

OF THE

AUG 31 2020

STATE OF SOUTH DAKOTA

Clerk

* * * *

JOHN REINTS,
Plaintiff and Appellant,

vs.

JANET SAYLER in her official capacity and individually; PENNINGTON COUNTY, SOUTH DAKOTA; RON BUSKERUD in his official capacity and individually; NANCY TRAUTMAN in her official capacity and individually; LYNDELL PETERSON in his official capacity and individually; DEB HADCOCK in her official capacity and individually; and GEORGE FERBEE in his official capacity and individually,

Defendants and Appellees.

**ORDER DIRECTING ISSUANCE OF
JUDGMENT OF AFFIRMANCE**

#29188

510115-1711

The Court having, pursuant to SDCL 15-26A-87.1(A), considered all of the briefs filed in the above-entitled matter, together with the appeal record, and having concluded that it is manifest on the face of the briefs and the record that the appeal is without merit on the following grounds: 1. that the issues on appeal are clearly controlled by settled South Dakota law or federal law binding upon the states, and 2. that the issues on appeal are factual and there clearly is sufficient evidence to support the findings of fact and conclusions of law below (SDCL 15-26A-87.1(A)(1) and (2)), now, therefore, it is

APPENDIX A


#29188, Order

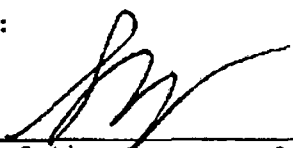
ORDERED that a judgment affirming the Judgment of the lower court be entered forthwith.

DATED at Pierre, South Dakota, this 31st day of August, 2020.

BY THE COURT:

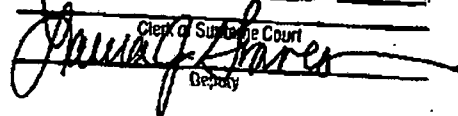
ATTEST:


David Gilbertson, Chief Justice


Clerk of the Supreme Court
(SEAL)

PARTICIPATING: Chief Justice David Gilbertson and Justices Janine M. Kern, Steven R. Jensen, Mark E. Salter and Patricia J. DeVaney.

STATE OF SOUTH DAKOTA
In the Supreme Court
I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this
14th day of October 2020


Clerk of Supreme Court
Deputy

-2-

Pennington County, SD
FILED
IN CIRCUIT COURT

OCT 16 2020

Ranee Truman, Clerk of Courts

By  Deputy

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

JOHN REINTS,)
)
Plaintiff,)
)
v.)
)
JANET SAYLER in her official capacity,)
and individually; PENNINGTON COUNTY,)
SOUTH DAKOTA; RON BUSKERUD in)
his official capacity, and individually;)
NANCY TRAUTMAN in her official)
capacity, and individually; LYNDELL)
PETERSON in his official capacity, and)
individually; DEB HADCOCK in her official)
capacity, and individually; and GEORGE)
FEREBEE in his official capacity, and)
individually,)
)
Defendants.)

51CIV15-001711

JUDGMENT

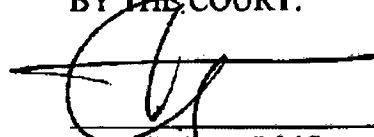
The above-entitled matter came on for trial before the Honorable Craig A. Pfeifle, at the Pennington County Courthouse in Rapid City, South Dakota, on March 18, 2019. Plaintiff appeared personally and through Todd A. Schweiger of Todd A. Schweiger Attorney at Law; Defendants appeared through Donald P. Knudsen of Gunderson, Palmer, Nelson & Ashmore, LLP; having presented documentary and testimonial evidence; both sides having rested; now therefore, the Court, having duly considered all the evidence presented and the statements and arguments of counsel, and having entered its Findings of Facts and Conclusions of Law, it is hereby:

ORDERED, ADJUDGED AND DECREED, that judgment is entered in favor of Defendants and against Plaintiff, and it is further

ORDERED, ADJUDGED AND DECREED that the Court's Findings of Fact and
Conclusions of Law dated September 10, 2019 are incorporated herein by reference.

Dated: October 28, 2019.

BY THE COURT:



Hon. Craig A. Pfeifle
Circuit Court Judge
Seventh Judicial Circuit

ATTEST: 
CLERK OF COURTS

By: 

Deputy



Pennington County, SD
FILED
IN CIRCUIT COURT

OCT 29 2019

Rance Truman, Clerk of Courts

By:  Deputy

12:55pm

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF PENNINGTON)

IN CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT

JOHN REINTS,)
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Plaintiff,)
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v.)
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JANET SAYLER in her official capacity,)
and individually; PENNINGTON COUNTY,)
SOUTH DAKOTA; RON BUSKERUD in)
his official capacity, and individually;)
NANCY TRAUTMAN in her official)
capacity, and individually; LYNDELL)
PETERSON in his official capacity, and)
individually; DEB HADCOCK in her official)
capacity, and individually; and GEORGE)
FEREBEE in his official capacity, and)
individually,)
)
Defendants.)

51CIV15-001711

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

FINDINGS OF FACT

1. On September 21, 1987, Anne Reints, John Reints' mother, purchased property located at 234 South Canyon Road in Rapid City, South Dakota ("Property").
2. Anne Reints mortgaged the Property on January 26, 1996. See Mortgage, Trial Exhibit 300. See also Trial Transcript ("TT") 101:17-23.
3. The Mortgage provides that monthly installment payments are to be made, a portion of which will be placed into escrow. The escrow monies may be used by the mortgagee to pay, among other things, real property taxes.
4. When questioned, Plaintiff admitted that obligation:

Q: Do you just—well, do you feel that the Estate of Anna Reints still has a contractual obligation to make payments on the mortgage?

A (Reints): Yeah, on paper there's—there's an obligation to make the payments.

Q: And part of the obligation includes paying money into escrow.

A: Yes.

Q: To pay the taxes.

A: Yes. Those are the terms of the mortgage.

TT 104:16-25.

5. In May of 1999, after the Property had been mortgaged, Anne Reints quit claimed a one-half interest in the Property to John Reints. See Deed, Trial Exhibit 301. See also TT 101:24 - 102:1.

6. In 2000, Anne Reints passed away. TT 102:2-3.

7. The Estate of Anne Reints has not been probated. The Estate retains an undivided one-half interest in the Property. TT 102:4-9.

8. In January 2014, John Reints submitted an Application for the Prohibition on the Collection of Real Property Taxes provided by SDCL 43-31-32. *Reints v. Pennington County*, 2015 SD 74, ¶ 3, 869 N.W.2d 466 (“*Reints I*”).

9. Reints' Application was denied.

10. Reints appealed to the South Dakota Department of Revenue. The Department of Revenue affirmed the denial.

11. Reints appealed to the Circuit Court. The Circuit Court also affirmed the denial.

12. Reints appealed to the South Dakota Supreme Court. *Id.* at ¶¶ 3-4.

13. In March 2015 Reints submitted a second Application for the Prohibition on the Collection of Real Property Tax. See Revised Third Amended Petition for Writ of Mandamus &

Declaratory Judgment, & Third Amended Complaint for Violation of Civil Rights, Return of Unlawfully-Collected Property Taxes & Barratry ("Petition"), ¶ 3.

14. Along with Reints' Application he submitted a letter to the Treasurer stating that any real property taxes paid on his behalf in the year 2015 would be paid under protest pursuant to SDCL 10-27-2.

15. Annette Brant of the Pennington County Treasurer's Office testified concerning the process by which Wells Fargo Home Mortgage (WFHM) pays real property taxes on behalf of its mortgagors. TT 108:20 – 112:10.

- A. WFHM initiates the process by asking Pennington County for the tax roll.
TT 108:24 – 109:5.
- B. The tax roll includes a listing of every parcel of real property in Pennington County subject to real property taxation. TT 111:19 – 112:4. TT 115:3-25.
- C. In response to WFHM's request, Pennington County provides the entire tax roll via email to WFHM. TT 108:24 – 111:18.
- D. WFHM sorts through the list of taxable real property parcels, identifies those for which it intends to pay the real property taxes, and sends a lump-sum payment for the total amount of real property taxes on all identified parcels (including the Property) to Pennington County. TT 111:5 – 112:10.

16. In April 2015, Wells Fargo Home Mortgage (WFHM), the agent of the mortgagee, Fanny Mae, made payments from an escrow account for real property taxes on the Property. One payment was in the amount of \$764.12 and a second payment was in the amount of \$19.60.

17. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

18. On May 4, 2015, Reints' Application for the Prohibition on the Collection of Real Property Taxes was approved. Petition, ¶¶ 3, 6.

19. On June 21, 2015, Reints filed Notice of an Administrative Appeal with the South Dakota Department of Revenue. Affidavit of John Reints in Support of Petition for Writ of Mandamus at ¶ 8.

20. On August 26, 2015, the South Dakota Supreme Court issued its Opinion in the case of *Reints I*. The South Dakota Supreme Court affirmed the denial of Reints' 2014 Application on grounds that he was not 70 years of age at the time he submitted his Application. *Id.* at ¶ 23.

21. The South Dakota Supreme Court determined that the statute restrains a county from collecting taxes once the prohibition is granted. *Id.* at ¶ 20. "Collecting" was defined as "[t]o call for and obtain payment of [.]" *Id.* at ¶ 11, quoting *American Heritage College Dictionary*, 274 (3d ed. 1997). The South Dakota Supreme Court did not determine whether Pennington County's acceptance of real property tax payments from WFHM against his wishes violated SDCL 43-31-32. *Id.* at ¶ 4, n. 1.

22. In September 2015, a hearing was held with the South Dakota Department of Revenue ("SDDOR") regarding Reints' administrative appeal. Petition, ¶ 8.

23. In October of 2015, WFHM made a payment of \$764.13 from the escrow account as payment for the second half of the 2014 real property taxes on Property co-owned by John Reints and the Estate of Anne Reints. Petition, ¶¶ 3, 4, 5, 25.

24. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

25. In November 2015, WFHM made a payment from the escrow account in the amount of \$349.65 as payment for a special assessment against the Property. Petition, ¶¶ 3-4.

26. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

27. In November 2015, the hearing officer who had conducted the hearing on behalf of the SDDOR with respect to Reints' administrative appeal died without making a decision in his case. Petition, ¶ 9.

28. On December 7, 2015, Reints filed his initial Petition in this lawsuit

29. From mid-2014 when Reints appealed the denial of his first application through the present date, there has been litigation between Reints and Pennington County.

30. Because of litigation, Pennington County personnel and commissioners testified they sought and followed legal advice from the Pennington County State's Attorney's Office or retained counsel.

31. On December 22, 2015, the Office of Hearing Examiners instructed the parties to notify it as to whether they wanted a new hearing or to have a decision based on the record previously created. Reints indicated his preference was to have a new hearing. Affidavit of Continuance of Hearing Before the Office of Hearing Examiners filed April 29, 2016.

32. In March 2016, Reints submitted his Application for the Prohibition on the Collection of Real Property Taxes for 2016. Petition, ¶ 13.

33. On March 7, 2016, Reints submitted a letter to the Treasurer stating that payments of real property taxes in the year 2016 would be paid under protest. Petition, ¶ 13.

34. On March 23, 2016, Reints was informed that his 2016 Application had been approved. Petition, ¶ 14.

35. On March 29, 2016, Reints filed a Revised Amended Petition for Writ of Mandamus & Revised Amended Complaint for Injunctive Relief, Violation of Civil Rights and Barratry.

36. In April 2016, the South Dakota Office of Hearing Examiners issued an Order continuing the petition for hearing on Reints' administrative appeal with the South Dakota Department of Revenue.

