

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 -BM

2011-CP-10-1084

FILED  
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JULIE J. ARMSTRONG  
CLERK OF COURT

PLAINTIFF'S MOTION FOR  
VOLUNTARY DISMISSAL  
AND STAY

Plaintiff, Roosevelt Simmons, hereby moves pursuant to FRCP 12(b) (1) and 41(a) (2) for voluntary dismissal of the Second Amended Complaint Count or in the alternative, dismissal of the First, Second and Third Counts and a stay of the Fourth and Fifth Counts pending further order of the Court. As set forth below, the Court lacks subject matter jurisdiction over the First, Second and Third Counts of the Second Amended Complaint and arguably also the Fourth Count and the Fifth Count; if the Court determines to retain jurisdiction of the Fourth Count and Fifth Count, a stay of these counts would avoid possible inconsistent results if the case would go to trial before the other Counts are resolved by the Charleston County Circuit Court. The plaintiff relies upon the following memorandum in support of this motion.

**FACTS RELEVANT TO THIS MOTION**

Plaintiff filed a Complaint on February 11, 2011 in Charleston County Court of Common Pleas. Doc. # 1-1. The First Count sought to invalidate a certain judgment for a user fee entered against plaintiff on the basis that the Magistrate Court where it was entered had no

jurisdiction and to vacate a Sheriff's sale and deed which resulted from execution upon this judgment. The Second Count sought to invalidate other judgments entered against plaintiff also on the basis that the Magistrate Court had no jurisdiction. The Third Count asserted a civil rights violation by Charleston County due to discriminatory enforcement of county ordinances relating to the collection of fees for solid waste removal. Plaintiff filed an Amended Complaint on March 23, 2011 which included an additional count to invalidate other judgments due to the lack of jurisdiction and a count for civil conspiracy relating to another lawsuit brought by Simmons involving the same real estate that was sold under an allegedly invalid judgment. Doc. # 6.

On March 24<sup>th</sup>, defendants Charleston County and Sheriff's Department filed a Petition of Removal to this Court, Doc. # 1, and answered denying liability. Doc. # 7. Defendant Mase and Company, LLC, the purchaser of the real estate sold by the Sheriff under the alleged invalid judgment, answered and filed a cross claim against the County defendants for indemnification and a counterclaim against plaintiff for a frivolous pleading. Doc. # 13. The County defendants filed an Answer to the Cross Claim, Doc. # 19 and plaintiff answered the Counterclaim. Doc. # 21. The parties conducted a Rule 26(f) conference and filed a consent motion, Doc. # 29, to amend the Scheduling Order which this Court subsequently granted. Doc. # 30.

Defendant Charleston County filed a consent motion for a confidentiality order regarding the contents of county employee personnel files requested by plaintiff. Doc. # 33. The Confidentiality Order was entered by this Court on September 21, 2011. Doc. # 34. Following the production of the files, plaintiff filed a Second Amended Complaint on October 15, 2011 asserting a tort claim against the Sheriff's Department relating to the conduct of its supervisors and joined one of its employees, Harry Long who was involved in the execution of

the judgment which resulted in the sale of the plaintiff's real property. Doc. # 35. All named defendants have answered. Doc. # 36 & 37.

The parties have exchanged and answered interrogatories and responded to initial document demands. The parties except for representatives of Mase and Company, LLC have been deposed including plaintiff and representatives of the Charleston County Revenue Collection department involved in the collection of the user fees and the Sheriff's Department. The County has produced the files of various employees under the Confidentiality Order. Other document demands are outstanding and further depositions of county employees and Mase and Company, LLC are yet to be scheduled. The Second Amended Scheduling Order requires discovery to be complete by November 29, 2011 and trial is scheduled for March 2012. Plaintiff now moves to dismiss the Second Amended Complaint or alternatively, the First, Second and Third Counts and to stay the remaining claims.

## **ARGUMENT**

### **I. The Court lacks subject matter jurisdiction**

Simmons contends that the court lacks subject jurisdiction over at least three and possibly the Fourth Count of the Second Amended Complaint under the Rooker- Feldman doctrine. See below. Because the Rooker-Feldman doctrine goes to subject matter jurisdiction, it may be raised at any time. Plyler v. Moore, 129 F.3d 728, 731 n.6 (4th Cir. 1997).

