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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.

FINAL BRIEF OF APPELLANT

Ronald I. Paul
Post Office Box 4353
Columbia, S.C. 29240
Appellant, *Pro Se* litigant
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

Federal Statute

State Statute

RULES

OTHER

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STATEMENT OF ISSUES ON APPEAL

I. Did the Court erred in dismissing the complaint in its entirely and dismissing SCDOT as an improper party that contained a State Law claim; action for declaratory judgment under South Carolina code section 28-2-10, *et seq and* 28-2-40, Compromise or settlement permit, that included all Respondents SCDOT, Rucker, Gresham, Moore, de Holczer Quinn and Ormond?

II. Did the Court err in ruling that, as a matter of law, that the applicable statute of limitations is three years and dismissing with prejudice?

III. Did the Court err in dismissing case number 2018-CP-400-5641 as a new limitations period is created with each overt act in furtherance of the conspiracy, and the statute of limitations begins to run on the date of the last overt act?

IV. Did the Court erred in granting Respondent's motion to dismiss citing res judicata (claim preclusion) and collateral estoppel (issue preclusion) where the united states District Court of South Carolina dismissed the previous cases without prejudice, is inconsistent with years of United States Supreme Court and other appellate Court precedents, and therefore erroneously found that Appellant's federal claims were dismissed on the merits in federal court and not because of any correctable pleading deficiency?

V. Did the Court erred in granting Respondent's Quinn and Ormond motion to dismiss when the complaint had stated facts to support the Sections 1983 civil conspiracy claim and that they were state actors, and compounded the error by relying upon, and unpublished opinion with no precedential value?

VI. Did the Court err in dismissing the Complaint with prejudice and without an opportunity to replead or amend, in this post- *Knick* world?

STATEMENT OF THE CASE

On October 26, 2018 Ronald I. Paul filed a Summons and Complaint case number 2018-CP-400-5641 under the civil rights federal statute 42 USC 1983 for declaratory judgment (State claim or action) 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.* (R 31-59)

Paul asserted a civil right cause of action under Section 1983 for declaratory judgment (State claim or action (432 lines 17-25, 433 lines 1-7)) and civil conspiracy under 42 U.S.C. 1983 against all named Respondents'. (R 55-59)

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

On or about November 20, 26, and 27, 2018, all Respondents filed motion to dismiss, under South Carolina Rules of civil procedure, Rule12 (b)(6) and Respondents SCDOT, de Holzcer and Moore filed a motion for summary judgement under Rule 56, SCRCP. (R 60-70, 395 lines 1-6) ***As of today, Respondents have not filed answers to the Appellant's Complaint to this action.*** (R 261-262, 265)

On February 11, 2019, the Respondents motions to dismiss and SCDOT, de Holzcer and Moore motion for summary judgement was scheduled and heard before

The Honorable Doyet A. Early, III. (R 300-328) Judge Early held the Respondents motion in abeyance. (R 325 lines 10-14)

On or about May 2019, time frame, the court ordered mediation deadline date, July 31, 2019, was approaching. Therefore, out of an abundance of caution, Paul insisted on proceeding with mediation in accordance with the ADR Notice which requires mediation to be held. Paul requested that mediation go forward on July 12, 2019. (R 447)

On or about May 17, 2019, based upon Mr. Lindemann representation, attorney for State officials ex parte emailed / communicated with Judge Early using his private email address that he obtained through another lawyer not connected with this case, about Respondents pending motions to dismiss and motion for summary judgment. (R 282)

On July 10, 2019, Mr. Osborne Eugene Powell, the court appointed mediator in this case, filed a Mediation Status update. (R 447)

On July 17, 2019, Mr. Lindemann filed a Notice of Motion and Motion to Defer Mediation pursuant to Rule 5(e). The Honorable Doyet A. Early, III was holding the Respondents motions to dismiss and for summary judgment in abeyance. The motion requested re-scheduling of these motions. In addition, the motion requested that mediation be deferred until such time as the Motions filed by each of the Respondents 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. (R 13-14)

At the hearing held on August 8, 2019, the Honorable Jocelyn Newman, granted the motions, (R 445 lines 4-7) and on August 9, 2019, filed a Form 4 Order. The form 4 order, titled "Judgment in a civil case" indicate that a Formal Order was to follow. (R 15-17)