37. The administrative appeal is still pending. Affidavit of Todd A. Schweiger regarding continuance of hearing before the Office of Hearing Examiners filed April 29, 2016.

38. In April of 2016, WFHM made payments of \$664.82 and \$635.20 from Reints' escrow account as payments for the first half of the 2015 real property taxes on the Property. Petition, ¶ 17.

39. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

40. On June 29, 2016, Reints filed a Second Amended Petition and Complaint. This was the first pleading filed by Reints that included a claim pursuant to SDCL 10-27-2.

41. On October 19, 2016, WFHM paid \$664.82 from Reints' escrow account as payment for the second half of the 2015 real property taxes on the Property. Petition, ¶ 17.

42. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

43. In January 2017, Mr. DiSanto and Mr. LaCroix replaced Ms. Trautman and Mr. Peterson as commissioners on the Pennington County Board of Commissioners. Petition, ¶ 18.

44. In February 2017, Reints submitted his Application for the Prohibition on the Collection of Real Property Taxes for the year 2017. The Application was accompanied by a letter advising that payments of real property taxes for 2017 would be made under protest pursuant to SDCL 10-27-2. Petition, ¶ 18.

45. On February 27, 2017, the Treasurer approved Reints' 2017 Application. Petition, ¶ 19.

46. In April 2017, WFHM paid \$664.37 from Reints' escrow account as payment for the first half of the 2016 real property taxes on the Property. Petition, ¶ 19.

47. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

48. WFHM was aware that Reints had qualified for the prohibition on the collection of real property taxes at the time it made the payment in April 2017. Petition. See also attached correspondence from John Reints to WFHM dated March 31, 2017.

49. On October 17, 2017, WFHM paid \$648.69 from Reints' escrow account as payment for the second half of the 2016 real property taxes on the Property. Affidavit of John Reints as to Tax Collection by Pennington County on October 17, 2017 dated October 23, 2017.

50. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

51. WFHM was aware that Reints qualified for the prohibition at the time it made the payment in October 2017.

52. In the spring of 2018, Reints filed an Application for a Prohibition on the Collection of Real Property Taxes for 2018.

53. Application for a Prohibition on the Collection of Real Property Taxes for 2018 was approved. TT 36:24 – 37:6.

54. On April 4, 2018, WFHM paid \$618.59 from Reints' escrow account as payment for the first half of the 2017 property taxes on the Property. A second payment was made on April 12, 2018 in the amount of \$15.68. Affidavit of John Reints filed May 4, 2018.

55. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

56. On October 17, 2018, WFHM paid \$618.59 from Reints' escrow account as payment for the second half of the 2017 real property taxes on the Property. Affidavit of John Reints as to Tax Collection by Pennington County on October 17, 2018, dated October 25, 2018.

57. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

58. On February 28, 2019, Reints filed an Application for a Prohibition on the Collection of Real Property Taxes for 2019.

59. On April 2, 2019, the 2019 Application was approved. Affidavit of John Reints dated April 23, 2019.

60. On April 5, 2019, WFHM paid \$634.28 from Reints' escrow account as payment for the first half of the 2018 property taxes on the Property. Affidavit of John Reints Regarding Collection of Property Taxes on His Home in April 2019, filed April 18, 2019.

61. WFHM failed to give notice at the time of payment that it was made under protest as required by SDCL § 10-27-2.

62. None of the real property tax payments made by WFHM on Reints' behalf gave notice that they were being paid under protest or the reason for any protest as required by SDCL 10-27-2.

63. Although the Estate of Anne Reints has not been probated, John Reints claims to be the executor of her estate. TT 102:21.

64. Since the death of Anne Reints in the year 2000, John Reints, as executor of her estate, has made monthly payments on behalf of the estate to Wells Fargo Home Management pursuant to the terms of the mortgage agreement entered into by Anne Reints prior to her death. TT 102:15 – 103:1.

65. Pursuant to the terms of the mortgage agreement, WFHM deposits a portion of the monthly payments into escrow. TT 103:5-7.

66. Twice annually, in April and in October each year, WFHM uses some of the funds in the escrow account to pay real property taxes assessed against the Property co-owned by John Reints and the Estate of Anne Reints. TT 103:5-12.

67. The practice of John Reints making the monthly payments on behalf of the Estate of Anne Reints, and WFHM depositing a portion of those payments into escrow, and WFHM using funds from the escrow account to pay real property taxes on the Property, has been going on for 19 years—since Anne Reints' death in the year 2000. TT 102:2 – 103:15.

68. Reints confirmed the Estate remains contractually obligated under its loan documents with Wells Fargo to make certain payments to the bank:

Q: Do you just—well, do you feel that the Estate of Anna Reints still has a contractual obligation to make payments on the mortgage?

A (Reints): Yeah, on paper there's—there's an obligation to make the payments.

Q: And part of the obligation includes paying money into escrow.

A: Yes.

Q: To pay the taxes.

A: Yes. Those are the terms of the mortgage.

TT 104:16-25

CONCLUSIONS OF LAW

I. Federal Claims.

A. Substantive Due Process.

1. *Claims Against Defendants in Their Individual Capacities.*

a. Defendants sued in their individual capacities are immune from suit under principles of qualified immunity because there was no clearly established law in existence at the time of the alleged misconduct which would have put a reasonable official in Defendants' positions on notice that their conduct (accepting payment of real property tax on the Property made by Anne Reints' mortgage management company against his wishes) violates any of Reints' federally-protected constitutional or statutory rights.

b. Assuming that Reints had a property interest in the prohibition on the collection of real property taxes, none of the individually-named Defendants caused any deprivation of that property interest. Rather, Reints himself, acting as executor of the Estate of Anne Reints, made monthly mortgage payments on her estate's behalf and pursuant to the terms of a mortgage agreement which expressly provided that a portion of the monthly mortgage payments would be deposited into an escrow account and that those funds would be used to pay real property taxes and assessments. While Reints, as a joint-owner of the Property has certain rights and

obligations, the other joint-owner, the Estate of Anne Reints, also has such obligations and acceptance of real property taxes from her estate via WFHM does not violate Reints' substantive due process rights.

c. Assuming that Reints acquired a property interest when he qualified for the prohibition on the collection of real property taxes, and assuming that the individually-named Defendants deprived him of that property interest¹, the individually-named Defendants' conduct was not an exercise of power used for purposes of oppression or abuse of government power that shocks the conscience, or action that is legally irrational and is not sufficiently keyed to any legitimate state interest. *Tri-County Landfill Ass'n v. Brule County*, 2000 SD 148, ¶ 14, 619 N.W.2d 663, 668-669.

d. Conduct by the individually-named Defendants was not the legal cause of any alleged violation of Reints' substantive due process rights. Rather, the real property taxes to be paid on the Property co-owned by John Reints and the Estate of Anne Reints is payment of monthly installments to WFHM paid by the Estate of Anne Reints pursuant to a mortgage, which mortgage expressly provides that WFHM may deposit a portion of the monthly installments into an escrow account and may use funds to pay real property taxes and special assessments.

2. *Claims Against Pennington County.*

a. Because none of the individually-named Defendants took any action which violated Reints' substantive due process rights, no unconstitutional Pennington

¹ The deprivation allegedly occurred when the individually-named Defendants accepted payment of real property taxes from WFHM made on behalf of the Estate of Anne Reints pursuant to the terms of a mortgage entered into by Anne Reints prior to her death, and from funds deposited into an escrow account which Reints paid to WFHM in his capacity as executor of the Estate of Anne Reints and pursuant to the terms of the mortgage.

County custom or policy motivated any of the individually-named Defendants to violate Reints' federally-protected constitutional or statutory rights. There is no legal basis for liability against Pennington County.

b. Reints failed to produce any evidence of any unconstitutional Pennington County custom or policy. Therefore, there is no legal basis for liability against Pennington County for any alleged violation of Reints' federally-protected statutory or constitutional rights.

B. Procedural Due Process.

1. *Claims Against the Individually-named Defendants.*

a. Defendants sued in their individual capacities are immune from suit under principles of qualified immunity because there was no clearly established law that would have put a reasonable official on notice that the acceptance of real property taxes from WFHM on behalf of the Estate of Anne Reints pursuant to the terms of that mortgage would violate John Reints' federally-protected constitutional or statutory rights.

b. Assuming that John Reints has a property interest when qualified for the prohibition on the collection of real property taxes, any such property interest is subordinate to, and subject to, the terms of a mortgage agreement entered into by a co-owner of the Property prior to her death. Anne Reints mortgaged the Property prior to conveying a one-half interest in the Property to John Reints. The mortgage expressly provides that a portion of the monthly installment payments could be deposited into an escrow account and could be used to pay real property taxes and assessments on the Property. John Reints acquired an interest in the Property subject

to the terms of the mortgage. Following his mother's death, John Reints, as the executor of her estate, has continued to make monthly installment payments pursuant to the terms of the mortgage. No act by any of the individually-named Defendants deprived John Reints of any property interest in violation of his procedural due process rights under either state or federal law.

c. John Reints is not entitled to any pre-payment notice that Pennington County would accept payment of real property taxes paid by WFHM on behalf of the Estate of Anne Reints pursuant to the terms of the mortgage on the Property because Reints was aware that WFHM paid the real property taxes twice annually prior to the statutory deadlines for doing so.

2. *Claims Against Pennington County*

a. Because none of the individually-named Defendants took any action which violated Reints' procedural due process rights, no unconstitutional Pennington County custom or policy motivated any of the individually-named Defendants to violate Reints' federally-protected constitutional or statutory rights. There is no legal basis for liability against Pennington County.

b. Reints failed to produce any evidence of any unconstitutional Pennington County custom or policy. There is no legal basis for liability against Pennington County for any alleged violation of Reints' federally-protected statutory or constitutional rights.

II. State Claims

1. The tax roll/tax list which Pennington County provides to WFHM in response to WFHM's semi-annual request is the tax list mandated by SDCL Ch. 10-17.

2. The tax roll/tax list prepared pursuant to SDCL Ch. 10-17 which the Auditor provides to the Treasurer is a public record. SDCL § 1-27-1.1.

3. Because the tax roll/tax list is a public record, Pennington County personnel are legally obligated to provide it to WFHM in response to WFHM's request. SDCL § 1-27-1.1.

4. If a taxpayer entitled to the prohibition on the collection of real property taxes pursuant to 43-31-32 fails to pay real property taxes, those taxes become a lien against the property and accrue interest. SDCL § 43-31-38.

5. While South Dakota law does not require an applicant to have a title to the property to qualify for a property tax deferral under SDCL § 43-31-31 to SDCL § 43-31-41, neither does South Dakota law indicate that a co-owner of the property who does not qualify for the tax relief is entitled to the same tax deferral.

6. Any statutory lien against the Property imposed pursuant to SDCL § 43-31-38 would be superior to WFHM's mortgage interest. See SDCL § 10-21-33. See also SDCL § 21-49-26.

7. Any statutory lien imposed pursuant to SDCL § 43-31-38 would impair or impose a defect in the title to the Property, thereby harming the Estate of Anne Reints' interest in the Property.

8. Because Reints seeks relief from this Court which would result in the non-payment of real property taxes on the Property co-owned by John Reints and the Estate of Anne Reints, and consequently, the imposition of a statutory lien superior to the interest of WFHM, would impair the Estate of Anne Reints' interest in the Property.

