

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

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 CLERK OF COURT

PLAINTIFF'S REPLY IN
 SUPPORT OF MOTION FOR
 VOLUNTARY DISMISSAL
 AND STAY

Plaintiff, Roosevelt Simmons, previously moved pursuant to FRCP 12(b) (1) and 41(a) (2) for voluntary dismissal of the Second Amended Complaint 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. Doc. # 38. Defendants Al Cannon, Jr., Sheriff's Department, Charleston County, Charleston County Revenue Collections Department and Harry Long (the County defendants) replied and requested only that there not be a stay of the Fourth Count, alleging civil rights violations by the county defendants. Doc. # 40. Defendant Mase and Company, LLC did not file opposition. The plaintiff submits the following reply to the County defendants' opposition and in support of his motion.

REPLY ARGUMENT

The county defendants do not oppose the plaintiff's motion to dismiss the First, Second and Third Counts of the Second Amended Complaint based upon a lack of subject matter jurisdiction. They also consent to dismissal of the Fifth Count which alleges a tort claim against

them. Doc. # 40 at page 1. They assert that they advised plaintiff's counsel that they would only consent to the dismissal of all claims if plaintiff which would proceed in state court based upon state constitutional law violations. Id.

The county defendants have not effectively rebutted plaintiff's contention that the alleged constitutional and Section 1983 violations under the Fourth Count are inextricably intertwined with the First, Second and Third Counts. 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; Guess v. Board of Medical Examiners, 967 F.2d 998, 1002 (4th Cir.1992). See Doc. # 38 at page 4-5.

The county defendants assert that the Fourth Count does not refer to the invalid judgments, Doc. # 40 at page 2, but the initial paragraph of the Fourth Count incorporates by reference all of the preceding counts. Thus the Fourth Count relies upon same operative facts as the earlier counts and alleges federal constitutional violations of law. The county defendants want this Court to adopt a narrow reading of the Fourth Count whereby the plaintiff could not introduce the invalidity of the Magistrate's Court judgments as part of the county's practices to collect user fees unconstitutionally. If the Court were to adopt the view of the county defendants, plaintiff's theory of the case would be limited at trial to only acts and conduct which were by themselves discriminatory and deprived plaintiff of his property. Therefore 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 County defendants oppose a stay on the grounds that there would not be inconsistent results for the same reason i.e. that the Fourth Count relies upon separate facts. Doc. # 40 at page 2. However, as demonstrated above, their view would unduly restrict the plaintiff's case, since the invalidity of the user fee judgments is part of the constitutional violations. Moreover, the county defendants do not present any reason why a stay of the Fourth Count, assuming the Court were to retain jurisdiction, would cause them prejudice. Instead the county defendants are trying to avoid the res judicata effect in this Court of a state court ruling that the judgments are invalid, by arguing against a stay.

Therefore, plaintiff contends that the interest of justice requires that a stay be imposed to allow the validity of the Magistrate Court judgments to be determined due to the lack of any prejudice to the county defendants, if the Court retains jurisdiction over Fourth and Fifth Counts.

CONCLUSION

Plaintiff contends that for the reasons expressed heretofore, the Second Amended Complaint should be dismissed for lack of subject matter jurisdiction. Alternatively, if the Court retains jurisdiction of the Fourth and Fifth Counts, plaintiff requests that the Court stay any further proceedings pending a resolution of the claims relating to the invalidity of the Magistrate Court judgments as set out in the Second Amended Complaint.

/s/ Edward A. Bertele
Edward A. Bertele, Esq.
Fed. ID. No. 10293
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082 phone
(843) 471-2082 fax
ebertele@msn.com
Attorney for Plaintiff Roosevelt Simmons

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