On November 13, 2019, Judge Newman filed the Formal Order that omitted Summary Judgment that is granted in the form 4 order filed on August 9, 2019. (R 18-27)

On November 25, 2019 Appellant filed a Rule 59(e), SCRCP motion within the ten-day period allowed by the rule that addressed issues raised in the formal order filed on November 13, 2019. (R 280-391)

Judge Newman denied Appellant's Motion to Reconsider filed on November 25, 2019, with a form 4 order filed on November 26, 2019. (R 28-30)

Appellant timely served and filed his Notice of Appeal on December 20, 2019.

On October 26, 2020, Appellant received from the court reporter a copy of the long-awaited transcript for the motion hearing held on August 8, 2019. ***Warning*** the transcript have multiple errors.

STATEMENT OF THE FACTS

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

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STANDARD OF REVIEW

See Cowart v. Poore 337 S.C. 359 (S.C. Ct. App. 1999) The ruling on a Rule 12(b)(6), SCRCP motion to dismiss must be based solely upon the allegations set forth in the complaint. State Bd. of Med. Exam'rs v. Fenwick Hall, Inc., 300 S.C. 274, 387 S.E.2d 458 (1990). On review, the motion will not be sustained if the facts alleged, and the inferences reasonably deducible therefrom, would entitle the plaintiff to relief on any theory of the case. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995); Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987). The question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999); Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999).

Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim. See, e.g. , Charleston Cty. Sch. Dist. v. Harrell , 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) ("In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint."); Brown v. Leverette , 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) ("... solely upon the allegations set forth on the face of the complaint"); see also Bell Atl. Corp. v. Twombly , 550 U.S. 544, 556, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929, 940-41 (2007) ("[A] well-pleaded complaint may proceed even if it

strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.") (internal quotations omitted); Republican Party of N. Carolina v. Martin , 980 F.2d 943, 952 (4th Cir. 1992) ("A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses."). At the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the pleading states a claim. Paul is entitled to litigate the validity of its complaint without having to convince the trial court of the merits of its underlying claim, see Skydive Myrtle Beach, Inc. v. Horry Cnty. 426 S.C. 175 (S.C. 2019) 826 S.E.2d 585 Decided Mar 13, 2019) in the Supreme Court of South Carolina.

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ARGUMENTS

I The Court erred in dismissing the complaint in its entirely and dismissing SCDOT as an improper party that contained a State Law claim ; action for declaratory judgment under South Carolina code section 28-2-10, *et seq and* 28-2-40, Compromise or settlement permit, that included all Respondents SCDOT, Rucker, Gresham, Moore, de Holczer Quinn and Ormond.

The Appellant brought a declaratory judgment action against SCDOT and all the other Respondents seeking, *inter alia*, a declaration. (R 55) On pages 24-25, paragraphs 101-106 Appellant's identify the federal Declaratory Judgment Act, 28 U.S.C. § 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.[1] (R 55-56)

As a basis for the relief sought, the power to issue a declaratory judgment pursuant to those statutes and rule are discretionary, as the declaratory relief sought would —in and of itself—serve a useful purpose in clarifying the parties' legal relations.[2] (R 55, 434 lines 7-25, 435 lines 1-25, 436 lines 1-25)

The declaratory relief sought was—in fact—a State Law claim or action under South Carolina code section 28-2-10, *et seq and* 28-2-40 Compromise or settlement permit; South Carolina code section 15-53-10, *et seq* and Rule 57 of the South Carolina Rules of Civil Procedure.[3] (R 55, 432 lines 17-25, 433 lines 1-7)

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[1] The district court had declined to exercise supplemental jurisdiction over the state law claim, dismissing it without prejudice. (R 432 lines 17-25, 433 lines 1-7, 183)

[2] Even though this action is substantively brought under federal law, namely 42 U.S.C 1983 civil conspiracy, the procedural aspects of the case are governed by the South Carolina Rules of Civil Procedure *See, Norton v. Norfolk Southern Railway Co.*, 350 S.C. 473, 567 S.E.2d 851, 853 (2002) (federal claim brought in state court " is controlled by federal substantive law and state procedural law") Therefore, SCRCP 57, is applicable to this case. This is the same as the language of Federal Rule 57 except that the appropriate State Code references are substituted for the Federal statute.

