42 U.S.C. Sections 1983 for the defendants Natalie J. Moore and Paul D. de Holczer violating Plaintiff's rights while acting under color of state law. On

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

page 4 paragraph 13 defendant Moore is named in her individual capacity and on page 4 paragraph 15 defendant de Holczer is sued as a State Actor and individually.

Section 1983 provides:

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

The immune argument is simply an attempt to address arguments under a different direction and is without merit.

DEFENDANT ~~ATTORNEY~~ IS A PRIVATE CITIZEN AS IS ALLEGED IN THE COMPLAINT AND SIMPLY REPRESENTED MR. PAUL IN 2004 IN THE CONDEMNATION ACTION AND IS THEREFORE NOT A STATE ACTOR UNDER THE SOLE CAUSE OF ACTION; CAR OCCUPANT INJURED IN COLLISION WITH FIXED OR STATIONARY OBJECT

According to the Complaint, on page 3 paragraph 6 this action is brought pursuant to 42 U.S.C. Sections 1983 for the defendant Ormond violating Plaintiff's rights while acting under color of state law and on page 5 paragraph 19 defendant Ormond is sued as a State Actor and individually.

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

Section 1983 provides:

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

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

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

Count one declaratory judgment: **(See Exhibits G and H)**

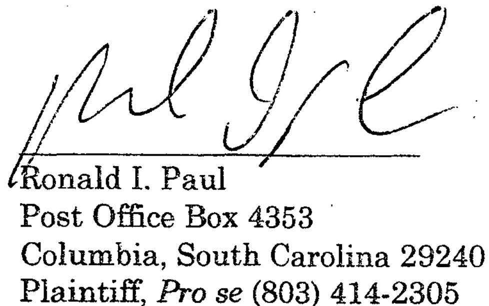
The Supreme Court has stated that "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The standing "inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Id.* The constitutional aspects of standing "import[] justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." *Id.* (citations omitted). Consequently, "at an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' and

that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision.'" *Valley Forge Christian Coll. v. Am.'s United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (citations omitted).

CONCLUSION

For the aforementioned reasons, all Defendants Motions to Dismiss/ and or Motion for Summary Judgment should be is denied. Alternatively, this Court should first permit discovery on Plaintiff Motions to Compel Discovery, Motion for entry of default and default judgment raised, before dismissal is an appropriate remedy 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).

Respectfully submitted,



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

Columbia, South Carolina
February 11, 2019

Exhibit
A

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Ronald I. Paul.
Plaintiff
v.
South Carolina Department of Transportation; 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. Holczer, Esq., Individually, and as a partner of the law Firm of Moses, Koon & Brackett, P.C.; G.L. Buckles, as Personal Representative fo the Estate of Keith J. Buckles and G.L. Buckles Individually; 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

)))))

Civil Action No. 3:12-1036-CMC-PJG

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* ________ recover from the defendant *(name)* ________ the amount of ________ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* ________________ recover costs from the plaintiff *(name)* ________________.

■ the plaintiff, Ronald I. Paul, take nothing of the defendants, South Carolina Department of Transportation; 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. Holczer, Esq., Individually, and as a partner of the law Firm of Moses, Koon & Brackett, P.C.; G.L. Buckles, as Personal Representative fo the Estate of Keith J. Buckles and G.L. Buckles Individually; 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, and this action is dismissed without prejudice.

This action was *(check one)*:

❒ tried by a jury, the Honorable _____________ presiding, and the jury has rendered a verdict.

❒ tried by the Honorable ___________ presiding, without a jury and the above decision was reached.

■decided by the Court, the Honorable Cameron McGowan Currie, US District Judge, presiding. The Court having adopted the Report and Recommendation of US Magistrate Judge Paige J. Gossett, granting defendants' motions to dismiss.

Date: February 6, 2013

LARRY W. PROPES, CLERK OF COURT

s/Charles L. Bruorton

Signature of Clerk or Deputy Clerk

CLOSED,JURY,LC 3,PROSE

U.S. District Court
District of South Carolina (Columbia)
CIVIL DOCKET FOR CASE #: 3:12-cv-01036-CMC

Paul v. South Carolina Department of Transportation et al
Assigned to: Honorable Cameron McGowan Currie
related Cases: 3:13-cv-00367-CMC
3:13-cv-01852-CMC
3:16-cv-01727-CMC
3:15-cv-02178-CMC
Cause: 42:1983 Civil Rights Act

Date Filed: 04/17/2012
Date Terminated: 02/06/2013
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Ronald I Paul

represented by **Ronald I Paul**
PO Box 4353
Columbia, SC 29240
PRO SE

V.

Defendant

South Carolina Department of Transportation

represented by **David Allan DeMasters**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Paul D de Holczer
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

G L Buckles
as Personal Representative of the Estate of Keith J Buckles and G L Buckles
Estate of
Keith J Buckles
Estate of
G L Buckles

represented by **Mark Weston Hardee**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Michael H Quinn
Individually and as Senior lawyer of Quinn Law Firm LLC

represented by **Michael H Quinn**
PRO SE

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ATTORNEY TO BE NOTICED

Defendant

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Esq Individually and as a partner of the Law Firm of Holler Dennis Corbett Ormond Plante & Garner

represented by **J Charles Ormond, Jr**
PRO SE

John Charles Ormond , Jr
Holler Dennis Corbett Ormond Plante and Garner
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Email: chuck@ormonddunn.com

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Oscar K Rucker *in his individual capacity as Director Rights of Way South Carolina Department of Transportation*	represented by	**David Allan DeMasters** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **William Henry Davidson , II** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Defendant

Macie M Gresham *in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation*	represented by	**David Allan DeMasters** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **William Henry Davidson , II** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Defendant

Natalie J Moore *in her individual capacity as Assistant Chief Counsel South Carolina Department of Transportation*	represented by	**David Allan DeMasters** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED* **William Henry Davidson , II** (See above for address) *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
04/17/2012	1	COMPLAINT against All Defendants (Filing fee $ 350 receipt number SCX300044296.), filed by Ronald I Paul.(jpet,) (Entered: 04/18/2012)
04/17/2012	2	Local Rule 26.01 Answers to Interrogatories by Ronald I Paul.(jpet,) (Entered: 04/18/2012)
05/02/2012	8	AMENDED COMPLAINT against All Defendants, filed by Ronald I Paul. (jpet,) (Entered: 05/02/2012)
05/15/2012	13	ORDER authorizing service of process by clerk and directing plaintiff to notify the clerk in writing of any change of address. Signed by Magistrate

		Judge Paige J Gossett on 5/15/2012. (jpet,) Modified to replace with corrected document on 5/15/2012 (jpet,). (Entered: 05/15/2012)
05/15/2012	15	Summons Issued as to All Defendants. (jpet,) (Entered: 05/15/2012)
05/15/2012	16	***DOCUMENT MAILED 15 Summons Issued, 13 Order Service and 1 copy of 8 Amended Complaint placed in U.S. Mail to Ronald I Paul (jpet,) (Entered: 05/15/2012)
05/25/2012	17	SUMMONS Returned Executed by Ronald I Paul. G L Buckles served on 5/24/2012, answer due 6/14/2012; Macie M Gresham served on 5/18/2012, answer due 6/8/2012; Natalie J Moore served on 5/18/2012, answer due 6/8/2012; J Charles Ormond, Jr served on 5/18/2012, answer due 6/8/2012; Michael H Quinn served on 5/18/2012, answer due 6/8/2012; Oscar K Rucker served on 5/18/2012, answer due 6/8/2012; South Carolina Department of Transportation served on 5/18/2012, answer due 6/8/2012; Paul D de Holczer served on 5/21/2012, answer due 6/11/2012. (Attachments: # 1 Proof of Service)(jpet,) (Entered: 05/25/2012)
06/05/2012	18	MOTION to Dismiss *of Michael H. Quinn*, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, MOTION to Dismiss for Lack of Jurisdiction (Response to Motion due by 6/22/2012) by Michael H Quinn. (Attachments: # 1 Exhibit List, # 2 Exhibit Order of Judge Lloyd, # 3 Exhibit Unpublished Opinion of Court of Appeals filed October 23, 2006, # 4 Exhibit Motion to Disburse Condemnation Proceeds, # 5 Exhibit Order of Judge G. Thomas Cooper dated January 28, 2008, # 6 Exhibit Unpublished Opinion of Court of Appeals dated May 27, 2009, # 7 Exhibit Respondent's Motion to Dismiss Appeal dated July 23, 2010, # 8 Exhibit Order of Court of Appeals filed January 19, 2011, # 9 Exhibit Ronald I. Paul Complaint dated February 20, 2008, # 10 Exhibit Order of Judge Joseph M. Strickland dismissing Complaint of Ronald I. Paul dated March 25, 2009, # 11 Exhibit Unpublished Opinion of Court of Appeals filed November 19, 2010, # 12 Exhibit Order of Supreme Court of SC dated October 19, 2011, # 13 Exhibit Portion of Transcript of October 14, 2004 trial before Judge Reginald I. Lloyd, # 14 Certificate of Service)No proposed orderMotions referred to Paige J Gossett. (Quinn, Michael) Modified to edit document descriptions on 6/6/2012 (jpet,). (Entered: 06/05/2012)
06/05/2012	19	MOTION for Sanctions by Michael H Quinn. Response to Motion due by 6/22/2012 (Attachments: # 1 Certificate of Service)No proposed orderMotions referred to Paige J Gossett.(Quinn, Michael) Modified to edit attachment description on 6/6/2012 (jpet,). (Entered: 06/05/2012)
06/06/2012	20	ROSEBORO ORDER directing clerk to forward summary judgment explanation to the opposing party and directing that party to respond in 34 days. Response due to 18 MOTION to Dismiss *of Michael H. Quinn* MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction Response to Motion due by 7/12/2012. Signed by Magistrate Judge Paige J Gossett on 6/6/2012. (jpet,) (Entered: 06/06/2012)
06/06/2012	21	

		***DOCUMENT MAILED 20 Roseboro Order, placed in U.S. Mail to Ronald I Paul (jpet,) (Entered: 06/06/2012)
06/07/2012	24	MOTION to Dismiss by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation. Response to Motion due by 6/25/2012 (Attachments: # 1 Memo in Support of Motion to Dismiss, # 2 Certificate of Service)No proposed orderMotions referred to Paige J Gossett. (Davidson, William) (Entered: 06/07/2012)
06/07/2012	25	ANSWER to 8 Amended Complaint by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation. (Attachments: # 1 Certificate of Service)(Davidson, William) (Entered: 06/07/2012)
06/07/2012	26	MOTION to Dismiss for Lack of Jurisdiction, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, MOTION for Sanctions, MOTION to Compel *Disclosure of Ghost-Writer* (Response to Motion due by 6/25/2012) by Paul D de Holczer. (Attachments: # 1 Affidavit, # 2 Exhibit Index, # 3 Exhibit A - J, # 4 Exhibit K - S, # 5 Exhibit T - FF, # 6 Certificate of Service) No proposed order. Motions referred to Paige J Gossett.(Brackett, B) Modified to correct filing date on 6/11/2012 (jpet,). (Entered: 06/08/2012)
06/08/2012	27	First MOTION for Sanctions, First MOTION to Dismiss (Response to Motion due by 6/25/2012) by G L Buckles. No proposed order. Motions referred to Paige J Gossett.(Hardee, Mark) Modified to replace incorrect document with corrected document provided by filing user on 6/13/2012 (abuc). (Entered: 06/08/2012)
06/11/2012	28	DELETION OF DOCKET ENTRY NUMBER 22 Reason: Multiple deficiencies. Corrected Filing Document Number 26 Modified filing date to that of original filing: 6/7/2012. Response due date modified to that of original filing: 6/25/2012 (jpet,) (Entered: 06/11/2012)
06/11/2012	29	ROSEBORO ORDER directing clerk to forward summary judgment explanation to the opposing party and directing that party to respond in 34 days. Response due to 27 MOTION to Dismiss, 24 MOTION to Dismiss, 26 MOTION to Dismiss for Lack of Jurisdiction MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM. Response to Motion due by 7/16/2012. Signed by Magistrate Judge Paige J Gossett on 6/11/2012. (jpet,) (Entered: 06/11/2012)
06/11/2012	30	SCHEDULING ORDER Motions to Amend Pleadings due by 7/9/2012, Plaintiffs ID of Expert Witness due by 8/6/2012, Defendants ID of Expert Witnesses Due by 9/5/2012, Records Custodian Affidavit due by 9/5/2012, Discovery due by 10/5/2012, Motions due by 11/5/2012, ADR Statement due by 11/6/2012, Mediation Due by 12/4/2012,. Signed by Magistrate Judge Paige J Gossett on 6/11/2012. (jpet,) (Entered: 06/11/2012)
06/11/2012	31	***DOCUMENT MAILED 29 Roseboro Order, 30 Scheduling Order, placed in U.S. Mail to Ronald I Paul (jpet,) (Entered: 06/11/2012)
06/11/2012	32	CERTIFICATE OF SERVICE by Ronald I Paul re 27 First MOTION for SanctionsFirst MOTION to Dismiss (Hardee, Mark) Modified to replace with

		corrected document provided by filing user on 6/11/2012 (jpet,). (Entered: 06/11/2012)
06/11/2012	33	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by J Charles Ormond, Jr. Response to Motion due by 6/28/2012 (Attachments: # 1 Certificate of Service)No proposed orderMotions referred to Paige J Gossett. (Ormond, John) Modified to replace main document and attachment with corrected documents provided by filing user on 6/12/2012 (jpet,). (Entered: 06/11/2012)
06/11/2012	34	Local Rule 26.01 Answers to Interrogatories by J Charles Ormond, Jr. (Attachments: # 1 Certificate of Service)(Ormond, John) Modified to replace main document and attachment with corrected documents provided by filing user on 6/12/2012 (jpet,). (Entered: 06/11/2012)
06/11/2012	35	DELETION OF DOCKET ENTRY NUMBER 23 Reason: Corrected document filed as an attachment to 26 instead of being submitted to Clerk's Office. Corrected Filing Document Number 26 Modified filing date to that of original filing: 6/7/2012 (jpet,) (Entered: 06/11/2012)
06/11/2012	36	MOTION for Entry of Default as to Defendant J Charles Ormond, Jr by Ronald I Paul. Response to Motion due by 6/28/2012 (Attachments: # 1 Affidavit, # 2 Certificate of Service)Motions referred to Paige J Gossett.(jpet,) (Entered: 06/11/2012)
06/12/2012	37	RESPONSE in Opposition re 36 MOTION for Entry of Default Response filed by J Charles Ormond, Jr.Reply to Response to Motion due by 6/22/2012 (Attachments: # 1 Certificate of Service)(Ormond, John) (Entered: 06/12/2012)
06/12/2012	38	Amended MOTION to Dismiss for Lack of Jurisdiction , Amended MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , MOTION to Compel *Disclosure of Ghost-Writer*, MOTION for Sanctions (Response to Motion due by 6/29/2012) by Paul D de Holczer. (Attachments: # 1 Affidavit, # 2 Exhibit Index, # 3 Exhibit A-J, # 4 Exhibit K-S, # 5 Exhibit T-FF, # 6 Certificate of Service)No proposed order. Motions referred to Paige J Gossett.(Brackett, B) Modified to remove duplicative text from attachment descriptions on 6/12/2012 (jpet,). (Entered: 06/12/2012)
06/12/2012	39	ROSEBORO ORDER directing clerk to forward summary judgment explanation to the opposing party and directing that party to respond in 34 days. Response due to 38 Amended MOTION to Dismiss for Lack of Jurisdiction Amended MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 33 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM. Response to Motion due by 7/16/2012. Signed by Magistrate Judge Paige J Gossett on 6/12/2012. (jpet,) (Entered: 06/12/2012)
06/12/2012	40	***DOCUMENT MAILED 39 Roseboro Order, placed in U.S. Mail to Ronald I Paul (jpet,) (Entered: 06/12/2012)
06/13/2012	42	REPLY to Response to Motion re 36 MOTION for Entry of Default Response filed by Ronald I Paul. (Attachments: # 1 Certificate of Service, # 2 Service Documents)(abuc) (Entered: 06/13/2012)

06/15/2012	43	RESPONSE in Opposition re 19 MOTION for Sanctions Response filed by Ronald I Paul.Reply to Response to Motion due by 6/25/2012 (Attachments: # 1 Certificate of Service, # 2 Envelope)(jada,) (Entered: 06/18/2012)
06/18/2012	44	MOTION to Stay *Scheduling Order* by Paul D de Holczer. Response to Motion due by 7/5/2012 (Attachments: # 1 Proposed Order, # 2 Certificate of Service)Proposed order is being emailed to chambers with copy to opposing counselMotions referred to Paige J Gossett.(Brackett, B) (Entered: 06/18/2012)
06/18/2012	45	MOTION to Amend/Correct 8 Amended Complaint by Ronald I Paul. Response to Motion due by 7/5/2012 (Attachments: # 1 Proposed Second Amended Complaint, # 2 Certificate of Service)Motions referred to Paige J Gossett.(jpet,) (Entered: 06/18/2012)
06/20/2012	46	RESPONSE in Opposition re 44 MOTION to Stay *Scheduling Order* Response filed by Ronald I Paul.Reply to Response to Motion due by 7/2/2012 (Attachments: # 1 Envelope)(jpet,) (Entered: 06/20/2012)
06/25/2012	47	RESPONSE in Opposition re 45 MOTION to Amend/Correct 8 Amended Complaint Response filed by Paul D de Holczer.Reply to Response to Motion due by 7/5/2012 (Attachments: # 1 Certificate of Service)(Brackett, B) (Entered: 06/25/2012)
06/26/2012	48	RESPONSE in Opposition re 18 MOTION to Dismiss *of Michael H. Quinn* MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction Response filed by Ronald I Paul.Reply to Response to Motion due by 7/6/2012 (Attachments: # 1 Certificate of Service, # 2 Envelope)(jpet,) (Entered: 06/26/2012)
06/27/2012	50	RESPONSE in Opposition re 33 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM Response filed by Ronald I Paul.Reply to Response to Motion due by 7/9/2012 (Attachments: # 1 Envelope)(jpet,) (Entered: 06/28/2012)
06/27/2012	51	RESPONSE in Opposition re 38 Amended MOTION to Dismiss for Lack of Jurisdiction Amended MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Compel *Disclosure of Ghost-Writer* MOTION for Sanctions Response filed by Ronald I Paul.Reply to Response to Motion due by 7/9/2012 (Attachments: # 1 Envelope)(jpet,) (Entered: 06/28/2012)
06/27/2012	52	RESPONSE in Opposition re 27 First MOTION for Sanctions First MOTION to Dismiss Response filed by Ronald I Paul.Reply to Response to Motion due by 7/9/2012 (Attachments: # 1 Envelope)(jpet,) (Entered: 06/28/2012)
07/02/2012	53	RESPONSE in Opposition re 45 MOTION to Amend/Correct 8 Amended Complaint Response filed by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation.Reply to Response to Motion due by 7/12/2012 (Davidson, William) (Entered: 07/02/2012)
07/03/2012	56	RESPONSE in Opposition re 45 MOTION to Amend/Correct 8 Amended Complaint Response filed by Michael H Quinn.Reply to Response to Motion due by 7/13/2012 (Attachments: # 1 Certificate of Service)(Quinn, Michael) Modified on 7/6/2012 (jpet,). (Entered: 07/05/2012)

07/05/2012	57	RESPONSE in Opposition re 24 MOTION to Dismiss Response filed by Ronald I Paul.Reply to Response to Motion due by 7/16/2012 (Attachments: # 1 Exhibit A - State court order)(jpet,) (Entered: 07/05/2012)
07/06/2012	58	DELETION OF DOCKET ENTRY NUMBER 54 Reason: Filing attorney did not follow the instructions given by the Clerk's Office and refiled documents instead of returning corrections to Clerk's Office. Corrected Filing Document Number 56 Modified filing date to that of original filing: 7/3/2012. Response due date modified to that of original filing: 7/13/2012. (jpet,) (Entered: 07/06/2012)
07/13/2012	62	DOCKET TEXT ORDER terminating 44 Motion to Stay. The deadlines in the court's 30 Scheduling Order are hereby extended by ninety (90) days. Entered at the direction of Magistrate Judge Paige J. Gossett on 7/13/2012. (kkus,) (Entered: 07/13/2012)
07/16/2012	63	***DOCUMENT MAILED 62 Order on Motion to Stay, placed in U.S. Mail to Ronald I Paul (jpet,) (Entered: 07/16/2012)
08/08/2012	67	MOTION to Stay, MOTION to Expedite *Consideration* (Response to Motion due by 8/27/2012.) by Paul D de Holczer. (Attachments: # 1 Exhibit 1 - Plaintiff's First Set of Interrogatories to Defendant de Holczer, # 2 Exhibit 2 - Plaintiff's First Request for Production of Documents to Defendant de Holczer, # 3 Exhibit 3 - Plaintiff's First Request for Admission to Admit on Defendant de Holczer, # 4 Exhibit 4 - Certificate of Service of Plaintiff, # 5 Certificate of Service)No proposed order.Motions referred to Paige J Gossett.(Brackett, B) Modified to correct motion relief and to edit attachment descriptions as provided by filing user on 8/9/2012 (jpet,). (Entered: 08/08/2012)
08/09/2012	68	NOTICE of Appearance by David Allan DeMasters on behalf of Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation (Attachments: # 1 Certificate of Service)(DeMasters, David) (Entered: 08/09/2012)
08/09/2012	69	MOTION for Protective Order *or in the alternative to Stay Discovery* by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation. Response to Motion due by 8/27/2012. (Attachments: # 1 Memo in Support, # 2 Certificate of Service)No proposed order.Motions referred to Paige J Gossett.(DeMasters, David) (Entered: 08/09/2012)
08/17/2012	70	MOTION for Protective Order, MOTION to Expedite by Michael H Quinn. Response to Motion due by 9/4/2012. (Attachments: # 1 Exhibit A - Plaintiff's First Set of Interrogatories to Defendant Michael H. Quinn, # 2 Exhibit B - Plaintiff's First Request for the Production of Documents on Defendant Michael H. Quinn, # 3 Exhibit C - Plaintiff's First Request for Admission to Admit on Defendant Quinn, # 4 Certificate of Service)No proposed order.Motions referred to Paige J Gossett.(Quinn, Michael) Modified to replace main document and certificate of service with corrected documents provided by filing user, to edit motion relief, to add motion relief and to edit attachment descriptions as provided by filing user on 8/21/2012. (jpet) (Entered: 08/17/2012)

08/20/2012	71	First MOTION to Stay by G L Buckles. Response to Motion due by 9/7/2012. No proposed order.Motions referred to Paige J Gossett.(Hardee, Mark) (Entered: 08/20/2012)
08/20/2012	72	MOTION to Compel by Ronald I Paul. Response to Motion due by 9/7/2012. (Attachments: # 1 Exhibit A - Plaintiff's First Request for Admission to Admit on Defendant J. Charles Ormond, # 2 Exhibit B - Defendant's Response to Plaintiff's Requests to Admit, # 3 Exhibit C - Letter to Mr. Ormond, # 4 Envelope)Motions referred to Paige J Gossett.(jpet,) (Entered: 08/21/2012)
08/21/2012	73	CERTIFICATE OF SERVICE by G L Buckles re 71 First MOTION to Stay (Hardee, Mark) Modified to replace main document with corrected document provided by filing user and to remove attachment on 8/22/2012 (jpet,). (Entered: 08/21/2012)
08/27/2012	74	RESPONSE in Opposition re 67 MOTION to Stay MOTION to Expedite *Consideration* Response filed by Ronald I Paul.Reply to Response to Motion due by 9/7/2012 (Attachments: # 1 Envelope)(jpet,) (Entered: 08/28/2012)
08/27/2012	75	RESPONSE in Opposition re 69 MOTION for Protective Order *or in the alternative to Stay Discovery* Response filed by Ronald I Paul.Reply to Response to Motion due by 9/7/2012 (Attachments: # 1 Envelope)(jpet,) (Entered: 08/28/2012)
09/04/2012	77	RESPONSE in Opposition re 70 MOTION for Protective Order MOTION to Expedite Response filed by Ronald I Paul.Reply to Response to Motion due by 9/14/2012 (Attachments: # 1 Envelope)(jpet,) (Entered: 09/04/2012)
09/04/2012	78	RESPONSE in Opposition re 71 First MOTION to Stay Response filed by Ronald I Paul.Reply to Response to Motion due by 9/14/2012 (Attachments: # 1 Envelope)(jpet,) (Entered: 09/04/2012)
09/11/2012	80	DOCKET TEXT ORDER suspending all discovery deadlines until resolution of the pending motions to dismiss. Entered at the direction of Magistrate Judge Paige J. Gossett on 9/11/2012. (kkus,) (Entered: 09/11/2012)
09/11/2012	81	DOCKET TEXT ORDER denying 72 Motion to Compel without prejudice to refile after discovery resumes, if appropriate. Entered at the direction of Magistrate Judge Paige J. Gossett on 9/11/2012. (kkus,) (Entered: 09/11/2012)
09/11/2012	82	DOCKET TEXT ORDER denying 36 Motion for Entry of Default as to Defendant J. Charles Ormond, Jr. as this defendant has filed numerous motions and/or memoranda defending against this action. See Fed. R. Civ. P. 55(a) (providing for clerk's entry of default against a party who has failed to plead or otherwise defend). The Clerk of Court is directed not to enter an entry of default as to this defendant. Entered at the direction of Magistrate Judge Paige J. Gossett on 9/11/2012. (kkus,) (Entered: 09/11/2012)
09/11/2012	83	

		***DOCUMENT MAILED 81 Order on Motion to Compel, 82 Order on Motion for Entry of Default, 80 Order placed in U.S. Mail to Ronald I Paul (jada,) (Entered: 09/11/2012)
09/12/2012	85	MOTION to Compel for Defendant Macie Gresham by Ronald I Paul. Response to Motion due by 10/1/2012. (Attachments: # 1 Exhibit A - First Set of Interrogatories, # 2 Exhibit B - First Request for Production of Documents, # 3 Exhibit C - First Request for Admission, # 4 Exhibit D - Certificate of Service, # 5 Exhibit E - Letter to Macie Gresham, # 6 Certificate of Service, # 7 Envelope)Motions referred to Paige J Gossett.(jpet,) (Entered: 09/12/2012)
09/12/2012	86	MOTION to Compel for Defendant Natalie Moore by Ronald I Paul. Response to Motion due by 10/1/2012. (Attachments: # 1 Exhibit A - First Set of Interrogatories, # 2 Exhibit B - First Request for Production of Documents, # 3 Exhibit C - First Request for Admission, # 4 Exhibit D - Certificate of Service, # 5 Exhibit E - Letter to Natalie Moore, # 6 Certificate of Service, # 7 Envelope)Motions referred to Paige J Gossett.(jpet,) (Entered: 09/12/2012)
09/12/2012	87	MOTION to Compel for Defendant G. L. Buckles by Ronald I Paul. Response to Motion due by 10/1/2012. (Attachments: # 1 Exhibit A - First Set of Interrogatories, # 2 Exhibit B - First Request for Production of Documents, # 3 Exhibit C - First Request for Admission, # 4 Exhibit D - Certificate of Service, # 5 Exhibit E - Letter to G.L. Buckles, # 6 Certificate of Service, # 7 Envelope) Motions referred to Paige J Gossett.(jpet,) (Entered: 09/12/2012)
09/12/2012	88	MOTION to Compel for Defendant SCDOT by Ronald I Paul. Response to Motion due by 10/1/2012. (Attachments: # 1 Exhibit A - First Set of Interrogatories, # 2 Exhibit B - First Request for Production of Documents, # 3 Exhibit C - First Request for Admission, # 4 Exhibit D - Certificate of Service, # 5 Exhibit E - Letter to SCDOT, # 6 Certificate of Service, # 7 Envelope) Motions referred to Paige J Gossett.(jpet,) (Entered: 09/12/2012)
09/12/2012	89	MOTION to Compel for Defendant Oscar Rucker by Ronald I Paul. Response to Motion due by 10/1/2012. (Attachments: # 1 Exhibit A - First Set of Interrogatories, # 2 Exhibit B - First Request for Production of Documents, # 3 Exhibit C - First Request for Admission, # 4 Exhibit D - Certificate of Service, # 5 Exhibit E - Letter to Oscar Rucker, # 6 Certificate of Service, # 7 Envelope)Motions referred to Paige J Gossett.(jpet,) (Entered: 09/13/2012)
10/01/2012	91	RESPONSE in Opposition re 89 MOTION to Compel, 86 MOTION to Compel, 85 MOTION to Compel, 88 MOTION to Compel Response filed by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation.Reply to Response to Motion due by 10/12/2012 (Attachments: # 1 Exhibit A - Letter to Plaintiff dated 09-07-12, # 2 Certificate of Service)(DeMasters, David) Modified to edit attachment description as provided by filing attorney on 10/2/2012 (jpet,). (Entered: 10/01/2012)
10/02/2012	92	RESPONSE in Opposition re 89 MOTION to Compel *Defendants* Response filed by G L Buckles.Reply to Response to Motion due by 10/12/2012 (Attachments: # 1 Certificate of Service)(Hardee, Mark) (Entered: 10/02/2012)
10/15/2012	94	

