



paying the costs of garbage and trash disposal at the county's facilities. Section 10-56 was intended to conform to S.C. Code Section 44-55-1210.

3. On or after 1987, Simmons received tax bills from the County for TMS 138 which included a user fee. Simmons regularly and timely paid the taxes assessed for each of these years and made a written application to the County's User Fee Department for waiver of the user fee.

4. Simmons was not required to pay a user fee under Ordinance Section 10-56 for TMS 138 because the County did not remove any trash from TMS 138. Simmons contracted with a private, approved and licensed solid waste collection company to remove his trash as permitted by Ordinance Section 10-24.

5. The County's User Fee Department granted Simmons' request for a waiver of the user fee against TMS 138 for the initial year and for all years following up to the present.

6. Notwithstanding the waiver of the user fees by the User Fee Department, the County commenced various law suits against Simmons in the Magistrate's Court of Charleston County for collection of the user fee imposed on TMS 138.

7. The Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee imposed upon TMS 138 since jurisdiction over all actions to collect real property taxes is vested in the Circuit Court.

8. Charleston County Code of Ordinances Section 10-56 states: "[t]he annual disposal user fee shall be due and payable within the time and in the manner prescribed by law for county ad valorem taxes pursuant to section 12-45-70 of the code . . . or other law of similar import. The treasurer shall bill and collect the annual disposal user fee established by the county council in the same manner as taxes are collected . . . ."

9. On or about February 2010, Defendant, J. Al Cannon, Jr., Sheriff of Charleston County (the Sheriff) executed a deed purporting to transfer title to TMS 498 to defendant Mase and Company, LLC. The deed was recorded in the office of the Register of Mesne Conveyances of Charleston County in Deed Book 0109 page 498. The deed was issued pursuant to a levy and execution on a judgment in Case No. 2000-JG -10-1817 issued by the Magistrates Court against plaintiff Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed against TMS 138 .

10. The judgment in Case No. 2000-JG -10-1817 is void since the Magistrates Court had no jurisdiction or authority in Case No. 2000-JG -10-1817 to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee of \$89.00 imposed upon TMS 138. The Sheriff's deed is also void because the judgment upon it is based is void.

11. Defendant Sheriff had no authority to levy and execute on TMS 498 for payment of user fees on TMS 138. The method to enforce a user fee is governed by SC Code Section 12-49-10 and laws applicable to real property taxes. Such sale is also subject to a statutory right of redemption pursuant to South Carolina Statutes Section 12-51-90.

12. TMS 283-00-00-498 is vacant land from which no solid waste is generated. Any levy and execution against TMS 138 is contrary to the express purpose and intent of the enabling laws and ordinances relating to user fees.

SECOND COUNT  
(Invalidation of User Fees and judgments)

13. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-12 as if more fully set forth herein.

14. At all relevant times, Simmons was and is in compliance with Charleston County Ordinance Section 10-24 by having contracted with a private trash hauling company licensed by the county to remove trash from TMS 138.

15. All user fees imposed by the county against TMS 138 are invalid because Simmons as owner derived no benefit from this charge as required by SC Code Section 44-55-1210

16. Pursuant to Simmons request, all user fees imposed against TMS 138 have been waived by the User Fee Department, an agency of Charleston County, as a matter of custom and practice over a long period of time.

17. Defendant County wrongfully commenced actions against Simmons for nonpayment of user fees imposed against TMS 138 after its User Fee Department waived all such user fees imposed against TMS 138.

18 All judgments entered against Simmons for nonpayment of user fees imposed against TMS 282-00-00-138 are the result of mistake, inadvertence and neglect and should be vacated. It would be unjust and inequitable for said judgments to have prospective effect against any real or personal property of plaintiff.

THIRD COUNT  
(Invalidation of judgments for non owned real property)

19. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-18 as if more fully set forth herein.

20. At all relevant times, the County issued tax bills against certain real property known and designated as TMS 311-00-00-024 ( TMS 024) and 311-00-00-032 ( TMS 032) which included user fees. TMS 024 contains a residential dwelling. Defendant County does not provide any services including trash removal, water, sewer or storm water control to TMS 024. TMS 032 is

unimproved. Defendant County does not provide any services including trash removal, water, sewer or storm water control to TMS 032.

21. According to the records of the Charleston County Tax Assessor, TMS 024 and 032 were owned by the estate of Sam Balaam. At all relevant times, plaintiff was one of the heirs of Samuel Balaam. In order to preserve his family's interest, Simmons regularly and timely paid the taxes assessed on TMS 024 and 032 and made a written application to the County's User Fee Department for waiver of the user fee.

22. The County's User Fee Department granted Simmons' request for a waiver of the user fee against TMS 024 and 032 for all years up to the present.

23. Notwithstanding his voluntary payment of real estate taxes, Simmons had no legal obligation to pay user fees imposed against TMS 024 and 032 and derived no benefit.

24. TMS 032 was not subject to user fees since the County did not remove any trash. Trash collection from TMS 024 was provided by a private, approved and licensed solid waste collection company as permitted by Ordinance Section 10-24.