9. The Court denies Reints' claims for equitable relief because he has an adequate remedy at law. SDCL §§ 10-27-2, 10-18-1. "There are two exclusive methods by which an aggrieved taxpayer may seek recovery for alleged illegal taxes paid. They are the Refund and

Abatement Statute, SDCL 10-18-1, and the Protest and Suit Statute, SDCL 10-27-2.” *Lick v. Dahl*, 285 N.W.2d 594, 599 (citing *Security Nat. Bank v. Twinde*, 52 S.D. 352, 217 N.W.542 (1928)).

10. The two statutory methods for seeking a refund of taxes paid are the exclusive remedies. There is no basis to seek such remedies in the context of an action for a declaratory judgment. *Metropolitan Life Ins. Co. v. Kinsman*, 2009 SD 53, ¶ 19, 768 N.W.2d 540, 545.

11. Reints is not entitled to a Writ of Mandamus requiring the Treasurer to refund real property taxes paid on behalf of the Estate of Anne Reints in 2015 because he has an adequate remedy at law. SDCL §§ 10-27-2, 10-18-1.

12. Reints is not entitled to a Writ of Mandamus ordering the Treasurer to refund real property taxes paid in 2015 because SDCL §§ 10-27-2 and 10-18-1 are the exclusive remedies for a taxpayer to obtain a refund of taxes allegedly wrongfully paid. *Metropolitan Life Ins. Co. v. Kinsman*, 2009 SD 53, ¶ 18, 768 N.W.2d 540, quoting *Agar School Dist. No. 58-1 v. McGee*, 1997 SD 31, ¶ 14, 561 N.W.2d 318, 322.

13. Reints is not entitled to a Writ of Mandamus ordering the Treasurer to refund his taxes paid in 2015 or any year thereafter because there is no clear legal right for Reints to receive such a refund and no clear legal duty for the Treasurer to refund the taxes. *Tornow v. Sioux Falls Civil Service Board*, 2013 SD 20, ¶ 16, 827 N.W.2d 852. SDCL § 43-31-41 authorizes the Treasurer to accept payment of real property taxes from “any person, entity, or trust that submits payment to a county treasurer.”

14. Reints has not met his burden of proving that SDCL § 43-31-41, as amended effective July 1, 2016, violates any provision of the United States Constitution or the South Dakota Constitution. *Steinkruger v. Miller*, 2000 SD 83, ¶ 8, 612 N.W.2d 591, 595; *Kyllo v.*


Panzer, 535 N.W.2d 896, 898 (S.D. 1995); *Specht v. City of Sioux Falls*, 526 N.W.2d 727, 729 (S.D. 1995).

15. Reints is not entitled to relief pursuant to SDCL § 10-27-2 because the real property taxes paid by WFHM in accordance with the terms of its mortgage agreement with Anne Reints were not made under protest at the time of payment.

16. Reints is not entitled to relief under SDCL § 10-27-2 or any other legal theory for real property taxes paid after July 1, 2016 because SDCL § 43-31-41 provides that nothing in SDCL §§ 43-31-31 to 43-31-41 inclusive "may be construed to prohibit a county treasurer from accepting payment for the real property taxes from any person, entity, or trust that submits payment to a county treasurer." The acceptance by the Pennington County Treasurer of real property taxes made by WFHM on behalf of the Estate of Anne Reints did not violate any of John Reints' rights under either federal or state law, nor common law.


Dated this 10 day of September, 2019.

BY THE COURT,



Craig A. Pfeifle
Circuit Court Judge
Seventh Judicial Circuit

ATTEST:


RANAE TRUMAN,
CLERK OF COURTS


By: 

Deputy



Pennington County, SD
FILED
IN CIRCUIT COURT

SEP 11 2019

Ranae Truman, Clerk of Courts
By  Deputy

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

JOHN REINTS,
Plaintiff and Appellant,

vs.

JANET SAYLER in her official
capacity and individually;
PENNINGTON COUNTY, SOUTH
DAKOTA; RON BUSKERUD in
his official capacity and
individually; NANCY TRAUTMAN
in her official capacity and
individually; LYNDELL PETERSON
in his official capacity and
individually; DEB HADCOCK in
her official capacity and
individually; and GEORGE FEREBEE
in his official capacity and
individually,
Defendants and Appellees.

ORDER DENYING PETITION FOR
REHEARING

#29188

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

OCT 14 2020

Shirley A. Jameson-Fergel
Clerk

A petition for rehearing in the above cause having been filed September 21, 2020 and no issue or question of law or fact appearing to have been overlooked or misapprehended, and more than fifteen days having elapsed therefrom and no written statement having been filed with the Clerk of this Court by a majority of the Justices requesting a rehearing, now, therefore, in accordance with the Rehearing Procedure Rule of this Court, the petition for rehearing is denied.

DATED at Pierre, South Dakota, this 14th day of October, 2020.

BY THE COURT:

David Gilbertson

David Gilbertson, Chief Justice

ATTEST:

Shirley A. Jameson-Fergel
Clerk of the Supreme Court

By: *Paula J. Graves*
Chief Deputy Clerk
(SEAL)

APPENDIX C

Seventh Judicial Circuit Court
PO Box 230
Rapid City SD 57709-0230
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RE: Reints v. Saylor et. al, Pending Motions (51CIV15-001711)

Dear Counsel:

The Court is in receipt of Plaintiff, John Reints', Second Amended Complaint, Reply to Motion to Dismiss, Affidavit of John Reints, correspondence to the Court, and Plaintiff's Brief on SDCL § 43-31-32 homestead law. The Court is also in receipt of Defendants', Janet Saylor, et. al, Rule 12 Motion, Reply to Plaintiff's Resistance to Defendants' Rule 12 Motion, correspondence to the Court, and Brief on the Effect a Co-Owner's Qualification for Protection Under SDCL § 43-31-32 has with Respect to Other Co-Owners' Tax Obligations.

The Court has considered the briefs, heard oral arguments, and is fully advised as to all matters pertinent hereto. For the reasons stated below, the Court **GRANTS IN PART AND DENIES IN PART** Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint. Defendants shall have 20 days in which to file an answer. The Court also **GRANTS** Plaintiff's

APPENDIX D

1

Motion to Compel. Defendants shall have 30 days in which to respond to the outstanding discovery.

BACKGROUND

In January of 2014, John Reints (hereinafter "Mr. Reints"), submitted an application pursuant to statute for a prohibition on the collection of his real property taxes. Mr. Reints' application was denied by the Pennington County Treasurer (hereinafter "Defendants"). Mr. Reints appealed the treasurer's decision to the South Dakota Department of Revenue, which determined Mr. Reints was not entitled to the prohibition. Mr. Reints then appealed the Department's decision to the Circuit Court. That Court affirmed. The South Dakota Supreme Court subsequently affirmed the denial of Mr. Reints application on appeal, holding essentially that since Reints was not yet 70, his application was premature. The Supreme Court did, however, find that a timely application receives the statutory protection as requested by Reints, in the manner he suggested. The Supreme Court expressly declined to consider the issue of whether the County could properly accept real property tax payments from Mr. Reints' mortgage management company against his wishes.

In the case before this Court, Mr. Reints is contesting the collection of real property taxes in 2015. Mr. Reints filed a second application for exemption of the collection of real property taxes in 2015, and was approved for the exemption. On December 7, 2015, Mr. Reints filed his Complaint in this lawsuit. The Complaint alleges Mr. Reints' rights are being violated because Defendants have continued to call for, and collect, real property taxes on his homestead even though the application for the homestead exemption has been approved.

Specifically, Mr. Reints contends that without being granted mandamus relief, he does not have a plain, speedy, and adequate remedy which preserves SDCL § 43-31-32's purpose.¹ Defendants assert the mandamus claim should not proceed forward since the exclusive method for an aggrieved taxpayer to seek recovery is through statute: SDCL §10-18-1, and/or SDCL § 10-27-2.

Additionally, Defendants argue Mr. Reints must join certain indispensable parties, including the Estate of Anne Reints (hereinafter "Estate"). Defendants contend proceeding with this lawsuit without the Estate would impede the Estate's ability to protect its interest in the property.² Defendants claim the Estate did not submit an application for a prohibition on the collection of property taxes, and would not qualify if it had because the Estate could not satisfy the statutory requirements. Additionally, Defendants argue there is no legal basis for claiming the Pennington County Treasurer is prohibited under SDCL § 43-31-32 from collecting real property taxes with respect to the Estate's undivided one-half interest in the property, and as such no property taxes may be collected by the County.

Conversely, Mr. Reints contends there is no requirement under SDCL § 43-31-32 that creditors, or anyone else who may have a qualified property interest in the homestead be joined. Moreover, Mr. Reints argues the homestead exemption applies to the entire homestead, regardless of the Estate's one half ownership interest in the property.

¹ Per the Supreme Court decision, the purpose of SDCL § 43-31-32 is to provide tax relief for low income applicants who have reached the age of 70 by deferring property taxes on their actual dwellings. Specifically, Mr. Reints is requesting the 2015 property taxes be returned to him by means of a writ of mandamus commanding their return, as they were paid by his mortgage company out of his escrow account, which he is required to fund to avoid foreclosure.

² The Estate of Anne Reints has John Reints as the sole heir. Defendants appear to have dropped the claim that Wells Fargo Home Mortgage or Fannie Mae must be added as indispensable parties, but have continued to request the Estate of Anne Reints be made a party. Specifically, Defendants argue the property is subject to taxation under SDCL § 10-4-1, and the Estate as a property owner is under a legal duty to pay or cause to be paid the property taxes under SDCL § 10-21-2.

ANALYSIS

A. PLAINTIFF STATES A VALID CLAIM FOR RELIEF AS THE HOMESTEAD EXEMPTION APPLIES TO ENTIRE ESTATE AND NO ADEQUATE REMEDY AT LAW EXISTS

A motion to dismiss for failure to state a claim upon which relief can be granted, pursuant to SDCL § 15-6-12(b)(5), “tests the law of a plaintiff’s claim, not the facts which support it.” *Brooks v. Milbank Ins. Co.*, 2000 S.D. 16, ¶ 14, 605 N.W.2d 173, 177 (quoting *Thompson v. Summers*, 1997 S.D. 103, ¶ 5, 567 N.W.2d 387, 390). When considering a motion to dismiss, the court must accept as true all facts properly pleaded in the complaint and any conclusions that the court can reasonably draw from those facts. *N. Am. Truck & Trailer, Inc. v. M.C.I. Commc’n Servs., Inc.*, 2008 S.D. 45, ¶ 6, 751 N.W.2d 710, 712. The court should not dismiss the action if, “in the light most favorable to the plaintiff, and with doubt resolved in his or her behalf, the complaint states any valid claim of relief.” *Brooks*, 2000 S.D. 16, ¶ 14, 605 N.W.2d at 177 (quoting *Schlosser v. Norwest Bank South Dakota*, 506 N.W.2d 416, 418 (S.D. 1993)). While the court must accept factual allegations as true, “the court is free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations.” *Nygaard v. Sioux Valley Hosp. & Health System*, 2007 S.D. 34, ¶9, 731 N.W.2d 184, 190.

Here, Defendant requests all state law claims set forth in Mr. Reints’ Second Amended Complaint be dismissed for failure to state a claim for which relief can be granted. Defendants argue Mr. Reints failed to exhaust administrative remedies, and/or he has adequate remedies at law.³ Finally, Defendants claim the homestead exemption Mr. Reints has been approved for

³ Mr. Reints claims he has exhausted all administrative remedies made available to him as evidenced from his Affidavit received by this Court on September 2, 2016.

does not permit the entire property to be exempt from the collection of real property taxes. The Court finds otherwise for purposes of this motion.