		ADR STATEMENT/CERTIFICATION by Ronald I Paul (Attachments: # 1 Envelope)(jpet,) (Entered: 10/15/2012)
10/17/2012	96	MOTION for Appointment of a Mediator by Ronald I Paul. Response to Motion due by 11/5/2012. (Attachments: # 1 Envelope)Motions referred to Paige J Gossett.(jpet,) (Entered: 10/17/2012)
10/18/2012	97	RESPONSE to Motion re 96 MOTION for Appointment of a Mediator Response filed by Paul D de Holczer.Reply to Response to Motion due by 10/29/2012 (Attachments: # 1 Exhibit Letter to Judge Gossett, # 2 Certificate of Service)(Brackett, B) Modified to edit text on 10/18/2012 (jpet,). (Entered: 10/18/2012)
10/18/2012	99	PLAINTIFF'S ID OF EXPERT WITNESSES by Ronald I Paul. (Attachments: # 1 Envelope)(jpet,) (Entered: 10/19/2012)
10/19/2012	98	RESPONSE in Opposition re 96 MOTION for Appointment of a Mediator Response filed by Michael H Quinn.Reply to Response to Motion due by 10/29/2012 (Attachments: # 1 Certificate of Service)(Quinn, Michael) Modified to edit text on 10/22/2012 (jpet,). (Entered: 10/19/2012)
10/19/2012	100	Letter from David DeMasters. (DeMasters, David) (Entered: 10/19/2012)
10/24/2012	101	REPLY to Response to Motion re 96 MOTION for Appointment of a Mediator Response filed by Ronald I Paul. (Attachments: # 1 Exhibit A - Letters from Defendants, # 2 Exhibit B - Letter from Defendant Paul D. de Holczer, # 3 Certificate of Service, # 4 Envelope)(jpet,) (Entered: 10/25/2012)
10/24/2012	102	REPLY to Response to Motion re 96 MOTION for Appointment of a Mediator Response filed by Ronald I Paul. (Attachments: # 1 Exhibit A - Letters from Defendants, # 2 Exhibit B - Letter from Defendant Paul D. de Holczer, # 3 Certificate of Service, # 4 Envelope)(jpet,) (Entered: 10/25/2012)
11/06/2012	103	PLAINTIFF'S ID OF EXPERT WITNESSES by Ronald I Paul. (Attachments: # 1 Envelope)(jpet,) (Entered: 11/07/2012)
11/16/2012	105	MOTION for Summary Judgment by Ronald I Paul. Response to Motion due by 12/3/2012. (Attachments: # 1 Exhibit A - Affidavit of Marcie Gresham, letters from Paul D. de Holczer and Order of eviction, # 2 Exhibit B - State Court Motion and Consent Order, # 3 Exhibit C - Letters between Plaintiff and Defendant Ormond, # 4 Exhibit D - Transcript dated September 7-8, 2004, # 5 Exhibit E - State Court order denying motion, # 6 Exhibit F - Expert Witness Opinion of Damages, # 7 Exhibit G - Transcript dated October 14, 2004, # 8 Exhibit H - Transcript dated October 20, 2004, # 9 Exhibit I - Transcript dated January 8, 2008, # 10 Exhibit J - Motions for Injunctive relief, # 11 Exhibit K - Transcripts dated March 1, 2004 and November 15, 2004, # 12 Exhibit L - Transcript dated November 4, 2004, # 13 Exhibit M - Defendants' discovery responses)Motions referred to Paige J Gossett.(jpet,) (Entered: 11/16/2012)
11/19/2012	106	MOTION to Stay re 105 MOTION for Summary Judgment by J Charles Ormond, Jr. Response to Motion due by 12/6/2012. (Attachments: # 1 Certificate of Service)No proposed order.Motions referred to Paige J Gossett. (Ormond, John) (Entered: 11/19/2012)

11/19/2012	107	MOTION to Stay *or Hold Response to Plaintiff's Motion for Summary Judgment in Abeyance* by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation. Response to Motion due by 12/6/2012. (Attachments: # 1 Certificate of Service)No proposed order.Motions referred to Paige J Gossett.(DeMasters, David) (Entered: 11/19/2012)
11/20/2012	108	MOTION to Stay re 105 MOTION for Summary Judgment by Paul D de Holczer. Response to Motion due by 12/7/2012. (Attachments: # 1 Certificate of Service)No proposed order.Motions referred to Paige J Gossett.(Brackett, B) (Entered: 11/20/2012)
11/26/2012	109	MOTION for Order Establishing Admissions by Ronald I Paul. Response to Motion due by 12/13/2012. (Attachments: # 1 Exhibit A - Plaintiff's First Request for Admission to Admit on Defendant SCDOT, # 2 Exhibit B - Plaintiff's First Request for Admissin to Admit on Defendant Oscar K Rucker, # 3 Exhibit C - Plaintiff's First Request for Admission to Admit on Defendant Macie M Gresham, # 4 Exhibit D - Plaintiff's First Request for Admission to Admit on Defendant Natalie J Moore, # 5 Certificate of Service)Motions referred to Paige J Gossett.(jpet,) Modified to add additional attachment on 11/27/2012 (jpet,). (Entered: 11/27/2012)
11/27/2012	110	RESPONSE in Opposition re 109 MOTION for Order Establishing Admissions Response filed by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation.Reply to Response to Motion due by 12/7/2012 (Attachments: # 1 Exhibit Letter from Plaintiff Requesting Discovery Responses, # 2 Exhibit Defendants Letter in Response to Plaintiff's Letter, # 3 Certificate of Service)(DeMasters, David) (Entered: 11/27/2012)
11/28/2012	111	Supplemental MOTION for Sanctions by Paul D de Holczer. Response to Motion due by 12/17/2012. (Attachments: # 1 Certificate of Service)No proposed order.Motions referred to Paige J Gossett.(Brackett, B) (Entered: 11/28/2012)
11/28/2012	112	**DOCKET TEXT ORDER** suspending the deadline for all defendants' responses to 105 Plaintiff's Motion for Summary Judgment until further order of the court. Entered at the direction of Magistrate Judge Paige J. Gossett on 11/28/2012. (kkus,) (Entered: 11/28/2012)
11/28/2012	113	***DOCUMENT MAILED 112 Order, placed in U.S. Mail to Ronald I Paul (jpet,) (Entered: 11/28/2012)
11/30/2012	115	REPLY to Response to Motion re 109 MOTION for Order Establishing Admissions Response filed by Ronald I Paul. (Attachments: # 1 Envelope) (jpet,) (Entered: 11/30/2012)
12/03/2012	116	**ORDER AND REPORT AND RECOMMENDATION** recommending that re 18 MOTION to Dismiss *of Michael H. Quinn* MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction filed by Michael H Quinn, 38 Amended MOTION to Dismiss for Lack of Jurisdiction Amended MOTION TO DISMISS FOR

		FAILURE TO STATE A CLAIM filed by Paul D de Holczer, 24 MOTION to Dismiss filed by Natalie J Moore, Oscar K Rucker, Macie M Gresham, South Carolina Department of Transportation, 33 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by J Charles Ormond, Jr, 27 First MOTION to Dismiss filed by G L Buckles be granted; and all remaining motions be terminated (Objections to R&R due by 12/20/2012), Motions denied: 45 MOTION to Amend/Correct 8 Amended Complaint filed by Ronald I Paul Signed by Magistrate Judge Paige J Gossett on 12/3/12. (jada,) (Entered: 12/03/2012)
12/03/2012	117	***DOCUMENT MAILED 116 Report and Recommendation, Terminate Motions, placed in U.S. Mail to Ronald I Paul (jada,) (Entered: 12/03/2012)
12/05/2012	119	RESPONSE in Opposition re 111 Supplemental MOTION for Sanctions. Response filed by Ronald I Paul.Reply to Response to Motion due by 12/17/2012 (Attachments: # 1 Certificate of Service, # 2 Envelope)(cbru,) (Entered: 12/05/2012)
12/10/2012	122	OBJECTION to 116 Report and Recommendation by Ronald I Paul.Reply to Objections due by 1/2/2013 (Attachments: # 1 Certificate of Service)(cbru,) (Entered: 12/10/2012)
12/19/2012	123	OBJECTION to 116 Report and Recommendation by Paul D de Holczer.Reply to Objections due by 1/7/2013 (Attachments: # 1 Certificate of Service) (Brackett, B) (Entered: 12/19/2012)
01/04/2013	124	REPLY by Ronald I Paul to 123 Objection to Report and Recommendation. (Attachments: # 1 Certificate of Service, # 2 Envelope)(cbru,) (Entered: 01/04/2013)
02/06/2013	127	OPINION and ORDER RULING ON REPORT AND RECOMMENDATION adopting 116 Report and Recommendation; granting 18 Motion to Dismiss, Motion to Dismiss for Failure to State a Claim, Motion to Dismiss/Lack of Jurisdiction; terminating 89 Motion to Compel; granting 38 Motion to Dismiss/Lack of Jurisdiction, Motion to Dismiss for Failure to State a Claim; terminating 109 Motion for Miscellaneous Relief; granting 24 Motion to Dismiss; terminating 86 Motion to Compel; terminating 85 Motion to Compel; terminating 87 Motion to Compel; granting 33 Motion to Dismiss for Failure to State a Claim; terminating 105 Motion for Summary Judgment; granting 27 Motion to Dismiss; terminating 96 Motion for Miscellaneous Relief; terminating 88 Motion to Compel; terminating 19 Motion for Sanctions; terminating 111 Motion for Sanctions. Signed by Honorable Cameron McGowan Currie on 2/6/2013. (cbru,) (Entered: 02/06/2013)
02/06/2013	128	JUDGMENT dismissing this action without prejudice (cbru,) (Entered: 02/06/2013)
02/06/2013	129	***DOCUMENT MAILED 128 Judgment, 127 Order Ruling on Report and Recommendation,,, placed in U.S. Mail to Ronald I Paul (cbru,) (Entered: 02/06/2013)
02/25/2013	130	

		MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation; MOTION to Amend/Correct 8 Amended Complaint (Response to Motion due by 3/14/2013) by Ronald I Paul. (Attachments: # 1 Memo in Support, # 2 Proposed Order, # 3 Amended Complaint, # 4 Certificate of Service)(cbru,) (Entered: 02/25/2013)
03/14/2013	131	RESPONSE in Opposition re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation,,, MOTION to Amend/Correct 8 Amended Complaint Response filed by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation.Reply to Response to Motion due by 3/25/2013 (Attachments: # 1 Certificate of Service)(DeMasters, David) (Entered: 03/14/2013)
03/14/2013	132	RESPONSE in Opposition re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation,,, MOTION to Amend/Correct 8 Amended Complaint Response filed by Paul D de Holczer.Reply to Response to Motion due by 3/25/2013 (Attachments: # 1 Certificate of Service)(Brackett, B) (Entered: 03/14/2013)
03/14/2013	133	RESPONSE in Opposition re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation,,, MOTION to Amend/Correct 8 Amended Complaint Response filed by Michael H Quinn.Reply to Response to Motion due by 3/25/2013 (Attachments: # 1 Consent Order, # 2 Order Denying Lessee Paul's Motion to Restore Case to Jury Roster, # 3 Certificate of Service) (Quinn, Michael) Modified to edit text on 3/14/2013 (cbru,). (Entered: 03/14/2013)
03/14/2013	134	RESPONSE in Opposition re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation,,, MOTION to Amend/Correct 8 Amended Complaint *Amended* Response filed by Macie M Gresham, Natalie J Moore, Oscar K Rucker, South Carolina Department of Transportation.Reply to Response to Motion due by 3/25/2013 (Attachments: # 1 Certificate of Service)(DeMasters, David) (Main Document 134 replaced on 3/14/2013) (cbru,). (Entered: 03/14/2013)
03/14/2013	135	RESPONSE in Opposition re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation,,, MOTION to Amend/Correct 8 Amended Complaint Response filed by G L Buckles.Reply to Response to Motion due by 3/25/2013 (Hardee, Mark) (Entered: 03/14/2013)
03/15/2013	136	REPLY to Response to Motion re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation, MOTION to Amend/Correct 8 Amended Complaint. Response filed by Ronald I Paul. (Attachments: # 1 Exhibit A - Unpublished Opinion, # 2 Certificate of Service)(cbru,) (Entered: 03/15/2013)
03/15/2013	137	REPLY to Response to Motion re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation, MOTION to Amend/Correct 8 Amended Complaint. Response filed by Ronald I Paul. (Attachments: # 1 Exhibit A - Unpublished Opinion, # 2 Certificate of Service)(cbru,) (Entered: 03/15/2013)

03/15/2013	138	REPLY to Response to Motion re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation MOTION to Amend/Correct 8 Amended Complaint. Response filed by Ronald I Paul. (Attachments: # 1 Exhibit A - Unpublished Opinion, # 2 Certificate of Service)(cbru,) (Entered: 03/15/2013)
03/15/2013	139	REPLY to Response to Motion re 130 MOTION for Reconsideration re 127 Order Ruling on Report and Recommendation, MOTION to Amend/Correct 8 Amended Complaint. Response filed by Ronald I Paul. (Attachments: # 1 Exhibit A - Unpublished Opinion, # 2 Certificate of Service)(cbru,) (Entered: 03/15/2013)
03/21/2013	140	OPINION and ORDER denying 130 Motion for Reconsideration; denying 130 Motion to Amend/Correct. Signed by Honorable Cameron McGowan Currie on 3/21/2013.(cbru,) (Entered: 03/21/2013)
03/21/2013	141	***DOCUMENT MAILED 140 Order on Motion for Reconsideration, Order on Motion to Amend/Correct placed in U.S. Mail to Ronald I Paul (cbru,) (Entered: 03/21/2013)

PACER Service Center			
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02/09/2019 14:12:29			
PACER Login:	rp4173:3914966:0	Client Code:	
Description:	Docket Report	Search Criteria:	3:12-cv-01036-CMC
Billable Pages:	12	Cost:	1.20

Exhibit B

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

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 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., 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.

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Civil Action No. 3:13-cv-367-CMC

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

❒ the plaintiff *(name)* ________ recover from the defendant *(name)* ________ the amount of ________ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

❒ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* __________________ recover costs from the plaintiff *(name)* _________________.

■ other: Plaintiff, Ronald I, Paul, shall take nothing of Defendants, South Carolina Department of Transportation, Paul D. de Holczer, G.L. Buckles, Michael H. Quinn, J. Charles Ormond, Jr., Oscar K. Rucker, Macie M. Gresham, Natalie J. Moore, from the complaint filed pursuant to 42 U.S.C. § 1983 and this action is dismissed without prejudice.

This action was *(check one)*:

❒ tried by a jury, the Honorable ______________ presiding, and the jury has rendered a verdict.

❒ tried by the Honorable ____________ presiding, without a jury and the above decision was reached.

■ decided by the Honorable Cameron McGowan Currie, United States District Judge, presiding, adopting the Report and Recommendation set forth by the Honorable Paige J. Gossett, United States Magistrate Judge, which recommended dismissal without prejudice.

Date: May 20, 2013

LARRY W. PROPES, CLERK OF COURT

s/Sara K. Samsa

Signature of Clerk or Deputy Clerk

Exhibit C

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

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, P.C.; G.L. Buckles, as Personal Representative of the Estate of Keith J. Buckles and G.L. Buckles individually; 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; and Natalie J. Moore, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation,
Defendants

Civil Action No. 3:13-01852-CMC-PJG

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* ________ recover from the defendant *(name)* ________ the amount of ________ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

■ the plaintiff, Ronald I. Paul, take nothing of the defendants, South Carolina Department of Transportation; Paul D. de Holczer, 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 individually; 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; and Natalie J. Moore, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation, and this action is dismissed without prejudice.

This action was *(check one)*:

☐ tried by a jury, the Honorable ______________ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable ____________ presiding, without a jury and the above decision was reached.

■ decided by the Court, the Honorable Cameron McGowan Currie, US District Judge, presiding. The Court having adopted the Report and Recommendation of US Magistrate Judge Paige J. Gossett, which recommended dismissal.

Date: October 21, 2013

ROBIN L. BLUME, CLERK OF COURT

s/Charles L. Bruorton

Signature of Clerk or Deputy Clerk

Exhibit D

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Ronald I. Paul,
Plaintiff
v.
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; and Natalie J. Moore, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation,
Defendants

)))))

Civil Action No. 3:15-cv-02178-CMC

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

❒ the plaintiff *(name)* ________ recover from the defendant *(name)* ________ the amount of ________ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

❒ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* __________________ recover costs from the plaintiff *(name)* _________________.

■ the plaintiff, Ronald I. Paul, take nothing of the defendants, 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; and Natalie J. Moore, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation, and this action is dismissed without prejudice.

This action was *(check one)*:

❒ tried by a jury, the Honorable ______________ presiding, and the jury has rendered a verdict.

❒ tried by the Honorable ___________ presiding, without a jury and the above decision was reached.

■ decided by the Court, the Honorable Cameron McGowan Currie, US District Judge, presiding. The Court having adopted, as supplemented, the Report and Recommendation of US Magistrate Judge Paige J. Gossett, which recommended dismissal.

Date: July 28, 2015 *ROBIN L. BLUME, CLERK OF COURT*

s/Charles L. Bruorton

Signature of Clerk or Deputy Clerk

Exhibit
E

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

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 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

)
)
)
)
)

Civil Action No. 3:16-cv-01727-CMC

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one):*

☐ the plaintiff *(name)* ________ recover from the defendant *(name)* ________ the amount of ________ dollars ($__), which includes prejudgment interest at the rate of ___ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* ____________________ recover costs from the plaintiff *(name)* _________________.

■ the plaintiff, Ronald I. Paul, take nothing of the defendants, 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, and this action is dismissed without prejudice.

This action was *(check one)*:

☐ tried by a jury, the Honorable _______________ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable ____________ presiding, without a jury and the above decision was reached.

■ decided by the Court, the Honorable Cameron McGowan Currie, US District Judge, presiding. The Court having adopted the Report and Recommendation of US Magistrate Judge Paige J. Gossett, which recommended dismissal.

Date: November 8, 2016

ROBIN L. BLUME, CLERK OF COURT

s/Charles L. Bruorton

Signature of Clerk or Deputy Clerk

Exhibit F

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND) 2006-CP-40-6410

Ronald I. Paul, Plaintiff, vs. J. Charles Ormond, Jr., et al., Defendant	)	TRANSCRIPT OF RECORD

October 15, 2007
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:
RONALD I. PAUL, PLAINTIFF
Appearing Pro Se

JAMES J. CORBETT, ESQUIRE
Attorney for the Defendant

Crystal Roach
Official Court Reporter

1 THE COURT: Okay, go ahead.
2 MR. CORBETT: And after that hearing, Mr.
3 Paul filed his own motion. And I'm ready to speak to
4 our motion, of course. I'm ready.
5 THE COURT: Are you ready, Mr. Paul?
6 MR. PAUL: Yes, Your Honor, I'm ready.
7 THE COURT: All right. This is your motion,
8 right, Mr. Corbett?
9 MR. CORBETT: Yes, Your Honor.
10 THE COURT: You may proceed.
11 MR. CORBETT: Thank you, Your Honor. May it
12 please the Court.
13 This is a very complex case involving a
14 condemnation action. Mr. Paul owned a liquor store.
15 Mr. Ormond was -- didn't own it, he leased the liquor
16 store. Mr. Ormond was the second lawyer involved.
17 After getting involved, he actually made a motion to
18 be relieved as counsel. Judge Lee brought the parties
19 together and they agreed to go forward together for
20 the trial. It was a non-jury ---
21 THE COURT: That'll teach you to listen to
22 Judge Lee -- go ahead.
23 MR. CORBETT: That was a non-jury trial. The
24 Department of Transportation and the landowner had
25 previously moved to have it moved from the jury trial

1 roster to the non-jury roster. Mr. Paul has alleged
2 as one of his counts here that Mr. Ormond should have
3 appealed the failure to appeal the jury trial, the
4 failure to restore it to the jury trial by Judge Lee.
5 Mr. Paul also has brought a malpractice claim
6 saying that Mr. Ormond is responsible for him not
7 getting $300,000 in damages instead of the $3,000
8 awarded by Judge Lloyd.
9 There were two trials in this case. At the
10 first trial, Mr. Paul had retained two experts
11 himself. Mr. Ormond and Mr. Paul got in there before
12 the trial before the Judge Lloyd. When the first
13 expert came to testify, the Depart -- who was a -- the
14 Department of Transportation objected in front of
15 Judge Lloyd and said that they would threaten to put
16 him under arrest or bring charges against him because
17 he was not ---
18 THE COURT: Against who ---
19 MR. CORBETT: --- qualified, the -- Mr.
20 Blinder (phonetic) -- Binder (phonetic) who was there
21 as an expert.
22 And at that point Judge Lloyd said, you may
23 want to get an attorney. The Department of
24 Transportation said he was not qualified and there was
25 a statute saying that you can't testify as an expert.

Exhibit G

Richland County
Fifth Judicial Circuit
Public Index

Switch View

JUDGMENT RULED IN FAVOR OF SOUTH CAROLINA DEPT OF TRANSPORTATI

Case Number:	258866	Court Agency:	Richland County Common Pleas	Filed Date:	03/11/2005
Case Type:	Judgment	Case Sub Type:	Miscellaneous	File Type:	
Status:	Judgment	Assigned Judge:			
Disposition:	Judgment	Disposition Date:	03/11/2005	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:	258866	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

For:	South Carolina Dept Of Transportati	Against:	Buckles, Keith J	Judg. Amount:	$0.00	Judgment Date:	03/11/2005
Description:	Judgment (Other) 799	Disposition:		Disp. Date:	03/11/2005	Date Entered/Last Changed	03/31/2005 --
Notes:	Case Number-02-4800;Judgment Amount-0;						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	South Carolina Dept Of Transportati	Against:	Buckles, G L	Judg. Amount:	$0.00	Judgment Date:	03/11/2005
Description:	Judgment (Other) 799	Disposition:		Disp. Date:	03/11/2005	Date Entered/Last Changed	03/31/2005 --
Notes:	Case Number-02-4800;Judgment Amount-0;						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	South Carolina Dept Of Transportati	Against:	Paul, Ronald	Judg. Amount:	$0.00	Judgment Date:	03/11/2005
Description:	Judgment (Other) 799	Disposition:		Disp. Date:	03/11/2005		03/31/2005 --

						Date Entered/Last Changed	
Notes:	Case Number-02-4800;Judgment Amount-0;						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	South Carolina Dept Of Transportati	Against:	Kim, Sang	Judg. Amount:	$0.00	Judgment Date:	03/11/2005
Description:	Judgment (Other) 799	Disposition:		Disp. Date:	03/11/2005	Date Entered/Last Changed	03/31/2005 --
Notes:	Case Number-02-4800;Judgment Amount-0;						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	Buckles, Keith J	Against:	South Carolina Dept Of Transportati	Judg. Amount:	$1,030.97	Judgment Date:	02/22/2010
Description:	Judgment/Taxation of Costs	Disposition:		Disp. Date:		Date Entered/Last Changed	10/19/2017 -- 10/19/2017
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	Buckles, G L	Against:	South Carolina Dept Of Transportati	Judg. Amount:	$1,030.97	Judgment Date:	02/22/2010
Description:	Judgment/Taxation of Costs	Disposition:		Disp. Date:		Date Entered/Last Changed	10/19/2017 -- 10/19/2017
Notes:	None						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

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Exhibit
H

SCDOT R/W Form 815 (06-01)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) C/A NO.
)

Road/Route	**US Route 1**
File	**40.623A**
Item	
Project	**BST-C0MB (013)**
PIN	**22871**

South Carolina Department of Transportation,

Condemnor,

VS.

Keith J. Buckles and G.L. Buckles,

Landowner(s).

CONDEMNATION NOTICE
AND
TENDER OF PAYMENT

(JURY TRIAL DEMANDED)

CERTIFIED TRUE COPY
OF ORIGINAL FILED
RICHLAND COUNTY
SOUTH CAROLINA

TO: THE LANDOWNER(S) ABOVE NAMED:

COPY TO: MICHAEL H. QUINN, ATTORNEY AT LAW, 2019 PARK STREET, COLUMBIA, SOUTH CAROLINA 29201

RONALD PAUL, 2414 CHESTNUT STREET, COLUMBIA, SOUTH CAROLINA 29204

SANG KIM, 2121 TWO NOTCH ROAD, COLUMBIA, SOUTH CAROLINA 29204

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. The South Carolina Department of Transportation (SCDOT) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.

2. **Keith J. Buckles is** named as Landowner in this action by virtue of **his** claim(s) of title (or other interests) as shown by that certain **Deed from Lois Myrtle Godshall dated June 19, 1972 and recorded June 19, 1972 in Deed Book D246 at Page 551, and that certain Deed from Keith J. Buckles dated June 19, 2001 and recorded July 5, 2001 in Deed**

Order of Judgment disburse total award to Landowners $156,751 & Lessee in amount of $154,300, signed by Judge Lloyd 3/11/05 Filed 3/11/05 Barbara A Scott

Book 539 at Page 1018, and re-recorded on September 6, 2001 in Deed Book 563 at Page 1282 in the records for Richland County.

3. **G.L. Buckles is** named as Landowner in this action by virtue of **his** claim(s) of title (or other interests) as shown by that certain **Deed from Keith J. Buckles dated June 19, 2001 and recorded July 5, 2001 in Deed Book 539 at Page 1018, and re-recorded September 6, 2001 in Deed Book 563 at Page 1282 in the records for Richland County.**

4. The following is a description of the real property subject to this action and a description of the interest sought to be acquired in and to the property by the Condemnor:

> **All that certain parcel or strip of land, in fee simple, with improvements thereon, including the one story brick and two concrete block commercial buildings, containing 3,271 square feet of land, owned by Keith J. Buckles and G.L. Buckles, shown as "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof.**
>
> **Tax Map Number 11510-15-05**

5. The SCDOT is vested with the power of eminent domain pursuant to Section 57-5-320 and Section 28-2-60, Code of Laws of South Carolina, 1976, as amended.

6. The property sought herein is to be acquired for public purposes, more particularly for the construction of **a section of US Rte. 1, (Two Notch Road), from Forest Drive/Taylor Street to Beltline Boulevard.**

7. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

8. The SCDOT has complied with the requirements set forth in Section 28-2-70(a), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and making the appraisal available to the Landowner(s) where required by law, and certifies to the Court that a negotiated resolution has been attempted prior to the commencement of this action, or pursuant to Section 12-27-405, Code of Laws of South Carolina, 1976, as amended, an appraisal of this property was not required.

9. Project plans may be inspected at the office of **South Carolina Department of Transportation, Richland County Maintenance Office, 7201 Fairfield Road, Columbia, South Carolina 29203,** under **File 40.623A, Project BST-C0MB (013), Tract 32PCR.**

10. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER, TO BE THE SUM OF **ONE HUNDRED FIFTY THOUSAND, ONE HUNDRED AND NO/100 DOLLARS ($150,100.00)** AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER(S).

