

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ROOSEVELT SIMMONS,

Plaintiff,

v.

MASE AND COMPANY, LLC, J. AL
CANNON, JR., CHARLESTON COUNTY
SHERIFF'S OFFICE, CHARLESTON
COUNTY, CHARLESTON COUNTY
REVENUE COLLECTIONS
DEPARTMENT, and HARRY LONG,

Defendants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: ~~2012~~-CP-10-1084

2011

**DEFENDANTS J. AL CANNON, JR.,
CHARLESTON COUNTY SHERIFF'S
OFFICE, CHARLESTON COUNTY,
CHARLESTON COUNTY REVENUE
COLLECTIONS DEPARTMENT, and
HARRY LONG'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Defendants, J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S OFFICE, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE COLLECTIONS DEPARTMENT, and HARRY LONG ("Defendants") file this Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment. Plaintiff's main contention in his motion is that the Magistrates' Court lacked subject matter jurisdiction over a suit to collect user fees and therefore, any judgment from the court and any subsequent sheriff's sale based on the judgment are void. In addition to the below arguments, Defendants incorporate by reference their Memorandum in Support of Defendants' Motion for Summary Judgment previously filed with this Court.

ARGUMENT

- I. **The Circuit Court does not have subject matter jurisdiction to overturn a Magistrates Court judgment that is more than ten years old.**

Plaintiff can cite no case law nor precedent that directly supports his contention that a Circuit

Court can overturn the subject matter jurisdiction of a Magistrates Court more than ten years after a judgment has been rendered. Plaintiff cites several cases that hold that “issues related to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by this court on our own motion.” Bunkum v. Manor Properties, 321 S.C. 95, 100, 467 S.E.2d 758, 761 (Ct.App.1996). However, all of the cases cited by Plaintiff in support of this contention dealt with direct appeals of matters to the appellate courts or have facts that are not applicable to the present case. Id. (Direct appeal from denial of temporary restraining order); State v. Funderbuck, 259 S.C. 256, 191 S.E.2d 520 (1972) (Direct appeal from criminal conviction); Amisub of SC, Inc. V. Passmore, 316 S.C. 112, 447 S.E.2d 207 (1994) (Direct appeal from Family Court order); State v. Richburg, 304 S.C. 162, 403 S.E.2d 315 (1991) (Direct appeal from criminal conviction); Toomer v. Toomer, 244 S.C. 399, 137 S.E.2d 406 (1964) (Direct appeal from ruling of South Carolina Wildlife Resources Commission); Lake v. Reeder Construction, 330 S.C. 242, 498 S.E.2d 650 (Ct.App.1998); Ross v. Richland County, 270 S.C. 100, 240 S.E.2d 649 (1978) (Direct appeal from a county court order transferring venue to Circuit Court); State v. Castleman, 219 S.C. 136, 64 S.E.2d 250 (1951) (Direct appeal of criminal conviction); State v. Adams, 73 S.C. 435 (1906) (Direct appeal of Order granting Motion for New Trial); Rock Hill Body Co. V. Rainey, 294 S.C. 426, 365 S.E.2d 228 (Ct.App.1987) (Direct appeal of Magistrate’s Order to sell property); Johnson v. State, 319 S.C. 62, 459 S.E.2d 840 (1995) (Conviction overturned on appeal of denial of post-conviction relief); Eichor v. Eichor, 290 S.C. 484, 351 S.E.2d 353 (Ct.App.1986) (Direct appeal of family court order); Brown v. Greenwood School Dist. 50 Bd. Of Trustees, 344 S.C. 522, 544 S.E.2d 642 (Ct.App.2001) (Direct appeal of denial of jury trial); Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (Ct.App.1998) (Direct appeal from Circuit Court judgment).