If property is owned by more than one owner, a single owner can claim the entire exempted amount. *In re Van Der Heide*, 164 F.3d 1183, 1184 (8th Cir. 1999). The Eighth Circuit Court of Appeals determined an individual who owned a home, as a joint tenant with two others, was entitled to the entire amount of Missouri's statutory homestead exemption where neither of the joint tenants claimed the exemption. *See also, In re Abernathy*, 19 Fed. App'x 460, 461 (8th Cir. 2001). Under South Dakota law, a homestead is exempt against creditors to the extent of the statutory amount of the exemption, over and above encumbrances. *In re Hughes*, 244 B.R. 805, 811 (Bankr. D.S.D. 1999). Homestead protection arises "by reason of possession and use and occupancy as a homestead, under the general statute. The source of title is immaterial." *Gross v. Gross*, 491 N.W.2d 751, 753 (S.D. 1992).⁴

Further, "once a debtor 'permanently remove[s] himself from the family home, it [is] no longer his homestead, although he still ha[s] an ownership interest.'"⁵ The homestead exemption is a privilege granted by law, not an estate in land.⁶ Under South Dakota law, the debtor's intent is the most relevant criteria to consider in determining whether a house is a homestead.⁷

⁴ The *Gross* Court cited *Bailey v. Farmers' State Bank of Sisseton*, 35 S.D. 122, 150 N.W. 942, 944 (1915). In *Bailey*, the South Dakota Supreme Court determined:

The land in which the owner has a homestead interest may be conveyed by deed or pass by will, or under the statutes of succession. But the homestead interest does not pass as an incident to the land; and, if the party acquiring such property becomes vested with a homestead interest founded on the title so obtained, it vests by reason of possession and use and occupancy as a homestead, under the general statute. The source of the title is immaterial.

Bailey, 150 N.W. at 944.

⁵ *In re Hanson*, Bankr. No. 00-30078 (Bankr. D.S.D. Apr. 9, 2001), <http://www.sdb.uscourts.gov/Decisions/2001Decisions/2001%20-19%20Hanson.htm>

⁶ James A. Craig, A "Rouge's Paradise?": A Review of South Dakota's Property Exemptions and a Call for Change, 59 S.D. L. REV. 257, 291 (2014) (citing *In re Wood*, 8 B.R. 882, 887 (Bankr. D.S.D. 1991)). SDCL § 43-31-2 lays out the specifications of a homestead and states that:

The homestead embraces the house used as a home by the owner of it, being either, real property or a mobile home, and if the owner has two or more house or mobile homes thus used at different times and places, the owner shall select which he or she will retain as a homestead. . . .

Together, the aforementioned cases indicate the “homestead” may be greater than individual property interests. Although Defendants argue the estate will still be subject to tax due, the Court finds the collection prohibition covers taxes assessed to the entire property.⁸ In *Van Der Heide*, the Court found it sufficient that one party applied for the exemption, and determined the exemption covered the entire homestead. Mr. Reints applied for the collection prohibition as the homestead, while the joint property owners did not. Mr. Reints was granted approval. There is no requirement for all joint property owners to apply for the collection prohibition under statute. Accordingly, this Court finds the entire homestead includes all property owners, including the Estate of Anne Reints, and the collection prohibition applies to the homestead.

Here, while Mr. Reints is entitled to a prohibition upon collection of real estate taxes, his position is that the County continues to list the property as having taxes due, and as such, the Estate and/or the mortgage company are making those payments. To the extent such are paid by Mr. Reints' mortgage company, they are paid from escrow and are charged to Mr. Reints. Defendants argue statutory changes to the chapter, specifically SDCL § 41-31-36 allows a third party to make payments like these. This argument overlooks the reality facing Mr. Reints: his tax status as, well as his escrow, are impacted by the County listing the property as having taxes due. The import of the collection prohibition statute (SDCL § 43-3-32) is to proscribe just such collection.⁹

Id. Additionally, SDCL §43-31-1 defines a homestead as exempt from judicial sale.

⁷ *Craig*, 59 S.D. L. REV. 293 (citing *In re Corbly*, 61 B.R. 843, 850 (Bankr. D.S.D. 1986)).

⁸ See *Van Der Heide*, 164 F.3d at 1184 (stating, “the applicable nonbankruptcy law in this case is Missouri property and exemption law. In Missouri, entireties property is not subject to the claims of the creditors of only one of the tenants, but is subject to such claims by creditors of joint debtors. Missouri’s homestead exemption law provides the homestead of every person, not to exceed \$8,000, is exempt from attachment and execution. If the property is owned by more than one owner, a single owner can claim the entire amount.”). The Court notes the case here is not a bankruptcy case, and this analysis is merely a discussion of the homestead exemption as applied to joint property owners. Since there are joint property owners in this case, the Court looks to the analysis utilized in *Van Der Heide* regarding homestead exemption statutes.

⁹ See *Reints*, 2015 SD 74, ¶20.

Here, Reints is without an adequate remedy at law to forestall this collection absent the mandamus proceedings. The County's position that lists the property as having taxes due allows the third party payers to make payment of taxes proscribed by statute, and adversely impacts Mr. Reints financially. No refund can provide the relief requested. As such, mandamus will lie.¹⁰

B. PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF IS DENIED

SDCL § 10-27-1 forbids injunctions to restrain or delay the collection of any tax claimed to be due. Defendants urge that any state law claim for injunctive relief must be dismissed for failure to state a claim under statute. Mr. Reints claims an injunction is proper pursuant to 42 U.S.C. §1983 and *Ex parte Young*, 209 U.S. 123 (1908). Mr. Reints asserts Defendants conduct, in defiance and contempt of the South Dakota Supreme Court shows an injunction is necessary. Further, Mr. Reints argues Defendants undertook a number of acts, including false representation, in order to cause the mortgagee's agent to believe taxes were currently due on Reints home during 2015 and 2016, and to cause and call for the mortgagee's agent. However, SDCL § 10-27-1 requires "no injunction to restrain or delay the collection of any tax claimed to be due may be issued by any court." Accordingly, the Court finds an injunction is inappropriate in this case, Mr. Reints' request for an injunction is hereby denied, and the Motion to Dismiss Mr. Reints' claim for injunctive relief is granted.

C. PLAINTIFFS MOTION TO COMPEL DISCOVERY IS GRANTED

The scope of pretrial discovery is broadly construed. *Kaarup v. St. Paul Fire & Marine Ins. Co.*, 436 N.W.2d 17, 19 (S.D. 1989). SDCL §15-6-37(a)(2) permits a party, to apply for an order compelling discovery by motion. An application for an order to compel discovery may be made in the court in which the action is pending. SDCL § 15-6-37(a)(1). If the motion is

¹⁰ To the extent Plaintiff also seeks declaratory relief barring the manner in which the County lists and collects taxes on his homestead, the Court can and will consider this as an opportunity to clarify rights of the parties. As such, dismissal is not warranted. See SDCL § 21-24-3.

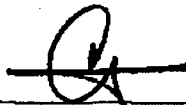
granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion . . . pay the moving party the reasonable expenses incurred in obtaining the order. SDCL § 15-6-37(a)(4)(A).

On April 22, 2016, Mr. Reints filed a Motion to Compel Responses to Plaintiff's First Admissions and First Interrogatories (hereinafter "Motion to Compel"). In his Amended Motion to Compel filed April 25, 2016, Mr. Reints argued there was need for the evidence sought via discovery. In light of the decision on the motion to dismiss, the Court grants Mr. Reints Motion to Compel and orders the discovery be answered within thirty (30) days of the Date of Entry of this Order.

CONCLUSION



For the reasons stated above, the Court **GRANTS IN PART AND DENIES IN PART** Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, and **GRANTS** Plaintiff's Motion to Compel.

Dated this 23 day of November, 2016.



Craig A. Pfeifle
Circuit Judge
Seventh Judicial Circuit


ATTEST:

 Clerk of Courts
By: 
Deputy Clerk



Pennington County, SD
FILED
IN CIRCUIT COURT

NOV 28 2016

Ranae Truman, Clerk of Courts
By:  Deputy

**IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA**

* * * *

JOHN REINTS

Plaintiff and Appellant

v.

JANET SAYLER,
PENNINGTON COUNTY,
RON BUSKERUD,
NANCY TRAUTMAN,
LYNDELL PETERSON,
DEB HADCOCK,
MARK DiSANTO, &
LLOYD LACROIX

Defendants and Appellees

* * * *

APPEAL FROM THE CIRCUIT COURT OF
THE SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE CRAIG A. PFEIFLE
Judge Presiding

* * * *

APPELLANT'S BRIEF

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Notice of Appeal filed December 2, 2019

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JURISDICTIONAL STATEMENT

Reints appeals pursuant to SDCL 15-26(A). This Court has jurisdiction under SDCL Chapters 43-31, 21-29, 10-27 and other provisions of South Dakota and common law. This Court has concurrent jurisdiction of claims arising under 42 U.S.C. 1983 and 42 U.S.C. 1988. *Haywood v. Drown*, 556 U.S. 729, 731 (2009); *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 506-07 (1982).

LEGAL ISSUES

1. Whether, immediately upon approval of each of his SDCL 43-31-32 applications for the years 2015 through 2019, Reints was entitled to actual prohibition on the collection of property taxes on his home.

The trial court held that Reints had no right to actual prohibition on collection.

Reints v. Pennington County, et al, 2015 S.D. 74, N.W. 2d 466 (2015),
Gross v. Gross, 4491 N.W. 2d 751, 753 (S.D. 1992)

2. Whether, after approving Reints' SDCL 43-31-32 applications for each of the years 2015 through 2019, Treasurer Janet Sayler then, in violation of SDCL 43-31-32, called for and obtained all of the real property taxes on Reints home.

The trial court made an implicit finding that Sayler did not "call for" payments.

Reints v. Pennington County, et al, 2015 S.D. 74, N.W. 2d 466 (2015)

3. Whether the amendment to SDCL 43-31-41 which became effective on July 1, 2016, nullified Reints' entitlement to the prohibition on collection of real property taxes on his home as to all such collections after that date.

The trial court held the amendment nullified any right to the prohibition on collection.

Reints v. Pennington County, et al, 2015 S.D. 74, N.W. 2d 466 (2015)

Faircloth v. Raven Industries, Inc., 620 N.W.2d 198, 201 (2000)

4. Whether Reints' Fourteenth Amendment right to equal protection is violated by the circuit court's finding that the 2016 amendment to SDCL 43-31-41 nullifies his entitlement to the prohibition on collection of property taxes on his home.

The trial court held that no equal protection right was violated.

Reints v. Pennington County, et al, 2015 S.D. 74, N.W. 2d 466 (2015)

Article XIV, Constitution of the United States

5. Whether Reints is entitled to the return of the property taxes collected on his home during the period 2015 through 2019, either pursuant to SDCL 10-27-1 and SDCL 10-27-2, or by a writ of mandamus pursuant to SDCL 21-29-2.

The trial court held Reints is not entitled on any basis to return of taxes.

Reints v. Pennington County, et al, 2015 S.D. 74, N.W. 2d 466 (2015)

7. Whether a county treasurer, immediately upon approval of an SDCL 43-31-32 application, is obliged by law to take specific steps to actually defer the successful applicant's real property taxes, i.e., must the treasurer immediately establish an SDCL 43-31-38 lien and/or take immediate steps to correct the auditor's tax list and the auditor's tax account for the treasurer?

The trial court did not rule on this issue. This is an issue of first impression.