11. Payment of this amount will be made to the Landowner(s) if within thirty (30) days of service of this Condemnation Notice, the Landowner(s) in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Oscar K. Rucker, Director, Rights of Way, South Carolina Department of Transportation, 955 Park Street, Columbia, South Carolina 29202. If no Agreement and Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected.

12. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner(s) and Other Condemnee(s) notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

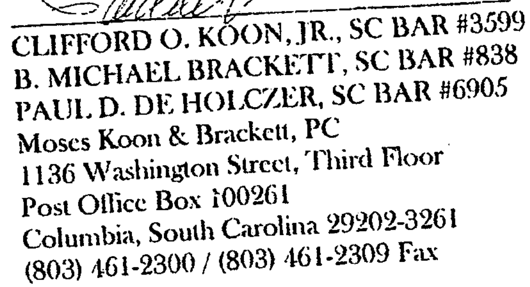
13. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER(S) WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

14. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, 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. A copy of that notice must be served on the Landowner(s). That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner(s) has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil

cases. The Clerk of Court shall give the Landowner(s) written notice by mail of the call of the case for trial.

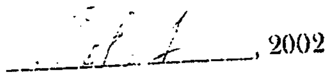
15. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER(S) IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

16. In the event the Landowner(s) accepts the amount tendered in this Notice, the attached Agreement and Request for Payment form should be signed and returned to the Condemnor within thirty (30) days of your receipt of this Notice.



CLIFFORD O. KOON, JR., SC BAR #3599
B. MICHAEL BRACKETT, SC BAR #838
PAUL D. DE HOLCZER, SC BAR #6905
Moses Koon & Brackett, PC
1136 Washington Street, Third Floor
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2300 / (803) 461-2309 Fax

Attorneys for Condemnor

, 2002

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

PLAINTIFF'S FIRST AMENDMENT TO PLAINTIFF'S COMBINED MEMORANDUM IN OPPOSITION TO ALL DEFENDANTS MOTIONS TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
2019 AUG -5 AM 8:41
C.C.P., G.S., & F.C.

Plaintiff, Ronald I. Paul *Pro se*, by this First Amendment, amend his Combined Memorandum in opposition to all Defendants' Motions to Dismiss and/or Motion for Summary Judgment filed with the Court on February 11, 2019 as follows:

1. The first paragraph on page 3 is amended to read:

According to the Complaint, on page 18 paragraph 80 the civil conspiracy continues to the day through cover-ups, defenses and tactics. One example: is on April 16, 2019 ...... "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.[1] 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), and, to the best belief of both counsel, there is no separate written settlement agreement to that effect". **(Exhibit I page 8).** Judge James R. Barber, III Consent Order between SCDOT and the Buckles did not confirm just compensation, did not confirm the agreement as to just compensation as reached between SCDOT and the Buckles **(Exhibit J).**

2. The first sentence on page 5 is deleted in its entirety, and the following is substituted in lieu thereof:[2]

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

[1] However, on December 27, 2018 and again on January 3, 2019 said defendants filed Responses to Plaintiff 's Requests for Production and stated, "In addition, the document requested is not relevant to the claims or defenses raised in this litigation". (Exhibit K)

[2] THE FIRST SENTENCE READS: FAILS TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION OR CAUSES OF ACTION AGAINST DEFENDANT QUINN.

3. The third paragraph on page 6 is deleted in its entirety, and the following is substituted in lieu thereof:[3]

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

4. The second paragraph on page 7 is deleted in its entirety, and the following is substituted in lieu thereof:[4]

<u>DEFENDANT ORMOND WAS A STATE ACTOR.</u>

5. The third paragraph on page 8 is deleted in its entirety, and the following is substituted in lieu thereof:[5]

<u>THE DEFENDANT SCDOT IS A "PERSON" AMENABLE TO SUIT UNDER 42 U.S.C. § 1983</u> COUNT ONE DECLARATORY JUDGMENT: (SEE EXHIBITS G AND H)

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

Columbia, South Carolina
August 5, 2019

---

[3] THE THIRD PARAGRAPH READS: <u>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.</u>

[4] THE SECOND PARAGRAPH READS: <u>DEFENDANT ATTORNEY IS A PRIVATE CITIZEN AS IS ALLEGED IN THE COMPLAINT AND SIMPLY REPRESENTED MR. PAUL IN 2004 IN THE CONDEMNATION ACTION AND IS THEREFORE NOT A STATE ACTOR UNDER THE SOLE CAUSE OF ACTION; CAR OCCUPANT INJURED IN COLLISION WITH FIXED OR STATIONARY OBJECT</u>

[5] THE THIRD PARAGRAPH READS: <u>The Defendant SCDOT is not a "person" amenable to suit under 42 U.S.C. § 1983.</u>

EXHIBIT

I

ELECTRONICALLY FILED - 2019 Jun 07 3:32 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

STATE OF SOUTH CAROLINA) **IN THE COURT OF COMMON PLEAS**

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 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.

Civil Action No. 2018-CP-40-5641

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.

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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-PGJ

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

On October 26, 2018, the Plaintiff filed the current lawsuit in state court. This action, 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

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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

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[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."

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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

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[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.

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any other entity to confer authority on an agent. Rule 4(d)(1), SCRCP, 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), SCRCP, 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), SCRCP, 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.

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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).

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

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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."

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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

ELECTRONICALLY FILED - 2019 Jun 07 3:32 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/Entry of Default

So Ordered

s/L. Casey Manning, 2061

Electronically signed on 2019-06-07 11:44:02 page 10 of 10

ELECTRONICALLY FILED - 2019 Jun 07 3:32 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

EXHIBIT

J

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

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.

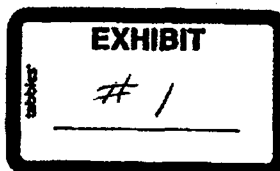
CONSENT ORDER

FILED
04 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.

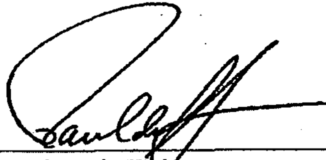
ELECTRONICALLY FILED - 2019 Jan 31 9:15 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4005641

AND IT IS SO ORDERED.

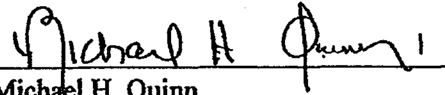
S/ James R. Barber III 3/23/04

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

WE SO MOVE AND CONSENT:



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

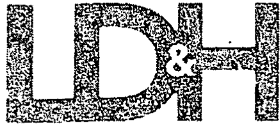


Michael H. Quinn
Quinn Law Firm, LLC
Attorney for Landowner

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

EXHIBIT

K



LINDEMANN
DAVIS &
HUGHES

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5 Calendar Court, Suite 202 (29206)
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Email: jim@ldh-law.com

JOEL S. HUGHES†
Direct Dial: (803) 881-8923
Email: joel@ldh-law.com

**Also Admitted in North Carolina*
†Certified Mediator

December 27, 2018

Mr. Ronald I. Paul
Post Office Box 4353
Columbia, South Carolina 29240

RE: Ronald I. Paul 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
Civil Action Number: 2018-CP-40-5641
Our File Number: 79.20087

Dear Mr. Paul:

Please find enclosed and served upon you the **Responses to Plaintiff's Requests for Production** in the above referenced matter.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Michael H. Quinn, Esquire *(w/ Enclosure)*
J. Charles Ormond, Jr., Esquire *(w/ Enclosure)*

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
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 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.	Civil Action No. 2018-CP-40-5641 **RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION**

TO: RONALD I. PAUL, PRO SE PLAINTIFF

Pursuant to Rule 34, SCRCP, the Defendants South Carolina Department of Transportation ("SCDOT"), Natalie J. Moore and Paul D. de Holczer object to Plaintiff's First Request for Production of Documents as follows:

1. Copy of the settlement agreement between South Carolina Department of Transportation (SCDOT) and Keith J. Buckles/G.G. Buckles (the Buckles) in case # 2002-CP-40-4800.

RESPONSE #1:

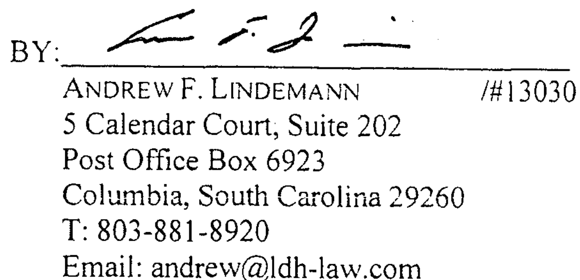
The Defendants SCDOT, Moore and de Holczer object to responding to this request for production based upon the grounds as set forth in the Motion for Stay of Discovery and/or Motion for Protective Order filed December 17, 2018. In addition, the document requested is not relevant to the claims or defenses raised in this litigation.

2. Copy of any settlement agreement in case # 2002-CP-40-4800 whatsoever/of any kind.

RESPONSE #2:

The Defendants SCDOT, Moore and de Holczer object to responding to this request for production based upon the grounds as set forth in the Motion for Stay of Discovery and/or Motion for Protective Order filed December 17, 2018. In addition, the document requested is not relevant to the claims or defenses raised in this litigation.

LINDEMANN, DAVIS & HUGHES, P.A.



BY:______________________________

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 South Carolina Department of Transportation, Natalie J. Moore and Paul D. de Holczer

December 27, 2018

QUINN LAW FIRM, LLC
2019 Park Street (29201)
Post Office Box 6903
Columbia, South Carolina 29260-6903

Michael H. Quinn

Telephone: (803) 779-6365
Facsimile : (803) 779-6372
Email: mquinn@quinnlawfirmllc.com

January 3, 2019

VIA U.S. MAIL

Mr. Ronald I. Paul
Post Office Box 4353
Columbia, South Carolina 29240

Re: Ronald I. Paul v. South Carolina
Department of Transportation, et al.
Civil Action No. 2018-CP-40-05641

Dear Mr. Paul:

I have enclosed, and am serving you with, a copy of the Defendant's Michael H. Quinn, individually and as senior lawyer of the Quinn Law Firm, LLC Responses to Plaintiff's Requests for Production. A Certificate of Service is also enclosed.

Sincerely,

QUINN LAW FIRM, LLC

Michael H. Quinn

MHQ/llb
Enclosures

C: Andrew F. Lindemann, Esq.
J. Charles Ormond, Jr., Esq.

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.

DEFENDANT MICHAEL H. QUINN AND QUINN LAW FIRM, LLC RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION

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

Pursuant to Rule 34, SCRCP, Defendant Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC (herein "Defendant") objects to Plaintiff's First Requests for Production of Documents as follows:

1. Copy of the settlement agreement between South Carolina Department of Transportation (SCDOT) and Keith J. Buckles/G.L. Buckles (the Buckles) in case #2002-CP-40-04800.

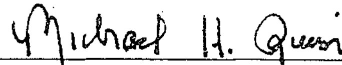
RESPONSE #1: This Defendant objects to responding to this Request for Production based upon the grounds as set forth in this Defendant's Motion for Rule 26(c) Protective Order to Stay Discovery filed December 19, 2018.

Additionally, the document requested is not relevant to the claims or defenses raised in this litigation.

2. Copy of any settlement agreement in case #2002-CP-40-04800 whatsoever/of any kind.

RESPONSE #2: This Defendant objects to responding to this Request for Production based upon the grounds as set forth in the Defendant's Motion for Rule 26(c) Protective Order to Stay Discovery filed December 19, 2018.

Additionally, the document requested is not relevant to the claims or defenses raised in this litigation.



Michael H. Quinn
S.C. Bar #4615
2019 Park Street (29201)
P. O. Box 6903
Columbia, South Carolina 29260
Attorney for Michael H. Quinn, Individually, and as Senior Attorney Of Quinn Law Firm, LLC

January 3, 2019

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	**FIFTH JUDICIAL CIRCUIT**
RONALD I. PAUL	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 2018-CP-400-5641**
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.	)	**NOTICE OF MOTION AND MOTION FOR RECONSIDERATION PURSUANT TO SCRCP 59 (e)**
Defendants.	)	

RICHLAND COUNTY
FILED
2019 NOV 25 AM 11:41
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

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

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

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

STATEMENT OF THE CASE

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

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

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

THE STATUTE OF LIMITATIONS

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

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

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

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

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

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

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

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

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

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

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

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

RES JUDICATA, COLLATERAL ESTOPPELS, ISSUE PRECLUSION AND CLAIM PRECLUSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATE ACTORS

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

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

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

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

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

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

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

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

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

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

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

Section 1983 provides:

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

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

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

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

EXCEPTION TO ELEVENTH AMENDMENT IMMUNITY

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

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

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

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

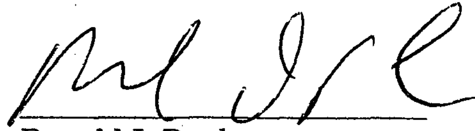
The Supreme Court has stated that "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The standing "inquiry involves both constitutional limitations on federal-court jurisdiction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

CONCLUSION

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

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

Respectfully submitted,



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

Columbia, South Carolina

November 25, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C.A. NO. 2018-CP-40-05641

RONALD I. PAUL,)
)
PLAINTIFF,)
)
VERSUS)
)
SOUTH CAROLINA DEPARTMENT OF)
TRANSPORTATION, ET AL,)
)
DEFENDANT.)

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MOTION HEARING TRANSCRIPT

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A MOTION HEARING IN THE ABOVE ENTITLED CASE WAS HELD ON THE 11TH DAY OF FEBRUARY, 2019, COMMENCING AT THE HOUR OF 2:43 P.M., BEFORE THE HONORABLE JUDGE DOYET A. EARLY AT THE RICHLAND COUNTY COURTHOUSE IN COLUMBIA, SOUTH CAROLINA.

REPORTED BY: KAREN E. HOLLEY, CVR-M
OFFICIAL STATE COURT REPORTER

APPEARANCES:

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ATTORNEYS FOR DEFENDANT.

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EXHIBITS:

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 JUDGE EARLY:

2 What kind of case is this, Mr. Lindemann?

3 MR. LINDEMANN:

4 It's actually a Section 1983 conspiracy case.

5 JUDGE EARLY:

6 With the Highway Department and the law firm?

7 MR. LINDEMANN:

8 Yes, Your Honor. I'll give a little -- I can give you

9 that background and you'll see.

10 JUDGE EARLY:

11 And Mr. Paul, what kind of motion do you have?

12 MR. PAUL:

13 Your Honor, I have a motion to compel and for default

14 judgment against --

15 JUDGE EARLY:

16 All right. I'm going to hear the motion for summary

17 judgment and all that; that might be dispositive. And

18 I'll listen to Mr. Lindemann carefully and maybe we can

19 streamline the arguments.

20 MR. LINDEMANN:

21 And, Your Honor,I know you got to see my memorandum. I

22 sent you one last Wednesday. I have --I can dig out an

23 additional copy.

24 MR. PAUL:

25 Your Honor, also I filed a response in opposition to

1 the Defendant's motion to dismiss the summary judgment.
2 I don't know if you have a copy of that, but if you
3 don't, I have a copy.
4 JUDGE EARLY:
5 Where did you send it?
6 MR. PAUL:
7 I brought it here to the courthouse.
8 JUDGE EARLY:
9 Well, I don't have it.
10 MR. BRACKETT:
11 He filed it today, Your Honor.
12 JUDGE EARLY:
13 Hand it up, Mr. Paul.
14 MR. PAUL:
15 Here you go. I already served all of the Defendants
16 with a copy of it; delivered a copy to their office
17 this morning.
18 JUDGE EARLY:
19 Okay.
20 MR. LINDEMANN:
21 Your Honor, and I would say that's not timely under our
22 rules which require -- at least our rules in Richland
23 County require a memorandum to be filed and submitted
24 the previous Wednesdays.
25 JUDGE EARLY:

1 Well, that's what -- all right, let's move along. Mr.
2 Lindemann, I'll let you argue. Mr. Paul, listen
3 carefully so you can respond to his argument and then
4 we'll take up yours.
5 MR. LINDEMANN:
6 And, Your Honor, I'll try to give you the background on
7 this quickly. This litigation has its origins in a
8 2002 condemnation action brought by the South Carolina
9 Department of Transportation against Keith Buckles.
10 And ultimately, it involved a piece of property in
11 which Mr. Paul had a leasehold interest. Ultimately,
12 that condemnation action proceeded through its normal
13 channels. In 2004, there was a settlement reached
14 between the Department of Transportation and Mr.
15 Buckles, and ultimately, the only thing that was tried
16 was tried in front of Judge Reggie Lloyd, that gives
17 you some idea of how old this is, in 2004 between the
18 Department and Mr. Paul. That case was tried by Paul
19 De Holczer, who is one of my clients, and Mr. Paul was
20 represented by Mr. Ormond, who has been sued in this
21 particular case as well. Ultimately, Your Honor, that
22 case got resolved. Mr. Paul didn't like the resolution
23 reached by Judge Lloyd. He appealed that to the Court
24 of Appeals, which affirmed Judge Lloyd. The Supreme
25 Court was then requested to issue a writ of certiorari,

1 and they denied it. So, ultimately, the 2002
2 litigation, Your Honor, was completed with the Supreme
3 Court's ruling in October 2007. There's a statute of
4 limitations defense, Your Honor; that's why I'm giving
5 you this time line. Mr. Paul subsequently, and I'll
6 let Mr. Ormond talk about this because it doesn't
7 involve me, but I believe that he brought suit against
8 Mr. Ormond some time in 2006, 2007 time frame, and that
9 litigation was dismissed. Ultimately, Mr. Paul then
10 brought an action in 2008 in the Court of Common Pleas
11 against all of the Defendants that are in this lawsuit,
12 with the exception of Natalie Moore; that litigation
13 raised civil conspiracy claims, just like this case is.
14 It was heard on a Motion to Dismiss by Judge
15 Strickland, Joseph Strickland, who was sitting as a
16 special Circuit Court judge. He granted the Motion to
17 Dismiss in 2009, based on a statute of limitations
18 defense, as well as other defenses. That dismissal was
19 then appealed to the Court of Appeals, which affirmed
20 it in November 2010. A petition for Writ of Certiorari
21 was sought again to the Supreme Court; that was denied
22 in October of 2011. So the 2008 litigation was over by
23 2011, but that didn't stop Mr. Paul from bringing
24 lawsuits. He subsequently filed five lawsuits in
25 Federal Court; all of them were assigned to Judge

1 Cameron Currie and Magistrate Judge, Paige Gossett.
2 There were actions filed in 2012, two of them in 2013,
3 2015 and 2016. All of the orders are submitted to this
4 Court and part of this record, they're attached to Mr.
5 Quinn's memorandum that he filed last Wednesday, Your
6 Honor. In each of those actions, the complaints were
7 identical to what has been brought here in state court
8 in 2018. Each of those lawsuits went through the
9 process of pretrial and clearance; two of them,
10 issuance of process wasn't even ordered; and three of
11 them, it was ordered, but ultimately Judge Currie
12 dismissed each of those cases as frivolous, but the
13 dismissals were without prejudice. Again, the current
14 action was brought just last year, late last year; it's
15 the exact same complaint that has been asserted in the
16 federal court cases. I did fail to mention one thing;
17 the 2016 case, that's the one in front of Judge Currie,
18 she issued a pre-filing injunction against Mr. Paul.
19 As a result of that pre-filing injunction, the decision
20 was made by defense counsel in this case not to remove
21 the case because of the pre-filing injunction and we're
22 proceeding in state court. It is a Section 1983 case,
23 however, and I think Your Honor is familiar with
24 Section 1983 litigation from a past career, I suppose.
25 Anyway, Your Honor, this case, we've all filed motions

1 to dismiss, giving this procedural history, on several
2 grounds. By far, the easiest ground for the Court to
3 rule on, I believe, and I don't believe there's an
4 argument around it, quite frankly, is the running of
5 the statute of limitations. Ultimately, Your Honor, as
6 Your Honor is well aware, there is not a federal
7 statute of limitations for 1983 cases. The federal --
8 the United States Supreme Court, Garcia versus Wilson,
9 indicating barring personal injury, the statute of
10 limitations from the form state. In South Carolina,
11 there are countless cases that state that it is a 3-
12 year statute of limitations for a 1983 case. The
13 memorandum of law that was provided by Mr. Paul this
14 morning attempts to argue for the first time that
15 there's a 20-year statute of limitations that applies
16 to sealed instruments; that is not the case. There are
17 no state law claims that have been asserted. There are
18 two 1983 claims, one for declaratory relief, and the
19 other for civil conspiracy under Section 1983. The
20 statute of limitations is three years, Your Honor.
21 Your Honor, it's very clear from the record that we've
22 presented that obviously he filed suit, as I indicated,
23 in October, I'll give you the exact date, it was
24 October 26, 2018, so, therefore, anything that occurred
25 prior to October 26, 2015 is statutorily barred. The

1 record is clear; he tried this -- these exact same
2 claims of civil conspiracy under state law in 2008 and
3 lost. He complains in -- in all of the federal cases
4 raised the same complaints; they start in 2013, go
5 through 2016. Clearly, Mr. Paul had notice of these
6 particular claims long ago. And, Your Honor, if I
7 could just call the Court's attention, the overt acts
8 that Mr. Paul is suing over are listed in paragraph 108
9 of his complaint, and the dates are -- he says it
10 starts back -- Defendants acted jointly in concert and
11 he gives the filing dates, February 2004, March 2004,
12 September of 2004, October 2004, January 2008. So all
13 of those overt acts, even the last one, of course, in
14 the 4th Circuit, you go by the first overt act, when
15 the statute starts running under Section 1983
16 conspiracy claims, but even if you go by that last one,
17 the statute of limitations has long run before this
18 lawsuit was brought. So that's the first ground, Your
19 Honor, for dismissal. And, obviously, the dismissal is
20 obvious from the face and, of course, the Court can
21 take judicial notice of other court filings as part of
22 a 12b6 Motion to Dismiss. As far as the Department of
23 Transportation is concerned, they're not a party under
24 Michigan -- United States versus Michigan -- I'm sorry,
25 Will versus Michigan State Police, not a person under

1 Section 1983, the State is not; that's an additional
2 basis for disposal of the claim against the Department
3 of Transportation.
4 As far as all the other Defendants, Your Honor, there's
5 also a Res judicata defense; he brought these claims in
6 2008, they were litigated all the way to the South
7 Carolina Supreme Court, even those -- even though those
8 were civil conspiracy claims, under state law they
9 asserted the same factual basis for the civil
10 conspiracy. The fact that he's now bringing it under
11 1983, obviously, under South Carolina law, Res judicata
12 applies not only to claims that were brought in
13 previous litigation, but claims that could have been
14 brought in previous litigation. He could have brought
15 the 1983 claim in the 2008 claim; that was fully
16 litigated to dismissal; not a dismissal without
17 prejudice, a dismissal with prejudice. So Res judicata
18 is another ground to bar this claim.
19 Then on behalf of my party, my clients, they're -- Mr.
20 de Holczer and Ms. Moore are both lawyers representing
21 the Department of Transportation in that 2002
22 litigation. There's -- they have immunity, both under
23 state law and federal law for actions they take in
24 their capacity as attorneys, so that's an additional
25 ground that we have raised. That's it in a quick

1 nutshell, Your Honor.

2 JUDGE EARLY:

3 Mr. Quinn, anything you want to add?

4 MR. QUINN:

5 Your Honor, I've got -- when we filed the exhibits, we

6 weren't able to put tabs on it, so I brought these and

7 I'd like to hand up the list of them, as well as that.

8 And also a time line that has been filed. And I will

9 give these to -- give a copy to Mr. Lindemann and Mr.

10 Ormond, as well as Mr. Paul. If I could just hand

11 these up.

12 JUDGE EARLY:

13 Just hand them to the clerk. Thank you, sir.

14 Mr. Quinn, have these been e-filed?

15 MR. QUINN:

16 They have, yes.

17 Your Honor, first let me say that, one, I don't have an

18 awful lot to add to Mr. Lindemann's, but I join in to

19 his argument before the Court; I believe he is exactly

20 correct.

21 There are -- Mr. Paul, just to be very candid, is

22 taking advantage of being a non lawyer. I think if he

23 were a lawyer, the courts would have called him to task

24 long before today. As a matter of fact, in Judge

25 Currie's last order, one of them, she made the

1 statement this Plaintiff, Mr. Paul, has abused the
2 Court. I will tell the Court that I believe, and I
3 think these gentlemen would agree, that not only has he
4 abused the Court, but he's abused the lawyers. We've
5 had allegations made by him without any bases. He's
6 had -- we've had statements of the law, which will be
7 in his complaint, that are just wrong, but he's just
8 moving on with his program.
9 The two cases that Mr. Lindemann referred you to, one
10 was the order of Judge Lloyd, it was appealed all the
11 way up, petition of Writ of Certiorari denied. It
12 became the law of the case. Same thing with Judge
13 Srickland's order; it was dismiss -- dismissed his
14 complaint; it was appealed; Appellate Court affirmed;
15 Supreme Court denied the Writ of Certiorari, law of the
16 case. With those, I totally agree with Mr. Lindemann
17 that the statute of limitations is right there. As a
18 matter of fact, as you can see the time line, you can
19 get that from the face of the complaint; he gave us the
20 dates. The other thing that I would mention is, not
21 only is that the case, but in addition to that, just --
22 the statute of limitations just appears to us to be one
23 that is there and there's no -- cannot be any real
24 serious opposition to it. In addition to that, we have
25 alleged in the memorandum that he has failed to state a

1 cause of action. The Court of -- I'm sorry, the
2 Federal District Courts said that time and again, Your
3 Honor, and these five complaints he's filed, said you
4 just can't deal with bare allegations, you've got to
5 put some facts out there; he never was able to do that.
6 I've mentioned law of the case that is there. I think
7 Res judicata is absolutely applicable, no question
8 about it. Collateral estoppel is another defense
9 that's out there, and I just listed these in the
10 memorandum, the file. I think claim preclusion is
11 there. So, you know, I've never seen so many defenses,
12 valid defenses, to -- not defenses, but grounds for a
13 Motion to Dismiss; I mean, they're all there; I'm not
14 going to take up the Court's time anymore, but they're
15 -- refer to the memorandum. Again, the statute of
16 limitations is the easiest one to get to. Thank you.
17 I'd be happy to answer any questions you might have.
18 JUDGE EARLY:
19 Anything you want to add?
20 MR. ORMOND:
21 Your Honor, I stand with the arguments made by Mr.
22 Lindemann and Mr. Quinn. A third legal argument for
23 Mr. Quinn and myself at least, maybe the others, we
24 were private attorneys representing the clients. I was
25 representing Mr. Paul in 2004. Mr. Quinn was

1 representing the landowner, the private landowner, Mr.
2 Buckles. We were not under a -- we were not operating
3 under the color of law or any ordinance or anything
4 else like that, we were simply representing a client.
5 That would be all I have, Your Honor.
6 JUDGE EARLY:
7 Mr. Paul?
8 MR. QUINN:
9 Just for myself, that is correct, Mr. Ormond referred
10 to me and I appreciate him bringing that out.
11 JUDGE EARLY:
12 Mr. Paul?
13 MR. PAUL:
14 Yes, Your Honor, if I may --
15 JUDGE EARLY:
16 You've got 15 minutes.
17 MR. PAUL:
18 Okay, Your Honor.
19 Your Honor, what I did was, like Mr. Lindemann say,
20 this is a 42 USC 1983, which I'm just going to shortcut
21 and say 1983 case, which I filed the first one in 2012.
22 Now, according to Williamson County, I didn't have a
23 right to file that or didn't -- until I used procedures
24 provided by the state to try to resolve the issue. So
25 after I did that, then I went to Federal Court the

1 first time and filed 42 USC 1983, which I'm going to
2 say again, I'm just going to refer to it as a 1983
3 case. Now, when I filed that case, summons were
4 issued, and I served all of the Defendants and the same
5 documents that they got here, handed up to you, and
6 they filed, and the same arguments they made here to
7 you, they made these same arguments in Federal Court.
8 JUDGE EARLY:
9 With Judge Currie?
10 MR. PAUL:
11 Right. And the Magistrate Judge Gossett and Judge
12 Currie.
13 JUDGE EARLY:
14 Well, Judge Gossett is the Magistrate and Judge Currie
15 is the Judge, she's --
16 MR. PAUL:
17 Yeah. So, made it to both of them. And the same thing
18 they did here, and Judge Currie dismissed the case
19 without prejudice. And to me, I think it's a well
20 settled law, a dismissal without prejudice means that I
21 can bring this lawsuit back again; I think it's well
22 settled, as long as I put it in my response in
23 opposition to Defendants' Motion to Dismiss that the
24 case was dismissed without prejudice. But let me go
25 back to the statute of limitations, Your Honor. All

1 the Defendants raised the issue of statute of
2 limitations, which I put in my memorandum in response,
3 sealed -- we're dealing with sealed instruments here,
4 so it's 20 years, the statute of limitations.
5 JUDGE EARLY:
6 We're dealing with what? I'm sorry.
7 MR. PAUL:
8 Sealed instruments. So, according to South Carolina,
9 the Defendants' were wrapped around South Carolina Code
10 15-3-530, which is three years. But however, since
11 we're dealing with sealed instruments, sealed
12 instruments, according to the South Carolina Code 15-3-
13 520B, it's 20 years, so I'm saying that it's 20 years
14 and they're saying that it's three years. Even though
15 the one sealed instrument that did have a seal on it,
16 according to --
17 JUDGE EARLY:
18 What instruments are you talking about were sealed?
19 MR. PAUL:
20 Well, we're dealing with a lease, you've got a sealed
21 instrument, and also it's a agreement that I never --
22 that I made a Motion to Compel to get a copy of, the
23 settlement agreement between South Carolina Department
24 of Transportation and the Buckles. Now, I made a
25 motion to get a copy of that because I needed that to

1 defend against the Defendants' Motion to Dismiss and
2 Summary Judgement, but they said that that wasn't
3 important, but as you hear, they just raised it on
4 their arguments, while we're here today, they just
5 raised that issue.
6 Now also, back to the statute of limitations, Your
7 Honor, yes, federal -- federal law barred the statute
8 of limitations from state law, but under a 1983
9 conspiracy, it don't determine when the statute started
10 to run, as this is a 1983 civil conspiracy, the statute
11 of limitations started running from the last overt act
12 of the conspiracy; that's when the statute of
13 limitations started to run. And I listed several case
14 law right here, and the United States Supreme Court
15 ruled when the statute of limitations started to run in
16 Federal Court when the conspiracy -- there's an overt
17 act in there. Now, according to the complaint, Your
18 Honor, on page 18, paragraph 80, the civil conspiracy
19 continuing as of today, so if we're looking at the four
20 corners of the complaint, I don't see how -- where they
21 get, you know, anything else from. I mean, they're
22 saying their defense it's a statute of limitations, but
23 to me it isn't, and I just put it down here -- I didn't
24 go over everything, Your Honor; it's in my complaint --
25 I mean, it's in my opposition to their motions.