[3] *Greer v. McFadden* , 295 S.C. 14, 17, 366 S.E.2d 263, 265 (Ct. App. 1988) (holding even if a pro se claim is not framed with expert precision, where the point is clear, the issue should be addressed)

THE COURT: Why did you choose to do that?

(R 432 line 17)

> MR. PAUL: Your Honor, when I was filing in Federal Court, Judge Curry had -- wouldn't take concurrent jurisdiction and it's in one of her orders. She refused to take concurrent jurisdiction over the settlement agreement. She called it a "contract-based claim," that, you know, from my understanding, that you need -- to settle that in State Court. I'm not -- I'm not going to deal with the settlement agreement. You need to deal with that in State Court; but she didn't say them [sic] exact words, but she put it in her order say that it's a contract State based claim and she refused to take concurrent jurisdiction.
>
> She -- she didn't use them [sic] exact words, but basically, that's what she said. And that's why I'm here in the State Court.

(R 432 lines 18-25, 433 lines 1-7)

Therefore, in case 4800 (2002-CP-400-4800 Eminent Domain case hereinafter referred to as "case 4800"). On or about February - March 23, 2004 Quinn, Buckles, SCDOT, Rucker, Gresham, Moore and de Holczer agreed to a settlement between them. (R 266, 305 lines 13-15)

In that all Respondents, including Ormond took a position claiming and declaring case 4800 had settled for just compensation. This was an intentionally false statement, because all Respondents knew without Paul's consent or approval, as a matter of law, Respondents could not settle the case for just compensation. (R 55-59, 434 lines 7-25, 435 lines 1-25, 436 lines 1-25)

Now, as set forth above, there exists an actual controversy between Appellant and Respondents as to whether the settlement agreement in case 4800 between SCDOT and the Buckles applied equally to Paul, as just compensation. (R 55, 305)

Therefore, Appellant seek declaratory relief and a judicial determination pursuant to: (R 55-56, 305 lines 13-21)

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, South Carolina code section 15-53-10, *et seq* and Rule 57 of the South Carolina Rules of Civil Procedure:

(a) That Respondents 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 Respondents 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 Respondents 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 Respondents 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).

"In South Carolina jurisprudence, settlement agreements are viewed as contracts." Harris-Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct.App. 2001);Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)

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,* (R 248-249) and the resultant financial damages approximating $310,000.00. (R 56-57)

The Court concluded 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. Thus, the Defendant SCDOT is dismissed on this additional basis". (R 25) However, count one for declaratory judgment, is a State Law claim or action that includes SCDOT to resolve an actual controversy. (R 55, 434 line 7- p 436 line 25) See McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985)

Lastly, in count one, Respondents statute of limitations argument is without merit, as "statutes of limitations are not controlling measures of equitable relief." Holmberg v. Armbrecht, 327 U.S. 392, 396, 66 S.Ct. 582, 584, 90 L.Ed. 743 (1946) In count one, equitable relief is all that Appellant has sought. (R 55 #105 (a) (b), 56 (c) (d)

As of today, Respondents have not filed answers to the Appellant's Complaint to this action. (R 261-262, 265)

II. The Court erred in ruling that, as a matter of law, that the applicable statute of limitations is three years and dismissing the complaint with prejudice.

Sealed Instrument

On August 8, 2019, Appellant argued in his motion and before the Court that the applicable statute of limitations is twenty years. S.C. Code Ann. § 15-3-520(b), which provides for a twenty-year statute of limitations for an action upon a sealed instrument. (R 205) When questioned by the Court:

> THE COURT: if Federal law determines it, then why'd you just tell me about South Carolina Code 15-5-520 because that's a State law. So, if your argument is that the Federal law is what determines the statute of limitations, why is 15-5-520 important at all?
>
> (R 422 lines 9-13)

> MR. PAUL: Well, State law -- Federal law bar(borrow) the State law statute of limitation.
>
> (R 422 lines 14-17)

Appellant argued a section 1983 action borrow the State law statute of limitation for personal injury actions. Under South Carolina law, the statute of limitations for a personal injury claim is three years. *See*, S.C. Code Ann. § 15-3-530(5) "an action for assault, battery, or any injury to the person or rights of another, ***not arising on contract*** and not enumerated by law, and those provided for in Section 15-3-545))".

