


THE STATE OF SOUTH CAROLINA
In The Court of Appeals


APPEAL FROM CHARLESTON COUNTY
CASE No. 2011- CP-10-1084
Circuit Court Judge R. Markley Dennis, Jr.

ROOSEVELT SIMMONS)
Plaintiff –Appellant)
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-Respondents)

FILED
2014 DEC -1 PM 12:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

NOTICE OF APPEAL

Plaintiff herein appeals the final Order filed June 21, 2013 by Circuit Court Judge R. Markley Dennis, Jr. granting summary judgment to all defendants and the Order filed October 13, 2014 by Circuit Court Judge R. Markley Dennis, Jr. denying plaintiff’s motion for reconsideration to alter or amend the final Order and the Form 4 Order filed November 20, 2012 by Circuit Court Judge R. Markley Dennis, Jr. denying summary judgment as to all defendants. Appellant received written notice of entry of the Order denying plaintiff’s motion for reconsideration on October 16, 2014.

Edward A. Bertele, Esq.
Attorney for Appellant, Roosevelt Simmons
1812 Pierce Street
Charleston, SC 29498
(843) 471-2082
By: 

Dated: November 17, 2014

To: Counsel of Record

Christopher T. Dorsel, Esq.
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
Attorney for defendants except Mase and Company, LLC

Wendy R. Keefer, Esq.
Keefer & Keefer, LLC
1643B Savannah Highway, Suite 226
Charleston, SC 29407
(843) 860-1534
Attorney for defendant Mase and Company, LLC

FILED
2014 DEC - 1 PM 12:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the within Notice of Appeal was served upon the defendants' attorneys by regular mail postage prepaid at their last known mailing address as set forth above.


Edward A. Bertele, Esq.

November 17, 2014
Charleston, SC

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

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

FILED

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.

RMD/TKL

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

Rm 2/12

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,

RMD/13

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.

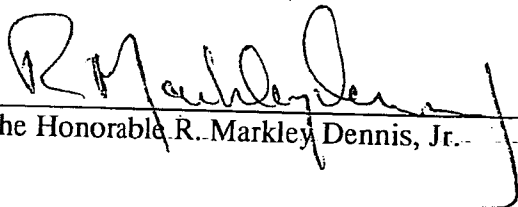
Plaintiff claims that his equal protections rights were violated by both the imposition of the user fee and the collection efforts taken by the Sheriff’s Office. The South Carolina Supreme

Rm 07/14

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

Rm07/15

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-10-1084

Roosevelt Simmons,

PLAINTIFF,

Mase and Company LLC, et al,


DEFENDANT.

ORDER

FILED
2014 OCT 13 AM 9:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter comes before me upon Motion for Reconsideration filed by Plaintiff, **Roosevelt Simmons**. After fully considering said Motion, this Court finds no need for oral argument in this matter and, therefore, the Motion for Reconsideration is DENIED;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

Charleston, South Carolina

October 6, 2014

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-1084

Roosevelt Simmons
 PLAINTIFF(S)

Mase and Company LLC, et al
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

- DISPOSITION TYPE (CHECK ONE)**
- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
 - DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
 - ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
 - ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed; Reversed; Remanded; Other

FILED
 2012 NOV 20 AM 8:59
 JULIE J. ARMSTRONG
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: All Motions for Summary Judgment were denied, except for granting of dismissal of Defendant Deputy Long. Motion to Amend 2nd Amended Complaint was granted. Motion to Compel discovery was resolved. Defendant's Mase Motion for Protection from Court was moot, as order granting protection has already been signed. Formal order to follow.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	\$n/a
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

R. M. [Signature]
Circuit Court Judge

2060
Judge Code

11/08/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

**EDWARD A. BERTELE
ATTORNEY AT LAW
1812 PIERCE STREET
CHARLESTON, SC 29492
Email: ebertele@msn.com**

Member: SC, NJ & NY bars

Ph: (843) 471-2082

Fax: (843) 471-2082

November 25, 2014

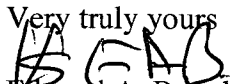
Ms. V. Claire Allen, Deputy Clerk
Court of Appeals
1015 Sumter St.
PO Box 11629
Columbia, SC 29211

**Re: Simmons v. Mase and Company et al.
2011-CP-10-1084**

Dear Ms. Allen:

I am enclosing for filing the Notice of Appeal with original signature and Certification of Service on respondents with copies of the Order filed June 21, 2013 by Circuit Court Judge R. Markley Dennis, Jr. granting summary judgment to all defendants; Order filed October 13, 2014 by Circuit Court Judge R. Markley Dennis, Jr. denying plaintiff's motion for reconsideration to alter or amend the final Order; Form 4 Order filed November 20, 2012 by Circuit Court Judge R. Markley Dennis, Jr. denying summary judgment as to all defendants. Also enclosed is a copy of the letter dated November 25, 2014 to Deborah Garrison requesting transcripts.

Also enclosed is my check of \$100.00 for the filing fee. If you have any questions, please do not hesitate to call. Thank you for your kind assistance.

Very truly yours

Edward A. Bertele

Encl:

CC: Christopher Dorsel, Esq.
Wendy Keefer, Esq.
Office of Court Administration
Charleston County Clerk