1 Next, Your Honor, all the defenses, or most all of
2 them, Res judicata, collateral estoppel, issue
3 preclusion, claim preclusion, or law of the case. Now,
4 when I filed this case in Federal Court on April the
5 17th 2012, and Judge Currie dismissed the case without
6 prejudice, none of the Defendants filed an appeal; none
7 of them filed an appeal, so that gave me the right to
8 refile the case in any courtroom I wanted to, either
9 Federal Court or either State Court, because it was
10 dismissed without prejudice and the Defendants did not
11 file no appeal. So all I want -- their claims of Res
12 judicata, collateral estoppel, issue preclusion, claim
13 preclusion, law of the case, all that we're not looking
14 at that time, because they didn't file no appeal and
15 they made the same arguments, presented the same
16 documents, in Federal Court. And you can see that I
17 attached to my filing here, if you go to exhibit A, you
18 can see the motions that they filed. Exhibit A shows
19 all the motions they filed and it shows the exhibits,
20 the same exhibits they presented here, the same
21 exhibits they presented in Federal Court and the case,
22 as I say again, was dismissed without prejudice.
23 Again, Your Honor, all of the Defendants rely on --
24 well, Mr. Quinn -- failure to state the cause of the
25 action against Mr. Quinn, but according to the

1 complaint on page 25 and 26, paragraph 108 to 110, I'm
2 not going to read all of this, but it clearly states
3 right there -- it clearly states right there -- it
4 clearly states right there, now I read Mr. Quinn, what
5 he had written down and I didn't understand it because
6 he's not addressing this complaint, he's addressing, I
7 think, the complaint I filed in 2008. But his
8 arguments surely don't address the complaint I've got
9 here. He's talking about, I think, some kind of
10 professional rules or something or other; I'm not sure
11 what he's talking about, but definitely he's not
12 addressing this complaint. He don't even address the
13 issues I've got here. And I went on this, basically,
14 it's other arguments that I could use to file this for
15 conspiracy; a combination that they couldn't accomplish
16 this one alone. Mr. Quinn, during the trial in 2004,
17 Mr. Quinn didn't have standing and his client because
18 they already had settled the case and been paid,
19 according to the South Carolina Department of
20 Transportation. And I have documentation on it, but
21 they already had settled the case, been paid, and Mr.
22 Quinn showed up with two expert cases; Mr. Ormond,
23 which was my attorney, never objected. I didn't know
24 no better; I had an attorney and I'm sitting back, I
25 didn't know no better at the time, but Mr. Quinn didn't

1 have no standing. And as again, he said he wasn't
2 acting -- at the time, he was acting under the color of
3 the law because he had no standing, he was done
4 representing the state, and I've got documentation to
5 show where he was representing the state. Of course,
6 we're looking at the four corners of the complaint at
7 this time and so trying to stay within the four corners
8 of the complaint.
9 JUDGE EARLY:
10 All right, Mr. Paul, you've got about four more
11 minutes.
12 MR. PAUL:
13 Next, I think Mr. -- Defendant de Holczer and Defendant
14 Moore, they raised the issue of immunity, but according
15 to the complaint, this is a 42 1983 action, so this is
16 up under conspiracy. And according to the 1983, any
17 person under the color of law who violates a person's
18 constitutional rights can be sued, so this immune
19 argument is simply an attempt to address the argument
20 under a different direction; to me it's without merit.
21 Next, Your Honor, South Carolina is not a person.
22 Well, I have to agree with that. According to the law,
23 South Carolina is not a person, so they can't be sued
24 under 1983. Now, I agree with that.
25 But I've got count one declaratory judgment; I think

1 they can be held liable up under there, under the state
2 law, because that could be a state claim because under
3 Federal law, Judge Currie, she refused to take
4 supplement jurisdiction on the issue of the settlement
5 agreement, and that's in her order.
6 Also, Your Honor, at my conclusion here, I filed two
7 Motions to Compel to get a copy of the settlement
8 agreement between the South Carolina Department of
9 Transportation. In addition, we've got some default
10 judgments against Defendant (inaudible) and Moses Koon
11 and Brackett, which I would kindly request that the
12 Court hear at this time.
13 JUDGE EARLY:
14 Well, here's what I'm going to do; you've just hand me
15 your memorandum. I haven't seen it; it's rather
16 extensive. I've read the Defendants' memorandum. I'm
17 not going to rule on this before I start ruling on
18 everything else. I'm going to be here until Wednesday;
19 I'll probably get a ruling on it Wednesday. If I rule
20 for you, we'll do your Motion for Default and all
21 perhaps Thursday or Friday on either case.
22 MR. PAUL:
23 I can't -- can you speak up, Your Honor?
24 JUDGE EARLY:
25 I said I will rule by Wednesday. If I rule for you,

1 then I'll set a time to hear your Motions that are
2 still outstanding.
3 MR. PAUL:
4 Yes, sir.
5 JUDGE EARLY:
6 I think that's the more efficient way to do it.
7 Anything else?
8 MR. PAUL:
9 Your Honor, I just want to make one more thing; one of
10 the Defendants raised, I think both of them raised,
11 pre-filing injunction against me in Federal Court. I
12 know that Judge Currie put that in her order, but it's
13 no pre-filing injunction against me in Federal Court.
14 I could file this in state court, I could have filed
15 this in Federal Court. The reason I filed it in state
16 court because Judge Currie wouldn't take up supplement
17 -- supplemental jurisdiction over the settlement
18 agreement and she put that in her order. She called it
19 a state court something or other, a contract, some kind
20 of claim she called it, a contract state court claim
21 something or other she called it, but then again,
22 whatever does not make any difference does not matter
23 as far as the pre-filing injunction. But as I say,
24 Your Honor, as I know of, there's no pre-filing
25 injunction. The Clerk of Court did not enter that

1 against me, so I could file this in --
2 JUDGE EARLY:
3 I'm going to look at her order.
4 MR. PAUL:
5 Yeah, I filed this in state court.
6 JUDGE EARLY:
7 All right.
8 MR. PAUL:
9 Also, if you look at -- when you read my complaint,
10 Your Honor, you'll see some statements that Judge
11 Currie made; they also suggest that landlord and South
12 Carolina acted corporately in opposing claims
13 consistent with their settlement agreement and that was
14 what Judge Currie put in one of her orders. And also
15 she put in there that some statements may have been
16 made in the proceedings that mischaracterized or
17 misrepresented plaintiff's actual opposition, and
18 that's on page 6 of my opposition to the Defendant's
19 Motion to Dismiss.
20 JUDGE EARLY:
21 All right, thank you very much.
22 MR. QUINN:
23 Your Honor, I was just going to point out for the
24 Court's benefit is that the order of Judge Currie that
25 he refers to is dated November the 8th 2016 and pages 6

1 and 7.
2 JUDGE EARLY:
3 Mr. Quinn, I'm going to read that order.
4 MR. BRACKETT:
5 Your Honor, on the -- Mike Brackett for Moses Koon,
6 well, now it's Moses and Brackett, P.C., formerly Moses
7 Koon and Brackett, P.C. Your Honor, I'm not as far
8 along as these other gentlemen are because we did not
9 file a response, Moses, Koon and Brackett, or Moses and
10 Brackett, for the simple reason we're not a party to
11 this lawsuit
12 JUDGE EARLY:
13 Then why are you arguing?
14 MR. BRACKETT:
15 Well, I entered a special appearance. I'm here on a
16 special appearance. I'd like to pass it up; it was e-
17 filed last week. A copy has been made -- has been sent
18 to Mr. Paul. And I also have a copy of his -- Mr.
19 Paul's complaint and all the various deficiencies as to
20 why we're not a party in this case are set out on page
21 2 of that special appearance return and I'd just --
22 Judge, we were asking, basically, that the Motion for
23 Entry of Default be denied.
24 JUDGE EARLY:
25 I'm not hearing that today.

1 MR. BRACKETT:
2 Okay.
3 JUDGE EARLY:
4 You weren't listening to me. I will rule on the
5 Motions that y'all filed. If I rule in favor of the
6 Plaintiff, then we'll reconvene and hear all of the
7 outstanding motions.
8 MR. PAUL:
9 Your Honor, there's one more thing I want to bring up.
10 JUDGE EARLY:
11 No, sir, I've made my ruling, which is I'll take it
12 under advisement. I'll rule on Wednesday. If I rule
13 for you, we'll reconvene. If I rule adversely,
14 everything is moot, is it not?
15 MR. BRACKETT:
16 Well, he's -- he's trying to hold -- he's trying to
17 hold my client in default, so we haven't gotten as far
18 as joining issues and all that other stuff, so it's a
19 question of whether the Court has any jurisdiction to
20 enter a default against a non party; that's in essence
21 the argument.
22 JUDGE EARLY:
23 Argue that when he argues his motion to hold you in
24 default if it's still around.
25 MR. BRACKETT:

1 That's true for two other Defendants, Rucker and -- why
2 can't I remember the other lady's name.
3 MR. PAUL:
4 Grace Gresham.
5 MR. BRACKETT:
6 Yeah, Gresham, who were not -- who were not served;
7 they're former employees of DOT, they were not served,
8 but he's attempting to hold them in default.
9 JUDGE EARLY:
10 Well, if I dismiss the case, then it's all over with,
11 is it not?
12 MR. BRACKETT:
13 I believe so; I believe if you dismiss it, it would
14 rule out --
15 JUDGE EARLY:
16 If I don't dismiss it, then all of that still has to be
17 heard.
18 MR. BRACKETT:
19 Right; if you dismiss it finding that it didn't have
20 any merit as to any of the defendants, I think that'll
21 take care of the ones he's got --
22 JUDGE EARLY:
23 Well, he's just handed me his memorandum; it's rather
24 thorough. I need to read his before I make a decision,
25 so I'll let y'all know something; I'm going to be here

1 all week. Thank you.
2 (This hearing concluded at 3:15 p.m.)
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1 **Certificate of Reporter**

2

3 I, Karen E. Holley, a Notary Public in and for the

4 state of South Carolina, do hereby certify that the

5 foregoing 28 pages represents a true and accurate transcript

6 of the hearing that was held in Richland County before the

7 Honorable Judge Early on the 11th day of February, 2019.

8 That I am not related to nor the employee of any of the

9 parties hereto, nor related to or employed by any attorney

10 or counsel employed by the parties hereto, nor interested in

11 the outcome of this action.

12

13 Karen E Holley

14 Karen E. Holley, CVR-M

15 Notary Public for S.C.

16 Commission expires: 4/11/2027

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EXHIBIT
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STATE OF SOUTH CAROLINA)   IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)   00-CP-26-4087

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, CONDEMNOR,

-VS-

McDONALD'S CORPORATION, ET AL LANDOWNER,

TRANSCRIPT OF RECORD

March 1, 2004
Conway, S.C.

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Judge.

A P P E A R A N C E S:

LARRY B. HYMAN, JR., ESQUIRE
Attorney for the Condemnor

MICHAEL H. QUINN, ESQUIRE
Attorney for the Condemnees

LINDA W. MCCALL
OFFICIAL REPORTER

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2 NONE

1 **MONDAY, MARCH 1, 2004**

2 MOTIONS AND RULING OF THE COURT

3 THE COURT: Alright. What's the next case, now?

4 MR. HYMAN: McDonald's Corporation, Your Honor.

5 THE COURT: Yes, sir.

6 Alright, sir, Mr. Quinn.

7 MR. HYMAN: I'm the first moving party, Your Honor.

8 THE COURT: Alright.

9 MR. QUINN: Your Honor, the one that I sent you the

10 Memorandum on our position for the Motion in Limini. It's also a,

11 ah, there are Motions to Compel in that document which have been

12 filed - - -

13 THE COURT: Okay. Who is the first motion?

14 MR. HYMAN: Mine, Your Honor.

15 THE COURT: Alright, sir.

16 MR. HYMAN: Your Honor, this may take a few minutes.

17 THE COURT: Got all day.

18 MR. HYMAN: If I can get this around.

19 Your Honor, the McDonald's - - -

20 THE COURT: While I'm talking. What case involves your

21 Motion to, ah, to - - as a whole and they want to sever it?

22 MR. HYMAN: That would be the Bybee case, Your Honor.

23 THE COURT: Okay. Go ahead.

24 MR. HYMAN: Ah, Your Honor, the 501 widening project

25 involved construction - - let me turn this over - - a series of

1 frontage roads.

2 This would have been the Forest Brook Interchange or

3 intersection.

4 THE COURT: I'm familiar with that.

5 MR. HYMAN: And this would have been the intersection at

6 George Bishop Boulevard which is the primary access to the Waccamaw

7 Pottery Complex.

8 This down at the far end would be the Intracoastal Waterway

9 Bridge.

10 Ah, in the before, Your Honor, there was Pottery Road or

11 Pottery Boulevard or Alton Park Boulevard that came around through

12 the Pottery, went under the waterway and came back to George

13 Bishop.

14 The purpose of the construction was to alleviate some of the

15 congestion on 501. So what the Department proposed back in 1993

16 was to build this series of frontage roads that could take traffic

17 off of 501 back at Forest Brook and bring it parallel to both sides

18 of 501 in the configuration - - the general configuration that we

19 see here today on this - - this is an exhibit that Mr. Quinn and I

20 used in a previous case.

21 So I don't think there's any - - in fact, it's his exhibit.

22 I don't think there's any question that it accurately depicts the

23 frontage roads.

24 One of the issues involved in the initial plan to build these

25 frontage roads was what to do with these intersections which were

1 the bottle-necks, so to speak, going into Myrtle Beach, and as the
2 '93 plan showed, these intersections were going to be eliminated
3 totally at Forest Brook and George Bishop. You would not be able
4 to cross over from one side of 501 to the other side without the
5 utilization of the frontage road system.
6 THE COURT: I'm familiar with that.
7 MR. HYMAN: The acquisition process began. This project
8 was on and off for several years.
9 As the Affidavit of Ms. Elliott, the right-of-way agent will
10 show, she first made contact with the owners of the McDonald's
11 Store which is this tract - - I might need to bring it up for Your
12 Honor - - which is this tract - - -
13 THE COURT: Where does the old motel sit - - the Days Inn
14 sit?
15 MR. HYMAN: The Days Inn would be down here, Your Honor.
16 THE COURT: I got you. Alright.
17 MR. HYMAN: And this would be the corner of George Bishop.
18 There's an Arby's, a McDonald's, a beachwear store and Quincy's.
19 THE COURT: I'm familiar with that.
20 MR. HYMAN: Quincy's Restaurant right here.
21 THE COURT: In the before there was a small turn-off of
22 501, and there was a crossover that would allow you to exit off of
23 501, and there was a short street called Waccamaw Boulevard as best
24 we can tell that then came down and intersected with George Bishop,
25 and that was an access to the fronts of these businesses.

1 THE COURT: Yes, sir.
2 MR. HYMAN: Alright, sir.
3 Now, when the plans were first presented back in 1994 and
4 negotiations were begun for the take on the McDonald's, the take
5 actually involved a strip across the back for the construction of
6 this rather large frontage system. It would come across the back,
7 and there was another street here called Bush Drive, a little two
8 lane street that kind of accessed this area which is light
9 industry.
10 The Pottery would be over here. You have light industry over
11 here. Bush Drive across the back.
12 Also, as you can see, McDonald's had a driveway that came out
13 behind the Arby's Restaurant that allowed access from George Bishop
14 as well.
15 So in the before they had access off of Waccamaw Boulevard,
16 and they had access, and there was a short median here but it did
17 not go to their - - their driveway. They could go left or right.
18 THE COURT: What's the issue?
19 MR. HYMAN: We did a take, filed a condemnation action.
20 That condemnation action involved the rerouting of Waccamaw
21 Boulevard. Waccamaw Boulevard in this exhibit it's not actually
22 correct. It ends down here in front of the Arby's.
23 What we did is we took Waccamaw Boulevard, took away the
24 access to 501 - - -
25 THE COURT: The access to 501.

1 MR. HYMAN: - - okay. Rerouted it and brought it around
2 where it intersects with the new frontage road system. That was
3 part of the plan that brought it around to here.
4 THE COURT: Did you do away with that part of that old - -
5 -
6 MR. HYMAN: Yes, sir. Waccamaw Boulevard would be
7 barricaded under the plans, and you can see those plans by
8 reference to the plan sheets which we have provided as well as the
9 appraiser's, ah, Mr. Ratchford's appraisal, and he discusses the
10 change in access in his appraisal, and this would be blocked off
11 here. There is a new ramp that comes off of 501 now that - - and
12 in the before that has a barricade there. So you could not get to
13 Waccamaw Boulevard off of 501 under that first plan period. You
14 had to come around this way, and that's how access was changed.
15 Now, when in 2000 the Department or late '99, the Department
16 had a study done concerning the blocking of these intersections,
17 and as a result of that a new condemnation or a new project was
18 planned and combined with the frontage road project to uplift 501
19 at Forest Brook and at George Bishop so that there would be
20 overpasses and traffic would be allowed to flow from one side to
21 the other.
22 Now, the new plan did not change, did not change how you would
23 access this property, the McDonald's property from the '93 change.
24 Still ended Waccamaw Boulevard here. Waccamaw Boulevard instead
25 of coming out on 501 came around to the frontage road. Right

1 here.

2 Well, a condemnation action was filed in reference to

3 McDonald's under the original plans. That case was settled.

4 McDonald's was paid. A Stipulation of Dismissal in compliance

5 with 43(k) was filed and signed by McDonald's representative.

6 McDonald's was represented by counsel, Ms. Ruth Showingmire

7 (spelled phonetically) during this process.

8 Now, when we came back and the uplifts were put in place, we

9 had to make a change to George Bishop Boulevard.

10 THE COURT: Is this after the settlement?

11 MR. HYMAN: After the settlement.

12 Came back with a new project. Therefore, some changes in the

13 project.

14 Put in a median here which changed this entrance to a right-

15 in, right-out, and we concede we also did a small take, another few

16 feet off the end of this driveway.

17 Now, we concede that potentially there are damages, new

18 damages for McDonald's as a result of the take, of course. The

19 change in access off of George Bishop, possibly, if the appraisal

20 would say - - would see that that does change or diminish the value

21 of McDonald's as well as the elevation of 501, things that were not

22 considered in the first action.

23 However, it is our position that in a condemnation action that

24 action is filed for damages to the property as well as the value of

25 the take. It's very clear. It's statutory.

1 And when McDonald's negotiated this settlement with the
2 Department, McDonald's took the offer. McDonald's, ah, also
3 wanted some other things like a time-frame for resetting signs and
4 that sort of stuff. That was done.
5 A deed was executed. The deed conveyed the interest
6 McDonald's had for a strip from Forest Brook Road all the way - - -
7 THE COURT: Didn't I hear you concede, though, that when
8 you changed the plans and did something else, they are entitled to
9 be paid for that?
10 MR. HYMAN: That's correct, Your Honor. We would concede
11 that any of these changes would have been but our point is this.
12 They are now wanting to argue change in access that went back to
13 the original - - -
14 THE COURT: Isn't that a question for the trial judge at
15 the time?
16 Obviously, they are entitled to bring a proceeding on any
17 changes that you made since they settled the case.
18 MR. HYMAN: And we would not have any problem with that.
19 THE COURT: Alright, sir. Then at the time.
20 MR. HYMAN: This is not an adverse, Your Honor.
21 THE COURT: Sir?
22 MR. HYMAN: This is not an adverse taking.
23 THE COURT: Oh, I understand but at - - at - - that's going
24 to be at the trial of the case whether or not that affects - -
25 whether or not that - - -

1 MR. HYMAN: We got no problem with that. Anything that's
2 changed. However the issue that we have before the Court today is,
3 one, we are moving, ah, made a Motion in Limini as to any damages
4 that may have occurred as a result of the change in Waccamaw
5 Boulevard it not coming back on 501 which was in the original
6 settlement, and they have made a motion that we should not even
7 discuss the fact that they have been paid.
8 THE COURT: Let me hear from Mr. Quinn.
9 If - - if - - if that - - if that was presented and if that
10 was in your original settlement, ah, you can discuss it.
11 I just don't know.
12 What is your position - - what I'm hearing is that he concedes
13 that there has been some changes after the settlement. Obviously,
14 you are entitled to present that but tell me how you proceed on the
15 - - he tells me there was no change on this road that comes in
16 here. Is that true or not?
17 MR. QUINN: No change on Waccamaw Boulevard?
18 THE COURT: Yes, sir.
19 MR. QUINN: Well, let me give you the factual background
20 based on documents and - - and as Your Honor might recall in the
21 Memorandum that we provided you in support of our opposition to Mr.
22 Hyman's Motion in Limini and in support of ours with respect to
23 this issue, we cited three bases for it.
24 First of all, we said the clear consideration in the 1999
25 transaction was only for the land taken.

1 Secondly, we said everything that's involved in that action is
2 merged into the deed of conveyance, and I'm going to get into these
3 facts.
4 And, thirdly, we also said that the 1999 Notice of
5 Condemnation did not specify the change or the loss of access.
6 THE COURT: Yes, sir. I read your Memorandum.
7 My question is, though, did the maps upon which your
8 settlement was predicated clearly show the loss of access. I know
9 that the condemnation didn't use the magic word "access" in the
10 2000 bid. I know that.
11 But my question is did those plans clearly show the loss of
12 that access that you now ask for.
13 MR. QUINN: They don't clearly show it. I've been told by
14 an engineer that they do reflect termination of access on 501 but,
15 Your Honor, these are - - the action is brought in 1999. There is
16 no reference to access at all in their condemnation notice.
17 THE COURT: Is it necessary if your settlement is
18 predicated on the set of plans that you can look at, and it shows
19 no access?
20 MR. QUINN: My settlement, Your Honor, is reflected by a
21 deed, and all negotiations go into that deed, basic, black letter
22 law in South Carolina, all prior negotiations go into the document
23 if it's unambiguous. The documents clearly reflect we are being
24 paid $42,000 for 4,372 square feet, period.
25 In addition - - -

1 THE COURT: That deed, though, refers to certain plats and
2 right of ways and - - -
3 MR. QUINN: No, sir. The only - - the only map referred
4 to in that deed, and it's typical Highway Department drafting, it
5 refers to all of the property from west of Forest Brook to the
6 Intracoastal Waterway.
7 For God's sakes, all the property from Forest Brook to the
8 Intracoastal Waterway on U.S. 501. Now, you tell me what that
9 means. They going to take Myrtle Beach, Mr. Bellamy's property.
10 THE COURT: Here's what I want to know. I want to know,
11 Mr. Hyman, then, what is your position on whether or not the plats
12 that were based on that settlement were clearly shown to deny
13 access. Now, somebody - - some engineer ought to be able to tell
14 me they do or do not.
15 MR. HYMAN: They absolutely - - -
16 MR. QUINN: An engineer will tell you that, Your Honor.
17 That's what I've said earlier but what I am saying is the only
18 reference in the deed of conveyance is to plans dated August 18,
19 1993. There are no such plans dated August 18, 1993.
20 Secondly, a deed of conveyance refers only to the 4,372 square
21 feet, and in addition to that, the Highway Department agreed to
22 reset a sign. If they were going - - if they wanted to take away
23 any access rights, it should have been in the deed. It wasn't.
24 Additionally, under the eminent domain statute, the condemnor
25 is required to provide a legal description of the property taken

1 and the interest being acquired.

2 THE COURT: Well, why - - what's wrong with permitting the

3 Highway Department to assert that and let the jury determine

4 whether or not it was a part of the prior settlement or not?

5 MR. QUINN: It's a matter of law.

6 You know, if we get into settlement negotiations and then all

7 of a sudden, Mr. Hyman and I have a settlement agreement and there

8 is some issue about what - - what the settlement agreement means,

9 we refer to the agreement. We don't get into to paroled evidence.

10 THE COURT: I agree with you that the '99 document of

11 Notice of Condemnation did not use the word "access" while the 2000

12 did. That gives me some concern.

13 MR. QUINN: Right.

14 And if you also - - -

15 THE COURT: But I also - - McDonald's is a big boy. I

16 don't know who the lawyers represented? Did you represent them?

17 MR. QUINN: No.

18 THE COURT: Well, they big boys, and I practiced enough law

19 for thirty-two years, a lot of which was property law, and if I see

20 a plat in front of me that shows me that my client is not going to

21 have access, I'm going to take that into consideration in

22 negotiations, and I can't believe that McDonald's did not.

23 Now, I know what's going on now. Y'all have decided all of

24 a sudden everybody raising these access things, and McDonald's

25 comes back in and wants their little piece of the pie.