SDCL 43-31-38
SDCL 10-11-10
SDCL 10-11-12

9. Whether a county treasurer and/or any other county official is prohibited by law, after he or she approves or knows or should know of the approval of an SDCL 43-31-32 application, from representing by any means to any person, entity or trust that property taxes which have thereby been deferred are currently due?

The trial court did not rule on this issue. This is an issue of first impression.

Reints v. Pennington County, et al, 2015 S.D. 74, N.W. 2d 466 (2015)

10. Whether Reints acquired a Fourteenth Amendment property interest in the SDCL 43-31-32 tax deferral benefit when he timely submitted his annual applications for that benefit.

The trial court did not rule on this issue but held any possible such interest was subordinate to mortgage obligations.

Goldberg v. Kelly, 397 U.S. 254, 264 (1970)

Board of Regents v. Roth, 408 U.S. 564, 577 (1972)

11. Whether the SDCL 43-31-32 tax deferral benefit is a need-based, statutory benefit pursuant to *Goldberg v. Kelly*.

The trial court did not rule on this issue.

Reints v. Pennington County, et al, 2015 S.D. 74, N.W. 2d 466 (2015)

Goldberg v. Kelly, 397 U.S. 254, 264 (1970)

Board of Regents v. Roth, 408 U.S. 564, 577 (1972)

12. Whether Reints was entitled, pursuant to *Goldberg v. Kelly*, to pre-tax collection hearings before an impartial authority?

The trial court did not rule on this issue but held that Reints had no right to notice of impending tax collections.

Goldberg v. Kelly, 397 U.S. 254, 264 (1970)

Board of Regents v. Roth, 408 U.S. 564, 577 (1972)

13. Whether any/all of the Defendant/Appellees violated Reints' Fourteenth Amendment right to procedural due process when they failed to provide for pre-tax collection hearings.

The trial court held that no Defendant violated Reints' procedural due process rights.

Goldberg v. Kelly, 397 U.S. 254, 264 (1970)

Board of Regents v. Roth, 408 U.S. 564, 577 (1972)

14. Whether any/all of the Defendant/Appellees violated Reints' Fourteenth Amendment right to substantive due process when they repeatedly denied him the SDCL 43-31-32 tax deferral benefit.

The trial court held that no Defendant violated Reints' substantive due process rights.

Ingraham v. Wright, 430 U. S. 651, 673 (1977)

Board of Regents v. Roth, 408 U.S. 564, 577 (1972)

15. Whether Pennington County maintained the regular custom and practice of denying Reints the SDCL 43-31-32 tax deferral benefit after approval of his SDCL 43-31-32 applications.

The trial court held that the County maintained no practice in violation of clearly established law.

Reints v. Pennington County, et al, 2015 S.D. 74, N.W. 2d 466 (2015)

16. Whether Pennington County maintained the regular custom and practice of failing to provide Reints with opportunity for pre-tax collection hearings after he timely submitted his qualifying SDCL 43-31-32 applications.

The trial court held that there was no obligation to provide such hearings.

Goldberg v. Kelly, 397 U.S. 254, 264 (1970)

Board of Regents v. Roth, 408 U.S. 564, 577 (1972)

17. Whether Janet Sayler acted as a policy maker for Pennington County in continuing to collect real property taxes on Reints' home after approval of his SDCL 43-31-32 applications, and as to the County's practice of failing to provide pre-tax collection hearings?

The trial court did not rule on this issue.

Pembaur v. City of Cincinnati, 475 U.S. 469 (1986)
Monell v. New York City Dept. of Social Services, 436 U. S. 658 (1978)
SDCL 7-11-1

18. Whether each of the named Pennington County Commissioners acted as a policy maker for Pennington County, in continuing to treat real property taxes on Reints' home as lawfully collectable after approval of his SDCL 43-31-32 applications, and as to the County's practice of failing to provide pre-tax collection hearings?

The trial court did not rule on this issue.

Pembaur v. City of Cincinnati, 475 U.S. 469 (1986)
Monell v. New York City Dept. of Social Services, 436 U. S. 658 (1978)
SDCL 7-8-20(3)

19. Whether Reints should be allowed to proceed with discovery and his claim for punitive damages against Janet Sayler and/or the individually named County Commissioners?

The trial court ruled that Reints had not shown sufficient evidence to proceed regarding punitive damages.

Smith v. Wade, 461 U.S. 30, 47-48, (1983)
Restatement (Second) of Torts, 908(1)(1979)

21. Whether attorney's fees should be awarded to Reints' counsel pursuant to state law or 42 U.S.C. 1988?

The trial court held that Reints was not a prevailing party.

Newman v. Piggie Park Enterprises, 390 US 400 (1968)

STATEMENT OF THE CASE AND FACTS

This case arises from Defendants' regular practice, during the period 2015-2019, of approving John Reints' SDCL 43-31-32 applications each year and then proceeding each year to collect Reints' deferred property taxes by representing to Reints' mortgage servicer that these taxes were currently due. Reints maintains that Defendants have willfully defied the rulings of this Court in *Reints v. Pennington County, et al*, 2015 S.D. 74, 869 N.W. 2d 466 (2015) ("*Reints I*"). Reints original petition and complaint in this matter was filed December 7, 2015.

In *Reints I*, this Court affirmed denial of Reints 2014 application for the SDCL 43-31-32 prohibition on the collection of real property taxes on Reints' single-family home, on the ground that he submitted his otherwise-qualifying application just before he turned 70, rather than just after. The Court then addressed and resolved, in Reints' favor, all issues he raised in this 2015 appeal except one it deemed unnecessary to address, namely, whether the County Treasurer could continue to collect property taxes on Reints' homestead property through the mortgage servicer, after approval of Reints' timely-submitted, qualifying SDCL 43-31-32 application.

This Court explained, “Because of our decision on the first two issues as presented, we do not reach Reints’ fourth and fifth issues which questioned whether the County could properly collect and retain real property tax payments from Reints’ mortgage management company against his wishes.” (fnote ¶4, *Ibid*). Reints understands the, “Because of our decision on the first two issues we do not reach Reints’ fourth and fifth issues...,” as similar to this Court’s statement in *Holland v City of Geddes*, 2000 S.D. 71, “For ease of analysis, we examine issues one and two together, and our ruling on those issues makes a decision on issue three unnecessary.” *Ibid* at ¶3. Defendants deny that this Court’s rulings on *Reints I*’s issues one and two bear relation to whether a county can continue collect from a mortgage servicer property taxes deferred by operation of SDCL 43-31-32.

This Court’s findings on issue one, as presented, were as follows. *The prohibition on collection applies to all property taxes no matter when assessed.*

The prohibition [on tax collection] offered by SDCL chapter 43-31 is intended to provide tax relief for low-income applicants who have reached the age of 70 by deferring property taxes on their actual dwellings. The County’s view that a prohibition shields only a specific assessment year of tax liability from collection is inconsistent with this purpose and contrary to the plain meaning of SDCL chapter 43-31. ¶30, *Ibid*.

The prohibition becomes effective upon approval of an application.

The plain language of chapter 43-31 indicates a prohibition, once granted, restrains a county from collecting any real property taxes on the applicant’s single-family dwelling. ¶20, *Ibid*.

As to the meaning of the SDCL 43-31-32 language, “prohibition on collection,” this Court held.

The word *collect* means ‘[t]o call for and obtain payment of[.]’ *The American Heritage College Dictionary* 274 (3d ed. 1997). Thus, a prohibition granted under SDCL 43-31-32 prevents a county from calling for and obtaining payment of real property taxes. ¶11, *Ibid.*

This Court also emphasized in *Reints I* that SDCL 43-31-32 and all other provisions of South Dakota homestead law are mandated by Article XXI, § 4, of the South Dakota Constitution and

“[C]arr[y] out th[e] purpose of ‘provid[ing] for the family a home in which it may have shelter from and a protection against the claims of creditors or its own improvidence and where it may live and be protected.’ (citation omitted) ¶7, *Ibid.*

On March 18, 2015, Reints timely filed his second SDCL 43-31-32 application and, with it, his letter stating that any taxes collected during 2015 would be paid only under protest. Treasurer Janet Sayler (“Sayler”) delayed approval of this application until May 4, 2015, and meantime, on April 14, 2015, collected property taxes on Reints home by representing to Reints’ mortgage management company, Wells Fargo Home Mortgage (“WFHM”), that the taxes were currently due. After approval of this application on May 4, 2015, Sayler again, on October 13, 2015 and November 20, 2015, collected property taxes on Reints home in the same way.

Reints quickly learned of the April 14, 2015, tax collection from the mortgage servicer’s monthly statements but he was unable to obtain an intelligible, dated notice of the Treasurer’s action on his application. He thus was unable to understand whether the April, 2015, tax collection occurred before or after action was taken on his application. He only received a letter from a Deputy Treasurer indicating that he had applied on the correct form. Late in 2015, Reints learned, indirectly, that his 2015 application had been approved on May 4.

After Reints' 2015 application was approved, Sayler took no step to actually defer Reints property taxes. She failed to establish and record a lien as required by SDCL 43-31-38. She failed to cause correction of the "auditor's tax list," or tax roll, as required by SDCL 10-11-10 and expressly provided for by SDCL 10-11-12, to show that Reints property taxes had been deferred. At no time prior to the 2015 tax collections did Sayler provide Reints with pre-deprivation notice of impending tax collections, nor did Sayler provide Reints with opportunity for pre-deprivation hearings.

On August 26, 2015, this Court issued its Opinion in *Reints I*. Five weeks earlier, on June 21, 2015, Reints administratively appealed Sayler's repeated failures to provide clear notice of action on his 2015 application and the April, 2015, collections of property taxes. Pennington County moved for dismissal without hearing of Reints' appeal, on grounds that the Hearing Examiner had no jurisdiction to prevent the tax collections.

Reints does not have any standing or authority to appeal to the Office of Hearing Examiners on these facts. The Office of Hearing Examiners does not have statutory authority or jurisdiction to order the Treasurer to turn away a payment from Reints' deceased mother's mortgage company, even if he has received a homestead exemption.

¶35, *Resistance to Defendants' Rule 12 Motion in Lieu of Answer*, filed March 3, 2016, Clerk's Index P. 146, quoting from P. 1., County's *Motion for Dismissal*.

In September, 2015, a telephonic hearing was held before Administrative Judge Hillary Brady. Sadly, Judge Brady passed away before rendering a decision. On Reints' motion, further administrative consideration of Reints' appeal was continued pending outcome of this litigation.

Reints then timely filed SDCL 43-31-32 applications for each of the years 2016 through 2019. In every case, Reints demanded pre-tax collection hearings and, also, informed Sayler in writing that any real property taxes collected during those years would be paid only under protest.¹ In the case of each tax collection, Reints either amended or moved to amend his petition and complaint herein so as to commence within 30 days an action to recover taxes via SDCL 10-27-2, or else, with leave of the court, filed his affidavits of tax collection as supplementary pleadings so as to timely commence SDCL 10-27-2 actions to recover taxes. Reints informed Sayler and the County Commissioners, in writing, that the SDCL 43-31-32 tax relief benefit was self-evidently a need-based, statutory benefit to which the requirements of *Goldberg v. Kelly*, 397 U.S. 254 (1970) applied. Each of said applications was approved by Sayler prior to the first-half April collections of real property taxes on Reints' home.

