

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
IN THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2011CP10-1084

ROOSEVELT SIMMONS )  
Plaintiff )  
Vs. )  
MASE and COMPANY, LLC, )  
J. AL CANNON, JR., )  
CHARLESTON COUNTY )  
SHERIFF'S DEPARTMENT, )  
CHARLESTON COUNTY, )  
CHARLESTON COUNTY )  
REVENUE COLLECTIONS )  
DEPARTMENT and )  
HARRY LONG )  
Defendants )

FILED  
2012 NOV -7 AM 9:09  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY  
AS

**PLAINTIFF'S REPLY TO  
AMENDED MEMORANDUM OF DEFENDANTS  
CHARLESTON COUNTY SHERIFF'S DEPARTMENT  
CHARLESTON COUNTY, CHARLESTON COUNTY  
REVENUE COLLECTIONS DEPARTMENT and  
HARRY LONG IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

**REPLY ARGUMENT**

**I. THE CIRCUIT COURT HAS SUBJECT MATTER JURISDICTION**

Defendants contend that the Circuit Court does not have subject matter jurisdiction to consider whether an earlier Magistrate's Court judgment was void for lack of jurisdiction.

Defendants Amended Memo at pages 1-4. Defendants contend that the plaintiff's remedy was solely to appeal the Magistrate Court's judgment to the Circuit Court and he failed to do so. Id. at pages 4-8. However, defendants ignore the provisions of R 60(b), SCRPC which provides the basis for an independent action to vacate a judgment. R 60 contains the procedure for filing motions for relief from judgments including judgments which are "void" but also states:

“This rule shall not limit the power of a court to entertain an independent action to relieve a party from a judgment”. Plaintiff contends that R 60(b) provides an alternate remedy to collaterally attack the Magistrates Court judgment for lack of subject matter jurisdiction.

The defendants are misstating the law when they contend that this Court should not act against “precedent”. Id at page 3. There is no case which specifically holds that the Circuit Court cannot hear a challenge to a Magistrate Court decision in an independent action.

Defendants rely upon numerous decisions which are factually different. Id at pages 2-7. These decisions such as Town of Hilton v Godwin, 370 SC 221, 634 S.E.2d 59 (Ct. App. 2006) deal with the Circuit Court’s appellate jurisdiction, which is not at issue here.

The issue of appellate jurisdiction is different from the matter of general jurisdiction. Whether or not plaintiff satisfied the requirements for perfecting an appeal from the Magistrate’s Court decision in 2000 does not determine this court’s general jurisdiction. “[O]ur state court's jurisdiction is general, derived exclusively from article V, section 11 of the South Carolina Constitution.” Limehouse v. Hulsey, 397 S.C. 49, 723 S.E.2d 211, 218 (Ct. App. 2011) As the Supreme Court noted in Skinner v. Westinghouse Elec. Corp., 668 S.E.2d 795, 380 S.C. 91 (S.C. 2008) “ Subject matter jurisdiction is ‘ the power to hear and determine cases of the general class to which the proceedings in question belong.’” (Citations omitted). In Great Games, Inc. v. South Carolina Department of Revenue, 339 S.C. 79, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2000), the Court observed that “ [t]he failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of ‘ appellate’ jurisdiction over the case, but it does not affect the court's subject matter jurisdiction.” See also State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004).

An independent action to vacate a judgment is specifically permitted under R 60 (b) and many cases have interpreted it as such. See e.g., T v T, 378 S.C.127, 662 S.E.2d 413 (Ct. App. 2008); Bunkum v. Manor Properties, 321 S.C. 95,100, 467 S.E.2d 758 (Ct. App. 1996). “In essence, the rule merely reflects many of the considerations attendant to an equitable analysis.” T v. T, 378 S.C. at 136, 662 S.E.2d at 417. Simmons contends that he has established the basis for relief under the Rule. He did not have notice that a user fee judgment was entered in July 2000 on the basis of a default. When a deputy Sheriff came to his home to execute on that judgment in August 2009, he believed that this was an error since the Auditor’s Office previously removed the user fee from the tax bill. Simmons filed this action after he discovered that TMS 498 had been sold in 2010 for the user fee on TMS 138. The defendants do not deny any of these allegations. Therefore, Simmons’ failure to file any post trial motions to the Magistrate’s Court or to appeal does not bar this action because this court has general jurisdiction under R 60(b) under appropriate circumstances to entertain an independent action to collaterally attack the Magistrate Court’s decision.