25. Notwithstanding the waiver of the user fees by the User Fee Department, the County commenced various law suits against Simmons in the Magistrate's Court of Charleston County for collection of the user fee imposed on TMS 024 and 032.

26. The Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee imposed upon TMS 024 and 032 since jurisdiction over all actions to collect real property taxes is vested in the Circuit Court.

27. All judgments entered against Roosevelt Simmons for nonpayment of user fees imposed upon TMS 024 and 032 are void since the Magistrates Court had no jurisdiction or authority in such cases.

28. All judgments entered against Simmons for nonpayment of user fees imposed against TMS 024 and 032 are the result of mistake, inadvertence and neglect. It would be unjust and inequitable for said judgments to have prospective effect against any real or personal property of plaintiff.

FOURTH COUNT  
( Civil Rights violations)

29. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-28 as if more fully set forth herein.

30. At all relevant times, Simmons timely paid his real property taxes and repeatedly complained about the imposition of user fees. Each year he had to make a personal application to have the fee waived notwithstanding the fact that the fee is not applicable to his property. Each year, the County has also imposed storm water collection fees against Simmons property although TMS 138 is not served by public storm water collection or sewer or water service. Simmons has repeatedly objected to the imposition of a storm water fee but the county continues to bill and seek to collect same.

31. Defendant County acted arbitrarily and discriminatorily in enforcing the user fee and storm water ordinances by commencing multiple suits against Simmons for user fees and storm water fees with the intent to deprive him of his property.

32. Defendant County's discriminatory enforcement of the user fee and storm water ordinances has violated Simmons right to equal protection of the Fourteenth Amendment of the United States Constitution and South Carolina Constitution art. I, § 3 and Simmons rights under 42 USC section 1983.

33. Defendant County by arbitrarily and discriminatorily executing on other real property owned by Simmons not in compliance with SC Code Section 44-55-1210 and SC Code Section 12-49-10 and laws applicable to real property taxes has denied Simmons equal protection of the law under the United states and South Carolina Constitutions.

34. Defendant Sheriff by arbitrarily and discriminatorily executing on other real property owned by Simmons not in compliance with SC Code Section 44-55-1210 and SC Code Section 12-49-10 and laws applicable to real property taxes has denied Simmons equal protection of the law under the United States and South Carolina Constitutions.

35. Defendant Sheriff by arbitrarily and discriminatorily conducting the sale of TMS 283-00-00-498 to satisfy payment of user fees against TMS 138 has violated Simmons right to equal protection of the law under the United States and South Carolina Constitutions.

FIFTH COUNT  
(Civil Conspiracy)

36. Defendants herein together with persons not presently known have engaged in a conspiracy for their own personal benefit to affect the outcome of pending litigation, Simmons v. Berkeley Electric Cooperative, Inc. et al, 2008 CP-10-1983 (the litigation) in which Simmons ownership of TMS 498 was an issue.

37. Defendants carried out their conspiracy to affect the outcome of the litigation by using an existing judgment against Simmons for nonpayment of a user fee relating to TMS 138 to levy and execute on an unrelated property, TMS 498 and causing the defendant Sheriff to sell TMS 498 prior to the completion of the litigation.

38. Due to defendants' efforts to interfere with the pending litigation, Simmons incurred additional legal fees and costs in the litigation to oppose defendants Berkeley Electric Cooperative, Inc. and St. Johns Water Company efforts to dismiss the litigation.

39. By depriving Simmons of his interest in TMS 498, defendants also caused Simmons' claim of damages against the named defendants in the litigation to be substantially reduced.

40. By carrying out their conspiracy to interfere with Simmons claims in the litigation and depriving Simmons of his interest in TMS 498, defendants reduced the value of Simmons' claims in the litigation even if he later recovered ownership of TMS 498.

WHEREFORE, plaintiff requests that judgment be entered against the defendants as follows:

1. A declaration that the Sheriff's deed to real property designated as TMS 283-00-00-498 to defendant Mase and Company, LLC, recorded in the office of the RMC of Charleston County in Deed Book 0109 page 498 is void and of no effect and that an Order thereupon be entered in the record of the Recorder of Mesne Conveyances;
2. A declaration invalidating all judgments entered against Simmons relating to payment of user fees imposed against TMS 282-00-00-138 and TMS 311-00-00-024 and 311-00-00-032
3. Declaratory and injunctive relief against defendants' future imposition of user and stormwater fees and levy and execution against TMS 282-00-00-138 and TMS 311-00-00-024 and 311-00-00-032.
4. Compensatory damages
5. Special damages relating to the litigation
6. An award of counsel fees and costs to the plaintiff;
7. Such other relief as the Court deems just and equitable.



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By: 

Dated: March 22, 2011

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March 22, 2011

Ms. Julie J. Armstrong  
Clerk of the Court  
Charleston County Courthouse  
100 Broad Street  
Charleston, SC 29401

Re: Simmons v. Mase and Company, LLC et al  
Case No. 2011-CP-10-1084

Dear Ms. Armstrong:

Enclosed are the Plaintiff's Amended Complaint for filing . Thank you for your kind assistance in this matter.

Very truly yours,

  
Edward A. Bertele, Esq.

Encl:

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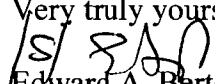
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