In 2015, Reints provided each Commissioner a printed copy of this Court's Opinion in *Reints I*. Reints repeatedly asked the Commissioners, in writing, to intercede, to oblige Sayler to afford pre-tax-collection hearings, and to use their tax-regulating authority to stop the unlawful tax collections. (See ¶¶5-8, *Plaintiff's Brief on Defendants' Duties As Regards Ongoing Litigation*, filed February 6, 2019, Clerk's Index P. 2046). In no case did any Commissioner or the Commission take any action. In no case did Sayler establish and record a lien pursuant to SDCL 43-31-38. In no case did she cause correction of the auditor's tax list to show that Reints' taxes were deferred, pursuant SDCL 10-11-10 and SDCL 10-11-12.

¹ In its final judgment, the circuit court has disregarded Reints' consistent notices to Sayler that taxes would be paid only under protest and held implicitly that only WFHM could invoke SDCL 10-27-2 by filing such notices.

After requesting briefs on South Dakota homestead law, Circuit Judge Craig Pfeifle ruled on November 23, 2016, as follows.

To the extent such [real property taxes] are paid by Mr. Reints' mortgage company, they are paid from escrow and are charged to Mr. Reints. Defendants argue statutory changes, specifically SDCL §41-31-36 [typographical error for SDCL §43-31-41] allow a third party to make payments like these. This argument overlooks the reality facing Mr. Reints: his tax status, as well as his escrow, are impacted by the county listing the property as having taxes due. The import of the collection prohibition statute (SDCL §43-3-32) [typographical error for SDCL §43-31-32] is to proscribe just such collection. See *Reints*, 2015 SD 74, ¶20.

P. 6, *Letter-Order* of November 23, 2016, Clerk's Index P. 529

In the same Letter-Order, Judge Pfeifle rejected Defendants' claim that Reints should be denied SDCL 43-31-32 tax relief because the co-owner of Reints' home, the Estate of Anne Reints, did not apply and could not meet SDCL 43-31-32 requirements.

If property is owned by more than one owner, a single owner can claim the entire exempted amount. *In re Van Der Heide*, 164 F.3d 1183, 1184 (8th Cir. 1999). The Eighth Circuit Court of Appeals determined an individual who owned a home, as a joint tenant with two others, was entitled to the entire amount of Missouri's statutory homestead exemption where neither of the joint tenants claimed the exemption. See also, *In re Abernathy*, 19 Fed. App'x 460, 461 (8th Cir. 2001). Under South Dakota law, a homestead is exempt against creditors to the extent of the statutory amount of the exemption, over and above encumbrances. *In re Hughs*, 244 B.R. 805, 811 (Bankr. D.S.D. 1999). Homestead protection arises "by reason of possession and use and occupancy as a homestead, under the general statute. The source of title is immaterial." *Gross v. Gross*, 491 N.W. 2d 751, 753 (1992)...

Further, "once a debtor 'permanently remove[s] himself from the family home, it [is] no longer his homestead, although he still has an ownership interest.'" [*In re Hanson*, Bankr. No. 00-30078 (Bankr. D.S.D. Apr. 9, 2001).] The homestead exemption is a privilege granted by law, not an estate in land. [James A. Craig, "*A Rouge's Paradise?*" - *A Review of South Dakota's Property Exemptions and a Call for Change*, 59 S.D.L. REV. 257, 291 (2014) (citing *In re Wood*, B.R. 882, 887 (Bankr. D.S.D. 1991))...] Under South Dakota law, the debtor's intent is the most relevant criteria to consider in determining whether a house is a homestead. [Craig, 59 S.D.L. REV. 293 (citing *In re Corbly*, 61 B.R. 843, 850 (Bankr. D.S.D. 1986))] (Some citations omitted)

Together, the aforementioned cases indicate the “homestead” may be greater than individual property interests. Although Defendants argue the estate will still be subject to tax due, the Court finds the collection prohibition covers taxes assessed to the entire property. [See *Van Der Heide*, 164 R. 3d at 1184...] In *Van Der Heide*, the Court found it sufficient that one party applied for the exemption, and determined the exemption covered the entire homestead. Mr. Reints applied for the collection prohibition under statute. Accordingly, this Court finds the entire homestead includes all property owners, including the Estate of Anne Reints, and the collection prohibition applies to the homestead.

PP. 5-6, *Letter-Order* of November 23, 2016, *ibid*

A Court trial was held on March 18, 2019. The Court ruled that Reints had not presented sufficient evidence to proceed with his punitive damage claims. (P. 3, TT).

Sayler testified that she does not “collect” taxes for Pennington County, but only “accepts” them. (P. 6, TT). She testified that she never provided tax relief to Reints and that she has never deferred collection of property taxes on Reints’ home. (PP 15-16, TT).² Sayler acknowledged that the prohibition on collection begins at the time an SDCL 43-31-32 application is approved. (PP.15-16, TT). Sayler stated that she did “not remember” whether any tax collection procedures were changed as a result of *Reints I*. (P. 18, TT). Sayler testified that she was “not aware” that South Dakota law provided for making corrections to the auditor’s tax list (the “tax list,” the “tax roll”)(P. 21, TT). She further testified as follows.

Q. Now, isn't it true that once you grant an application for the tax deferral program, that those applicants' real property taxes are deferred immediately?

A. I don't believe that.

Q. Well, ma'am, I just had you –

A. Because the taxes -- the taxes never go away.

Q. No. I said deferred.

² Trial herein was conducted before the 2019 tax collections. Reints’ 2019 application was approved. In both April and October, 2019, Sayler collected Reints’ property taxes.

A. According to law?

Q. Yes.

A. That would be correct.

Q. Can you identify any reason why the taxes you're restrained from collecting due to the deferral should remain on the Auditor's tax list?

A. It's a -- it's a true and correct list for all taxes due in Pennington County.

Q. Ah, due in Pennington County. But when the tax is deferred, it is not due, is it?

A. Probably not.

P. 23, TT

Sayler was asked to read from SDCL 10-11-12.

Q. Now, I believe you have before you another statute. It is SDCL 10-11-12. It is highlighted, and if you would read it to the Court, please.

A. "In all such cases of addition, correction, or amendment of the tax lists, the fact that the same was made as an addition, correction or amendment shall be made and the date of making the same shall be entered in the 'remarks' or other appropriate column of the tax list. The original entries in such cases shall be left standing, but interlined and the new or corrected entries made with red ink."

Q. Now, can you identify any reason why an application under 43-31-32 that has been approved should not be treated as SDCL 10-11-12 provides?

A. No, I cannot.

Q. Do you let the Auditor know when you have approved a tax deferral application?

A. No, I do not.

Q. Do you make any attempt to correct the Auditor's tax list or tax account for the Treasurer when you approve a tax deferral application?

A. No, I do not.

PP. 23-24, TT

Sayler acknowledged that she understands that money collected from WFHM to pay taxes on Reints' home is paid into escrow by Reints, himself. (P. 41, TT). She testified that, as Treasurer, she does not have responsibilities to the Commissioners and that she does not consult with the Commissioners. (P. 43, TT).

Deputy Treasurer Annette Brant testified as to her correspondence with Reints and her part in procedures of the Treasurer's office. Reints testified as to his efforts to

prevent the post-approval tax collections, his unanswered requests to Sayler and Commissioners, his efforts to cause the Commissioners to stop the tax collections, and the devastating consequences for him of sustained denial of the homestead protection. On cross-examination, Reints was asked about details of the mortgage on the homestead property. (See PP. 102-104, TT)

Transcripts of each of the Defendant Commissioners' depositions are incorporated in the record. These were allowed as trial testimony and filed on November 16, 2018, and appear at PP. 1648-1768 of the Clerk's Index. Each of the Commissioners except Mr. Buskerud testified at their August, 2018, depositions that they did not familiarize themselves with the this Court's Opinion in *Reints I*, a written copy of which Reints provided each of them in 2015. Mr. Buskerud, a former Pennington County Assistant States Attorney, stated that he read the Opinion asked the States Attorney's Office to look at it. (p. 9, deposition transcript). All Commissioners testified in their depositions that they took no action in relation to *Reints I* or any of Reints' written notices and requests to them other than to file, discard, or pass these to the State's Attorney.

Trial concluded on March 18, 2019. Five months later, on September 10, 2018, the court entered its *Findings of Fact and Conclusions of Law*. In a striking reversal without explanation of its November 23, 2016, findings, the court held that a mortgage contract obligation to pay property taxes controls the applicability of the SDCL 43-31-32 prohibition on collection of property taxes and nullifies Reints' right to SDCL 43-31-32 homestead protection. The court reversed its prior holding that homestead protection arises "by reason of possession and use and occupancy as a homestead,

under the general statute. The source of title is immaterial.” (*Gross v. Gross*, 491 N.W. 2d 751, 753 (1992)). The court found that, despite approval of his applications, Reints has suffered no violation of any state-law or constitutional right; that all individual Defendants have qualified immunity, and that Pennington County has no liability. Final judgment was entered on October 29, 2019.

ARGUMENT

STATE LAW CLAIMS

It is undisputed that for five years --- the years between Reints’ 70th and 76th birthdays --- he has properly applied and met all the requirements of SDCL 43-31-32, and yet has never received the homestead protection afforded by this statutory prohibition on the collection of property taxes. The purpose of the statutory prohibition is not in dispute and has been clearly established by this Court. “The prohibition offered by SDCL chapter 43-31 is intended to provide tax relief for low-income applicants who have reached the age of 70 by deferring property taxes on their actual dwellings.” (*Reints I*, at ¶23). The language of the statute is clear and unmistakable:

Any person making an application under the provisions of §§ 43-31-31 to 43-31-41, inclusive, is entitled to a prohibition on the collection of real property taxes upon the person's single-family dwelling if the following conditions are met...

SDCL 43-31-32

It is undisputed that, in every case, Reints satisfied all of the conditions.

The appearance is that the County and individual Defendants herein have, for some unstated reason, tried one thing after another in order to deny Reints the deferment of property taxes on his homestead. It adds to the puzzle that, in the end, this deferment would cost the County nothing, since interest at an annual rate of 4% accrues on all deferred taxes. In *Reints I*, this Court upheld the plain meaning of SDCL 43-31-32 and ruled against two innovative County interpretations that lacked statutory basis. Defendants have responded to *Reints I* by pretending that they are not “collecting” real property taxes on Reints’ homestead but only “accepting” them.

In the circuit court’s first ruling in this matter, on November 23, 2016, Judge Pfeifle relied upon *Reints I* and previous state Supreme Court and Eighth Circuit authorities that apply directly to homestead law. On this basis, the court held that Reints was entitled to actually receive the SDCL 43-31-32 homestead protection, and that “mandamus will lie” in relation to Reints’ petition for return of property taxes improperly collected. (P. 7, *Letter-Order* of November 23, 2016, *supra*). In its final judgment, however, the circuit court, without reference to any authority on homestead law, reversed its previous rulings, held that mortgage obligations nullify Reints’ homestead right and legitimized Defendants’ regular practice of falsely representing Reints’ deferred property taxes as currently due in order to obtain payment. The circuit court did these things by the twofold means of implicitly accepting Defendants’ fiction that the auditor’s tax list cannot be amended, on the one hand, and by ruling at ¶4, P. 14 of its *Conclusions of Law* that the prohibition on collection becomes effective only *after* the April deadline for payment of property taxes, on the other.

If a taxpayer entitled to the prohibition on the collection of real property taxes pursuant to 43-31-32 fails to pay real property taxes, those taxes become a lien against the property and accrue interest. SDCL §43-31-38.

P.14, *Conclusions of Law*, Clerk's Index P. 2421

By contrast, this Court has held that that the prohibition becomes effective at the time of approval the SDCL 43-31-32 application. "[O]nce granted, [the prohibition] restrains the County from collecting *any* real property taxes assessed on the applicants single family dwelling." (§12, *Reints I*).