A case which is procedurally similar also supports the plaintiff’s interpretation of the scope of R 60(b). In Judy v Martin, 381 SC 455, 674 S.E. 2d 151 (SC 2009), the Supreme Court decided an appeal from a Master in Equity’s decision upholding a Magistrate Court decision challenged in an independent action. *Id* at page 152. The Supreme Court affirmed based upon the law of the case i.e. that the appellant had already appealed the Magistrate’ decision to the Circuit Court which upheld it, consequently he was barred from relitigating it again in the independent action. *Id* at page 153. The Supreme Court did not reject the jurisdiction of the Circuit Court to hear the case initially. Although not precedent, the decision in the Judy case suggests that an independent action represents an alternative remedy absent an earlier appeal.

Here, the plaintiff is not barred by the law of the case since he was never aware of the decision, never filed an appeal and thus is not barred from relitigating it. There is no procedural bar to this action and this Court should decide the issue on the merits.

In summary, this Court has general jurisdiction to determine the validity of the various Magistrate Court decisions entered against plaintiff in 2000 and thereafter and of the Sheriff's levy and sale of TMS 498 resulting from the 2000 judgment. Defendants concede that the plaintiff had no notice of the suit to collect the user fee in 2000 or of the judgment entered thereon. Defendants Amended Memo at page 8. Defendants do not contest any of the other bases for relief under R 60(b) i.e. that the material facts are not in dispute, that the equities favor the plaintiff and that the Sheriff's deed is void if the judgment is void. See Plaintiff's Amended Motion for Partial Summary Judgment at pages 11-12. Therefore, plaintiff urges this Court to decide the issue of the Magistrates Court jurisdiction on the merits.

## **II. THERE IS NO STATUTORY AUTHORITY TO COLLECT USER FEES IN MAGISTRATES COURT**

The defendants cannot identify a single statutory or ordinance provision which specifically authorizes the Magistrates Court to have jurisdiction over a suit to collect a user fee. Magistrate Courts are courts of limited jurisdiction. See S.C. Ann. Code Section 22-3-10 & 20. Defendants have unconvincingly pointed to certain provisions of general welfare statute S.C. Code Ann. Sect 4-9-30. As plaintiff has previously demonstrated in his prior Opposition to defendants summary judgment motion which is incorporated by reference, this provision is not self executing and requires by its very terms that the County enact an ordinance. Charleston County enacted Ordinance Section 10-56 which provides for the collection of "annual disposal

user fee established by the county council in the same manner as taxes are collected”.

Furthermore, Ordinance Section 10-60 provides that when the user fee is delinquent, the “treasurer shall collect a penalty in the amount provided for delinquent taxes”. Those are the only remedies available to the county to recover the user fees or penalties for failure to pay same. It does not provide for any suit in Magistrate’s Court to collect the fee, thus the defendants argument fails. If the County did not adopt an ordinance in conformity with the county’s own interpretation of this provision, the defendants cannot rely upon the statute without an ordinance to support their position.

Defendants allege that because the general welfare ordinance provides that violations of user fee ordinances shall be heard in courts created by the general law including the magistrates’ courts, that this provision creates magistrates court jurisdiction. Defendants Amended Memo at page 9. However, the defendants must still point to a specific provision of some other ordinance or statute which provides jurisdiction to the Magistrates Court since they are not courts of general jurisdiction and the general welfare statute is not self executing. Plaintiff also contends that the use of the term “violation” does not apply to the collection of a user fee. Plaintiff asserts that this term was intended to apply to criminal activities or to the enforcement of an ordinance by imposition of a penalty. As stated above, Ordinance Section 10-60 provides that when the user fee is delinquent, the “treasurer shall collect a penalty in the amount provided for delinquent taxes”. However, the 2000 complaint filed by the county was not for a penalty but for the amount of the user fee. S. C. Code Ann. Section 22-3-10(3) provides that actions for penalties (less than \$7500.) may be brought in Magistrates Court. Therefore, the defendants’ arguments are again refuted by the language of the ordinance which they are relying upon to impose a user fee and by the language of the complaint they filed.