In this matter, the particular facts of the case would lead to an expansion of Paul's rights, not diminution. Because Paul commercial lease, a sealed instrument ***"arising on contract"*** was a required part of the eminent

domain transaction in case 4800 selling, buying, and transferring property. The Court overlooked the language of section 15-3-530 (5) that expanded the statute, that S.C. Code section 15-3-530 (1) and 15-3-520(b) applies within, and therefore is an arm of S.C. Code section 15-3-530 (5).

> 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).")

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

On or about October 28, 2003, the state official terminated Paul's commercial lease a sealed instrument, without payment of just compensation to Paul, *in other words to be clearly, zero $0.00. dollars and cents.* (R 39, 248-249)

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). In this case, the order applies the wrong statute.

III. The Court erred in dismissing case number 2018-CP-400-5641 as a new limitations period is created with each overt act in furtherance of the conspiracy, and the statute of limitations begins to run on the date of the last overt act.

Appellant argued, the statute of limitations for conspiracy "runs from the last overt act during the existence of the conspiracy." Fiswick v. United States, 329 U.S. 211, 216 (1946) (citing Brown v. Elliott, 225 U.S. 392, 401 (1912)

It is unclear when the Court determined the statute of limitation began to run but ruled "all claims arising prior to October 26, 2015[4] are time-barred". (R 21)

Therefore, appellant argued, 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)

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4 Appellant had argued under *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 176 (1985). The United States Supreme Court held that a property owner's takings claim is not ripe for consideration in federal court until the property owner has pursued any available state court remedies that might lead to just compensation. 473 U.S. at 194. *Williamson County* required a federal court plaintiffs to pursue any available state court remedies that might lead to just compensation before bringing suit in federal court under section 1983 for claims arising under the Fourteenth and Fifth Amendments for the taking of property without just compensation. *Fields v. Sarasota Manatee Airport Auth.*, 953 F.2d 1299, 1303 (11th Cir. 1992); *Williamson County*, 473 U.S. at 196-97. (R 425 lines 24-25, 426 lines 1-20, 441 lines 6-13)

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).

An overt act is an independent act that comes after the agreement or conspiracy and is performed to affect the objective of the conspiracy. The overt act "within itself" is not a cause of action under 1983 conspiracy claim; its sole function is to demonstrate that the conspiracy is operative and or continuing.

Appellant argued 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,[5] therefore, according to the four corners of the Complaint, on page 18 (R 49) the statute of limitations in this civil conspiracy case under 42 U.S.C. 1983 started to run / accrual on April 20, 2016, ***Respondents have not filed answers.*** (R 261-262, 265)

Appellant argued overt acts after October 26, 2015: According to the four corners of the Complaint on page 18 the civil conspiracy continues to the day

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[5] 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.

through cover-ups, defenses and tactics, ***Respondents have not filed answers.*** ((one example: is on April 16, 2019, *see* (Plaintiff is 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)). (R 255-279, 424)

IV. The court erred in granting Respondent's motion to dismiss citing res judicata (claim preclusion) and collateral estoppel (issue preclusion) where the United States District Court of South Carolina dismissed the previous cases without prejudice, is inconsistent with years of United States Supreme Court and other appellate Court precedents, and therefore erroneously found that Appellant's federal claims were dismissed on the merits in federal court and not because of any correctable pleading deficiency.

After, pursuing and exhausting all available State court remedies. On April 17, 2012, Appellant Filed a 42 U.S.C. 1983 civil rights lawsuit in the U.S. District Court of Columbia South Carolina against the same Respondents. (218 ECF # 1) *Williamson County* required a federal court plaintiffs to pursue any available state court remedies that might lead to just compensation before bringing suit in federal court under section 1983 for claims arising under the Fourteenth and Fifth Amendments for the taking of property without just compensation.