1 MR. QUINN: It - - it was clear.
2 I mean, first of all, it was never closed.
3 Secondly, the 1999 plans, Judge, have been - - have been
4 changed so many times even DOT does not know what's appropriate.
5 THE COURT: Gentlemen, I'm going to tell you, now, I'm not
6 going to rule that it is or is not. The only thing that I'm going
7 to rule is that you can present it as a part of the '99 property
8 settlement negotiations, and I'll leave it to the jury to decide.
9 MR. HYMAN: Well, Your Honor - - -
10 THE COURT: Unless at the trial of the case, it becomes a
11 matter of law at that time.
12 MR. HYMAN: In response to some of Mr. Quinn's statements,
13 I would just like to point out to the Court that I have provided to
14 the Court the appraisal and the transmittal letter where the
15 appraisal was sent to the landowner when it was done well before
16 this settlement, and that that appraisal not only discusses under
17 paragraph 17 the changes in access but it also contains the plan
18 sheet which clearly show and put the landowner on notice that
19 access is going to be changed.
20 There can be no question that they were not aware of that.
21 THE COURT: Well, I think - - I've read your briefs
22 extensively.
23 And the only thing you are asking at this time is that you be
24 permitted to present this testimony.
25 MR. HYMAN: I've asked that he not be allowed to put up any

1 testimony concerning change of position or change of configuration
2 of Waccamaw Boulevard which was included in the first settlement.
3 I have made a motion that that be excluded in this case, that
4 it is a matter which has already been determined, that it is not
5 proper as a matter of law for them to go back now and have a change
6 of heart and decide, "Well, we want to litigate that."
7 THE COURT: Well, I have two concerns.
8 One is your Notice of Condemnation did not use the word that
9 you were taking access.
10 The other concern I have in your favor is that clearly and
11 your documents now seem to show that that that issue was discussed
12 and known.
13 And doesn't that then make it a jury question?
14 MR. HYMAN: I think that it is a question - - and
15 McDonald's has not offered to return the money that they received.
16 McDonald's has the benefit of their bargain, and, now, they want to
17 go back and revisit it.
18 They have not made any motion to set aside a settlement in
19 this matter - -
20 THE COURT: What you say about that, Mr. Quinn?
21 MR. HYMAN: - - to rescind their contract.
22 THE COURT: He wants the money plus whatever else you can
23 get?
24 MR. QUINN: Judge, you know, the whole idea of the merger
25 doctrine is to avoid these little arguments Mr. Hyman and I have

1 here.

2 Now, what they did the first time around. They paid us - -

3 now this is Mr. - - -

4 THE COURT: Let me ask you this. Have y'all mediated this

5 case?

6 MR. QUINN: No. We were waiting on this.

7 But, Judge, the appraisal he refers to clearly says 4,372

8 square feet and $8.50 a square foot. Now, you can't read access

9 into that.

10 Plus, asphalt paving, concrete girding, landscaping for the

11 $42,000. They accepted that.

12 There is nothing with respect to the denial of access which,

13 as Your Honor knows, can be a tremendous damage in this case, and

14 by the way, what they've offered in this case, incidentally, is

15 $3300.

16 THE COURT: Well, then, maybe they were settling. Maybe

17 the negotiators were satisfied with the new access. I can't read

18 somebody's mind as to why you - -

19 MR. QUINN: That's right.

20 THE COURT: I do know this. McDonald's is a big boy.

21 MR. QUINN: And let me tell you, Your Honor. I agree with

22 that but, unfortunately, we can't make decisions based on who was

23 involved. This could be some little lady in Loris for example.

24 THE COURT: Yes, sir. If it was a lady in Loris, I

25 wouldn't have no concern with what I would do.

1 MR. HYMAN: Your Honor, the exact wording of the appraisal
2 was, "by referring to the attached property sketch and project
3 plans, one will note that the remaining property containing 2.2
4 acres - - - "
5 THE COURT: No, sir.
6 Mr. Quinn, on this issue if he's saying he has documents that
7 discuss this issue and address this issue, I'm not going to let you
8 do that.
9 MR. QUINN: Not going to let me do what?
10 THE COURT: I'm not going to let that be an element in this
11 case if he's showing me as a matter of law, if he's showing me that
12 that issue was discussed and y'all - - and you had notice of it,
13 McDonald's cannot now come in and say they weren't aware of it.
14 MR. HYMAN: It's in the appraisal.
15 THE COURT: I want to see that language where you tell me
16 it was actually discussed.
17 MR. HYMAN: Right here in paragraph 17, and if you would
18 look at the Affidavit of the Right-of-Way Agent as well as her
19 attached notes where she discussed it with McDonald's.
20 THE COURT: Have you read those notes?
21 MR. QUINN: I have, Your Honor. What they sent me I have
22 read.
23 Let me just show, for example, this is in the 2000. These
24 are notes which we just got Friday. Alright?
25 This is the deed that's in that Memorandum. You'll see that

1 even up here, for example, these stations and that frontage road,
2 that is the back road. It is not Waccamaw Boulevard.
3 This map they refer to, May - - I think I said May 19th, there
4 is no such map. When you get into the description, the only
5 description is the strip of land on Bush River Road and a small
6 area on George Bishop.
7 THE COURT: Well, what are you seeking as a matter of law
8 or are you just seeking to let the jury determine?
9 MR. QUINN: I think as a matter of law that real estate
10 deed controls the agreement between the parties.
11 THE COURT: I don't think so.
12 What do you seek?
13 MR. HYMAN: I would just ask Mr. Quinn is it his position
14 that this access did not change the element of damage on the first
15 case? If it was, I think the statute says that that was a matter
16 to address in this 1999 condemnation.
17 THE COURT: Well, there's two different contention's here.
18 One is that clearly the condemnation notice in 1999 did not
19 use the word "access" where you did in 2000.
20 On the other hand there are plats here and engineers that said
21 it was there.
22 There's two separate contentions here.
23 Why - - why can't it be resolved by letting that be a separate
24 issue for the jury to determine? Whether or not it was or not
25 included.

1 MR. QUINN: Well, I just - - I come back, again, to three
2 things.
3 One, clearly, the consideration was only for the quote "square
4 feet".
5 Number two, the notice of condemnation in 1999 did not comply
6 with the statute even if they are trying to say that access was cut
7 off because they didn't refer to it.
8 THE COURT: But you have another issue. The new access
9 may be as good as the access that you said was cut off.
10 MR. QUINN: Well, let them argue that.
11 And that's exactly what they are saying.
12 They're appraiser is saying the new access is just as good as
13 the one that was terminated, and we think you're only entitled to
14 $3,000.
15 Now, we've appraisers that run to $600,000 and above because
16 they don't agree with that.
17 I mean, that is the Department's position.
18 Access, the access after the 2000 deal - - -
19 THE COURT: I mean, let me ask you this.
20 McDonald's originally got how much for their property?
21 MR. QUINN: $42,000.
22 THE COURT: And how much are they asking for now?
23 MR. QUINN: One appraisal is $600,000 and one appraisal is
24 at somewhere up about a million.
25 THE COURT: Isn't that about absurd on it's face.

1 MR. QUINN: No. I think the $3300 is absurd on its face.
2 You know, access is about an important right, Judge, as I have
3 seen tried in this court.
4 THE COURT: I mean, how can McDonald's in their negotiation
5 go from $40,000 to a million?
6 MR. QUINN: Because in the negotiations, Judge, they were
7 only talking 4,000 square feet of land on the back of the property.
8 No access involved.
9 THE COURT: Yes, sir, but you don't - - you don't even put
10 in the fact that they hadn't discussed that they may have just as
11 good access now as they - - if they took it.
12 MR. QUINN: If that were the case, they should have, one,
13 they should have - - the condemnation notice should have stated it.
14 And, number two, the deed should have referred to access.
15 MR. HYMAN: Your Honor, the condemnation notice refers to
16 the plans which clearly show it.
17 If you'll look at the first note of the Right-of-way Agent,
18 she discussed this matter with, ah, Mr. Amendoa (spelled
19 phonetically) with McDonald's and McDonald's told her where they
20 intended to put a new street, and they felt that it may even
21 improve their situation.
22 THE COURT: Gentlemen, I - - and you gave me an exhaustive
23 brief. I was very much impressed with it, Mr. Quinn.
24 And have you sent him this brief?
25 MR. HYMAN: Your Honor, it's right there.

1 THE COURT: Let me keep these things, and I'll rule on it.
2 I'm going to rule one of two ways.
3 Either I'm going - - either I'm going to assert that, ah, the,
4 ah, the settlement included this based on the record - - based on
5 the facts that the maps and all clearly show they are.
6 I'm going to probably rule that it's a question for the jury.
7 I'm not going to deny you.
8 MR. QUINN: But, Judge, when I say that I talked to an
9 engineer, an engineer told me that could be ascertained in the
10 condemnation, I did not say it clearly reflected that.
11 And if that is a matter for your consideration, I'd rather
12 bring the engineer and let him discuss that with Your Honor, ah,
13 bring him in as a Court's witness.
14 Mr. Hyman and I can share his expense.
15 MR. HYMAN: I'd rather you pay him, Mike.
16 THE COURT: Gentlemen, I tell you what. It would help me
17 in my decision for somebody to tell me whether or not those plans
18 that the settlement of the '99 issue was predicated on clearly show
19 to a reasonable person that the access was denied or not.
20 I mean, an engineer ought to be able to tell me that, and if
21 you show me some plans that clearly show that, I'm not concerned
22 with whether the word "access" is in or out of the settlement.
23 MR. HYMAN: And, Your Honor, I think the plan sheets that
24 we have provided to you clearly show that. It shows the
25 barricading of Waccamaw.

1 THE COURT: Well, you say that. You got an engineer who
2 says that?
3 MR. HYMAN: I can certainly assure you that I can get one
4 from the Highway Department.
5 THE COURT: Well, he can get one, too.
6 Give me - - you can do it by Affidavits.
7 Yeah, I would like that first.
8 I clearly have some concerns, Mr. Quinn, if an engineer would
9 say, "Listen, there's no question."
10 MR. QUINN: Judge, I'm through after this one.
11 I understand - - I understand property law, and I understand
12 when a map or plat is referred to in the description, it becomes a
13 part of that.
14 That's, one, not the case here.
15 Number two, you and I back in your practicing days, we could
16 have negotiated, had plats and everything else but once we entered
17 into that final conveyance with a deed, whatever went on between
18 the people before then merges into that deed. That is the final
19 document.
20 THE COURT: How can you tell me that it wasn't considered
21 in the negotiations? They may have - - whoever represented
22 McDonald's, they may have said that's not an issue because access
23 now is even better than we had - - what we had.
24 MR. QUINN: I - - I can tell you. I'll get you an
25 Affidavit from McDonald's, and I believe - - -

1 THE COURT: I don't need an Affidavit from McDonald's.
2 MR. QUINN: Well, you've got one from Toni Elliott that's
3 the most absurd thing I've ever seen and is incorrect in a number
4 of ways, Your Honor.
5 If you'll look at her Affidavit, Toni Elliott's, take a look
6 at it sometime. It's interesting that she, ah, she's referring to
7 a conservation March 17, 1994, but the funny thing is it's on a
8 revised SCDOT form, 1996.
9 THE COURT: I'm going to look at your things.
10 I would be interested - - I'm not going to take a deposition.
11 I would be interested in an Affidavit from a certified exper - - I
12 mean, a survivor as to what they say these plats show. That will
13 help me.
14 And I'm going to tell you, if I conclude that the plats
15 clearly show that there was going to be no access, I think it was
16 merged into the negotiations.
17 If - if there's some ambiguity about it, then I'll let a jury
18 determine.
19 MR. HYMAN: Now, there's also a Stipulation in the file
20 saying the case was settled.
21 THE COURT: Oh, no question about that. He concedes that.
22 MR. QUINN: But it is - - it's dismissed without prejudice.
23 I mean, the case goes away, for goodness sakes.
24 THE COURT: Well, no. That's another issue. You've got -
25 - I think you've got to concede that the case was settled based on

1 the facts then known.

2 You don't even concede that?

3 MR. QUINN: No. I concede the case was resolved based on -

4 - -

5 THE COURT: I'll accept that.

6 "Resolved." Okay. We'll accept that.

7 MR. HYMAN: Well, the Stipulation says "settled".

8 THE COURT: Well. You heard what I said. I'm going to

9 look very carefully, and I'm inclined to think that just what I

10 said I'm going to do.

11 MR. HYMAN: Your Honor, I'll be happy to get you an

12 Affidavit from an engineer. I assume you want somebody from

13 outside the Department?

14 THE COURT: I do, and I want one - - I'll accept any that

15 Mr. Quinn has, too.

16 No, that's - - that's a big issue for me, Mr. Quinn, as to

17 whether - - as to what the documents show the plats to contain.

18 I've settled as a lawyer many times land line disputes, and

19 every time I relied on plats and the engineers, what they told me.

20 MR. QUINN: No document culminating the negotiations in

21 your cases.

22 I understand.

23 THE COURT: Well, this - - let me ask you one other

24 question. This description refers to certain documents and certain

25 plats.

1 MR. QUINN: No, sir.
2 THE COURT: There was some language from - - -
3 MR. QUINN: The deed - - the description in the deed refers
4 only to 4,372 square feet of property - -
5 THE COURT: Let's see that.
6 MR. QUINN: - - and a small area on George Bishop which is
7 not involved.
8 THE COURT: Let's see the exact description.
9 MR. HYMAN: I have a copy of the deed, Your Honor.
10 THE COURT: Read that for me.
11 MR. HYMAN: That's your description and under special
12 provisions - - -
13 THE COURT: Wait a minute.
14 What does five feet to the center line of George Bishop
15 Broadway mean?
16 MR. QUINN: I'll tell you what it means.
17 THE COURT: Don't tell me it doesn't refer to some plat
18 because I'm reading it.
19 MR. QUINN: Okay. It does not refer to some plat showing
20 the, um, the denial of access.
21 THE COURT: Well, I don't know what - - -
22 MR. HYMAN: You have to look up here, Your Honor. This is
23 where it references.
24 THE COURT: Where?
25 MR. HYMAN: Up - - up here on the first paragraph. Fee

1 simple and absolute from West Forest Brook Road to the Intracoastal
2 Waterway on U. S. 501 as shown on plans prepared by the Department
3 August 18, 1993.
4 MR. QUINN: August 18, 1993, plans. I don't think they are
5 in existence.
6 THE COURT: Now, don't tell me they don't refer to that
7 because I'm reading it.
8 MR. QUINN: I told you that. I said it referred to August
9 18, 1993.
10 THE COURT: Well, you told me that after I called it your
11 attention.
12 THE COURT: No, Judge. I respectfully disagree with Your
13 Honor.
14 MR. HYMAN: - - - from Highway 501 and then goes down and
15 talks about the 4300 feet which is on the back on George Bishop.
16 MR. QUINN: Judge, 55 feet on the left side of service - -
17 that's why you need an engineer. It refers to Bush Road which is
18 on the back of the property. It was a 55 foot right-of-way on the
19 back.
20 THE COURT: I told you what I need. We can argue about
21 it. I'm not an engineer.
22 What I need to know is what a reasonable engineer concludes
23 that that plat. Did it or did it not? That's the question.
24 Now, I'm going to do it two ways.
25 Either I'm going to deny re-opening it on that issue or I'll

1 leave it to the jury to determine because there is some question
2 about it but I'll do one of the two.
3 MR. HYMAN: Thank you, Judge.
4 MR. QUINN: We had a Motion to Compel Discovery.
5 THE COURT: Wait a minute. Let's get this back, Larry.
6 Is that yours?
7 MR. HYMAN: Yes.
8 THE COURT: Alright. Next.
9 This yours, too?
10 MR. HYMAN: Thank you, Your Honor.
11 THE COURT: Alright. What's next, please?
12 MR. QUINN: Well, now, Judge, there is a - - we've got a
13 Motion to Compel, ah, in McDonald's and a Request to Produce, and
14 I think - - well, actually, he's got a motion for a request.
15 MR. HYMAN: Your Honor, Mr. Quinn promised me he's going to
16 get the stuff to me.
17 MR. QUINN: Wait a minute.
18 What he wants on his second request, he wants any and all
19 profit and loss statements for the last five years.
20 I object to that anywhere and everywhere.
21 MR. HYMAN: No. We discussed that, and it's for the
22 subject property. I assume we're talking about the subject
23 property.
24 MR. QUINN: I realize what he put in here.
25 THE COURT: No, he's entitled to it on the subject property

1 though I realize that all our cases have indicated that business
2 profit and loss is not but it's a part of the configuration in
3 figuring the loss.
4 MR. QUINN: The subject property, Your Honor, we'll put
5 something together.
6 I'm not sure how to do it.
7 I do want this. I want either an agreement of
8 confidentiality from Mr. Hyman.
9 THE COURT: You can have it.
10 You agree with that, Mr. Hyman?
11 MR. HYMAN: Confidentiality other than for purposes of
12 trial.
13 MR. QUINN: For trial.
14 THE COURT: Why sure.
15 MR. QUINN: Judge, the other thing. Any and all income
16 tax records and South Carolina tax reports for the last five years.
17 I don't believe they filed any tax records, ah, you know, with
18 respect to this property by itself, you know, with all the
19 restaurants they've got in South Carolina.
20 THE COURT: Surely, they'd have records which would
21 indicate somewhere what part they attribute to that piece of
22 property.
23 MR. QUINN: If they do, again, we'll provide it. I don't
24 think they do.
25 THE COURT: Well, if they don't, you're an Officer of the

1 Court, and if you say they don't, Mr. Hyman and I will accept that.
2 MR. QUINN: He also wants and we would provide this
3 documents relate to the decision to relocate.
4 We'll give him what we have on that.
5 THE COURT: Alright, sir.
6 MR. QUINN: We had a Request to Produce.
7 THE COURT: You need to get this now before your mediation.
8 MR. QUINN: Absolutely.
9 THE COURT: Alright.
10 MR. QUINN: Ah, we got a Request - - -
11 THE COURT: I really think that the issue we just discussed
12 is going to probably resolve it.
13 MR. QUINN: We got a Request to Produce the same thing.
14 Documents to and from their appraiser, compensation to and from the
15 appraiser, and I think Mr. Hyman is willing to provide that.
16 MR. HYMAN: That - - the matters that we discussed earlier,
17 that was - - this letter that I spoke of from Mr. Rutker was from
18 the Myrtle Beach Farms and the McDonald's case, and if there's
19 anything that's not in that package that he'd would like to have in
20 his discovery, we'll certainly give it to him but if there's
21 anything specific, I don't know it.
22 THE COURT: That complies with my concerns.
23 If there is something else, Mr. Quinn, I give you the
24 affirmative duty to tell us about it.
25 MR. QUINN: Alright.

1 MR. HYMAN: And I'd just ask if Mr. Quinn can recall. this
2 was back in 2002.
3 MR. QUINN: I can't recall.
4 MR. HYMAN: He's got - - he has this stuff in bid sheets
5 and things of that nature which it's my understanding that he has.
6 I may be incorrect but if he doesn't I'll make copies of this
7 today.
8 MR. QUINN: He offered to make copies, and I appreciate
9 that and would like for him to do it.
10 THE COURT: Alright, sir.
11 Does that deal with those issues, now?
12 MR. QUINN: Judge, it does.
13 THE COURT: Alright.
14 When can you gentlemen get me those Affidavits in that other
15 case so I can go ahead and rule on that?
16 MR. QUINN: I will talk to an engineer today. I would say
17 fifteen days.
18 THE COURT: No more than that. I want it - - do you need
19 it before your mediation date?
20 MR. HYMAN: Ah, actually, Your Honor, we almost need a
21 ruling before the mediation date.
22 THE COURT: Well, get me that engineer and you'll, ah, and
23 you'll get one.
24 You get it to me, and I'll rule within the next five days.
25 MR. HYMAN: Within fifteen days, Your Honor.

1 THE COURT: Well, now, that - - that takes you to your
2 mediation.
3 MR. QUINN: I can get it before then, Your Honor.
4 THE COURT: Well, try ten.
5 MR. HYMAN: I can get it in ten.
6 THE COURT: Can you do the same, Mr. Quinn?
7 MR. QUINN: Fifteen days?
8 THE COURT: Well, fifteen takes you to your mediation.
9 MR. QUINN: What did he say?
10 THE COURT: He said ten.
11 MR. QUINN: Well, I think I'm trying about a three day case
12 in Greenville on the 8th, and that's my problem.
13 THE COURT: When is your mediation date?
14 MR. QUINN: In McDonald's?
15 THE COURT: Yes, sir.
16 MR. QUINN: We were going to try and get Myrtle Beach Farms
17 out of the way on the 15th and then here this motion. Then set the
18 mediation some time after that.
19 THE COURT: Okay.
20 So the fifteen days won't interfere with your mediation?
21 MR. QUINN: It won't interfere with the mediation on Myrtle
22 Beach Farms which is the Monday I come back from the trial.
23 THE COURT: Well, we're talking about McDonald's, aren't
24 we?
25 MR. QUINN: We certainly are.

1 Ah, we can get a mediation set up the later part of that week.
2 THE COURT: Well, you can't do it until I rule on this
3 issue. That's why I'd like to go ahead and don't wait fifteen days
4 to get me an engineer.
5 MR. QUINN: Oh, no. I understand. We'll do that.
6 THE COURT: Get it to me in ten days so I can rule on it.
7 MR. QUINN: Okay.
8 THE COURT: And, ah, okay.
9 MR. QUINN: We'll do that.
10 THE COURT: Alright.
11 (The Court adjourns this hearing to address other matters
12 before the Court.)
13 - - - END OF TRANSCRIPT - - -

CERTIFICATE OF COURT REPORTER

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

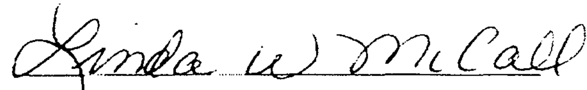
3

4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the hearing transcribed of the captioned case,
9 relative to appeal, in the Court of Common Pleas, Horry County,
10 South Carolina.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13 April 9, 2005

14

15 

16 Linda W. McCall

17 Official Reporter

EXHIBIT C

STATE OF SOUTH CAROLINA)   IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)   00-CP-26-4087

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION,)
CONDEMNOR,)
-VS-)   TRANSCRIPT OF RECORD
McDONALD'S CORPORATION, ET AL)
LANDOWNER,)

November 15, 2004
Conway, S.C.

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Judge.

A P P E A R A N C E S:

LARRY B. HYMAN, JR., ESQUIRE
Attorney for the Condemnor

MICHAEL H. QUINN, ESQUIRE
Attorney for the Condemnees

LINDA W. MCCALL
OFFICIAL REPORTER

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2 MONDAY, NOVEMBER 15, 2004

3 MOTION TO RECONSIDER 4

4 RULING OF THE COURT 24

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6 CERTIFICATE OF THE COURT REPORTER 27

1 **EXHIBITS**

2 NONE

3 (SEE COURT REPORTER'S NOTE ON PAGE 7 AS WELL AS LETTER OF MR. QUINN

4 MADE A PART OF THIS TRANSCRIPT OF RECORD.)

1 **MONDAY, NOVEMBER 15, 2004**

2 MOTION TO RECONSIDER

3 THE COURT: Mr. Quinn, good afternoon.

4 MR. QUINN: Good morning, Judge.

5 Good afternoon, Judge. It was morning when I left.

6 THE COURT: Well, we're glad to have you. Had a pretty

7 day to travel anyway.

8 MR. QUINN: Yes, I did.

9 THE COURT: Alright, sir.

10 I have before me your Motion to Reconsider my order in the

11 McDonald case.

12 Do you have the case number?

13 MR. HYMAN: 00-CP-26-4087.

14 THE COURT: Alright.

15 Any other preliminary matters, Mr. Hyman, before we proceed?

16 MR. HYMAN: No, Your Honor.

17 THE COURT: You may proceed, Mr. Quinn.

18 MR. QUINN: Your Honor, one thing in the beginning. I

19 would like to ask the Court to make the 2000 plan sheets, the

20 Highway Department plan sheets which relate to the pending action

21 a part of the record.

22 THE COURT: Yes, sir. You're entitled to that because my

23 order refers to that.

24 MR. QUINN: Alright, sir.

25 (Court Reporter inquires about plans to be used as Court's

1 Exhibit.

2 MR. QUINN: The plans? I don't know.

3 THE COURT: They will be made a part of the record, and I

4 will rely on you to get them to her.

5 MR. HYMAN: I know that there were - - the plan sheets that

6 were discussed in my order were those that were contained in Mr.

7 Ratchford's appraisal, and there was reference to those.

8 Now, you - - you want the 2000 - - the whole plan - -

9 MR. QUINN: The plan sheets.

10 MR. HYMAN: - - the plan book?

11 MR. QUINN: That relates to what I refer to as the loss of

12 access from 501 to Waccamaw Boulevard.

13 THE COURT: The crucial issue was whether or not the plans

14 in the '99 action clearly showed a loss of access.

15 MR. QUINN: Right.

16 THE COURT: I concluded that they did.

17 MR. HYMAN: Yes, sir.

18 THE COURT: And he wants those plans.

19 MR. HYMAN: He wants - - -

20 MR. QUINN: The 2000 plans, Your Honor, that this

21 condemnation case is based on.

22 THE COURT: Yes, he's entitled to that.

23 MR. HYMAN: And I - - I have no objection to it.

24 Ah, Judge, these plans come out and when you say construction

25 plans, there may be forty sheets - -

1 THE COURT: No. He doesn't want all that.

2 MR. HYMAN: - - that apply to it.

3 THE COURT: He wants the overview showing the actual - - he

4 don't want the detailed.

5 MR. HYMAN: Why don't I do this? I wouldn't have any

6 objection to any of them. Mr. Quinn is in Columbia. I'll call

7 Engineering and make an appointment for him to meet there, and he

8 can take any plan sheets that he wants.

9 THE COURT: That take care of it?

10 I know what he wants. He wants the final thing showing the

11 total lay-out. That's what he wants.

12 MR. HYMAN: And they may be shown. I've learned since

13 I've started doing this. They may be shown on a dozen different

14 sheets for different purposes.

15 THE COURT: That will accommodate your problem?

16 MR. QUINN: Yes, it will, Your Honor.

17 THE COURT: Alright, sir.

18 COURT REPORTER: Your Honor, and those will then be

19 submitted to me?

20 THE COURT: Yes, sir, and I'll leave it to Mr Quinn to do

21 that.

22 COURT REPORTER: I'll give you my card.

23 MR. QUINN: Okay. Very good.

24 MR. HYMAN: For the record, Mr. Still will be the Engineer,

25 and I'll make sure Mr. Still becomes available.

1 THE COURT: Okay. Alright.

2 **COURT REPORTER'S NOTE**

3 **Mr. Quinn later advised that he wished to withdraw the request**
4 **for this Court Exhibit to be made a part of the record. Therefore,**
5 **no Court Exhibit is made a part of this record.**

6 **See Letter of Mr. Quinn dated April 6, 2005, attached hereto**
7 **as Page 26 of this Transcript of Record.**

8 THE COURT: Now, Mr. Quinn, I have before me your Motion
9 here for Reconsideration, and I'll be glad to hear from you, and I
10 thank you for your appearance.

11 MR. QUINN: Thank you, Your Honor.

12 May it please the Court, without going into details and
13 leaving the factual issues alone, let me just state for the record,
14 first of all, I believe that my Motion to Alter or Amend under Rule
15 59 does cover the grounds that I want to raise that have not been
16 raised in previous hearings before Your Honor as well as the
17 Memoranda submitted.

18 THE COURT: You don't contest - - contest that issue, do
19 you?

20 MR. HYMAN: No, Your Honor, I don't.

21 THE COURT: Alright, sir.

22 Go ahead.

23 MR. QUINN: Um, just for, perhaps, one at a time, and the
24 first thing that I would say, Your Honor, ah, is that it does
25 appear in part that the Motion in _Limini_ is based upon disputed

1 factual findings, and I would submit to the Court that a Motion in
2 Limini should be based on - - should be determined, rather, based
3 on undisputed facts and matters of law, and I have put that in my
4 Motion, Your Honor, and I know you have considered that.
5 Having said that, and I'd like to touch on some of the latter
6 issues.
7 First of all, Your Honor made a ruling that the land - - that
8 any landowner's cause of action with respect to an inverse taking
9 involving the laws of access reflected on the '99 plans is barred
10 by the statute of limitations.
11 Your Honor, that, we respectfully submit to you, that issue is
12 not before the Court and is not before the Court, and based on case
13 law that we cite it is not proper for the Court to take up an issue
14 that is not properly before you.
15 THE COURT: Okay.
16 At the appropriate time I'm going to ask you to address that
17 specific issue.
18 Proceed, Mr. Quinn.
19 MR. QUINN: Alright, sir.
20 Having said that, a great portion of Your Honor's order is
21 based on the 1999 condemnation action. Without question, although
22 there is a disputed fact as to how clear the 1999 plans may be to
23 one who is not professionally trained, the 1999 plans did show a
24 loss of access.
25 We have covered that with Your Honor. You've got Affidavits.