The defendants' argue that S.C. Code Ann. Sect 4-9-30 should be read in conjunction with Section 22-3-10 based upon the holding in Rock Hill Body Co. v. Rainey, 294 S.C. 426, 430, 365 S.E.2d 228 (Ct. App. 1987). Rock Hill involved the application of the statute giving the Magistrate's Court jurisdiction over enforcement of statutory liens, S.C. Code Ann Section 29-15-10, not the enabling statute authorizing county government to adopt general welfare ordinance. There, the court was concerned with an ambiguity in the procedure for enforcing liens of a certain amount and determined that the monetary limit of the Magistrates Court jurisdiction contained in Section 22-3-10 ( \$7500.00) would apply. Plaintiff contends that Rock Hill supports his position since the monetary limit under Section 22-3-10 was found to govern, not the general authority of Section 29-15-10 to enforce liens. Therefore Rock Hill does not permit an interpretation of Section 4-9-30 which expands the jurisdiction of the Magistrate Court to include suits to collect user fees.

Defendants urge an interpretation of Section 4-9-30 which would create jurisdiction (without any enabling ordinance) in Magistrates Court over a suit to collect a user fee although there is no specific language in that statute which mentions collection of fees and although the Magistrates Court Act only allows suits over penalties. The Court should not accept an interpretation of the general welfare statute which contradicts the provisions of the S.C. Code Ann Sect 22-3-10. As plaintiff has already established, a general principle of statutory construction is that a general statute will not be read to contradict a specific one. Section 22-3-10 does not create jurisdiction over a user fee suit, only an action for a penalty. Defendants' interpretation is violation of the general principle of statutory construction and distorts the plain the meaning of the words in the statute.

Finally, defendants contend that SC Code Ann. Sect 22-3-10 which allows suit for damages to real or personal property in Magistrates Court allows user fee suits because the County has been damaged. This is a bizarre interpretation of the language of the statute provision relating to “damages to real or personal property” and the Court should reject it summarily.

In summary, plaintiff contends that there is no reasonable interpretation of the Magistrates Court jurisdiction statute, Section 22-3-10 or the ordinance which allows the County to collect user fee that grants the Magistrates Court jurisdiction over the collection of user fees. The General Welfare Statute, Section 4-9-30 does not provide an independent source of jurisdiction absent an ordinance. That statute should not be read to create jurisdiction in the Magistrates Court (the subject of another statute) when is intended to authorize the enactment of general welfare ordinances by counties. Any other interpretation would stretch the meaning of the General Welfare Statute beyond the reasonable intention of the Legislature.

### CONCLUSION

For the additional reasons set forth above, plaintiff respectfully requests that the Court grant plaintiff’s motion for summary judgment.

Respectfully submitted,

Edward A. Bertele, Esq.  
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Charleston, SC 29492  
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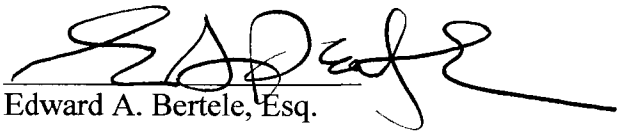
Attorney for plaintiff, Roosevelt Simmons’  
By: 

Dated: November 6, 2012  
Charleston, SC

2011-CP-10-1084

**CERTIFICATION OF SERVICE**

I hereby certify that a true copy of the within Reply to Amended Memorandum in Opposition to plaintiff's motion for summary judgment was served upon the defendants' attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. by regular mail postage prepaid at their last known mailing addresses.

  
Edward A. Bertele, Esq.

November 6, 2012

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November 6, 2012

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

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

Dear Ms. Armstrong:

Enclosed for filing is the plaintiff's Reply to defendants Amended Memorandum in Opposition to plaintiff's motion for partial summary judgment and a Certificate of Service. The motion is scheduled to be heard by Judge Markley Dennis on November 7<sup>th</sup> at 9:30. Thank you for your kind assistance in this matter.

Very truly yours,  
  
Edward A. Bertele, Esq.

Encl:  
CC: Chris Dorsel, Esq. w/o enclosure  
Wendy Keefer, Esq. “ “