As Sayler's trial testimony and the statutes' own plain meanings show, the auditor's tax list (the "tax roll") is not unalterable, and the original, January 1 version of auditor's tax list --- which shows total assessed taxes for the year on a piece of property *as of the beginning of that year* --- is not what Defendants send to WFHM in response to its bi-annual requests for a list of taxes due and payable.

Defendants falsely claim --- and the trial court has erroneously accepted --- that, "[T]he amount of tax owed on any particular piece of property in Pennington County cannot be changed once the tax roll has been provided to the Treasurer by the Auditor in any manner other than through the abatement process." (§36, Defendants' *Answer* of October 25, 2017, Clerk's Index P. 960.) When testifying at trial, Sayler was asked to read a portion of SDCL 10-17-9.

A. "The county auditor shall, immediately after preparation of the tax lists, charge the county treasurer with the amount of the lists as shown in the recapitulation thereof, in a record prepared for that purpose. The auditor shall also charge the treasurer in the tax list account with all additional assessments made after the list is prepared and shall credit the treasurer with all amounts collected and any other amounts as may be lawfully deducted from such lists."

Q. So the assessor can add additional assessments to the list, correct?

A. That's correct.

Q. And that's at --

A. Pardon me?

Q. Are you okay? Do you --

A. Yes. No, I'm fine.

Q. And that can be done after the January 1st list is provided to you?

A. Yes.

Q. Okay. There's also a provision at the end of that citation that you read that any other amounts that may lawfully be deducted from such lists, correct?

"...shall credit the treasurer with all amounts" --

A. Yeah.

Q. -- "collected and any other amounts as may be lawfully deducted from such lists."

A. That's correct.

PP. 22-23, TT.

What the County actually sends electronically to WFHM twice each year is a large, computerized data file with one line of data of approximately 80 characters for each taxable property in Pennington County. The single line for Reints' homestead property begins with the property tax identification number. The meaning of each number in the single line cannot be understood without a "key" to what each sequential entry means. (See Saylor's trial testimony at P. 19, TT, and trial *Exhibit 48*³). One of the entries in the line of data indicates *the amount of taxes currently due*. Separate data files are transmitted by Defendants to WFHM just before each April and October tax collection, and each data line shows a bi-annual amount due at the time each data file is sent. At trial, Saylor testified as follows.

Q. Okay. Are these entries, these data file lines, identical to what you get from the County Auditor, or is the County Auditor's list something from which you compile this data file?

A. I could not answer that specifically. That file is sent through from the Audit-- from -- through many different avenues to our IT department.

³ Trial exhibits are not identified as such in the alphabetically-arranged Clerk's Index, as received by Reints' counsel. They are not shown as part of the trial transcript. They can be found in the Clerk's Index starting at P. 1909 under, "Correspondence:- Exhibits Attached for CAP's Review - Dated 1/11/2019." See P. 24, TT, for admission of Exhibit 48. All the exhibits submitted to Judge Pfeifle for review on January 11, 2019, were admitted at trial. See P. 81, TT.

Throughout its *Findings of Fact and Conclusions of Law*, the circuit court attributes *only one action* other than approving Reints' applications to the County and the individual Defendants. That action is "accepting payment of real property taxes." This is not accurate. Reints is entitled to fair consideration of his actual claims and the evidence he has provided.

Reints has provided substantial, undisputed proof that Defendants have "called for" payment of property taxes on his homestead property by representing them as currently due, after they have been deferred. The circuit court has now ignored that proof and, without reasoned explanation, abandoned the governing authority on which it properly relied in its Letter-Order of November 23, 2016. The circuit court has now implicitly and erroneously accepted Defendants' representations that they are helpless to timely correct the auditor's tax list to show that taxes on Reints home have been deferred. The circuit court did not expressly rule that Defendants have not "called for" payment of these taxes. Yet, in dismissing all of Reints claims, the court relies heavily on the unsupported and unstated premise that Defendants have *only* "accepted" deferred taxes without calling for their payment.

Throughout its *Conclusions of Law*, the trial court also errs by treating Reints' SDCL 43-31-32 homestead right as subordinate to the conditions of his and his co-owner's interest by title in the homestead property. Reints homestead right is not derived from title. Rather, it is derived from his "possession and use and occupancy as a homestead, under the general statute. The source of title is immaterial." *Gross v. Gross, supra*.

This Court has clearly held that the purpose of South Dakota homestead law generally and SDCL 43-31-32 in particular is to protect the home. (§7, *Reints I*). The rights and recourse of creditors are limited and compromised to some degree, in any case in which South Dakota homestead law, derived from Article XXI, § 4, of the South Dakota Constitution, is applied. The Constitution and the Legislature have established that it is necessary to thus limit creditors' or other claimants' rights because of the importance to society of "provid[ing] for the family a home in which it may have shelter from and a protection against the claims of creditors or its own improvidence and where it may live and be protected." (§7, *Reints I, ibid*) It is the same widely recognized, humane principal that has led modern democratic societies to abolish debtors' prisons and to allow claims of personal property exemption. First Defendants, and now the trial court, would treat protecting the homes of elderly, low-income South Dakotans as illegitimate, when met with any compromise to, or limitation of, creditors' or co-owners' title-based rights. This is a case of stark disagreement with the legislature and the Constitution.

In its *Conclusions of Law*, the circuit court first finds that the co-owner of Reints' homestead property would improperly benefit if all property taxes were actually deferred, then reverses that by finding this co-owner would be harmed if the prohibition on collection were applied and all property taxes deferred.

While South Dakota law does not require an applicant to have title to the property to qualify for a property tax deferral under SDCL § 43-31-31 to SDCL § 43-31-41, neither does South Dakota law indicate that a co-owner of the property who does not qualify for the tax relief is entitled to the same tax deferral.

¶5, P. 14, *Conclusions of Law*

Any statutory lien imposed pursuant to SDCL 43-31-38 would impair or impose a defect in the title to the Property, thereby harming the Estate of Anne Reints' interest in the property.

¶7, P. 14, *ibid*

The circuit court's implicit theory apparently is that, if Reints died after property taxes were deferred and SDCL 43-31-38 liens created, then Anne Reints' estate would be liable for all deferred taxes, rather than just for the estate's portion. It is unclear that this is true. Upon Reints' death there would be no homestead, and all future property taxes would be currently due. John Reints' estate or the successor to his interest in the property would be liable for at least a one-half portion of the deferred taxes, or perhaps for all of the deferred taxes.

The circuit court found that,

Reints is not entitled to relief under SDCL § 10-27-2 or any other legal theory for real property taxes paid after July 1, 2016, because SDCL § 43-31-41 provides that nothing in SDCL § 43-31-31 to SDCL § 43-31-41, inclusive "may be construed to prohibit a county treasurer from accepting payment for the real property taxes from any person, entity or trust that submits payment to a county treasurer."

¶16, P. 16, *Conclusions of Law*

Defendants have in every case, beginning in 2015, *caused* WFHM to submit tax payments by falsely representing Reints' deferred taxes as currently due. SDCL 43-31-41, as amended, obvious does not apply when no tax payments are submitted. Taxes unlawfully collected by falsely representing their status as currently due are not legitimized by SDCL 43-31-41. As soon as Defendants stop falsely representing deferred taxes on Reints' homestead as currently due, WFHM will necessarily stop submitting tax payments. WFHM is subject to federal regulation as to when and what

it may pay from a mortgage escrow account. The *Real Estate Settlement Procedures Act* provides that

(a) Timely escrow disbursements required. If the terms of a mortgage loan require the borrower to make payments to the servicer of the mortgage loan for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the mortgaged property, the servicer shall make payments from the escrow account in a timely manner, that is, on or before the deadline to avoid a penalty, as governed by the requirements in §1024.17(k).

12 CFR § 1024.34(a)

If taxes not yet due are paid, they are obviously not “paid in a timely manner.”

There can be no question that WFHM submits payments of taxes on Reints’ homestead property because the “tax collector,” --- namely the Defendants herein --- represents to WFHM that taxes are currently due.

We received your request and can confirm even based on the information the tax collector provided there are still real estate taxes due on the account. A disbursement will be made from your escrow account on April 14, 2017, in the amount of \$664.37.

April 13, 2017 letter to John Reints from WFHM representative Monique Bryan, Trial *Exhibit 39*.

We do not receive written bills [for taxes] from the county; *instead we receive electronic requests for payment.* (emphasis supplied)

July 24, 2017 letter to John Reints from WFHM representative Narita Shrestha, Trial *Exhibit 40*.

Reints respectfully submits that Defendants’ interpretation of SDCL 43-31-41 is not at issue here, for the reasons just stated. However, in case this Court finds it is necessary to apply this statute, he asks that the following be considered.

Defendants claim that tax payments made from funds Reints has, under compulsion, placed in mortgage escrow are “from” WFHM, in terms of this statute. There are many problems with this interpretation, chief among which is that, when the Legislature amended SDCL 43-31-41, it did not alter or repeal SDCL 43-31-32. If the tax payments WFHM has made with Reints’ money have been “from” WFHM, then SDCL 43-31-41 simply nullifies SDCL 43-31-32. It must be assumed that if the Legislature had intended to nullify or repeal SDCL 43-31-32 as to any successful applicants who have mortgages with escrow accounts on their homestead property, it would have done so directly. It must be assumed that the Legislature does not intentionally enact contradictory statutes. If Reints had not, from 2015 to the present day, made mortgage payments in their full amounts including the portions that go to escrow, he would have lost his homestead to foreclosure long ago. As reiterated by this Court, the purpose of SDCL 43-31-32 is to protect the home.

“Where two statutes appear to conflict, it is the duty of a court to reasonably interpret both, giving effect if possible to all provisions under consideration, construing them together to make them harmonious and workable.” *Faircloth v. Raven Industries, Inc.*, 20 S.D. 158, 620 N.W.2d 198, 201 (2000). Any measure of conflict that exists between SDCL 43-31-32 and SDCL 43-31-41 can be resolved by recognition of the fact that WFHM is merely an agent. It is the agent of Fannie Mae on whose behalf it administers the mortgage, on the one hand, and it is the agent of John Reints when it receives from him money that goes into escrow and is then distributed to pay taxes and insurance on Reints’ homestead property, on the other. Reints’ mortgage payments are not paid to WFHM for its own possession and use, and the escrow funds that WFHM

distributes to pay taxes on Reints' homestead do not at any time belong to WFHM. Accordingly, it is misleading to claim that the tax payments WFHM makes as agent are "from" WFHM. Similarly, payment by a bank account check from an account holder is not a payment "from" the bank. In reality, the tax payments made to Pennington County from the escrow account of the mortgage on Reints' homestead property are "from" Reints. Reints provides the money with which such payments are made. Any interpretation of SDCL 43-31-41 should recognize this reality. Collection of real property taxes "from" Reints is prohibited, when Reints has qualified for the SDCL 43-31-32 homestead protection.

So long as WFHM is correctly understood as acting as an agent carrying out fiduciary duties, there is no conflict between any portion of SDCL 43-31-32 and SDCL 43-31-41 and "all provisions" of both statutes are given effect.