Plaintiff claims that the above cited case law supports the proposition that “the law is clear

that the lack of subject matter jurisdiction can be a basis for vacating an earlier judgment.” (Plaintiff’s Motion for Partial Summary Judgment at p. 10). In a sense, Plaintiff is correct. Subject matter jurisdiction can be raised by the parties or the courts at the pleading stage, trial stage, or during any appeal, which is what the above cited cases stand for. However, Plaintiff wants this Court to go against precedent and find that Plaintiff can raise the issue of subject matter jurisdiction of a Magistrates Court at any time whatsoever, even ten or twenty years after a judgment has been rendered. One of the cases cited by Plaintiff contradicts this and instead shows the proper way to contest subject matter jurisdiction of a Magistrate Court is through a direct appeal of the judgment.

In Rock Hill Body, the Plaintiff, a body shop, asked the Magistrates Court to sell a truck owned by one of the defendants in order to satisfy a garagemen’s lien. Rock Hill Body, 294 S.C. at 427. The Magistrate Judge ordered the sale of the truck and the owner directly appealed to the Circuit Court, which upheld the judgment, and then to the Court of Appeals. Id. The Court of Appeals ultimately held that the Magistrates Court lacked subject matter jurisdiction based solely on the fact that the lien in question was over the jurisdictional limit. Id. at 429-430.

In our current case, Plaintiff is not making a direct appeal of the 2000 Magistrates Court judgment, and in fact, he never directly appealed the Magistrates Court judgment. Instead, Plaintiff is in effect appealing a 2000 judgment more than 10 years after the judgment was entered by filing the subject lawsuit. This is improper and this court does not have subject matter jurisdiction to hear the case. This contention is, in fact, supported by cases cited by Plaintiff in his Partial Summary Judgment Motion.

In State v. Gorie, 256 S.C. 539, 183 S.E.2d 334 (1971), the defendant was convicted of manslaughter by a jury. Id. at 540. Defendant did not make any post-trial motions and did not appeal the verdict. Id. Instead, defense counsel filed post-trial motions more than 14 months after

the trial ended. Id. at 541. The trial judge denied the motion, and defendant appealed. Id. The South Carolina Supreme Court held that, due to the untimely motion, the trial judge lacked subject matter jurisdiction to hear the motion. Id.

In Ness v. Eckerd Corp., 350 S.C. 399, 566 S.E.2d 193 (Ct.App.2002), an entry of default was entered against defendant, and the trial judge denied defendant's motion to set aside the entry. Id. at 401-402. However, more than one month after denying defendant's motion, the trial judge discovered a potential conflict, recused himself from the case, and vacated his prior ruling pursuant to Rule 59(e). Id. at 402-403. On appeal, the Court of Appeals held that the trial judge could not vacate his own order more than ten days after it was issued. Id. Based on this, the trial judge "lacked jurisdiction to vacate the original order." Id.

Based on Gorie and Ness, this court does not have subject matter jurisdiction to hear this case. In Gorie, the Supreme Court held that a trial judge did not have jurisdiction to hear post-trial motions in a case he presided over due to the defendants untimely post-trial motions. In Ness, the Court of Appeals held that a trial judge lacked subject matter jurisdiction to vacate his own order due to the untimeliness of his attempt to do so. In our current case, Plaintiff is asking the Circuit Court (an entirely different court) to overrule a decision made by a Magistrates Court, not a month after the judgment, not fourteen months after the judgment, but more than ten years after the judgment. This is improper pursuant to South Carolina precedent, and therefore, this court does not have subject matter jurisdiction to overturn a ten year old Magistrate Court judgment.

II. The Circuit Court does not have jurisdiction to overturn any judgments against Plaintiff from the Charleston County Magistrates Court because Plaintiff has never filed any post-trial motions nor has he filed an appeal of the Magistrates Court judgments against him.

Plaintiff cannot collaterally attack Magistrates Court judgments in Circuit Court because

Plaintiff failed to file any post-trial motions or appeals after notice of the judgments. Plaintiff is asking the Circuit Court to overturn multiple judgments from the Charleston County Magistrates Court. Plaintiff seeks to do this not through an appeal of the Magistrates Court judgments, but rather through a collateral lawsuit filed more than ten years after some of the judgments were rendered. This is improper under South Carolina statute, court rules and case law.

