

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.: 2011-CP-10-1084

ORDER

FILED
2013 JUN 21 PM 3:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before this Court on a Motion for Reconsideration in connection with a Motion for Summary Judgment filed by Defendants Al Cannon, Jr., Charleston County Sheriff's Office, Charleston County, Charleston County Revenue Collections Department, and Harry Long (hereinafter referred to as "Defendants").¹ The Court heard arguments on the Motion for Summary Judgment on November 7, 2012, and initially denied Defendants' Motion. Thereafter, Defendants filed a Motion for Reconsideration and arguments were heard before the Court on March 20, 2013. Present at the Motion for Reconsideration hearing were Ed Bertele (counsel for Plaintiff), Wendy Keefer (counsel for Mase and Company, LLC), and Chris Dorsel (counsel for Defendants). After hearing arguments and reviewing the filed Motions and memoranda regarding Defendants' Motion for Summary Judgment and Motion for Reconsideration, this Court

¹ The Court would note that Defendant Harry Long was dismissed from this action by Order of this Court dated November 8, 2012.

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hereby grants Defendants' Motion for Reconsideration and grants Defendants' Motion for Summary Judgment as to all claims filed by Plaintiff. The grant of Summary Judgment also ends any claims by or against Defendant Mase and Company, LLC.

BRIEF STATEMENT OF FACTS

Plaintiff owned land on Johns Island that was subject to the Charleston County Solid Waste Recycling and Disposal User Fee ("User Fee"). Due to non-payment of the user fee, the County instituted legal action in the Charleston County Magistrates Court, which resulted in an initial judgment against Plaintiff dated September 19, 2000. The County instituted several more actions against Plaintiff for unpaid user fees and received several more judgments against Plaintiff from 2001-2009.

In 2009, the Sheriff's Office was directed to collect on the outstanding judgments and eventually sold a piece of real property belonging to Plaintiff at a Sheriff's Sale in December 2009. Plaintiff was not present at the Sheriff's sale despite being served with notice of the sale. The first action Plaintiff took to challenge the sale and the 2000 judgment that gave rise to the sale was this lawsuit originally filed on February 11, 2011. Plaintiff amended his Complaint twice and his Second Amended Complaint alleged the following causes of action: (1) Invalidation of Sheriff's Deed for Plaintiff's property; (2) Invalidation of User Fees and judgments; (3) Invalidation of judgments for non-owned real property; (4) Civil Rights violation, and (5) Tort Claim. Defendants filed a Motion for Summary Judgment as to these causes of action. Plaintiff also filed a sixth cause of action by amendment for Insufficiency of Sale Price.

FINDINGS

I. The Court of Common Pleas does not have jurisdiction in this case.

In this lawsuit, Plaintiff is challenging Magistrates Court judgments from the years

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2000-2009 and asking this Court to overturn those judgments. Yet, Plaintiff has never filed any motions regarding the Magistrates Court judgments nor appeals of the Magistrates Court judgments once he had notice of the same. Therefore, he is procedurally barred from challenging those judgments in a collateral action in Circuit Court now. Additionally, this Court finds that every cause of action brought by Plaintiff in this case necessarily flows from the underlying Magistrates Court judgments. Because this Court does not have jurisdiction to overturn the underlying Magistrate Court judgments, this court does not have jurisdiction regarding any of Plaintiff=s claims in this matter and all claims are dismissed with prejudice.

II. Defendants are entitled to immunity pursuant to the South Carolina Tort Claims Act.

Plaintiff brings claims against Charleston County and the Charleston County Revenue Collections Department (hereafter referred to as “County Defendants”) for imposing user fees on him and for taking legal action against him to collect unpaid user fees. Plaintiff further alleges that Al Cannon, Jr., Charleston County Sheriff=s Office (hereinafter referred to as “Sheriff’s Office”) was negligent in seeking to enforce judgments against Plaintiff and sold Plaintiff’s property for less than the property was worth. This Court finds that these Defendants are governmental entities and all claims against them are subject to the immunities provided by the South Carolina Tort Claims Act.

With regard to any state law claims against the County Defendants, this Court finds that their actions were taken to enforce User Fee payments provided by Charleston County Ordinance. Therefore, the County Defendants are subject to immunity under S.C. Code §15-78-60 (4), which provides immunity for the “adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision,

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ordinance, resolution, rule, regulation, or written policies.” Further, the County Defendants are charged with the duty of collecting User Fees and must use discretion in doing so. Therefore, the County Defendants are subject to immunity under S.C. Code §15-78-60 (5), which provides immunity for “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion judgment of the governmental entity or employee.” This Court further finds the County Defendants’ actions in this matter were for the purpose of collecting User Fees and therefore any actions taken by these entities are also subject to the immunities provided by S.C. Code §§15-78-60 (11) & (23).

With regard to any state law claims against the Sheriff’s Office, this Court finds that the actions taken by the Sheriff’s Office in this case were done to enforce an order from the Magistrate Court. Therefore, the Sheriff’s Office is subject to immunity under S.C. Code §15-78-60 (3), which provides immunity for “execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process.” Further, the Sheriff’s Office is charged with the duty of enforcing judgments and must use discretion in enforcing those judgments. Therefore, the Sheriff’s Office is also subject to immunity under S.C. Code §15-78-60 (5), which provides immunity for “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion judgment of the governmental entity or employee.” This Court further finds that the Sheriff’s Office instituted a Sheriff’s Sale to collect unpaid User Fees and is therefore also subject to the immunities provided by S.C. Code §§15-78-60 (11) & (23).

III. Plaintiff has not stated a valid constitutional claim in this case.

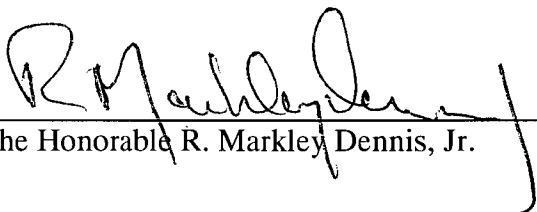
Plaintiff claims that his equal protections rights were violated by both the imposition of the user fee and the collection efforts taken by the Sheriff’s Office. The South Carolina Supreme

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Court has addressed equal protection concerns as they relate to user fees in the case of Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 417 (1996). Based on the holdings in Skyscraper, Plaintiff in our current case has not set forth a genuine issue of fact as to how imposition of the user fee by the County Defendants violated his constitutional rights. Further, Plaintiff has likewise not set forth a genuine issue of fact as to how the Sheriff's Office collection efforts violated his constitutional rights. Therefore, Plaintiff's constitutional claims in his Second Amended Complaint are dismissed.

THEREFORE, ALL OF PLAINTIFF'S CLAIMS IN THIS MATTER ARE DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED.


The Honorable R. Markley Dennis, Jr.

June 17, 2013
Charleston, South Carolina

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