The Summons were issued on May 15, 2012 by the district court and served on all Respondents on or about May 25, 2012. (R 218-219)

On or about June 10, 2012, all Respondents filed motions to dismiss and the state officials also filed an answer. (R 219-221)

The 42 U.S.C. 1983 civil rights lawsuits were dismissed without prejudice. (R 232-242) **RESPONDENTS FILE NO APPEAL.** (R 427-428) Now, in this case

Respondents attempt to rely upon the defenses of res judicata, collateral estoppels, issue preclusion, claim preclusion. Notwithstanding, that when the district Court issued its Order dismissing Appellant Complaint without prejudice, **Respondents failed to file an appeal.** (R 427-428) *See* Semtek International Inc. v. Lockheed Martin Corp., 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 v. OpenBand at Lansdowne, LLC 713 F.3d 187 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); citing Cooter Gell v. Hartmarx Corp., 496 U.S. 384, 396 (1990) ("`[D]ismissal . . . without prejudice' is a dismissal that does not `operat[e] as an adjudication upon the merits,' and thus does not have a res judicata effect.") 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.

Black's Law Dictionary (7th ed. 1999) defines "dismissed without prejudice" as "removed from the court's docket in such a way that the plaintiff may refile the same suit on the same claim," . . . and defines "dismissal without prejudice" as "[a] dismissal that does not bar the plaintiff from refiling the lawsuit,"..... . .

Lastly, it is "well settled law" that when a case is dismissed but the Appellant 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 Appellant from bringing a new lawsuit on the same claim. Dismissal without prejudice is based upon procedural errors.

All Respondents are arguing against years of United States Supreme Court and other Appellate Court precedents.

V. The court erred in granting Respondent's Quinn and Ormond motion to dismiss when the complaint had stated facts to support the sections 1983 civil conspiracy claim and that they were state actors, and compounded the error by relying upon an unpublished opinion with no precedential value.

The court erroneously found that the unpublished opinion of *Marcantoni v. Bealefeld,* 734 Fed. Appx. 198, 199 (4th Cir. 2018) that held "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* was a 42 U.S.C 1983 complaint against Frederick H. Bealefeld, III, Commissioner of the Baltimore Police Department and Gregg L. Bernstein, State's Attorney for Baltimore City. The district court dismissed *Marcantoni's* complaint without prejudice based on *Heck v. Humphrey, 512 U.S. 477 (1994).* The *Marcantoni's* case is clearly distinguishable from Paul's case. Moreover, because this case is an unpublished opinion, it has no precedential value, pursuant to Rule 220(a) SCACR. Even though this action is substantively brought under federal law, namely 42 U.S.C 1983 civil conspiracy, the procedural aspects of the case are governed by the South Carolina Appellate Court Rules *See, Norton v.*

Norfolk Southern Railway Co., 350 S.C. 473, 567 S.E.2d 851, 853 (2002) (federal claim brought in state court " is controlled by federal substantive law and state procedural law") Therefore, SCACR 220(a), is applicable to this case.

In this case, however, according to the Complaint, on pages 25,26 paragraphs 108-110, the Respondents have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment rights of the United States Constitution:[6]

(R 56-57)

(a) in that the Respondents 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 Respondents, including Ormond took a position claiming and declaring case 4800 had settled for just compensation. This was an intentionally false statement, because all Respondents knew without Paul's consent or approval, as a matter of law, Respondents could not settle the case for just compensation,

(b)in furtherance of the conspiracy the Respondent 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 Respondent Michael H. Quinn threaten Paul's expert witnesses with criminal prosecution and threaten to have his expert witnesses arrested, if they testified. (additional evidence (R 244-245))

Because of the foregoing Paul has suffered a denial of its Constitutional rights, the inability to set forth all his evidence, before a jury, as otherwise allowed in accordance with the State and Federal Constitutionally established and protected

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[6] 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 v. Blankenship 931 So. 2d137 at 140 (Fla. Dist.Ct. App. 2006) (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).

safeguards designed to prevent just such occurrences and, the resultant financial damages approximating $310,000.00. (R 56-57, 248-249)

Further, because of the foregoing actions the Respondents 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. (R 56-57, 248-249)