South Carolina Code Ann. § 22-3-1000 provides the time for post-trial motions and appeals from civil and criminal judgments in Magistrates Courts.

No motion for a new trial may be heard unless made within five days from the rendering of the judgment. The right of appeal from the judgment exists for thirty days after the rendering of the judgment.

The South Carolina Magistrates Court Rules conform to the statute. Magistrates Court Rule 19 states that:

The motion for a new trial shall be made in writing and filed with the court no later than five (5) days after notice of the judgment. The court shall notify all opposing parties that the motion has been filed and shall provide those parties a copy of the motion in a manner provided for in Rule 8.

Rule 19(b), SCRMC. Rule 18 of the SCRMC governs appeals from Magistrates Courts:

All appeals of judgments rendered by the magistrates court shall be to the circuit court of the county where the judgment was rendered. Within thirty (30) days after delivery of written notice of judgment to the parties or their attorneys, a party wishing to appeal shall serve on the respondent and file a notice of appeal containing a statement of the grounds for appeal with the magistrate rendering the judgment and with the Circuit Court of the County where the judgment was rendered.

Rule 18(a), SCRMC.

In Town of Hilton Head Island v. Godwin, 370 S.C. 221, 634 S.E.2d 59 (Ct.App.2006), the South Carolina Court of Appeals addressed the necessity to file timely post-trial motions once notice

of a judgment is received. In this case, Godwin was issued a ticket for criminal domestic violence (“CDV”) in July 1995. Id. at 222. Godwin failed to appear for a trial on the CDV charges that was set for August 8, 1995, and in his absence, he was convicted and the court ordered him to pay a fine of \$304. Id. On September 29, 1995, Godwin was arrested for three outstanding warrants, one being the CDV charge. Id. Either Godwin or someone on his behalf paid the \$304 fine on September 29, 1995, in order to have Godwin released from jail. Id.

Approximately eight years later, on August 11, 2003, Godwin applied for a gun permit; however, he was denied the permit due to the CDV conviction. Id. at 223. Instead of filing any motions with the Municipal Court or an appeal with the Circuit Court, Godwin waited seven months to send a letter to the Municipal Court, which was “treated as a motion to set aside the conviction and/or a motion for a new trial.” Id. The municipal court denied the motion and Godwin appealed to the Circuit Court. Id. Godwin argued to the Circuit Court that due to clerical errors or mistakes made by the Municipal Court, he did not receive notice until August 11, 2003. The Circuit Court ordered a new trial. Id.

The Court of Appeals vacated the Circuit Court judgment and held that the Circuit Court lacked jurisdiction to hear Godwin’s motion. Id. at 224. The basis for this holding was that Godwin did not file a timely post-trial motion or appeal once he received notice of the conviction. Id. The Court held that “[a] party who fails to timely appeal or take any other timely action necessary to correct an error is procedurally barred from contesting the validity of the conviction.” Id. Importantly, the court held that while there was evidence to support the fact that Godwin had received notice of the conviction in 1995 when he paid the \$304 fine, there was certainty that he had notice of the conviction on August 11, 2003. Id. at 225. Because Godwin waited 7 months to take any action on the conviction, the Circuit Court was without jurisdiction to overturn Godwin’s

conviction. Id.

In Godwin, the Court of Appeals relied on Brewer v. South Carolina Highway Department, 261 S.C.52, 198 S.E.2d 256 (1973). In that case, Brewer filed a motion to enjoin the South Carolina Highway Department (“SCHD”) from suspending his driver’s license and reinstating his driving privileges. Id. at 55. The underlying facts of the case are that Brewer was arrested for driving under the influence, and neither he nor his attorney received notice of the trial set before a magistrate judge on September 25, 1972. Id. at 54-55. Brewer was convicted in his absence and did not receive notice of the conviction until October 18, 1972. Id. Brewer’s attorney filed a motion for a new trial the following day, October 19, 1972. Id.