1 They differ.

2 That 1999 action, however, was dismissed without prejudice.

3 The case law in this state is clearly to the effect, I believe,

4 that when an action is dismissed without prejudice, the effect of

5 that is as if there was never an action at all, that all the

6 parties go back to where they are.

7 Now, Your Honor, I cite the case to you Gulledge v. Young,

8 S.C., 1960 case cited by our Supreme Court. The cite is 130 SE 2nd

9 695, a 1966 - a 1960 case. That case involved a voluntary non-

10 suit which I would submit is the same thing as a Stipulation of

11 Dismissal by the parties.

12 The Court clearly states in that case that when cases are

13 dismissed or terminated, a voluntary non-suit, and I think the same

14 thing applies to a Stipulation of Dismissal, it is as if there are

15 no - - or the action was never brought. All the parties stay in

16 the same position they were in prior to the action.

17 That being the case, I believe any basis - - excuse me, any

18 reference to the - - to the 1999 condemnation action is of no

19 effect because it was dismissed, and I can't find any case law that

20 will contract that.

21 Gulledge is still - - it is a good case. It has not been

22 overturned. It has not been modified.

23 THE COURT: I'll take a look at it.

24 MR. QUINN: Alright, sir.

25 The, ah, second issue setting that aside, and we have

1 discussed this at length before Your Honor and because of that I
2 will not belabor the point but I do believe that under - - that
3 under the majority of the case law, and I think South Carolina,
4 too, based on the statute, that the 1999 condemnation notice did
5 not include, did not refer to and did not involve a taking of
6 access, and in that respect it did not comply with the code section
7 as we have pointed out to Your Honor before.
8 THE COURT: It did not specifically use the word "access",
9 and 2000 did. I note that.
10 MR. QUINN: Yes, sir.
11 And you might also recall, Your Honor, in one of the Memoranda
12 we submitted, we probably provided an additional eight or ten, I
13 may be off my numbers, actions instituted in Horry County where
14 controlled access was specifically referred to.
15 THE COURT: Let me ask you this.
16 Your taking - - the taking in 2000 consumed a portion of land
17 not as big as this courtroom. Now, you tell me how that taking
18 has changed any access that you had prior to the taking. I'm
19 talking about 2000. Insofar as it affects access from 501. I'm
20 not talking about George Bishop. I'm talking about how does the
21 taking of that small piece of land affect your access for 501?
22 How does it change it?
23 MR. QUINN: Your Honor, the case law in South Carolina
24 going back to, and your familiar with this case, South Carolina
25 Highway Department v. Wilson.

1 THE COURT: Yes, sir.

2 MR. QUINN: The median case, ah, gosh, in Lee County where

3 the Courts talked about the consequential affect of the overall

4 condemnation.

5 The issue was there. The Highway Department said, "Well, you

6 know, we've got the police power to put median in. So there is no

7 compensation due to the landowner."

8 In that particular case, the Court said, "You look at the

9 overall affect of the condemnation. You don't look just at the

10 property being taken."

11 And, Your Honor, I - - I thought this was particularly

12 relevant, this recent case by the Court of Appeals - -

13 THE COURT: Wait a minute.

14 Wasn't the median going to be there - - the median was there

15 anyway, isn't it?

16 MR. QUINN: In Wilson?

17 THE COURT: No. In your case?

18 MR QUINN: No. No. No.

19 The median - - the Highway Department acknowledges indirectly,

20 I believe, today, or at least Mr. Hyman might, that the median is

21 being put on George Bishop Parkway which is immediately adjacent to

22 the tract.

23 THE COURT: Well, I know that.

24 There's no median - - the thrust of your case as I understand

25 it is the loss of access from 501.

1 MR. QUINN: That is exactly right.

2 THE COURT: And I don't see - - there's no median involved

3 in that.

4 MR. QUINN: No. No, there's not but what I was going to

5 say is I take just the median analogy. The plans for 2000 clearly

6 reflect the loss of access from 501. There's no question about

7 that.

8 THE COURT: But you had already lost it in 1999.

9 MR. QUINN: Not if the 1999 case, Your Honor, is of no

10 effect. The Order of Dismissal wiped it out. It's not there.

11 That's Gulledge.

12 THE COURT: You - - it seems to me, though, that you're

13 seeking - - the 2000 case for the taking of something smaller than

14 this courtroom for something that you didn't have the day before

15 they took it.

16 MR. QUINN: But, Your Honor, would your opinion be any

17 different, for example, if, in fact, the loss of access had not

18 occurred in the 1999 filed condemnation action but if it, in

19 effect, did in 2000? Would you feel differently?

20 THE COURT: I don't know.

21 MR. QUINN: Alright, sir.

22 Because I believe that's something Your Honor needs to ponder.

23 If, in fact, there was not a 1999 condemnation action, if it

24 had never been brought, setting aside the deed, incidently, I'll

25 get to.

1 THE COURT: But regardless of whether or not you set it
2 aside or not, the physical attributes at the time of the taking in
3 2000 were exactly what you claimed damages for the day before they
4 took it. They hadn't changed anything on 501 for the day before
5 they took it - - the 2000 piece of property.
6 MR. QUINN: That's not correct.
7 THE COURT: What's different - - -
8 MR. QUINN: What they did is they actually took the access.
9 They closed the access off.
10 THE COURT: That's to Bishop but you seek - - -
11 MR. QUINN: No, I'm talking about to 501 - - in - - in - -
12 with respect, first of all, 501 is being constructed with respect
13 to plans have been changed numerous times. No question about it.
14 The 2000 plans upon which this action is based clearly show
15 the loss of access from 501 onto the spur road in front of our
16 property.
17 THE COURT: Alright.
18 Proceed, and I'll let you respond to that, Mr. Hyman.
19 MR. QUINN: Let me - - for example, going back to the
20 overall affect, in this recent case of Hardee v. SCDOT, Your Honor,
21 it's Opinion No. 3786, Court of Appeals, Judge Anderson in - - in -
22 - in deciding - - not - - in writing the opinion goes back to
23 Cothran v. Rock Hill that Your Honor is very familiar with, the
24 case where the road is vacated and that sort of thing, and it talks
25 of this. It says that Cothran is rooted in the principal that the

1 depravation of the ordinary beneficial use and enjoyment of one's
2 property is equivalent to the taking of it, and it is as much a
3 taking as though the property was actually appropriated for public
4 use.
5 There is no distinction between taking and damaging, and the
6 least damage to property constitutes a taking.
7 The loss of access is a damage to this property just like loss
8 of visibility from 501, ah, like, ah, well, that would be the
9 biggest thing, I guess, the elevation.
10 You know, that was something that was not there before but
11 it's there as a result of the 2000 action.
12 THE COURT: That may be another issue. We're talking
13 about loss of access.
14 I - - I fail to see where your loss of access changed one iota
15 from the taking of something I continue to say that's smaller than
16 half of this courtroom.
17 MR. QUINN: I understand, Your Honor, but that's not what
18 the Courts, with due respect to Your Honor - -
19 THE COURT: I understand. I want to hear you.
20 MR. QUINN: - - that is not what the Courts in this state
21 say.

---

22 Take a look at Touchberry decided by Justice Brailsford. You
23 know, that the damages are as numerable as whatever. That was a
24 wonderful quote from the landowners' standpoint.
25 THE COURT: But he didn't get it from Shakespear.

1 MR. QUINN: Sir?

2 THE COURT: He didn't get it from Shakespear.

3 MR. QUINN: No.

4 The access, visibility, breeze, that both.

5 THE COURT: Alright. Go ahead with your next position.

6 I'm anxious to hear what Mr. Hyman has to say.

7 MR. QUINN: Alright.

8 But, again, I would ask Your Honor to consider this. What if

9 the 1999 condemnation action had never been brought? If it had

10 never been brought, based on the 2000 condemnation plans could a

11 landowner tell the Highway Department, "Well, you don't have the

12 right to close access from 501."?

13 No way. Absolutely not, and I will be happy to answer any

14 other questions.

15 THE COURT: No. I can agree with you.

16 MR QUINN: Alright. That's the issue.

17 What happened to the 1999 case? Does it go away or still out

18 there?

19 Your Honor, with respect to, if I might move into real estate

20 deed.

21 THE COURT: Let me ask you this. What do you think the

22 Highway Department paid for to McDonald in 1999?

23 MR. QUINN: I know exactly what they paid for. If you can

24 look at Robert Christopher's appraisal, they paid - - this is what

25 they paid, $42,000.

1 Now, this is a store that in the year 2000 had a million, I
2 believe I'm correct, a million, five hundred thousand dollars, a
3 million, six hundred thousand dollars in sale. It closed up after
4 access from 501 was terminated, after it was sure it was going to
5 happen.
6 Now - - -
7 THE COURT: Did it close up because of that or because they
8 found a better sight down the road as Forest Acres.
9 MR. QUINN: No. A million, six, that's a tremendous
10 store. That's more than Burger King was making, more than Arby's
11 next door. That's a very good store.
12 As a matter of fact, I understand, it's probably one of the
13 best producing stores in Horry County.
14 A million, six hundred thousand dollars is a lot of hamburgers
15 being sold.
16 THE COURT: Alright, sir. Proceed.
17 MR QUINN: Now.
18 But - - but you did ask what did McDonald's - - what did they
19 get paid for. When you look at Christopher's appraisal which I
20 believe is attached to, perhaps, um, Ms. Elliott's Affidavit,
21 you'll see what they paid for was a square foot of land - - the
22 land being taken on the back of the property, and they were being
23 paid an additional five thousand, some-odd dollars for the
24 landscaping and paving within the area of the taking.
25 It is spelled out what was paid for.

1 THE COURT: Let me ask you this. They - - they only
2 condemned this little square of the land because they needed it in
3 the George Bishop thing. Do you take the position the Highway
4 Department owed them some more money had this - - the condemnation
5 of this little piece of land not even taken place? Because this
6 condemnation did not affect anything on 501. It was already there.
7 MR. QUINN: If - - if - - let me tell you what I think. If
8 they had not taken that little bit of space - -
9 THE COURT: Yeah.
10 MR. QUINN: - - alright. The little bit, what McDonald's
11 would have had to have done is file an inverse cause of action,
12 number one, and, number two, McDonald's would have had to show that
13 they suffered special damages, consequential damages different from
14 the public at large but once the Highway Department takes that
15 small piece of property, and there's case law on this, once they
16 take it, the landowner does not have to show special damages. It
17 is assumed.
18 I've got the case right here.
19 THE COURT: Oh, I know - - I know that one.
20 MR. QUINN: I'm sure you do.
21 THE COURT: But were it not for one little matter on George
22 Bishop, we wouldn't have even been here.
23 MR. QUINN: That is exactly - - well, unless you were here
24 by the inverse condemnation.
25 THE COURT: How many square feet? We keep talking about

1 the - - -

2 MR. QUINN: 521, something like that.

3 THE COURT: 521 square feet.

4 MR. QUINN: But, Judge, let's just assume, again, if you've

5 got access - - -

6 THE COURT: That's as big as a big game room.

7 MR. QUINN: But let's just say you've got a business

8 established on 501. They take twenty of your feet, twenty square

9 feet, but they, ah, they cut off the access to 501 - - -

10 THE COURT: Let's - - that's where you and I disagree and

11 what I continue to have trouble with. I don't see where you lost

12 anything as a result of the taking that you had a week before the

13 taking.

14 MR. QUINN: Only because the position has been taken so far

15 by the Court, again, with due respect, that the 1999 condemnation

16 action had an effect on the 2000 condemnation action and what was

17 involved, and if - -if that is correct, then Culledge is going to

18 have to be overruled.

19 THE COURT: Alright. I think I hear your position.

20 Now, can I hear Mr Hyman?

21 MR. QUINN: Well, you want to hear about the real estate

22 deed, just real quickly?

23 THE COURT: Well, real quickly.

24 MR. QUINN: I think what it really comes down to - - Judge,

25 I really think what a substantial part of this case is what did the

1 real estate deed do, the real estate deed from McDonald's to the
2 Highway Department. Did it convey away access rights?
3 And, you know, I just submit to the Court that it did not. I
4 understand about plans that are referred to. I also understand the
5 statute saying that when a plat or a survey is referred to in a
6 deed, the statute specifically says it is the same thing as if the
7 boundaries, the metes, the courses and the measurements are set out
8 in detail.
9 I don't believe you can take that principal of law and stretch
10 it to a landowner who conveys property by reference to Highway
11 Department plans and bring a loss of access into that conveyance.
12 And so the issue is, I think, is the deed ambiguous or is it
13 not.
14 If it is not ambiguous and, you know, I think I understand
15 having dealt with Highway Department deeds that it's archaic as can
16 be but I take the position it's not ambiguous but I also take the
17 position that it does not convey the right of access which is a
18 property right.
19 If it is ambiguous, then it's got to be most strictly
20 construed against the Highway Department.
21 THE COURT: I understand your position.
22 Let me hear you, Mr. Hyman.
23 MR. HYMAN: Yes, Your Honor.
24 May I first address the position of the wording of access and
25 make that very clear for the record.

1 In 1999 when the action was brought there was no mention of
2 access changes simply because there were no changes in access.
3 The McDonald's fronted on Waccamaw Boulevard. That access has not
4 changed its access to the abutting street.
5 The access at George Bishop, the driveway, was not changed.
6 It still remains a full access driveway.
7 The access to the rear on Bush Drive which later became
8 Frontage Road F or Waccamaw Boulevard remained the same, full
9 access there.
10 So, there was no access issue in the first case unless, and
11 the burden is upon the landowner under the case law in this State,
12 and I'd call the Court's attention to Rock Hill v Cothran, Gray v.
13 South Carolina, Woods v. South Carolina, as well. In those cases
14 it said that the burden is on the State, I mean, the landowner if
15 it has any other damages to bring those damages forward and to
16 prove those damages.
17 When the 1999 action was brought, it was brought subject to
18 the plans. The frontage road system including the changes in
19 Waccamaw Drive were very clear. I think that that's established by
20 now that the plans do, in fact, show that.
21 Only when the 2000 action was brought and it was determined to
22 uplift 501 was any changes in any of the accesses to abutting
23 roads, and that access was when a median was put down George
24 Bishop, the driveway became a right-in, right-out. We have no
25 problem with them pursuing any damages that they can show in that

1 regard as to that driveway in the 2000 action.

2 THE COURT: You mean to George Bishop?

3 MR. HYMAN: Off George Bishop.

4 We will tell you right now that there is a change.

5 The burden is on the landowner to show whether or not he has

6 been damaged by that but we concede that he has a right to attempt

7 that because there is a change in that action.

8 Now, in 1999, when this Stipulation of Dismissal was filed,

9 the Stipulation of Dismissal itself said that the matter was

10 settled and the case was to be stricken from the docket. That's

11 what the order said.

12 Now, if you'll look at Ms. Ligon's Affidavit which is produced

13 for this Court, there was a deed delivered as Mr. Quinn has said.

14 However, the case law that he has cited previously to this Court

15 makes it very clear that the deed in those cases was the last

16 document signed by the parties, and it incorporated or merged what

17 had occurred previous thereto.

18 In this case we don't have that because, according to Ms.

19 Ligon, in addition to the $42,800 which was given for the land, she

20 says that plus $5,615 was given for site improvements. We know

21 about the negotiations concerning the sign. We know that there

22 were all sorts of other things, and this deed was never intended to

23 incorporate the agreement of the parties. It was, merely, a part

24 of the agreement of the parties and necessary to facilitate the

25 agreement of the parties.

1 The key here is this. If McDonald's one day before the 2000
2 action had been filed, one day went to any person and said, "We
3 want to sell this piece of property," that person is going to have
4 an attorney check the title, and the attorney is going to say,
5 "This is what you've got. Here it is."
6 It shows this road coming around. This frontage road comes
7 around. You've got access over here to George Bishop. You've got
8 access on the back. He would have said, "This is what is owned by
9 Hardee's at this time. This is the condition, or McDonald's, this
10 is the condition of the parties - - or the property on this day."
11 Now, if the condemnation action by statute is filed the
12 following day, that condemnation action begins by considering the
13 property as it existed on that day, and any changes perceived or
14 otherwise, in its access or its ability to reach 501 were completed
15 on that day or before that day, and what is to be considered - - -
16 THE COURT: You talking about the day of the taking?
17 MR. HYMAN: The day of the taking, and what is to be
18 considered is what happened to that property with the filing of the
19 2000 condemnation. What changes happened on that day? You
20 consider it as having been already completed. You look at the
21 condemnation action of the property as if everything was done and
22 say what change has been made. And the change that has been made
23 is there is an uplifted 501 that they did not have access to on
24 that date from, ah, Waccamaw Boulevard, and there is a median on
25 George Bishop. That's what the change was.

1 THE COURT: That - - they're entitled to ask for
2 compensation for those two issues.
3 MR. HYMAN: And they've asked for compensation on those
4 issues.
5 THE COURT: And they are entitled to that.
6 MR. HYMAN: I don't dispute that, Your Honor. If they can
7 show that they are damaged in that regard, then I think they have
8 every right to attempt to do that. The burden is on them to do
9 so.
10 In summary, Your Honor, I'd say that, certainly, this deed by
11 the actions of the parties, the payment of extra monies according
12 to their own Affidavit, the, ah, filing at a later date of a
13 Stipulation of Dismissal indicating the case was settled, the
14 failure of McDonald's to proceed with any adverse action. There
15 was nothing else for McDonald's to do.
16 If they by some way had preserved in that condemnation and in
17 that condemnation you settle it, you settle it as to all matters.
18 If they had preserved it, if there was some way that it had been
19 done, they would have had to bring an inverse action to do so.
20 THE COURT: Mr. Quinn, there was one case that you cited
21 that would be of interest to me. What was that, please?
22 MR. QUINN: That would have been, probably, Gulledge v.
23 Young.
24 THE COURT: Yeah. What is that cite?
25 MR. QUINN: That's 130 SE 2nd 695, and I can get the South

1 Carolina cite for you, Judge.

2 THE COURT: No. I can get it.

3 MR. QUINN: Alright, Your Honor. Thank you.

4 RULING OF THE COURT

5 THE COURT: Alright, sir.

6 Now, I have your brief before me.

7 MR. QUINN: You do.

8 THE COURT: And I thank you both for your arguments. They

9 were splendid arguments and helped me.

10 What I'm going to do is I'm going to read this case, ah,

11 review my notes here coupled with your brief, and I'm going to ask

12 the prevailing side to provide me an order and send a copy to the

13 other side.

14 Is that okay, gentlemen?

15 MR. QUINN: Yes, sir.

16 Judge, I - - I do have one question just in clarification.

17 In your order you state that the deed does not reflect the

18 settlement agreement between the parties, and in Mr. Hyman's

19 argument he referred to the settlement agreement.

20 I don't know what the settlement agreement is if it is not

21 reflected by the deed.

22 THE COURT: Well, as I recall, there was letters back in

23 forth that were in the file. What's your response to that?

24 MR. HYMAN: They are, Your Honor. There are letters back

25 and forth. Of course, we have the Affidavit of Ms. Elliott as well

1 as - - -

2 THE COURT: I think the totality of the record indicates

3 that there was a settlement. That was my view of it.

4 MR. QUINN: Well, I - - I think the negotiations developed

5 and turned in to - - culminated in that real estate deed. That

6 put everything at rest. I don't think there is any question about

7 it.

8 I was just a little bit puzzled, um, ah, and we've both

9 submitted orders to Your Honor. So I know that you took portions

10 of Mr. Hyman's and, ah - - -

11 THE COURT: I did.

12 I would let that stay like it is, I think.

13 MR. QUINN: But that was just an issue that I was not sure

14 of.

15 MR. HYMAN: You wanted to see us a moment, Your Honor?

16 THE COURT: Yeah. Come on back and let's talk just a

17 moment. I've got to go here shortly.

18 (Court adjourns this matter and adjourns Court for the day.)

19 - - - END OF TRANSCRIPT - - -

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April 6, 2005

Ms. Linda McCall
Circuit Court Reporter
Fifteenth Judicial Circuit
Post Office Box 187
North Myrtle Beach, South Carolina 29597

RE: SCDOT v. McDonald's Corp., et al.
C/A No. 2000-CP-26-4087
(Our File No. 7948.1)

Dear Ms. McCall:

During the most recent Hearing before Judge Cottingham, we asked that the 1999 SCDOT plans involved in the 1999 condemnation litigation be made a part of the Record in this case. We met with Berry Still, the SCDOT engineer involved with this project, and learned from him that there were not any plans which would show only the construction plan as of February, 1999, but that as changes were made, they were superimposed on previous plans. As such, we did not believe the current set of plans which would have originated sometime prior to 1999 would be beneficial, and advised you that we were withdrawing our Motion that the plans be included as part of the Record.

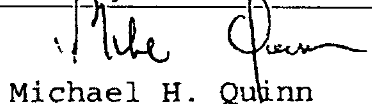
This confirms that we have withdrawn our Motion to include the 1999 plans as part of the Record for the reasons set forth above.

If anything further is needed, please let me know.

With best regards, I am

Sincerely,

QUINN LAW FIRM, LLC



Michael H. Quinn

MHQ/sgp

c: The Honorable Edward B. Cottingham
Larry B. Hyman, Jr., Esq.

CERTIFICATE OF COURT REPORTER

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3

4 I, the undersigned Linda W. McCall, Official Court

5 Reporter for South Carolina Court Administration, do hereby

6 certify that the foregoing is a true, accurate and complete

7 Transcript of Record of all the proceedings had and evidence

8 introduced in the hearing of the captioned case, relative to

9 appeal, in the Court of Common Pleas of Horry County, South

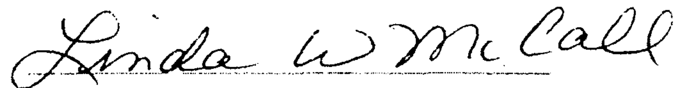
10 Carolina.

11 I do further certify that I am neither of kin, counsel,

12 nor interest to any party hereto.

13 April 5, 2005

14

15 

16 Linda W. McCall

17 Official Reporter

State of South Carolina) In the Court of Common Pleas
)   Fifth Judicial Circuit
County of Richland)   2018-CP-40-05641

Ronald I. Paul,
Plaintiff,

vs.

South Carolina Department of Transportation, et al,
Defendants.

August 8, 2019
Columbia, South Carolina

B e f o r e:

The Honorable Jocelyn Newman, Judge

A p p e a r a n c e s:

Ronald I. Paul,
Pro se Plaintiff

Andrew Lindemann, Esquire,
Michael Quinn, Esquire
J. Charles Ormand, Esquire
Attorneys for the Defendants

Bonnie H. Kelly, CVR
Circuit Court Reporter

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E X H I B I T S

-- No Exhibits Entered --

1 (On the record at 9:39 a.m.)

2 THE COURT: Plaintiff Quinn's Motion to Dismiss,

3 Ormand's Motion to Dismiss, and a Motion to Dismiss and

4 Summary Judgement?

5 MR. LINDEMANN: Alternatively Summary Judgement for

6 DOT, de Holczer, and Moore.

7 THE COURT: Okay.

8 (To the Plaintiff) And you're Mr. Paul.

9 MR. PAUL: Yes, Your Honor.

10 THE COURT: Okay. And you are representing yourself.

11 MR. PAUL: Yes, Your Honor.

12 THE COURT: All right. Good enough. I'll hear them

13 whichever order you prefer.

14 MR. LINDEMANN: Thank you, Your Honor. May it please

15 the Court. Andrew Lindemann for the Defendants Department

16 of Transportation, Paul de Holczer, and Natalie Moore.

17 Your Honor, I think there's probably going to be some

18 overlap between all of the Defendants in this case, but I

19 will -- I will go first.

20 Your Honor, this case has, needless to say, a

21 tortured history. This case goes all the way back -- or

22 the origin of this case goes all the way back to 2002,

23 with a condemnation action that commenced in October of

24 2002, by the South Carolina Department of Transportation,

25 over a parcel of land on Two Notch Road that was owned by

1 Keith Buckles and then later by G. L. Buckles, both of
2 whom are now deceased. They -- the -- the two Buckles
3 were represented throughout their condemnation litigation
4 by Mr. Quinn, who is a defendant in this case. The
5 Buckles are -- neither the Buckles nor their estates are
6 parties to this case.
7 My client, Paul de Holczer, was in private practice
8 back in the early 2000's, and he was retained by the
9 Department of Transportation in order to represent their
10 interest in that condemnation action. He is actually now
11 in-house as Assistant General Counsel with SCDOT.
12 My other client, Natalie Moore, was at that time and
13 still is currently an attorney in the General Counsel's
14 Office with SCDOT, and I believe Mr. Ormand now -- Mr.
15 Ormand is involved in all of this because he was Mr.
16 Paul's lawyer in the condemnation action.
17 Your Honor, there's several grounds that we move to
18 dismiss, and the only reason I put alternatively Motion
19 for Summary Judgement is because we're relying on a
20 substantial amount of court documents, not only from the
21 2002 action, but from subsequent actions. I didn't want
22 that to be interpreted by the Court as going beyond the
23 pleadings. Arguably it doesn't because the Court can take
24 judicial notice of those documents. That's the extent of
25 what goes beyond actually what was attached to the

1 pleadings. So I believe this is appropriately before the
2 Court as a Motion to Dismiss. I did that mostly as a
3 precautionary measure.
4 And Your Honor, based upon the four corners of the
5 complaint and then, of course, supplemented by some of
6 these court pleadings and orders that I will go through
7 here very shortly, we believe that all of the Defendants -
8 - specifically I'll speak to my Defendants -- are entitled
9 to be dismissed on a number of different alternative
10 bases. This is one of those cases that I love to bring to
11 court because you got so many different issues that a
12 Court can rule to dismiss.
13 Essentially, if you don't like one, how 'bout this
14 one, how 'bout this one. But I won't belabor them all. I
15 think there's a couple that are absolutely dispositive,
16 but I certainly want to rely on anything that was asserted
17 in my motion that we may not talk about in depth here
18 today.
19 Your Honor, the two main defenses are going to be
20 Statute of Limitations and Claim and/or Issue Preclusion,
21 *res judicata* or collateral estoppel.
22 Mr. Quinn attached to is memorandum of law that was
23 filed back in February -- this is the case, as Your Honor
24 may remember, that we've argued previously in front of
25 Judge Early about a week before his retirement. Judge

1 Early never issued a decision and you -- two -- a week or
2 two ago, you issued an order resetting these motions. So
3 all of the documents that have been filed by the parties
4 were all filed back in February. That's the reason for
5 that, in order for the first hearing in front of Judge
6 Early.
7 At any rate, Mr. Quinn had provided the Court at that
8 time with a time line of relevant dates, and I'm not going
9 to go through all of those in great detail. I think it
10 provides the Court very much of a background on this. It
11 also correlates with the allegations in the complaint, and
12 he actually references the portions of the complaint that
13 identify each of these dates. But I'm going to highlight
14 a couple of key dates.
15 And Your Honor, as you will hear in a moment, this
16 case -- this litigation -- or the original litigation has
17 heard a number of different lawsuits, both from the State
18 system as well as the Federal system, and a number of
19 appeals. So we are definitely -- not the first time this
20 has -- coming before the Court, and of course, that plays
21 a major role in the Statute of Limitations defense as well
22 as the *res judicata* and collateral estoppel defenses.
23 Anyway, the initial condemnation action was filed way
24 back in October of 2002. Ultimately it was tried in front
25 of -- and this will give you some idea of how old it is --

1 Judge Reggie Lloyd was the trial judge of the condemnation
2 trial back in October, 2004.
3 Basically, the background of the case, it was a
4 condemnation of a piece of property on Two Notch Road.
5 Mr. Paul was not the owner of the property. That was the
6 Buckles, but Mr. Paul had a leasehold interest in one of
7 the properties, and so he made a claim for a portion of
8 the just compensation that was awarded by the Court.
9 Ultimately, Judge Lloyd did award him just compensation,
10 but he was not satisfied with the amount. Judge Lloyd's
11 order was issued in March of 2005. He awarded Mr. Paul
12 $2,450.
13 Ultimately, Mr. Paul appealed Judge Lloyd's order.
14 It went before the South Carolina Supreme Court -- Court
15 of Appeals initially. In October, 2006, by a memorandum
16 opinion, Judge Lloyd's order was affirmed.
17 He petitioned for certiorari and the South Carolina
18 Supreme Court denied the petition for Writ of Certiorari
19 in October, 2007. So the initial 2002 litigation, Your
20 Honor, was completed in October, 2007.
21 Ultimately, it came back to the lower court and Judge
22 Cooper issued an order to disburse the condemnation
23 proceedings in January, 2008. That order also got
24 appealed. Court of Appeals affirmed by unpublished
25 decision in May, 2009. Supreme Court denied cert in 2010.

