

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Roosevelt Simmons)
 Plaintiff)
)
 v.)
)
 Mase And Company, Llc Et Al.)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
 2011-CP-10-1084

MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

Plaintiff's Attorney: Edward A. Bertele, Bar No. 72521 Address: 1812 Pierce Street Charleston, SC 29492 phone: 843-471-2082 fax: 843-471-2082 e-mail: ebertele@msn.com other:	Defendant's Attorney: , Bar No. Address: phone: _____ fax: _____ e-mail: _____ other: _____
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

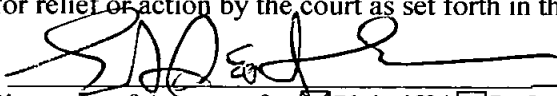
SECTION I: Hearing Information

Nature of Motion:
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

March 30, 2012
 Date submitted

SECTION III: Motion Fee

- PAID – AMOUNT: \$25.
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011CP10-1084

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)

FILED
2012 APR -2 PM 1:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**PLAINTIFF'S MOTION TO AMEND
SECOND AMENDED COMPLAINT**

PLEASE TAKE NOTICE that on the tenth day following service of the within NOTICE of MOTION or as soon thereafter as counsel may be heard, plaintiff Roosevelt Simmons, by his attorney, Edward A. Bertele, Esq. shall move before the Court of Common Pleas for the Ninth Judicial Circuit at the Charleston County Courthouse, 100 Broad Street, Charleston, SC 29401 for an Order pursuant to South Carolina Rules of Civil Procedure 15(a) for leave to amend the Second Amended Complaint. Plaintiff relies upon the pleadings filed heretofore and the reasons set forth herein for the filing of this motion.

BASIS FOR THIS MOTION

Plaintiff filed the within action to vacate a Sheriff's sale and deed of certain real property to defendant Mase and Company previously owned by him on Johns Island, South Carolina. The complaint asserted that the judgment upon which the execution and sale was based

was void because the Magistrate's Court did not have jurisdiction over the subject matter, a claim by the county for an overdue user fee. The complaint was subsequently amended (prior to answer by defendants) to add claims against the county for civil rights violations in connection with the execution and sale (Amended Complaint) and with consent to add tort claims against the Sheriff's Department for wrongful retention of the deputy who oversaw sale of the property (Second Amended Complaint).

In early March 2012, plaintiff's counsel requested that counsel for all defendants consent to a further amendment to the Second Amended Complaint and provided them with a copy of the proposed amendment, attached to this motion as Exhibit A. Counsel for Mase and Company agreed but counsel for the County defendants refused without explanation. Accordingly, plaintiff moves pursuant to SCRCP 15 (a) for leave to amend.

SCRCP 15(a) provides that leave of court shall be freely given in the interest of justice and when no other party is prejudiced. Plaintiff asserts that it is in the interest of justice to allow him to add an additional claim to recover his property; and that no other party is prejudiced. Plaintiff seeks to add an additional claim to vacate the sheriff sale, namely, that the amount of the sale was grossly inadequate. As set forth in the proposed Amendment to Second Amended Complaint, the sheriff's sale yielded an amount insufficient to satisfy the judgment debt and was grossly inadequate in relation to the fair market value of the property. See paras. 41-44.


The proposed Amendment relies upon facts which were previously alleged in earlier pleadings. The proposed amendment merely adds an additional legal theory. The parties are continuing to engage in discovery and have recently entered into a scheduling Order which provides that the trial shall not occur before September 2012. Counsel for defendant Mase and Company, LLC, the purchaser of the property did not object to this amendment. Counsel for the

county defendants refused to consent but did not assert any reason to object to this amendment so that plaintiff's counsel had not opportunity to address any alleged prejudice. Under the circumstances, plaintiffs' counsel does not believe that the county defendants will be prejudiced as the trial will not occur sooner than September 2012 and there is adequate time for them to conduct any additional discovery they may require.

Accordingly, plaintiff respectfully requests that the court grant this motion and allow the amendment in the form annexed herein.

Respectfully submitted,

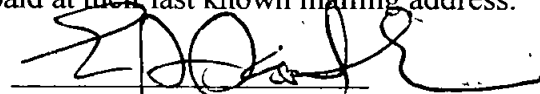
Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082
Attorney for plaintiff, Roosevelt Simmons'

By: 

Dated: March 30, 2012
Charleston, SC

CERTIFICATION OF SERVICE

I hereby certify that a true copy of the within motion to amend the Second Amended Complaint and Appendix was served upon the defendants' attorneys, Christopher Dorsel, Esq. and Wendy Keefer, Esq. by regular mail postage prepaid at their last known mailing address.


Edward A. Bertele, Esq.

March 30, 2012

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP10-1084

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)

Blocked by date
2012 APR -2 PM 1:36
JULIE J. ARMSTRONG
CLERK OF COURT
FILED
Canceled

**AMENDMENT TO
SECOND AMENDED COMPLAINT**

**SIXTH COUNT
(Inadequacy of Sale price)**

- 38. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-37 of the Second Amended Complaint as if more fully set forth herein.
- 39. On or about November 4, 2009 defendant Harry Long in his capacity as Deputy Sheriff of defendant Charleston County Sheriff's Department conducted a judicial sale of real property known as TMS 283-00-00-498 then owned by plaintiff.
- 40. The sale was purportedly to satisfy a judgment in Case No. 2000-JG -10-1817 issued by the Magistrates Court against plaintiff Roosevelt Simmons for nonpayment of a user fee imposed against TMS 282-00-00-138 also owned by plaintiff.
- 41. Defendant Mase and Company, LLC purchased the subject property for the sum of six hundred dollars (\$600.00) but the judgment remains unsatisfied.

¹
Exhibit "A"

42. 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.

43. The sale price was so grossly inadequate as to shock the conscience.

44. The fair market value of the subject property is approximately \$70,000.00

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.

Edward A. Bertele, Esq.
1812 Pierce Street
Charleston, SC 29492
(843) 471-2082 phone
Attorney for Plaintiff Roosevelt Simmons

Dated: March , 2012

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

Member: SC, NJ & NY bars

Tele: (843) 471-2082
Fax: (843) 471-2082

March 30, 2012

Ms. Julie J. Armstrong
Clerk of the Court
Charleston County Courthouse
100 Broad Street
Charleston, SC 29401

Re: Simmons v. Mase and Company, LLC et al
Case No. 2011-CP-10-1084

Dear Ms. Armstrong:

Enclosed for filing is plaintiff's motion to amend the Second Amended Complaint, the Motion Information Form and my check for the \$25.00 filing fee. Kindly return a filed copy in the enclosed envelope. Thank you for your kind assistance in this matter.

Very truly yours,

Edward A. Bertele, Esq.

Encl:
Cc: Christopher Dorsel, Esq.
Wendy Keefer, Esq.