If SDCL 43-31-41 were interpreted so as to nullify the homestead protection to which Reints is statutorily and (SD) Constitutionally entitled, an equal protection issue would be raised. Such interpretation would make actual benefit of the SDCL 43-31-32 prohibition on tax collection unavailable to that sub-group of successful SDCL 43-31-32 applicants whose homestead property was subject to a mortgage that required payment of property taxes via escrow. SDCL 43-31-32 does not require the absence of a mortgage or the satisfaction of all of the terms of a mortgage, as a condition of eligibility. The state Constitution's purpose of protecting the home would, in this case, be defeated for a sub-group of successful SDCL 43-31-32 applicants who would thereby be denied equal protection of South Dakota homestead law. Insofar as the tax collections on Reints' homestead property since July 1, 2016, have been based on

SDCL 43-31-41, Reints has asserted and legitimately claims the protection of the equal protection clause of the Fourteenth Amendment. The Attorney General was notified of this Constitutional claim.

FEDERAL LAW CLAIMS

It is self-evident from five years of identical tax collection actions that it is the regular practice and custom of Pennington County to approve Reints' SDCL 43-31-32 applications, then to collect all property taxes on his home anyway. Similarly, it is self-evident from five years of identical actions that it is the regular practice and custom of Pennington County to fail and refuse to provide Reints pre-tax collection hearings.

It is also clear that Janet Sayler is a policy maker for Pennington County as to the County's tax collection practices. "The county treasurer is the collector of taxes." (SDCL 7-11-1). Sayler testified at trial that, as Treasurer, she does not have responsibilities to the Commissioners and that she does not consult with the Commissioners. (P. 43, TT).

The individual County Commissioners are policy makers as to what property taxes may be collected in Pennington County. "[T]he board of county commissioners shall have the power...to levy a tax not exceeding the amount authorized by law..." SDCL 7-8-20(3). The Commissioners established the regular practice and policy of allowing all assessed taxes to be collected on Reints' home when, because of the SDCL 43-31-32 prohibition, none could be lawfully collected during the period 2015 through 2019. These same Commissioners permitted collection of all assessed property taxes

on Reints' home during this period when no taxes could be lawfully collected without affording Reints pre-tax collection hearings.

Accordingly, Pennington County is liable for all of the violations of Reints' rights resulting from collections of property taxes on his home from 2015 to 2019, as well as for violations of Reints' rights resulting from failure to provide pre-tax collection hearings. *Monell v. New York City Dept. of Social Services*, 436 U. S. 658 (1978); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986).

PROCEDURAL DUE PROCESS

Reints procedural due process claims are based on the fact that he has timely filed SDCL 43-31-32 applications. A "legitimate claim of entitlement" to a state law-based benefit establishes a property interest protected by the Fourteenth Amendment.

[Property interests] are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. Thus, the welfare recipients in *Goldberg v. Kelly*, *supra*, had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them. The recipients had not yet shown that they were, in fact, within the statutory terms of eligibility. But we held that they had a right to a hearing at which they might attempt to do so.

Board of Regents v. Roth, 408 U.S. 564, 577 (1972)

Reints acquired his Fourteenth Amendment property interest in the SDCL 43-31-32 tax relief benefit *when he submitted his application* each year. Reints' procedural due process claims do not depend upon vindication of any of his other claims.

Where the threatened property interest is a need-based benefit, pre-deprivation hearings are required because the recipient or applicant "may be deprived of the very means by which to live." *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). Reints

undisputed evidence clearly shows that he has been thus threatened and that his ability to retain and have a home in retirement and old age is endangered by the denial of this benefit. Receipt of the SDCL tax relief benefit is determined by economic need, and an extremely low income must be shown. This Court has found that a county may not divorce grant of the benefit from “the applicant’s concurrent economic need.” ¶19, *Reints I, supra*. There can be no reasonable doubt that the SDCL 43-31-32 tax relief benefit is need-based. Therefore, “only a pre-termination hearing provides the recipient with procedural due process.” *Ibid*.

“It is well settled that state law does not define the parameters of due process for purposes of the Fourteenth Amendment.” *Brown v. Daniels*, 290 Fed. Appx. 467, 471 (3d Cir. 2008), referencing *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541. Reints had an unmistakable right based in federal law to a pre-tax collection hearing before a genuinely impartial authority every year, and probably every time, that Defendants collected property taxes on his home between 2015 and 2019. It is undisputed that Defendants provided no such hearings. By their failure to provide such hearings, Defendants, as their regular practice, violated Reints’ clearly established right to procedural due process.

“The remedy for a procedural due process violation is restoration of the status quo ante and an injunction barring deprivation of the plaintiff’s rights without the requisite procedural protections.” *Taylor v. Ledbetter*, 818 F.2d 791, 822 (11th Cir. 1987) (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976)). “The aim of a compensatory damage award in a section 1983 case is to put the plaintiff in the same position he would have been in if the constitutional tort had not occurred.”

Brewer v. Chauvin, 938 F.2d 860, 864 (8th Cir. 1991). On the sole ground of repeated violations of Reints' Constitutionally-protected procedural due process rights, he is entitled to the immediate return to him, either as refund or as compensatory damages, of all property taxes which Defendants have collected from 2015 through 2019. State law limitations on the means by which property taxes can be refunded do not apply, since state law does not define the parameters of due process for purposes of the Fourteenth Amendment.

The circuit court denies Reints' due process claim on the ground that his "property interest is subordinate to, and subject to, the terms of a mortgage agreement entered into by a co-owner of the [homestead] property prior to her death." (P 12, *Conclusions of Law*). This confuses the federally-protected property interest (in the tax relief benefit) which Reints acquired when he submitted his SDCL 43-31-32 applications, on the one hand, with the interest in the homestead property Reints acquired when his late mother deeded a one-half interest in the property to him, on the other. The circuit court further mistakenly finds that Reints' federally-protected property interest in the SDCL 43-31-32 benefit is somehow subject to the terms of, and subordinate to, a mortgage on the homestead property. Reints property interest in his entitlement to the SDCL 43-31-32 benefit is derived from the Fourteenth Amendment to the federal Constitution, not from title to property.

Sayler has no qualified immunity because it was her regular practice, over five years, to knowingly and willfully violate Reints procedural due process right to a pre-deprivation hearing. Reints even referred her to *Goldberg v. Kelly, supra*, and urged her to consult her attorney about it, without effect. Each Commissioner has forfeited

qualified immunity by the regular practice of knowingly and willfully failing to stop tax collections in amounts 100% in excess of what was lawful.

Defendants and now the circuit court have treated Reints' procedural due process claims as derivative or trivial. The contrary is the case. "The history of liberty has largely been the history of observance of procedural safeguards." *McNabb v. United States*, 318 U.S. 332, 347 (1943).

SUBSTANTIVE DUE PROCESS

Reints' substantive due process claims *do* partly depend on vindication of his separate claim that he has been unlawfully denied the SDCL 43-31-32 prohibition of collection of taxes on his home, after approval of his applications. These claims are based on Defendants' prolonged, unreasonable intrusion on his personal security and the devastating effect of the sum total of their actions on Reints' ability to be secure in his home and to enjoy daily life.

We have repeatedly held that state statutes may create liberty interests that are entitled to the procedural protections of the Due Process Clause of the Fourteenth Amendment.

Vitek v. Jones, 445 U.S. 480, at III(A). (1980).

[A]mong the historic liberties [protected by the Due Process Clause is the] right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security."

Ingraham v. Wright, 430 U. S. 651, 673 (1977).

Without doubt [liberty interests encompass] not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates

of his own conscience, and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men.

Board of Regents v. Roth, supra, at 572.

There is a substantial similarity between what South Dakota homestead law protects, on the one hand, and what the Fourteenth Amendment protects as a liberty interest, on the other. This Court held in 1944 --- the year of Reints' birth --- and, again, in 2015 that, "The homestead exemption, which is codified in SDCL chapter 43-31, carries out this purpose of 'provid[ing] for the family a home in which it may have shelter from and a protection against the claims of creditors or its own improvidence and where it may live and be protected.'" *Reints I, supra*, at ¶7, quoting with approval *Ramsey v. Lake Cty.*, 70 S.D. 61, 62, 14 N.W.2d 125, 126 (1944). There is a certain point beyond which the claims of creditors cannot go.

The extent of Janet Saylor's and the County Commissioners' callous, deliberate indifference to Reints rights *combined with the results for Reints of their actions* truly "shock the conscience." Reints' trial testimony and the proposed findings of fact which he submitted to the trial court (Clerk's Index P. 2370) summarize those results.

Five years of relentless, deliberate indifference to Reints homestead right and his Fourteenth Amendment due process rights is the basis for Reints' punitive damage claims. Discovery on punitive damages should help to clarify whether actual malice on Saylor's or any of the Commissioners' parts has played a role. But it is not necessary for Reints to prove actual malice in order to sustain these claims.

The Restatement (Second) of Torts (1979), for example, states: "Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." 908(2); ... Most cases under state common law, although varying in their

precise terminology, have adopted more or less the same rule, recognizing that punitive damages in tort cases may be awarded not only for actual intent to injure or evil motive, *but also for recklessness, serious indifference to or disregard for the rights of others*, or even gross negligence. (emphasis supplied)

Smith v. Wade, 461 U.S. 30, 47-48, (1983).

[W]e are content to adopt the policy judgment of the common law - that reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law, should be sufficient to trigger a jury's consideration of the appropriateness of punitive damages. See *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 233 (1970) (BRENNAN, J., concurring and dissenting).

Ibid at 51.

The purpose of 42 U.S.C. §1983 punitive damage awards is punishment and to provide future deterrence. Punitive damages are awarded in the jury's discretion "to punish the [defendant] for his outrageous conduct and to deter him and others like him from similar conduct in the future." *Restatement (Second) of Torts*, 908(1)(1979).

Sayler, the Commissioners and the County have exhibited a relentless, inventive determination to find some way to deny Reints urgently-needed homestead protection, in violation of his rights under the South Dakota Constitution, state law, and the U.S. Constitution, all despite this Court's clear direction to these same Defendants in *Reints*

I. Repetition of such conduct should be effectively deterred.

Reints respectfully requests that attorney's fees he cannot pay himself be awarded his counsel pursuant to 42 U.S.C. 1988. The purpose of §1988 is to ensure effective access to the judicial process for persons with civil rights grievances litigated pursuant to 42 U.S.C. 1983. Accordingly, a prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award

unjust.” *Newman v. Piggie Park Enterprises*, 390 US 400, 402; 19 L Ed 2d 1263; 88 S Ct 964 (1968).

CONCLUSION

Defendants claim they have not collected Reints’ property taxes. This is simply false. Treasurer Sayler and the other Defendants know from long experience that WFHM will treat as currently due and automatically pay any tax amount which appears in a certain column of the routinely-modified, computerized data files they send to WFHM twice every year, in response to WFHM’s bi-annual requests for lists of property taxes currently due and owing. Defendants’ claim that they merely send an unalterable public document is a ruse, invented to evade the holdings of *Reints I*.

A fair measure of Defendants’ improper determination to nullify Reints’ SDCL 43-31-32 homestead right is given by their suggestion that Reints *should* sell his home in order (briefly) to meet expenses, rather than actually receive the SDCL 43-31-32 benefit.

Reints could sell the property and with prudent financial management pay rent, buy groceries, pay for transportation, etc. His failure to do so is just as much a cause of any financial strain as WFHM’s payment of real property taxes on the property despite John Reints’ qualification for the prohibition.”

P. 4, *Defendants’ Objection to Plaintiff’s Proposed Findings of Fact and Conclusions of Law*, filed May 17, 2019, Clerk’s Index P. 2389

Defendants thus confess the intention which their actions have demonstrated, namely, that Reints *should* be without his own home in his retirement and old age, if the alternative is that they must, as the law requires, stop collecting his property taxes.

Defendants have tried to substitute their preference as to what the law should be for what the law clearly is.

Dated this 3rd day of February, 2020.

(signed electronically)

/s/

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