1 And so ultimately that prong of the litigation was over by
2 2010.
3 In the interim ---
4 THE COURT: Let me interrupt you just so that I make
5 sure we're on the same page.
6 MR. LINDEMANN: Sure.
7 THE COURT: Judge Cooper's decision -- you said that
8 it was affirmed. I see an order --
9 MR. LINDEMANN: I'm sorry.
10 THE COURT: -- dismissing ---
11 MR. LINDEMANN: Dismissed.
12 THE COURT: --- the ---
13 MR. LINDEMANN: Dismissed. I'm sorry. I should have
14 said that. I apologize, Your Honor. It didn't even get
15 to the merits.
16 THE COURT: Okay.
17 MR. LINDEMANN: The Court actually dismissed the
18 appeal.
19 In the interim, which is not on Mr. Quinn's time line
20 -- that I'm sure Mr. Ormand will speak to -- is a separate
21 action Mr. Paul brought against him as well that factors
22 into all of this. But in 2008, Your Honor, there was a
23 civil lawsuit that was brought in State Court here in
24 Richland County that -- in the complaint which is attached
25 to Mr. Quinn's memorandum. He submitted, as I indicated,

1 a number of the pleadings and various orders. But in
2 February, 2008, a lawsuit was brought by Mr. Paul acting
3 pro se, and in the caption of that lawsuit it indicates
4 that he sued Department of Transportation, Paul de
5 Holczer; he did include the Buckles in that particular
6 lawsuit. Mr. Quinn was sued in that lawsuit, Mr. Ormand
7 was sued in that lawsuit.
8 That lawsuit included civil conspiracy cause of
9 actions under State law, but they're the same factual
10 allegations underlying this civil conspiracy allegations
11 as -- in the present case.
12 And let me actually backtrack for a second. The
13 present case, which I failed to mention, which was filed
14 in October, 2018, brings solely Section 1983 claim. There
15 are only two Federal claims that have been asserted in
16 this case. I'll explain in a little bit why this case is
17 in State Court rather than Federal Court. So that's
18 important for this Court to -- to know from the outset,
19 and I apologize I didn't share that with you.
20 It's a civil conspiracy claim under Section 1983, and
21 a claim for declaratory, I believe, under Section 1983.
22 And that's -- and that's the nature of the claim that's
23 before the Court at this moment.
24 Now, going back to the 2008 litigation, the State
25 Court litigation in 2008 did not bring Federal claims, but

1 they brought State claims based on a theory of civil
2 conspiracy. Same factual allegations that are being
3 asserted in the present case in 2000 -- filed in 2018.
4 That litigation was adjudicated by Judge Strickland.
5 He issued an order, and that's attached also to Mr.
6 Quinn's memorandum. He issued an order filed March 25 of
7 -- where he granted all the Defendants' motions to
8 dismiss, statute of limitations defense as well as other
9 defenses as well. But he found that -- clearly barred by
10 the statute of limitations in -- having been filed in
11 2008, 10 years before this one.
12 Mr. Paul appealed that order to the Court of Appeals,
13 which affirmed the dismissal on November 19, 2010. He
14 also petitioned for the Writ of Certiorari, and the South
15 Carolina Supreme Court denied that in October of 2011.
16 That ended the State Court litigation by Mr. Paul up to --
17 up until this case was filed.
18 Mr. Paul then thereafter, starting in 2012, started
19 filing a series of Federal Court cases, all of which were
20 decided by Judge Cameron Curry. There's a 2012 lawsuit --
21 two -- two of them filed in 2013, another one in 2015, and
22 finally a case was filed in 2016 that ended with not only
23 a dismissal, but Judge Curry also issued a pre-filing
24 injunction preventing Mr. Paul from filing again in
25 Federal Court. And that is what precipitated him bringing

1 the identical action under 1983 in 2018, in State Court.
2 And we had the potential of removing that case, and
3 ultimately -- part of the problem, Your Honor -- and I
4 know Your Honor's probably familiar with pre-filing --
5 what goes on in Federal Court, particularly with pro-se
6 litigation.
7 Couple of ---
8 THE COURT: And trying to institute it in State Court
9 as well.
10 MR. LINDEMANN: I think that would be actually a
11 great -- a great thing to do.
12 THE COURT: Mention that to the Chief Justice,
13 please.
14 MR. LINDEMANN: I -- I will -- if I have the
15 opportunity, I definitely will.
16 And Your Honor -- but basically what happened with a
17 couple of these lawsuits never even got served because
18 they were dismissed going through the pre-filing process.
19 But all of these dismissals were without prejudice
20 because, for instance, they didn't issue process
21 typically, as Your Honor probably well knows, that results
22 in dismissal without prejudice.
23 But if you look at the reports of recommendation from
24 the orders that were done in the Federal litigation, they
25 do address the -- the merits, and ultimately -- I didn't

1 go back and count -- I think most, if not all of those
2 orders from Judge Curry were appealed to the Fourth
3 Circuit and were affirmed. And I don't know that that's
4 necessarily relevant to -- for the Court's decision here
5 today, but we can certainly get you those orders.
6 Mr. Quinn has attached to his memorandum several of
7 the reports of recommendation and orders, including the
8 last one from 2016 which includes the pre-filing
9 injunction.
10 One of the things, Your Honor, that we had not
11 previously submitted that I'd like to give the Court is a
12 copy of one of the complaints in Federal Court, so the
13 Court can see and compare what the pleadings were. I --
14 I've pulled -- these are very, very long complaints, and I
15 didn't want kill so many trees to give the Court all of
16 them, but if I can approach.
17 THE COURT: Yes, sir.
18 MR. LINDEMANN: (Hands documents to the Court) This
19 is the 2015 lawsuit that was brought. I think that's the
20 fourth one with the Federal Court, Paul Four. It's about
21 a 79-page complaint. As you can see it's captioned "Civil
22 Conspiracy, Section 1983 and For Declaratory Relief,"
23 exactly what we have on this case that's pending before
24 Your Honor.
25 And so the reason why this procedural history is

1 important because, obviously, for statute of limitations
2 purposes, Your Honor -- will show that Mr. Paul didn't
3 have a discovery rule excuse for the statute of
4 limitations.
5 Obviously he filed this action, as I indicated, the
6 current action, in October, 2018. So there's a three-year
7 statute of limitations, and I know Mr. Paul's going to try
8 to argue that there's a 20-year statute of limitations
9 under State law. He did not bring any State law claims.
10 He brought Federal 1983 claims.
11 The law is very well established that the statute of
12 limitations for a Section 1983 claim arising in the State
13 of South Carolina is three years. And as you probably
14 know, that the -- the -- the Federal Courts borrow the
15 personal injury statute of limitations from State Court.
16 So it is a three-year statute that's well
17 established. We cited a couple of cases for that purpose.
18 I can probably get you a couple of hundred more.
19 So it's a three-year statute of limitations, so you -
20 - basically, anything that occurred prior to October 2015
21 should be barred by the statute of limitations, and
22 clearly I think this history shows that he filed similar,
23 if not identical, lawsuits prior to October 2012,
24 litigated a case in State Court which Judge Strickland
25 decided in 2008/2009 time period, a combination

1 proceedings initiated in what he -- most of his
2 allegations have to do with how the case was tried in
3 front of Judge Lloyd and some of the issues that came up -
4 - and things of that nature. That all happened in 2004.
5 So I won't belabor this point, Your Honor. We
6 believe the statute of limitations clearly bars this case.
7 Second issue, as I mentioned earlier, *res judicata*
8 and collateral estoppel. That's why I handed up that one
9 complaint. It's the same allegations that he keeps
10 bringing over and over again. And I do recognize that the
11 -- his lawsuit's in Federal Court were dismissed without
12 prejudice. I would suggest, however, that -- at least as
13 Judge Curry ruled in 2016, even though it's without
14 prejudice, there is some merit to looking at how those
15 issues were decided.
16 But the Court doesn't even have to go there because
17 you've got the 2008 case that was decided on the merits
18 and dismissed by Judge Strickland. I think *res judicata*
19 bars this case based on that alone.
20 I threw in for my clients a couple of additional
21 issues. I won't belabor them and rely on the brief, but
22 in a nutshell, you know, 1983 cases, as I indicated, as
23 Your Honor probably well knows, the State of South
24 Carolina and its agencies are not persons under Section
25 1983. So South Carolina Department of Transportation is

1 not a proper party in this case and could be dismissed --
2 should be dismissed on that basis pursuant to *Will vs.*
3 *Michigan State Police*, very well settled case law.
4 My only two clients are Paul de Holczer and Natalie
5 Moore. They have both been sued for their actions purely
6 as attorneys representing the South Carolina Department of
7 Transportation. And we have cited State law immunities,
8 that we would submit would also be adopted in the Federal
9 system for these cases, that an attorney is immune for
10 liability to third parties simply by performing a
11 professional activity as an attorney. Cited the *Garr vs.*
12 *North Myrtle Beach Realty Company* case, as well as the
13 *Stiles vs. Onorato* -- O-n-o-r-a-t-o -- a Supreme Court
14 case from -- from 1995, that an attorney may not be liable
15 for representing a -- a litigant, even though there is --
16 they can be liable for conspiracy, but they must bring
17 some independent duty owed to the third party or act in
18 their own personal interest, outside the scope of their
19 representation. There are no allegations that either Mr.
20 de Holczer or Ms. Moore doing that. So that would be an
21 also an -- an additional basis for dismissing this case.
22 But as I indicated, I think by far the -- the most
23 straightforward defenses are the statute of limitations,
24 Your Honor, and *res judicata*, and as I indicated earlier,
25 we just simply want to get the dismissal of this with

1 prejudice to end this stream of litigation. It's put the
2 Department of Transportation to tremendous expense, and
3 I'll let Mr. Quinn and Mr. Ormand address their -- for
4 them as well. Thank you.
5 THE COURT: Thank you. Gentlemen?
6 MR. ORMAND: Thank you, Your Honor. My name is Chuck
7 Ormand. I've been and attorney for about 30 years.
8 In 2004, Ron Paul had me to assist him with his claim
9 in a condemnation action, and as Mr. Lindermann said, the
10 issue there was there's a property being taken in the
11 widening of Two Notch Road. The property belonged to the
12 Buckles. The property had two buildings on it, and Mr.
13 Paul was leasing a portion of one of the buildings which
14 was going to be taken. There's no question about that.
15 He had a liquor store within -- business within that
16 building and he had five years left on the lease.
17 The condemnation of a lease, as you likely know,
18 would be whether the value of the lease was below market
19 value. There was an expert hired to indicate that, as a
20 business broker, the lease was below market value; that
21 someone else coming in to run a business like that would
22 likely pay more rent. So for five years, the present
23 value of that would be the damages.
24 The -- the Department fought back and so did Buckles
25 saying that there was, that -- that the lease was

1 appropriate, and therefore, there should be no
2 compensation. The judge, Judge Lloyd, ruled that there
3 was some compensation.
4 Mr. Paul -- I think maybe it's important at this
5 stage -- I haven't been bringing this up, but Mr. Paul
6 never was able to see -- and it is a complex issue -- that
7 the loss of his business and the loss of the lease on the
8 property were two separate things. And the loss of the
9 business was not actionable under an inverse condemnation
10 action. It's probably not actionable in any way.
11 Although there were -- there was payment by
12 Department of Transportation for the moving of the
13 business and so forth, it just -- that was the issue that
14 Mr. Paul didn't seem to grasp, and I did not seem to be
15 able to convey to him in a manner that was -- well, that
16 stuck. Put it that way, Your Honor.
17 Before the order of Mr. -- of Judge Lloyd, which was
18 in March of 2005, I was let go by Mr. Paul. So I stopped
19 my representation at his request I believe in December of
20 2004, and did not represent him again.
21 The order was issued, he appealed that case, he also
22 sued me and the firm in essence for -- for malpractice.
23 That case was dismissed by Judge Manning in 2006, summary
24 judgement. He appealed -- Mr. Paul appealed that to the
25 Court of Appeals. It was affirmed. Requested cert. It

1 was denied, and then the cases that we talk about after
2 that are the ones that Mr. Lindemann has spoken about in
3 which I was one of many parties and that is also the same
4 here.
5 The only thing I can add as far as the law,
6 obviously, the statute of limitation issues are identical.
7 The *res judicata* issues are identical. I suppose I would
8 have an additional legal argument to suggest to each of
9 the -- the civil conspiracy argument was in essence in a
10 factual pattern presented also in the 2006 case against
11 me, and should be at least claim precluded. But since
12 there's been six or seven cases after that which have been
13 dismissed, I would suggest it really doesn't matter.
14 And then finally, neither Mr. Quinn or I were -- in
15 any way could be considered state actors. We were private
16 attorneys, representing private parties. In my case, I
17 was representing Mr. Paul. In Mr. Quinn's case, he was
18 representing Mr. Buckles, I think, Mr. Buckles or the
19 estate. At some point, Mr. Buckles died. I'm not sure of
20 the chronology of event.
21 That's -- without belaboring anything else, I think
22 that's really where we are. I -- I filed a motion in
23 November. We I believe emailed -- or I did email the --
24 a copy of the motion to you yesterday or maybe the day
25 before. Thank you, Your Honor.

1 THE COURT: Thank you. Mr. Quinn?
2 MR. QUINN: May it please the Court. I'm Mike Quinn,
3 and as Mr. Lindemann and Mr. Ormand said, my
4 representation initially was Mr. G. L. Buckles and Mr.
5 Keith Buckles. Keith Buckles died during this litigation
6 process and I took over to the extent through his estate.
7 I also represented G. L. Buckles, too. Mr. Buckles
8 is now deceased.
9 Your Honor, to begin with, let me refer back to Mr.
10 Ormand. He is correct. I am not a State actor. I have
11 never represented a governmental entity. All of my
12 representations throughout and including this case have
13 been private individuals.
14 Mr. Lindemann has referred you to the time line I
15 prepared which as you will note, I reference the -- what I
16 consider the relevant provisions in his complaint, and I'm
17 -- I'm going to get to that complaint in just a minute.
18 Looking at his 2000 -- 2018 complaint, the one that's
19 before Your Honor now, his Count 1, essentially his first
20 cause of action, is declaratory judgement. And what he's
21 doing, he -- he's never been able to accept the fact that
22 the landowner and the condemning authority can agree to a
23 -- a settlement. That does not -- if they do that, that
24 does not affect his rights. He can come in, he can
25 petition, and then you can have a hearing which would

1 determine what portion of the compensation -- once just
2 compensation is agreed to -- he's entitled to.
3 And -- and I might say this, that when the case was
4 tried before Judge Lloyd -- Judge Lloyd determined that
5 just compensation was 156,000 and some-odd dollars -- he
6 allocated that, about 2400 or 2500 dollars to Mr. Paul,
7 and the balance, about $156,000, to the Buckles.
8 That obviously did not suit Mr. Paul. So he then
9 brought a lawsuit, which as we call the "2008 lawsuit,"
10 and -- and that was heard by Judge Strickland. And my
11 recollection is that Judge Strickland, after hearing
12 arguments, ruled from the bench and granted the
13 Defendants' motions to dismiss.
14 Looking at what he is doing now on the settlement
15 agreement, he is saying that -- that he is entitled to
16 declaratory judgement, that entering into the settlement
17 agreement prejudiced him and was civil conspiracy.
18 Looking at his 2008 complaint -- and I've got a copy,
19 Your Honor. I can hand that up later. Let me look here
20 and see if I can put my hands on it.
21 (Brief pause.)
22 MR. LINDEMANN: (Hands document to the Court) And
23 Your Honor, this is one of the exhibits attached to Mr.
24 Quinn's memo as well.
25 THE COURT: Thank you.

1 MR. QUINN: In his 2008 complaint -- I'm sorry --
2 with -- Count 1, his first cause of action, on page 24 of
3 his complaint, refers to the settlement agreement that the
4 individuals, my client, telling him that there was a
5 settlement agreement, was false, that there was a
6 controversy between them. The settlement agreement
7 intentionally -- was intentionally a false statement.
8 That is absolutely -- first of all it's not right.
9 Secondly, the two parties, the land owner and condemnor,
10 can agree to a settlement agreement.
11 In addition to that, looking at his 2008 complaint,
12 on page 3 and 4 -- let's see ...
13 That -- that is paragraph 18. Let me back up.
14 (Mr. Quinn confers with Mr. Lindemann and Mr. Ormand
15 briefly.)
16 MR. QUINN: Judge, I've got a 2008 complaint here.
17 (Brief pause.)
18 MR. QUINN: All right. Your Honor, going back to the
19 settlement agreement he said was false, was intended to
20 act -- react adversely to him, in the -- in the complaint
21 filed, which Judge Strickland heard, paragraph 18, on page
22 4, states that -- and this is his complaint (as read):
23 "On March 23, 2004, the landowner, Defendants
24 Quinn/Buckles (Keith J. Buckles and G.L. Buckles) and
25 condemnor Defendant SCDOT agreed to a settlement."

1 So in -- in his complaint, in 2008, he is saying
2 there was a settlement agreement referred to -- entered
3 into. So he knew, obviously, there was a settlement
4 agreement. So there again, by his own pleadings, he has
5 affirmed or confirmed the -- the basis of the statute of
6 limitations.
7 In addition to that, paragraph 19 -- and of course,
8 he states, and I'm reading again, paragraph 19, page 4 (as
9 read): "Plaintiff's rights were not affected by settlement
10 agreement between landowner, Defendant Quinn/Buckles, and
11 the condemnor, Defendant SCDOT/de Holczer."
12 So here we are again in 2008 saying, "My rights
13 weren't violated."
14 Then from the standpoint of the trial, in his second
15 count, Your Honor -- so I think that just blows his first
16 count, Count 1, out. He's known since the -- the
17 complaint was filed in 2008 that there was a settlement
18 agreement, that it did not affect his rights, and he -- he
19 can't change that by a subsequent pleading.
20 With respect to the present case, let me just look at
21 that. Okay. Count 2, civil conspiracy, and in that one
22 he alleges that -- that I threatened his expert witnesses.
23 One, I take offense to that. Second, I absolutely did not
24 threaten his -- his witnesses. What I did was there is a
25 s statute that says you can't appraise property unless you

1 are licensed in South Carolina.
2 I brought that up, the statute, brought it up for
3 Judge Lloyd, believing -- I still do -- that the trial
4 judge would want to know about the statute if he was not
5 aware of it, and it would not be unusual for a circuit
6 judge not to be aware of that.
7 So he brought that up, and that was the extent. It
8 is in the transcript. Mr. Paul does not refer to that.
9 In addition to that, there is also a portion in the
10 transcript where Judge Lloyd said, you know, "Nobody is
11 threatening you with criminal prosecution." That is
12 contrary to what Mr. Paul has alleged. It's there. It's
13 right there. So that -- that just, to me, blows him --
14 him out of his Count 2.
15 Your Honor, let me just look through here.
16 Okay. So again, in paragraph 27 of his 2008
17 complaint -- and that's found on page 5 -- he alleges (as
18 read): "During trial, Defendant SCDOT de Holczer
19 conspired with Defendants Quinn/Buckles and Defendant
20 Ormand whose actions were outside the scope of their
21 clients' representation," and "all Defendants breached an
22 independent duty owed to Plaintiff," -- and that's what
23 we've faced with, those kind of allegations -- "by
24 planning to and intimidated Plaintiff Paul's expert
25 witness by threatening criminal prosecution."

1 That is absolutely untrue. It is contradicted by the
2 record in this case, and it also shows that as of the
3 filing of the 2008 complaint, he knew there was a
4 settlement agreement that had been entered into between
5 land owner and condemnor. He also knew that he -- he also
6 took the position that there -- that there was a civil
7 conspiracy, which is not -- not correct.
8 So I think those pleadings -- and as the Court knows,
9 once they are there, they can certainly used as -- once
10 they are there, the statute of limitations comes in and
11 applies.
12 In addition to that, reviewing the complaint itself,
13 what he's basically done -- which is why I did the time
14 line -- he's laid out the reasons in his complaint why the
15 statute of limitations is applicable. And -- and rather
16 than go through each one, Judge, I'm just going -- it's
17 there, and you can compare the time line and the relevant
18 paragraphs in his complaint.
19 So I think clearly the statute of limitations bars
20 his claim.
21 The second thing, Your Honor, if I might just
22 briefly, is *res judicata*. I won't go over what Mr.
23 Lindemann has said. I agree with him. It meets the three
24 elements. Granted, there was a deceased party. Natalie
25 Moore, who was with the Highway Department, was not,

1 perhaps named in the first; but *res judicata* is
2 applicable. And Mr. Ormand also has that.
3 The other thing -- and again, I've referred to these
4 -- the law of the case. Judge Strickland's order became
5 the law of the case, and what's in there is -- is exactly
6 that. Judge Lloyd's order became law of the case.
7 And I -- in my memorandum, Your Honor, I have
8 referred to -- to the law of the case, and essentially
9 under -- under that a party's precluded from re-
10 litigating, after an appeal, matters that were either not
11 raised on appeal, but should have been, are raised on
12 appeal, but rejected by the Court. I mean, we -- we got
13 there.
14 And again, the *res judicata*, not only does it bar --
15 I mean, excuse me -- the statute of limitations, *res*
16 *judicata*, not only does it bar what the Plaintiff alleged,
17 it also bars what he could have alleged. He could have
18 alleged whatever he wanted to in 2008. He did not do it.
19 Collateral estoppel that Mr. Lindemann referred to
20 prevents a party from re-litigating in a subsequent suit
21 an issue actually and necessarily litigated and determined
22 in a prior action applicable.
23 Plaintiff preclusion: Under the principals of
24 Plaintiff preclusion a final judgement on the merits in a
25 prior action will absolutely "bar parties and their

1 privies from litigating in a subsequent action issues
2 actually litigated and issues that could have been raised
3 in the first action," citing a South Carolina case.
4 To raise the bar on claim preclusion, there -- three
5 elements must shown: Identity of the parties, identity of
6 the subject matter, and a final determination on the
7 merits. That was with Judge Lloyd's order and also with
8 Judge Strickland's order.
9 And of course, we -- we have gone on the record and
10 saying, of course, that I am not a State actor.
11 The other thing that is applicable here is a
12 privilege. To the extent there were any of these comments
13 made by Mr. Paul -- which are not true with respect to the
14 threats -- his cause of action from that standpoint is
15 barred basically by the privilege, i.e., whatever may have
16 been said or may not have been said. If -- if it's all in
17 relation to the particular attorney representing his
18 client and absent an exception it couldn't have happened,
19 it's just another defense.
20 And you got defense after defense. First and
21 foremost, clearly the statute of limitations; secondly,
22 *res judicata;* and the others are just out there.
23 I'd be pleased to answer any questions the Court
24 might have.
25 THE COURT: I don't have any.

1 MR. QUINN: Thank you, Your Honor.
2 THE COURT: Before I hear from Mr. Paul, Mr.
3 Lindemann, tell me the procedural posture of this case
4 with respect to Defendants Rucker and Gresham.
5 MR. LINDEMANN: Mr. Paul filed motions for default --
6 for default judgement against the two of them. They are
7 no longer employed by the Department of Transportation.
8 He attempted service by sending certified mail to SCDOT to
9 serve both of them.
10 Ultimately, those motions did not get heard by Judge
11 Early because he was running out of time. So they got
12 reset in front of Judge Manning, and that was at the time
13 that we thought Judge Early had these motions under
14 advisement. That's why they -- everything wasn't heard by
15 Judge Manning, but he heard those two default motions and
16 he not only denied default motions, but he also dismissed
17 for improper service of process both Ms. Gresham and Mr.
18 Rucker.
19 Mr. Paul has subsequently appealed that to the Court
20 of Appeals, but we believe this matter's properly before
21 this Court because it's not affected by the default order
22 involving those two defendants.
23 THE COURT: Okay.
24 MR. LINDEMANN: Thank you.
25 THE COURT: Thank you. I just couldn't find the

1 order of dismissal, but there's so many things going on in
2 this case.
3 MR. LINDEMANN: Yes.
4 THE COURT: Mr. Paul.
5 MR. PAUL: Yes, Your Honor.
6 THE COURT: Good morning.
7 MR. PAUL: Good morning. How you doing, Your Honor.
8 I tell you, got a lot to argue there, but they done [sic]
9 argued a lot. I didn't think I'd have to argue this much
10 when I came down here, but I'll do my best, Your Honor.
11 THE COURT: Yes, sir.
12 MR. PAUL: Your Honor, I filed a -- I filed a
13 memorandum in opposition to Defendants' motion to dismiss
14 and motion for summary judgement. Also I filed an
15 amendment to that which I filed on August the 5, 2019, and
16 that should be in the record. I noticed that they all in
17 here scanning -- put it in the record.
18 I also I mailed you a copy of that, Your Honor.
19 THE COURT: Let me find it real quick.
20 MR. PAUL: Yes, Your Honor.
21 THE COURT: The mail is a little slow around here.
22 So I've not received it in the mail.
23 MR. PAUL: Oh. I emailed it to you, to your law
24 clerk, I think that was.
25 THE COURT: Oh, yeah. I don't have a law clerk right

1 now.

2 MR. PAUL: Oh. Okay.

3 THE COURT: It's probably just hanging out in an

4 unmonitored inbox.

5 You should have gotten an automatic reply that said

6 contact someone else.

7 MR. PAUL: Oh. That may be the same -- I think Mr.

8 Lindemann mailed one -- no, Mr. Quinn mailed one first,

9 then Mr. Lindemann added something to it. Then I replied

10 and added my ---

11 THE COURT: Oh. You know what, I see it and I see

12 probably why it wasn't printed is because it's so long.

13 But we're good. I found it.

14 MR. PAUL: Okay. Okay. Your Honor, as I just said,

15 I filed a memorandum in opposition to Defendants' motion

16 to dismiss, and I filed an amendment to that on August the

17 5, 2019.

18 Your Honor, all three Defendants rely upon the three-

19 year statute of limitation in South Carolina, Code Section

20 15-3-530, which is three years. But the correct statute

21 of limitation in this case, Your Honor, is 20 years upon a

22 sealed instrument, South Carolina Code Section 15-5-

23 520(b).