The SCHD took the position that the motion was not timely as it was not filed within five days of the conviction. Id. at 55. However, the Court held that Brewer timely filed his motion as he filed it one day after he had notice of the conviction. Id. at 55-56. The Court also held that the “time to appeal from a judgment in a magistrate’s court or move for a new trial therein does not begin until he has notice of the judgment against him.” Id. at 56. The Brewer Court cited the case of O’Rourke v. Atlantic Paint Co. 74 S.E. 930, 932 (1912), which held that “the only remedy of a party against whom a judgment is rendered is either to appeal, or make a motion for a new trial, and appeal in case such motion is refused.”

In our current case, Plaintiff has never filed any motions or appeals of the Magistrates Court judgments once he had notice of the same. Therefore, he is procedurally barred from challenging those judgments. Plaintiff is challenging Magistrates Court judgments from the years 2000-2009. He claims that the Magistrates Court lacked jurisdiction to hear cases involving non-payment of user fees and therefore, the Magistrates Court judgments are without affect. As the Supreme Court held

in O'Rourke, Plaintiff's proper remedy for challenging a judgment in Magistrate Court is to make a motion for a new trial or to appeal. Id. If a party does not make a timely motion or appeal, once he has received notice of the Magistrate Court judgment, he is procedurally barred from challenging that judgment. Town of Hilton Head Island, 370 S.C. at 224; Brewer, 261 S.C.56.

Plaintiff has neither timely appealed nor filed a motion for a new trial regarding any of the judgments he is now challenging. Plaintiff claims that he was never served with any of the Magistrates Court lawsuits nor any of the judgments against him. While Defendants strongly dispute this allegation, for purposes of this summary judgment motion and taking facts in a light most favorable to the non-moving party, Plaintiff was certainly on notice of these judgments when he filed the current lawsuit contesting the judgments. This lawsuit was originally filed on February 11, 2011. When Plaintiff became aware of these judgments, he should have filed a motion for a new trial or an appeal of the judgments as required by South Carolina statute and the South Carolina Magistrates Court rules. Instead, he filed a civil lawsuit against defendants seeking monetary damages and declaratory relief among other elements of relief. Because Plaintiff did not timely file a motion for a new trial nor an appeal of the judgments, this court in our current lawsuit is without jurisdiction to overturn those judgments. Town of Hilton Head Island, 370 S.C. at 225.

III. Pursuant to the South Carolina Code of Laws, Magistrates' Courts have subject matter jurisdiction to hear cases involving user fees imposed by county ordinances.

If this Court finds that it does have jurisdiction to hear Plaintiff's claims, Defendants submit that the Charleston County Magistrates' Court had subject matter jurisdiction to enter judgments against Plaintiff for non-payment of User Fees. This is outlined in our South Carolina Code of Laws:

SECTION 4-9-30. Designation of powers under each alternative form of government except board of commissioners form.

Under each of the alternate forms of government listed in Section 4-9-20, except the board of commissioners form provided for in Article 11, each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: ...

(14) to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts. **Alleged violations of such ordinances shall be heard and disposed of in courts created by the general law including the magistrates' courts of the county.** County officials are further empowered to seek and obtain compliance with ordinances and regulations issued pursuant thereto through injunctive relief in courts of competent jurisdiction. No ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law, except as specifically authorized by such general law;

S.C. Code § 4-9-30 (emphasis added). One of the enumerated powers granted to county government is the assessment of “uniform service charges” for “sanitation, including solid waste collection and disposal.” S.C. Code § 4-9-30(5)(a). This is precisely what is covered in the Ordinance that mandates a User Fee. Therefore, based on S.C. Code § 4-9-30, non-payment of a User Fee (i.e. violation of the Ordinance) may be heard in “magistrates’ courts of the county.” This statute provides subject matter jurisdiction in Magistrates Courts, which means that the judgments entered against Plaintiff were valid and enforceable.