In Rooker v. Fidelity Trust Company, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923) the Supreme Court held : "Under the legislation of Congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment [ of a state court] for errors of that character. To do so would be an exercise of appellate jurisdiction." The doctrine extends not only to constitutional claims presented or adjudicated by the state

courts but also to claims that are 'inextricably intertwined' with a state court judgment. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 486-87, 103 S. Ct. 1303, 1315-17, 75 L.Ed.2d 206 (1983). "The Rooker-Feldman doctrine provides that federal district courts lack jurisdiction to exercise appellate review over final state court judgments." Henrichs v. Valley View Dev., 474 F.3d 609, 613 (9th Cir.2007). "The Rooker-Feldman doctrine precludes not only review of adjudications of the state's highest court, but also the decisions of its lower courts." Jordahl v. Democratic Party of Virginia, 122 F.3d 192,199 (4th Cir. 1997).

The First, Second and Third Counts of the Second Amended Complaint request the court to invalidate several South Carolina Magistrate Court judgments and a Sheriff's sale resulting from execution on one of them. Under Rooker-Feldman, this Court cannot determine whether the Magistrate Court had jurisdiction because that would require appellate review of those decisions. Therefore, this Court should dismiss those counts due to the lack of subject matter jurisdiction.

The Fourth Count alleges that County Revenue Collections Department practices and procedures 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, Doc. # 35, Para. 29, 30; and that a Sheriff's Department employee arbitrarily and discriminatorily executed on real property owned by Simmons in violation of SC Code Section 15-39-80 and denied Simmons equal protection of the law under the United States Constitution and Simmons rights under 42 USC section 1983. Id. at Para. 31. When the constitutional claims for which the petitioner seeks judicial review are "inextricably intertwined with the [state court's] decisions, in judicial proceedings," they cannot be reviewed. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 486-87, 103 S. Ct. 1303, 1315-17, 75 L.Ed.2d 206

(1983); Berry v. South Carolina Dept. of Social Services, 121 F.3d 697 (4th Cir. 1997) See also Guess v. Board of Medical Examiners, 967 F.2d 998, 1002 (4th Cir.1992). Although the Fourth Count relies upon same operative facts as the earlier counts, it alleges further violations of law. To the extent that the Section 1983 claim in the Fourth Count relies upon the invalidity of the Magistrate Court judgment, it is inextricably intertwined with the counts which the Court cannot entertain jurisdiction under Rooker –Feldman and thus also beyond this Court’s jurisdiction.

The Fifth Count of the Second Amended Complaint alleges that the defendant Sheriff’s Department was negligent in retaining defendant Harry Long as an employee and that 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. Id. at Para. 35 & 36. This count is a tort claim over which the court has pendent but not original jurisdiction.

28 U.S.C. Section 1367 provides that the court has supplemental jurisdiction over state law claims but may decline to exercise jurisdiction if the district court has dismissed all claims over which it has original jurisdiction. Id at (c) (3). If the Court determines that it does not have subject matter jurisdiction of the Section 1983 claim, then it may also dismiss the Fifth Count for lack of subject matter jurisdiction.

**2. The Court should stay the remaining counts if not dismissed.**

Plaintiff requests that if the Court does not dismiss the remaining Fourth and Fifth Counts, then it should stay further proceedings for these reasons. Discovery is not complete but is scheduled to end on November 28, 2011. Doc. # 30. The case is scheduled for trial in March 2012. Id. A stay would enable the plaintiff to bring the claims relating to the validity of the

Magistrate Court judgments in Charleston County where the case was venued before removal. If as plaintiff alleges, the Magistrate Court judgment and the Sheriff sale resulting that judgment is void for lack of jurisdiction, plaintiff will have the primary relief to which he would be entitled, i.e. return of his real property. As a result, the monetary damages for civil rights and tort claim violations would be lessened since plaintiff will recover his property. Also the plaintiff will have the benefit of a ruling that the judgment and sale upon which the other alleged civil rights and tort claim violations are based is illegal. If these counts are not stayed, then there is a potential for inconsistent results if plaintiff recovers damages for the loss of his property due to civil rights and tort claim violations in this Court and later recovers the real property in state court. Therefore, plaintiff contends that it is in the interest of justice that a stay be imposed to allow the validity of the Magistrate Court judgments to be determined, if the Court retains jurisdiction over Fourth and Fifth Counts.

#### CONCLUSION

Plaintiff respectfully requests than the court dismiss the First, Second and Third Counts of the Second Amended Complaint for lack of subject matter jurisdiction. Further, if the court determines that the Fourth Count is inextricably intertwined with those counts that it also be dismissed together with the Fifth Count. Alternatively, plaintiff requests that the Court stay any further proceedings on the Fourth and Fifth Counts.

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