24 The commercial lease that was -- I signed, that I had

25 on the property at 2115 Two Notch Road, that I was evicted

1 from by Court order, was a sealed instrument which is
2 filed with the Register of Deeds Office here in Richland
3 County.
4 Next, Your Honor, in addition, the State law does not
5 determine when the statute of limitation starts to run.
6 Federal law determine [sic] when Federal cases -- when the
7 statute of limitation start to run.
8 THE COURT: Well, hold on. Let me interrupt you now
9 because if Federal law determines it, then why'd you just
10 tell me about South Carolina Code 15-5-520 because that's
11 a State law. So if your argument is that the Federal law
12 is what determines the statute of limitations, why is 15-
13 5-520 important at all?
14 MR. PAUL: Well, State law -- Federal law bars the
15 State law statute of limitation, but when the statute of
16 limitation started to run. In other words, Your Honor,
17 this is according to USC 1983 civil conspiracy case.
18 THE COURT: Exactly. So don't we need to be talking
19 about the statute of limitations for 1983 action?
20 MR. PAUL: Right, Your Honor, which ---
21 THE COURT: Okay.
22 MR. PAUL: --- which the statute of limitations
23 started to run after averted [sic]-- after the last
24 averted act in furtherance of the conspiracy because this
25 action, Section 1983, requires averted act to furtherance

1 the conspiracy. So upon the last averted act, that's when
2 the statute of limitation stated to run. Even though we
3 bar State law, which is either -- which is -- in -- which
4 I believe in this case is -- Federal law determines when
5 the statute of limitations started to run. I -- I -- I
6 listed the case law in there, Your Honor, what -- what
7 [sic] governs that.
8 (As read) "Rejected -- relies on State law -- the
9 running of the statute of limitation, a civil conspiracy
10 case under 42-1983." That would be in my first memorandum
11 on page 2, second paragraph.
12 THE COURT: I'll find it. Keep talking.
13 MR. PAUL: Okay. Okay. Okay, Your Honor. Let me
14 back up and get my thoughts back together.
15 THE COURT: Okay.
16 MR. PAUL: Let me get back on track, Your Honor, just
17 -- just a short version because I know the State -- I know
18 the Federal law bars the State law statute of limitations.
19 But once Federal law bars the State law statute of
20 limitation, Federal law determines when the statute of
21 limitation starts to run, and this is case law that I
22 listed on page 2 in my memorandum on that.
23 THE COURT: Tell me what date you filed that
24 memorandum.
25 MR. PAUL: I filed this memorandum on 11th of

1 February, 2019. No -- yes, yes, yes, Your Honor. 11
2 February, 2019.
3 THE COURT: I see it.
4 MR. PAUL: You see it?
5 THE COURT: Yes, sir.
6 MR. PAUL: Page 2, second paragraph.
7 (Brief pause.)
8 THE COURT: Yes, sir. Okay.
9 MR. PAUL: So if Federal law determines when the
10 statute of limitations starts to run, under 42 USC 1983
11 civil conspiracy action, which requires averted act, then
12 according to Federal law, the statute of limitations
13 starts to run after the last averted act in furtherance of
14 the conspiracy.
15 Now, Your Honor, according to the complaint --
16 according to the complaint on page 18, paragraph 8 (as
17 read): "The civil conspiracy continues to this date
18 through coverups, defenses, and tactics."
19 Now, I listed one example in there, Your Honor, which
20 on April 19, 2019, before Judge Manning, Defendants told
21 Judge Manning that Judge Barbers' order confirmed the
22 settlement agreement between South Carolina Department of
23 Transportation and Buckles.
24 Now, Judge Manning [sic] order is listed as Exhibit I
25 on page 8 on my amended memorandum. And Judge Barber is

1 Exhibit J. All you got to do is put these two orders
2 together and you can see that that is not a correct
3 statement. It is a false statement. Judge Barbers' order
4 did not confirm just compensation and it did not confirm
5 just compensation as agreed to between South Carolina
6 Department of Transportation and the Buckles. That's in
7 black and white. It's like a picture. You can't dispute
8 that. Defendants can't dispute that. I mean, it's
9 totally opposite.
10 Now, why did they do this? I'll get to that later.
11 Next, Your Honor, res judicas [phonetic] or res
12 judicate [phonetic]-- whatever that is,
13 THE COURT: *Res judicata.*
14 MR. PAUL: Yeah. *Res judicata,* collateral estoppel,
15 issue preclusion, claim preclusion, and law of the case
16 doctrine. Now, I filed it combined, and they're all
17 arguing them separate, but I'm just going to argue them
18 all together.
19 THE COURT: Okay.
20 MR. PAUL: The -- rely upon all of them. De Hazia
21 [phonetic] -- de Holzo [phonetic], Moore are *res judicata*
22 and collateral estoppel, and Mr. Ormand only *res judicata*
23 only.
24 Now, Your Honor, I have two arguments here against
25 these affirm [sic] defenses. The first one is *Williamson*

1 *County Regional Planning Commission vs. Hamilton Bank,*
2 1985. It's been upheld twice by the United States Supreme
3 Court. Now, in that case, Your Honor, the Court ruled
4 that a plaintiff have not suffered a violation of the
5 taking clause until that plaintiff have seek [sic] just
6 compensation through the procedures provided by State
7 procedure -- State law. Only then -- when he had been
8 denied compensation after going through them [sic]
9 procedures, only then is his claim ripe for appellate
10 review.
11 So when Defendants argue all that -- the actions I
12 took in State Court, according to Wils -- Wilson County
13][sic}, I was deprived before I could even take my claim
14 to Federal Court. So when they argue all that, they
15 ignore Wilson County which has been upheld twice by the
16 United States Supreme Court.
17 I think 1985 to now on, what's that, 30/40 years?
18 It's been okay. So that's been the law for 40 years. So
19 I know as attorneys these fellows should be -- knowledge
20 of that. That's my first argument, Your Honor.
21 My second argument, Your Honor, is got to deal with
22 dismissal without prejudice. Now, once this case was
23 ripe, not -- yeah, ripe for Federal Court, after it had --
24 after I had to follow State procedures and I had been
25 denied compensation, then I filed a 42 USC 1983 action

1 civil conspiracy case.

2 The Clerk of Court in Federal Court issued a summons

3 to all these Defendants. I filed the same claim in

4 Federal Court. They issued summons to all of them.

5 THE COURT: You say you filed the same claim in

6 Federal Court?

7 MR. PAUL: The same ---

8 THE COURT: The same claim as this?

9 MR. PAUL: This -- yes, Your Honor.

10 THE COURT: Okay. Go ahead.

11 MR. PAUL: It was the same claim. Well -- yes. It's

12 the same claim, same Defendants.

13 THE COURT: Okay.

14 MR. PAUL: Now, the Clerk of Court issued a summons

15 to all those Defendants. Defendants responded. They

16 responded the same documents and arguments they responded

17 to this action here today. Now, that case was dismissed

18 without prejudice.

19 Defendants filed more appeal. So it's well settled

20 law when a dismissal without prejudice is made that I can

21 refile as though the claim had never been filed, and it's

22 unnecessary for the Court to determine whether them [sic]

23 other claims barred my current claim because it was

24 dismissed without prejudice. And every claim that I filed

25 in Federal Court was dismissed without prejudice.

1 Here again, Your Honor, they filed more appeal. So
2 now, all these claims are barred -- are useless that they
3 are bringing up, the ones that I just talked about res
4 judicash [sic], collateral estoppel, issue pre --
5 preclusion, claim preclusion, law of the case. They [sic]
6 gone. They should have filed an appeal, Your Honor.
7 Since they didn't file no [sic] appeal, at this time it's
8 too late.
9 Next, Your Honor -- next, Your Honor, Defendant
10 Quinn, who had no standing -- I'm going to repeat that
11 again -- who had no standing in State Court after the
12 settlement agreement between South Carolina Department of
13 Transportation and Buckles, which Mr. Quinn was the
14 attorney for Buckles.
15 THE COURT: He had no standing to do what? What do
16 you mean?
17 MR. PAUL: Well, Mr. Quinn settled in, I think, 'bout
18 -- when he settled in February or March with South
19 Carolina Department of Transportation. In other words, he
20 represented Buckles and -- and South Carolina Department
21 of Transportation and Buckles' settled, and so as the
22 attorney for Buckles, Buckles didn't have no [sic] more
23 standing. So Mr. Quinn didn't have no [sic] standing as
24 an attorney.
25 THE COURT: I know, but standing to do what?

1 MR. PAUL: Standing -- he was there representing
2 Buckles.
3 THE COURT: Okay.
4 MR. PAUL: But the Buckles had settled.
5 THE COURT: Okay.
6 MR. PAUL: So -- I mean, so what -- what -- what was
7 [sic] they doing? I'll get into that later, Your Honor.
8 Why was he here? Well, I'll tell you why he was there,
9 threatening my expert witness with criminal prosecution.
10 I know he said he didn't do that, but I got evidence that
11 he did. I got transcripts of records. It's on the trans
12 -- the witness got off the stand and said, "Hey, I'm not
13 going testify." That's in my -- that's in the four
14 corners of my complaint because they argued way outside
15 the four corners of my complaint.
16 But the witness got off the stand and said, "Hey, I'm
17 not going to jail. I'm not going to jail over this." And
18 so the witness stepped down off the stand and left, say he
19 had to talk to his former counsel before he testified
20 because of threats.
21 THE COURT: Okay. When you say he -- Quinn didn't
22 have standing, you mean that he shouldn't even have been
23 there.
24 MR. PAUL: He shouldn't have been there, Your Honor.
25 He had ---

1 THE COURT: Got it.
2 MR. PAUL: --- no standing because he had settled.
3 THE COURT: Okay.
4 MR. PAUL: He represented the Buckles, which South
5 Carolina Department of Transportation and the Buckles
6 settled.
7 THE COURT: I got it.
8 MR. PAUL: But Mr. Quinn was the attorney for the
9 Buckles. So he -- at that time, he had no standing, but
10 he was there threatening my expert witness with criminal
11 prosecution.
12 THE COURT: Got it.
13 MR. PAUL: Which he claim he didn't do in face of
14 evidence.
15 THE COURT: I got it. Let's move on to your next
16 point.
17 MR. PAUL: And lastly on that, Your Honor, Defendant
18 Quinn only argued State law. He didn't argue on the -- on
19 his -- on his -- on -- Defendant Quinn stated that the
20 complaint failed to state a cause of -- cause of action
21 against him. That's what I was just arguing. That --
22 that is -- failed to state facts significant to constitute
23 a cause of action against Defendant Quinn.
24 That's the argument that I just made against that,
25 Your Honor. The complaint does state a cause of action

1 against Defendant Quinn.

2 According to the complaint, on page 26 -- 25/26,

3 paragraph 108 to 110, the complaint state [sic] a cause of

4 action against Defendant Quinn. I'm not going to go

5 through this, Your Honor, but it's in the complaint on

6 page -- on page 26 -- on page 25/26, paragraphs 108

7 through 110.

8 Now, Your Honor, I read Defendant Quinn [sic]

9 arguments that he put forth far as complaint failed to

10 state a cause of action against Defendant Quinn. Again,

11 Your Honor, he only argued State law, but really, I don't

12 understand what he's talking about.

13 But anyway, he have not ---

14 THE COURT: I'm sure the feeling's mutual.

15 MR. PAUL: Yes, ma'am.

16 THE COURT: I said I'm sure the feeling is mutual.

17 You don't know what they're talking about. You don't know

18 -- and they don't know what you're talking about.

19 MR. PAUL: (Laughing) Yes, Your Honor.

20 I don't understand what he's talking about, but any

21 way, he ought not address the four corners of this

22 complaint period today far as failure to state a cause of

23 action against Defendant Quinn.

24 And as he say [sic] that he's not a State actor, but

25 in -- in the four corners of the complaint, it states the

1 Defendant Quinn conspired with the State officials. So in
2 the four corners of the complaint, he don't address that.
3 He just say he wasn't a State actor because he was an
4 attorney. But that's not what is in the complaint -- the
5 complaint. The complaint clearly states that Mr. Quinn
6 conspired with State officials.
7 Next, Your Honor, Defendant de Holczer and Moore
8 claim that they are entitled to immunity. They are not
9 entitled to immunity whatsoever in this case, Your Honor.
10 They only argue State law again. This is a 42 USC 1983
11 case. It's not -- they argue as though I filed a claim in
12 State law for civil conspiracy, and it is State law and -
13 -and how it goes in -- a civil conspiracy case goes in
14 State Court; but this is a USC 1983 civil conspiracy case
15 filed -- civil filing in State Court, which I'm allowed to
16 do.
17 THE COURT: Why did you choose to do that?
18 MR. PAUL: Your Honor, when I was filing in Federal
19 Court, Judge Curry had -- wouldn't take concurrent
20 jurisdiction and it's in one of her orders. She refused
21 to take concurrent jurisdiction over the settlement
22 agreement. She called it a "contract-based claim," that,
23 you know, from my understanding, that you need -- you need
24 to settle that in State Court. I'm not -- I'm not going
25 to deal with the settlement agreement. You need to deal

1 with that in State Court; but she didn't say them [sic]
2 exact words, but she put it in her order say that it's a
3 contract State based claim and she refused to take
4 concurrent jurisdiction.
5 She -- she didn't use them [sic] exact words, but
6 basically, that's what she said. And that's why I'm here
7 in the State Court.
8 I only have a little bit more, Your Honor.
9 Not -- since -- back to Defendant de Hazer [phonetic}
10 de Holzo [phonetic] and Moore claim they're entitled to
11 immunity. Now, they want to argue State law, and this is
12 a 42 1983 civil conspiracy case, a Federal case, that's
13 filed in State Court. But they only argued State law, so
14 I put my arguments there, Your Honor.
15 Next, Your Honor, Mr. Ormand claims that he's not a
16 State actor because he was an attorney. But the complaint
17 -- according to the complaint, Defendant Ormand conspired
18 with State officials. That's in the four corners of the
19 complaint, that he conspired with State officials.
20 Now, he didn't address that. I know Defendant Quinn,
21 he states, too, that he's not a State actor; but he didn't
22 put that in his arguments and he just raised it here
23 today. So Mr. Quinn join Mr. Ormand, but both of them was
24 [sic] State actors because they conspired with State
25 officials. They claim that, "Well, because we was [sic]

1 attorneys, we was representing such and such people." But
2 that's not the law. So I list it in there that they can
3 sue that they conspired with State officials or acted
4 under color of law. And they did both of them. And
5 that's in the four corners of the complaint. They didn't
6 address that.
7 Next, Your Honor, Defendant South Carolina Department
8 of Transportation claim they's [sic] not a person subject
9 to suit under 42 USC 1983. Now, they [sic] not a person,
10 Your Honor, far as money damages, but -- but derogatory
11 relief -- I mean, declaratory relief, they are a person.
12 Let me explain that, Your Honor.
13 Because I have no other choice or no other way to get
14 relief but for derogatory relief -- I mean, declaratory
15 relief. Now, what take places, Your Honor, every time I
16 come to court to try to get paid for my property taken
17 that I wasn't paid for, here comes South Carolina
18 Department of Transportation with this settlement
19 agreement beating across my head, "The case settled for
20 just compensation. The case settled for just
21 compensation."
22 In other words, the settlement between South
23 Carolina Department of Transportation and the Buckles
24 apply to you, too. I had nothing to do with it, I knew
25 nothing about it. It didn't involve my property. You

1 didn't talk to me about it. How does this refer to me?
2 So that's why I need declaratory relief on this issue to
3 stop them from running with that settlement agreement that
4 don't [sic] have nothing to do with me, beating me across
5 the head with it.
6 Two reasons, Your Honor. It occurs to South Carolina
7 Department of Transportation in the order or they
8 authorized the Defendants to act in such a manner. In
9 other words, Your Honor, claim and declaring the case had
10 settled for just compensation without my approval or
11 without my consent. They can't -- they cannot settle this
12 case with just some text because I was a party, too. I
13 was a party to it, I have a commercial lease filed. So
14 they cannot settle this case as a matter of law for just
15 compensation.
16 But here go South Carolina Department of
17 Transportation with this settle agreement that's -- that
18 have just a period. They don't know where it's at now.
19 Claim it -- it never was one. Beating me across the head
20 with it. There's no -- case settled for just compensation
21 subject.
22 That's why I'm here in State Court, Your Honor, to
23 get this issue settled that Judge Curry refused to deal
24 with in Federal Court, refused to take concurrent
25 jurisdiction over this. And that's -- she put that in her

1 order, Your Honor. I -- I don't know where it's at, but I
2 think probably Mr. Quinn filed it. But if you need a copy
3 of it, I can -- I can -- I can get it to you.
4 Your Honor, when you look at Exhibit G (as read):
5 "Judgement zero public index"; Exhibit H, we see an amount
6 of $154,300. Now, somebody put that I was paid that. I -
7 - I can tell you, Your Honor, I never was paid that.
8 Exhibit K (as read): "-- question that's not
9 relevant to the claims or defenses raised in -- in this
10 litigation." That's in response from South Carolina
11 Department of Transportation and others when I requested a
12 copy of the settlement agreement. They said, "It's not
13 relevant at this time. We don't know where it's at."
14 Judge Manning's order, on page 9, which is Exhibit I
15 (as read): "Plaintiff's two motions to compel discovery,
16 are denied as moot."
17 In other words, I can't have a settlement agreement.
18 Ain't got nothing to do with me, but you beating me over
19 my head talking about case settlement just compensation.
20 In other words, you're saying I don't have no rights to
21 any.
22 What they doing, they take the settlement agreement,
23 beat me over the head with, and then say, "Well, Judge
24 Lloyd awarded you $2,450 from the settlement agreement."
25 I mean, I got nothing to do with the settlement agreement.

1 I never agreed to this.
2 That -- this is -- that is not -- Mr. Quinn is -- is
3 one of the best South Carolina -- at least I thought he
4 was -- one of the best attorneys when it comes down to end
5 of -- end of demand. But the statement he just got up and
6 made is incorrect. I got transcripts of record of Mr.
7 Quinn in -- where he got up and said that McDonald's was
8 entitled to one million dollars because it was a good
9 business. Now, I didn't bring them [sic] transcripts with
10 me, but I got them because I didn't know they was [sic]
11 going to argue outside the four corners of the complaint.
12 Now, this was -- for -- I went down -- I drove down
13 and got them [sic] records. This was for a lease, a
14 person who leased the property. And they have a
15 McDonald's there, and they condemned that property in --
16 county. They were gonna open up that road. And Mr. Quinn
17 argued that McDonald was entitled to one million dollars,
18 and they only was taking a little corner of the property,
19 blocking access to something or other, blocking so the
20 person couldn't make an immediate left turn. They had to
21 go up make a right turn or something or other like that.
22 But they didn't even take the entire property.
23 But today, he argued something different.
24 Now, like I say, Your Honor, I didn't bring the
25 transcript of record, but they filed in Federal Court, and

1 I can bring it. I got all the records.

2 THE COURT: Anything that's public record I can get

3 myself. So any complaint ---

4 MR. PAUL: Yes, Your Honor.

5 THE COURT: --- in Federal Court and all those things

6 are public record. So you don't need to give me any of

7 that.

8 Now, I'm not trying to cut you off. I do have

9 another hearing coming up, and so I want you to ---

10 MR. PAUL: Speed up.

11 THE COURT: --- begin to finish. Right.

12 MR. PAUL: Okay, Your Honor. Your Honor, I just got

13 one -- let me see here. I just got a couple more

14 arguments, Your Honor.

15 It's -- it's -- summary judgement. I guess they

16 abandoned that issue, Your Honor. So I'm not going to put

17 any arguments forward on that.

18 THE COURT: We don't even need to go there.

19 MR. PAUL: Okay. Next, Your Honor, what they argued

20 -- but they didn't raise it, but they talked about a pre-

21 filing injunction in the past that Judge Curry issued in

22 Federal Court. And I just want to address that, to make

23 that clear, because it did raise some issue about a pro se

24 person filing in Federal Court.

25 Because, yes, Your Honor, when a pro se person file a

1 complaint in Federal Court, there's a standing order where
2 that complaint goes to a magistrate judge. You have to
3 pay the filing fee, and they got to -- it goes to the
4 magistrate judge for review.
5 Now, if those injunction is to be filed in Federal
6 Court, I probably have to submit the complaint, and it
7 still goes to a magistrate judge for review. I just don't
8 have to pay that $400 filing fee. And if something wrong
9 with it, whatever's wrong with it, the magistrate judge
10 will send it back to me, and then I could correct that and
11 send it back.
12 But since the Clerk of Court -- I know that Judge
13 Curry put that in her order, but they think that it's
14 something bad. And it's not that bad on my behalf. It's
15 better on my behalf because I can the -- if Judge Curry --
16 if the Clerk of Court were to enter that, I could take a
17 complaint to Federal Court, submit it, and wouldn't have
18 to pay no [sic] money. Get the magistrate judge to review
19 it, send it back to me, tell me what's wrong with it, and
20 take it back up there. I have not been barred from filing
21 anything in Federal Court. In fact, if they would have
22 entered that, it would have been better for me, but it's
23 no filing injunction against me ---
24 THE COURT: It doesn't even matter.
25 MR. PAUL: Whatever does not make a difference does

1 not matter.

2 THE COURT: Right.

3 MR. PAUL: Next, Your Honor, Defendant Quinn time

4 line. He put in his time line that the Court refused to

5 accept three complaints I took to Federal Court.

6 THE COURT: That doesn't matter.

7 MR. PAUL: Lastly, Your Honor, I disagree and reject

8 Defendant Quinn's statement of facts, Defendant Ormand and

9 Moore backgrounds that they put in their motions to

10 dismiss. Thank you, Your Honor.

11 Do you have any questions of me, Your Honor?

12 THE COURT: I do not. Well, I do. Just so that I'm

13 clear, everything that we're talking about with the just

14 compensation, the settlement, the condemnation of the

15 land, everything happened in 2000 -- 2002, 2003, 2004,

16 somewhere around there, correct?

17 MR. PAUL: Right. It -- yeah, that -- that happened

18 during that time frame, Your Honor.

19 THE COURT: Okay. And the conspiracy, everything

20 that Mr. Quinn did with intimidating the witness, with

21 threatening the witness and all of that, all that happened

22 back then, too, right?

23 MR. PAUL: Yes, Your Honor.

24 THE COURT: Okay. All of acts in furtherance of the

25 conspiracy and all that was 2002, 2003, maybe even through

1 2008 somewhere?

2 MR. PAUL: Yeah. It was during that time frame, Your

3 Honor.

4 THE COURT: Okay. All right. I just wanted to make

5 sure I understood your argument.

6 MR. PAUL: Yeah. But then, Your Honor, that's when I

7 had to take the claim to Federal Court --

8 THE COURT: Right.

9 MR. PAUL: -- and we -- because I had to go through

10 Wilson County -- Williamson County procedures, to make

11 sure that the claim was ripe for review in Federal Court

12 first. So really, I couldn't file the claim in Federal

13 Court until I went through --

14 THE COURT: Yeah. I got that part. I'm just saying

15 if I were to make a time line that -- and we're leaving

16 out what dates you filed the lawsuit. But if I had to

17 make a time line of everything that DOT or Mr. Quinn or

18 Mr. Ormand, all those people did, Ms. Moore -- I'm making

19 a time line, all my dates on my time line would be 2002,

20 2003, 2004, maybe through 2008, when you filed ---

21 MR. PAUL: Well, the last averted [sic] act in

22 furtherance of the conspiracy, Your Honor, was April the

23 16, 2019.

24 THE COURT: And what was that, coming to court for

25 filing something?

1 MR. PAUL: That's when the Defendants told Judge
2 Mannning that Judge Barber's order --
3 THE COURT: Gotcha. I got -- I remember you saying
4 that.
5 So with the exception of them saying anything to the
6 Court, so right -- so Judge -- saying something about
7 Judge Barber's order to Judge Manning, let's take that out
8 of it.
9 MR. PAUL: Uh-huh.
10 THE COURT: All the other stuff was years ago, right?
11 MR. PAUL: I think it started in the last -- it
12 started in 2000 -- I think the first time he filed it was
13 2002. And then everything they actually did ran -- let me
14 -- let me ...
15 THE COURT: Okay. Anything after 2015?
16 MR. PAUL: Let ---
17 THE COURT: And I'm not telling the judge something
18 or filing something with the Court. Anything except that.
19 MR. PAUL: I think -- let me make sure. I got my
20 file here.
21 (Brief pause.)
22 MR. PAUL: Yes, Your Honor. On page 18 of the
23 complaint.
24 Your Honor, all the things that these Defendants did
25 took place in -- it's in documents and things they did

1 related to -- to give them base of action for State Court.
2 THE COURT: Well, right. That's why I said I'm not
3 talking about filing stuff with the Court ---
4 MR. PAUL: Okay.
5 THE COURT: --- interaction with the Court. I'm
6 talking about settling the case, trying to -- you know,
7 doing the -- dividing up the money, whether they consulted
8 you about what's just compensation. All of that was ---
9 MR. PAUL: Right, Your Honor.
10 THE COURT: --- in 2002/2003, right?
11 MR. PAUL: 2 -- 2000 -- well, 2002. I think 2005.
12 THE COURT: Okay.
13 MR. PAUL: Yeah.
14 THE COURT: And everything after that was -- that
15 they did was filing stuff with the Court. Am I correct,
16 or ---
17 MR. PAUL: Well --
18 THE COURT: --- talking to the judge or coming to
19 court.
20 MR. PAUL: Well, everything they did after that, Your
21 Honor, was more of a coverup.
22 THE COURT: Okay. Got it.
23 MR. PAUL: You know --
24 THE COURT: A coverup of the stuff they did in 2002
25 and 2003.

1 MR. PAUL: Yes, Your Honor.
2 THE COURT: Got it.
3 MR. PAUL: Well, more -- more of an action to
4 continue the conspiracy.
5 THE COURT: Okay.
6 MR. PAUL: Averted [sic] act in continuance of the
7 conspiracy.
8 THE COURT: Continued by covering it up so that you
9 wouldn't discover it or ---
10 MR. PAUL: Well ---
11 THE COURT: --- so that the Court wouldn't discover
12 it.
13 MR. PAUL: Well -- well, making false statements.
14 THE COURT: Got it.
15 MR. PAUL: Stuff like that.
16 THE COURT: I understand.
17 MR. PAUL: Yes, Your Honor.
18 THE COURT: Okay. Does anyone -- I don't have
19 anything else for you Mr. Paul.
20 (To other counsel) Y'all don't need to say anything
21 else, do you?
22 MR. LINDEMANN: I don't think so, Your Honor.
23 MR. ORMAND: No, Your Honor.
24 MR. QUINN: No, Your Honor.
25 THE COURT: I don't think so either.

1 Okie dokie. I'll let you know.

2 MR. LINDEMANN: Thank you, Your Honor.

3 MR. ORMAND: Thank you, Your Honor.

4 THE COURT: Actually, no. I'm going to let you know

5 right now.

6 Motions to dismiss are granted. Draft proposed

7 orders for me, please.

8 MR. LINDEMANN: Thank you, Your Honor. Any specific

9 grounds you want me to -- do with or all of them or how do

10 you want me ---

11 THE COURT: All of them, and just send it to me in

12 Word version so that I can edit it.

13 MR. LINDEMANN: That sounds great.

14 THE COURT: Okay.

15 MR. LINDEMANN: I'll do it, Your Honor. Thank you,

16 Your Honor.

17 THE COURT: Thank you.

18 (Off the record at 10:52 a.m.)

19 **END OF TRANSCRIPT OF RECORD**

1 **CERTIFICATE**

2 I, the undersigned Bonnie H. Kelly, previously an
3 Official Court Reporter for the Fifth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate transcript of record of all
6 the proceedings had and evidence introduced in the hearing
7 of the captioned cause, relative to appeal, in the Circuit
8 Court for Richland County, South Carolina, on the 15th day
9 of January, 2020.
10 I do further certify that I am neither of kin,
11 counsel, nor interest in any party hereto.

12 *e/Bonnie H. Kelly, CVR*
13 Bonnie H. Kelly, CVR
14 Court Reporter

15 Columbia, South Carolina
16 October 25, 2020

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ATTORNEYS

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July 10, 2019

Via Regular Mail to

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Re: 2018CP4005641
Ronald I. Paul v. SC Department of Transportation, Paul D. DeHolczer, Moses Koon & Brackett, PC

Gentlemen:

Mr. Paul has requested that I go forward with the mediation on July 12, 2019; however, in view of the fact that the parties are not agreeable to mediation at this time, I have no authority to order that they do so. Obviously, one cannot conduct mediation with only one party present. Accordingly, we will not conduct mediation on July 12, 2019, or any anytime thereafter unless I am requested to do so by all the parties.

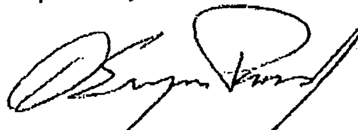
If you have any questions, please feel free to contact me at 803-779-7599 or e-mail

COLUMBIA:
1614 TAYLOR STREET | PO BOX 7965 | COLUMBIA, SC 29202

GRAND STRAND:
1208 3RD AVENUE | CONWAY, SC 29526

gene@bluesteinattorneys.com regarding this matter. Thank you.

Respectfully,



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cc. Charlotte Jackson, ADR Coordinator

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Briefs complies with Rule 211 (b), SCACR.

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Appellant, *Pro Se* Litigant

January 4, 2021

Columbia, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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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 COMPLIANCE

The undersigned *Pro Se* Appellant certifies that the Record on Appeal 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 4, 2021

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