

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

MASE and COMPANY, LLC, J. AL
CANNON, JR., SHERIFF OF
CHARLESTON COUNTY and
CHARLESTON COUNTY,

Defendants.

CIVIL ACTION NO.: 2:11-cv-00709-RMG

2011-CP-10-1084

ANSWER ON BEHALF OF
DEFENDANTS' J. AL CANNON, JR.,
SHERIFF OF CHARLESTON COUNTY
AND CHARLESTON COUNTY

(Jury Trial Demanded)

FILED
2012 JUL 11 PM 4:17
JULIE J. ARMSTRONG
CLERK OF COURT

Come now the defendants, J. Al Cannon, Jr., Sheriff of Charleston County, and Charleston County, and hereby answer the plaintiff's Amended Complaint to wit:

FOR A FIRST DEFENSE
(Qualified General Denial)

All specifically not admitted herein should be deemed denied.

1. Lack sufficient information to admit or deny and therefore denies.
2. Plead conclusions of law which the answering defendants can neither admit nor deny.
3. Lack sufficient information to admit or deny and therefore denies.
4. Deny that he was not required to pay a user fee; lack sufficient information regarding the remainder of the paragraph.
5. Deny
6. Deny that user fees were waived; admit that the County proceeded with its legal remedies against the plaintiff.

7. Plead conclusions of law which the answering defendants can neither admit nor deny.
8. Is a statement of law that does not require a response.
9. Admit.
10. Deny.
11. Deny.
12. Deny.
13. Requires no response.
14. Deny
15. Deny.
16. Deny.
17. Deny.
18. Deny.
19. Requires no response.
20. Admit that tax bills were issued against TMA 024 and TMS 032.
21. Lack sufficient information to admit or deny and therefore denies.
22. Deny.
23. Deny.
24. Deny that TMS 032 was not subject to user fees; lack sufficient information regarding the trash collection for this address and therefore deny.
25. Deny.
26. Deny.
27. Deny.

- 28. Deny.
- 29. Requires no response.
- 30. Deny.
- 31. Deny.
- 32. Deny.
- 33. Deny.
- 34. Deny.
- 35. Deny.
- 36. Deny.
- 37. Deny.
- 38. Deny.
- 39. Deny.
- 40. Deny.

FOR A SECOND DEFENSE
(Impossibility)

41. The plaintiff has pled a cause of action for Civil Conspiracy which is impossible, as legally, entities cannot participate in a conspiracy, only persons are able to do so. Therefore, this cause of action should be dismissed.

FOR A THIRD DEFENSE

(Rules 8 and 12)

42. Plaintiff has failed to state a cause of action for which relief can be granted. Further, this Complaint should be dismissed for all applicable reasons in accordance with Rule 12 and Rule 8 of the Federal Rules of Civil Procedure.

FOR A FOURTH DEFENSE

(No Constitutional Violation)

43. The alleged actions/inactions claimed by the plaintiff did not rise to the level of a constitutional violation and the plaintiff did not suffer any infringement of constitutional and/or federal rights, privileges or immunities.

FOR A FIFTH DEFENSE

(Comparative Negligence/Sole Negligence)

44. Any injuries or damages sustained by the plaintiff, all of which are expressly denied, are due to and caused by the plaintiff's own negligent, gross negligent, reckless, wanton, and illegal behavior.

FOR A SIXTH DEFENSE

(Waiver, *Estoppel*, Laches, Acquiescence, Stale Demand, Statute of Limitations, Service of Process and Proximate Cause)

45. Plaintiff's claims are barred, in whole or in part, by the doctrines of *estoppel*, laches, waiver, acquiescence, stale demand, statute of limitations, service of process and/or the acts of the answering defendants were not the proximate cause of the damages.

FOR A SEVENTH DEFENSE
(South Carolina Frivolous Civil Proceedings Sanctions Act)

46. Under the South Carolina Frivolous Civil Proceedings Sanctions Act, Sections 15-36-10 et seq of the South Carolina Code of Laws, these defendants are entitled to recover their attorney's fees and court costs incurred in litigating this matter.

FOR AN EIGHTH DEFENSE
(Sovereign Immunity - Tort Claims Act)

47. As to any alleged violation of common law or state law, the answering defendants assert the protections and provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et seq, pertinent portions thereto.

FOR A NINTH DEFENSE
(Failure to Mitigate)

48. Plaintiff's claims are barred or must be reduced by his failure to mitigate damages, should there be any damages.

Wherefore, having fully answered the Amended Complaint, the answering Defendants hereby pray that the Complaint be dismissed with prejudice; that plaintiff be responsible for all costs associated with defending this action; and for all such further relief as this court deems just and proper. In addition, the defendants reserve the right to amend to allege additional affirmative defenses or other defenses as they become known throughout the course of discovery.

s/Sandra J. Senn

SANDRA J. SENN
FED. I.D. NO: 5761
ROBIN L. JACKSON
FED. I.D. NO.: 7465
Senn, McDonald, & Leinbach, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045

March 31, 2011

Attorneys for Defendants Sheriff Al Cannon,
Charleston County Sheriff's Department,
and the County of Charleston

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

ROOSEVELT SIMMONS,

Plaintiff,

v.

MASE and COMPANY, LLC, J. AL
CANNON, JR., SHERIFF OF
CHARLESTON COUNTY and
CHARLESTON COUNTY,

Defendants.

CIVIL ACTION NO.:

CERTIFICATE OF SERVICE

FILED
2012 JUL 11 PM 4:18
JULIE J. ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that a true copy of Defendants J. Al Cannon, Jr., Sheriff of Charleston County, and Charleston County's Answer to Plaintiff's Amended Complaint was served this 31st day of March, 2011, by depositing same in the United States mail, postage pre-paid, and addressed to the following:

Mr. Charles E. Masencup
Mase & Company, LLC
138 Broad Street, Unit D
Charleston, SC 29401

BY: s/Sandra J. Senn