Plaintiff claims that S.C. Code Ann. § 22-3-10 does not specifically give jurisdiction over user fee judgments to the Magistrates Court are without merit. Plaintiff cites only one case that discusses the application of this code section. See Rock Hill Body, 294 S.C. 426, 365 S.E.2d 228 (Ct.App.1987). In that case, a Magistrate Judge ordered the sale of a truck to satisfy a lien pursuant to S.C. Code Ann. §29-15-10. At the time this case was decided, the jurisdictional amount in

Magistrates Court was limited to \$1000 pursuant to S.C. Code Ann. § 22-3-10. The Court of Appeals held that since the amount of the lien was over the jurisdictional limit, the Magistrates Court lacked subject matter jurisdiction.

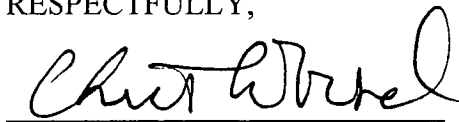
Importantly, though, is the Court of Appeals' analysis of the two statutes together. The court held that "[a] construction of Sections 29-15-10 and 22-3-10 leads to the conclusion that a magistrate has jurisdiction to determine a dispute as to the amount of the lien under Section 29-15-10 only if the amount involved does not exceed one thousand dollars." Id. at 429. The court does not cite to a specific section of S.C. Code § 22-3-10, but rather refers to it generally. In fact, no specific section in S.C. Code § 22-3-10 covers liens in Magistrates Courts. Regardless, the Court based its holding on the general monetary jurisdiction limit combined with S.C. Code § 29-15-10. Id.

In our current case, a construction of S.C. Code § 4-9-30 and S.C. Code § 22-3-10 together leads to the conclusion that the Magistrates Court had jurisdiction over judgments related to User Fees. S.C. Code § 4-9-30 provides that a violation of an ordinance can be heard and disposed of in Magistrates Courts. Non-payment of a User Fee is a violation of the Ordinance that established the User Fee. At the time all of the judgments were rendered against Plaintiff in Magistrates Court, the judgments were within the jurisdictional limit of Magistrates Court pursuant to S.C. Code § 22-3-10. Therefore, based on the Court of Appeals holding in Rock Hill Body, a construction of the two code sections together leads to the conclusion that the Magistrates Court had jurisdiction to hear cases involving non-payment of User Fees, so long as the amount in question was within the jurisdictional limit of the Magistrates Court. Id. at 429. Because all of the judgments in question were under the jurisdictional limit, the Magistrates Court had subject matter jurisdiction to hear them.

CONCLUSION

For all the reasons stated herein along with all the reasons set forth in Defendants' Memorandum and Supplemental Memorandum in Support of Defendants' Motion for Summary Judgment, Defendants respectfully request that this Honorable Court deny Plaintiff's Motion for Partial Summary Judgment.

RESPECTFULLY,



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August 14, 2012

Charleston, South Carolina


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August 14, 2012

The Honorable Julie J. Armstrong
Clerk of Court, Charleston
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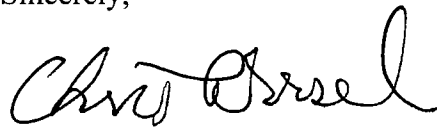
RE: Roosevelt Simmons v. Mase and Company, LLC, Et al
Case No.: 2011-CP-10-1084

Dear Julie:

Enclosed for filing, please find Defendants' Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment and Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend the Second Amended Complaint in the above referenced case. If you would, please clock-in the original and additional copies and return the copies to me in the envelope provided for your convenience. Opposing counsel is being served via this correspondence.

With kind regards, I am,

Sincerely,



Christopher T. Dorsel

CTD/lem
Enclosure

cc: Edward A. Bertele, Esquire (*via email*)
Wendy Keefer, Esquire (*via email*)