

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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)

Civil Action No: 2:11-cv-00709-RMG

2011-1084

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JULIE J. ARMSTRONG
CLERK OF COURT

SECOND AMENDED COMPLAINT

Plaintiff Roosevelt Simmons, at all relevant times a resident of Johns Island, South Carolina, alleges the following as his complaint against the defendants:

FIRST COUNT
(Invalidating Sheriff's Deed of TMS 498)

1. At all relevant times, Simmons was the owner of real property known as TMS 282-00-00-138 (TMS 138), TMS 282-00-00-135 (TMS 135), 283-00-00-498 (TMS 498) and 283-00-00-499 (TMS 499) located on Johns Island, South Carolina. TMS 138 contains a residential dwelling and is accessible only by private road. At all relevant times TMS135, 498 and 499 have been vacant and unimproved.

2 S.C. Code Section 44-55-1210 authorizes a county to provide and regulate solid waste collection and disposal and to levy user fees only against persons for whom services are provided. On or about 1987, defendant Charleston County (the County) adopted Ordinance Section 10-56 to impose user fees upon the owners of real property located in the county for the

express purpose of 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, 135 and 499 which included a user fee.

4. At various times thereafter and in response to inclusion of the user fee on the tax bill, Simmons made written application for waiver of the user fee. Employees of the Charleston County's Auditor's Department accepted Simmons' request for a waiver of the user fees against TMS 135, 138 and 499 for the years he requested and removed the user fee from the tax bill.

5. In response to the removal of the user fee, Simmons timely paid the taxes assessed for each of these years.

6. Notwithstanding the removal of the user fee by the Auditor, defendant Charleston County Revenue Collections Department (f/k/a Charleston County Business License User Fee Department) 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 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. Defendant County does not provide any trash removal services to TMS 135, 138, 498 or 499. Simmons was not required to pay a user fee under Ordinance Section 10-56 because the County did not remove any trash from TMS 135,138, 498 or 499.

15. All user fees imposed by the County against TMS 135,138, 498 or 499 are illegal because Simmons as owner derived no benefit from this charge as required by SC Code Section 44-55-1210.

16. Defendant Revenue Collections Department wrongfully commenced actions against Simmons for nonpayment of user fees imposed against TMS 138 and obtained judgments as follows: 2004-JG -10-444; 2006-JG-10-931; 2002-JG-10-0021;2003-JG10-170;2002-JG-10-923.

17 All judgments entered against Simmons for nonpayment of user fees are void since the Magistrates Court had no jurisdiction or authority to proceed against plaintiff Roosevelt Simmons for nonpayment of a user fee.

18. All judgments entered against Simmons for nonpayment of user fees 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 Charleston County Auditor for waiver of the user fee.

22. Pursuant to Simmons request, the Auditor removed the user fee from the tax bills for TMS 024 and 032 for the years requested.

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 Auditor, the Revenue Collections Department 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 and all judgments entered against Roosevelt Simmons for nonpayment of user fees imposed upon TMS 024 and 032 are void.

27. 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)

28. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-27 as if more fully set forth herein.

29 Defendants County and Revenue Collections Department practice and procedures for the collection of user fees by commencing actions in Magistrate's Court of Charleston County have deprived Simmons of equal protection of the law in violation of the Fourteenth Amendment of the United States Constitution and Simmons rights under 42 USC section 1983.

30. Defendant Revenue Collections Department practice and procedures of obtaining judgments for user fees and executing on those judgments against other real property owned by Simmons has denied Simmons equal protection of the law under the United States Constitution and Simmons rights under 42 USC section 1983.

31. Defendant Harry Long, acting under the authority of the Sheriff's Department by arbitrarily and discriminatorily executing on other real property owned by Simmons not in compliance with SC Code Section 15-39-80 has denied Simmons equal protection of the law under the United States Constitution and Simmons rights under 42 USC section 1983.

FIFTH COUNT
(Tort Claim)

32. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-31 as if more fully set forth herein.

33. At all relevant times, defendant Harry Long was employed as Deputy Sheriff in the Charleston County Sheriff Department and was assigned to perform the execution and levy of judgments and sale of properties to satisfy said judgments submitted to the Sheriff's Department.

34 At all relevant times, defendant Long was engaged in efforts to execute and levy upon 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.

35. Defendant Sheriff's Department was negligent in retaining defendant Long as an employee prior to the time he undertook work on the Simmons judgment.

36. Defendant Long exhibited hostility toward Simmons and with malice and intent to injure Simmons, caused a levy to be placed against real property owned by Simmons which resulted in a sale and loss of Simmons interest in the property.

37. As a result of the acts and conduct of defendants, Sheriff's Department and Harry Long, plaintiff has sustained damages.

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 fees;
4. Compensatory damages:
5. Punitive damages:
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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