Next, according to the Complaint, on page 3 paragraph 6 this action is brought pursuant to 42 U.S.C. Sections 1983 for the Respondents Quinn and Ormond violating Appellant's rights while acting under color of state law; and on page 5 paragraph 17 Respondent Quinn is sued as a State Actor and individually; and on page 5 paragraph 19 Respondent Ormond is sued as a State Actor and individually. (R 34-36) A private person, including an attorney, acts "under color of state law when engaged in a conspiracy with state officials to deprive another of his federal rights. See Tower v. Glover, 467 U.S. 914, 920 (1984), citing Dennis v. Sparks, 449 U.S. 24, 27-28 (1980)

In addition, according to the Complaint, on pages 25,26 in paragraphs 108-110 (R 56-57) Respondents have conspired to deprive Paul of his Fifth Amendment and Fourteenth Amendment rights of the United States Constitution, Respondents Quinn and 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).

Also, 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.."*; (R 176)

Lastly, 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..."*.[7] (R 177, 428 lines 9-25, 429 lines 1-25, 430 lines 1-16)

[7] 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).

The Court erred, in ruling and concluding that Respondents Quinn, Ormond, and their law firms are not proper parties and dismissing them from the case, that should be reversed.

VI. The Court erred in dismissing the Complaint with prejudice and without an opportunity to replead or amend, in this post-*Knick* world.

While this case was pending in the lower circuit Court, on June 21, 2019 the United States Supreme Court's decided *Knick v. Township of Scott*, 139 S. Ct. 2162 (2119),that overruled, in part, *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) 34-year old precedent that established a federal claim was not ripe until a state takings plaintiff exhausted its remedies under state law.[8]

In South Carolina, "[t]he general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively." Carolina Chloride, Inc. v. S.C. Dep't of Transp., 391 S.C. 429, 433, 706 S.E.2d 501, 503 (2011) (citation omitted). See Carolina Chloride, Inc., 391 S.C. at 433-34, 706 S.E.2d at 503 (finding judicial decision should be applied retroactively when it created no new right or cause of action; rather, it abandoned former test and restated the focus for what a landowner must prove to entitle him

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

to damages in an inverse condemnation action. "Prospective application is required when liability is created where formerly none existed." Id. at 433–34, 706 S.E.2d at 503. "As a common rule, judicial decisions in civil cases are presumptively retroactive." Miranda C. v. Nissan Motor Co., 402 S.C. 577, 586, 741 S.E.2d 34, 39 (Ct.App.2013); Lucero v. State 777 S.E.2d 409 (S.C. Ct. App. 2015) As a common rule, judicial decisions in civil cases are presumptively retroactive; *See Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 95-96, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993) (discussing the "presumptively retroactive effect" of civil decisions); *see also* 20 Am.Jur.2d *Courts* § 150 (2013) ("[I]t is said that, unlike legislation, which is presumptively prospective in operation, judicial decisions are presumptively retrospective.").

In this instant case ***Knick*** applied retroactively, therefore, the statute of limitations contained in S.C. Code section 15-3-530 (5), 15-3-530 (1) and 15-3-520(b) begins from the day the United States Supreme Court issued the opinion, June 21, 2019.

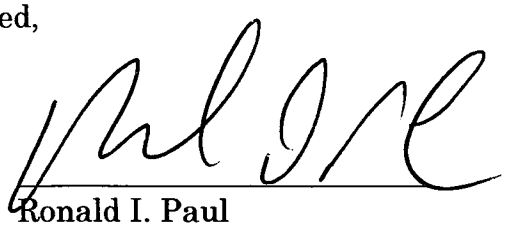
In this post- *Knick* world, the court erred in dismissing Appellant Complaint with prejudice and without an opportunity to replead or amend.

Lastly, the circuit court erred in effectively preventing Appellant from litigating a post-ruling motion to amend by immediately dismissing the claims "with prejudice." Skydive Myrtle Beach, Inc. v. Horry Cnty. 426 S.C. 175 (S.C. 2019) • 826 S.E.2d 585 (Decided Mar 13, 2019). (R 25)

CONCLUSION

For these reasons stated, this court should reverse the judgments / orders of the circuit court; reversal and remand for further proceedings are warranted.

Respectfully submitted,



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January 19, 2021

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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 Brief and Final Reply Brief complies with Rule 211 (b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned *Pro Se* Appellant certifies that the Final Brief of Appellant and the Final Reply Brief of Appellant 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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