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Jun 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel Hall, Circuit Court Judge

Case No. 2019-CP-46-00310
Appellate Case No: 2019-000979

Ex Parte, Ryan Powell, Appellant.

In re LB PARK, LLC Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, Respondents.

**Return In Opposition to LB PARK, LLC's
Motion to Continue Holding Appeal In Abeyance**

Pursuant to Rule 240(e) SCACR, Appellant Ryan Powell ("Appellant") makes this return ("Return") to oppose LB PARK, LLC's ("Respondent") Motion to Continue Holding Appeal in Abeyance ("Motion to Continue"). Respondent's appellate attorney Sarah P. Spruill ("Spruill"), wrote a letter to this Court dated June 13, 2022 requesting clarification of this Court's letter to the parties dated June 9, 2022 (copy attached as **Exhibit 1** and incorporated herein by reference). In the Court's June 17, 2022 letter, Spruill's letter was construed to be a "motion to continue holding the appeal in abeyance" and Appellant was given 10 days to file his opposition to it, if he so desired.

**Appeal Should Have Been Permitted To Proceed
After Respondent Failed To Abide By The Remand Order**

This Court entered an order on October 15, 2019 ("Remand Order", copy attached as **Exhibit 2** and incorporated herein by reference), which states that Respondent's motion to remand is granted *"for the limited purpose of allowing LB PARK to file a motion to dismiss the underlying action without prejudice pursuant to Rule 41(a), SCRCP."* [emphasis mine]. There can be no dispute that the Remand Order gave Respondent the authority to ONLY seek a court order to dismiss the underlying case. That authority was given to Respondent so that Appellant's due process right was not violated to object to a dismissal and demonstrate any prejudice he may suffer from such. However, Respondent decided to disobey the Remand Order and instead it filed an unauthorized "Stipulation of Dismissal". That filing not only violated the Remand Order, and Appellant's due process rights, but was named specifically to deceive since "stipulation of dismissal" means the parties agreed to a dismissal according to Rule 41(a)(1) SCRCP¹. Appellant neither agreed to a dismissal of the underlying case nor can Appellant's signature be found on Respondent's "Stipulation of Dismissal" (copy attached as **Exhibit 3** and incorporated herein by reference).

Because of Respondent's violation of the Remand Order, it became impossible for this appeal to ever be released from being held in abeyance because the event that would have released this appeal, could never happen. See Exhibit 2, *"This appeal shall be held in abeyance pending the lower court's consideration of the motion"*, i.e., consideration of Respondent's motion to dismiss. Appellant brought this impossibility to the attention of the Court in his Motion to Revive Appeal filed on or about April 15, 2020; that motion was denied. In the order denying that motion, Judge H. Bruce Williams changed his earlier Remand Order and did so on his own initiative, without a motion, five (5) months after his Remand Order was entered, and without any notice that he was going to do so. See attached as **Exhibit 4** a copy of that order ("Changed Remand Order") incorporated herein by reference. The Changed Remand Order not only changed the terms and conditions of the Court's earlier Remand Order, but violated Appellant's due process

¹

² Rule 41(a)(1)(B) "by filing a **stipulation of dismissal** signed by all parties who have appeared in the action."

rights to notice and an opportunity to oppose the Court changing the terms and conditions of the Remand Order. Nonetheless, if the Court had the authority to change its earlier Remand Order, on its own initiative, five months after the Remand Order was entered, without notice, then it certainly has that same authority NOW to change the Changed Remand Order. It appears that by this Court's June 9, 2022 letter (Exhibit 1) that is exactly what has happened.

Appeal Should Be Permitted To Proceed Forward

Spruill states in her June 13th letter that "*The 2020 Action remains pending as shown in Exhibit 1. We expect that it will be set for a hearing on the merits in the very near future.*"¹ As is typical of Spruill, that above statement is a lie. Spruill took a screen shot of the lower court docket for the dismissed case that underlies this appeal ("2019 Case") and then refers to it to presumably show that Respondent's present case ("2020 Case") "*will be set for a hearing on the merits in the very near future*". However, had Spruill actually taken a screen shot of the 2020 Case docket (copy of which is attached as **Exhibit 5** and incorporated herein by reference), it shows that on June 8, 2022, Appellant filed a motion for leave to amend his Answer to make a third-party complaint based on newly discovered evidence.

The newly discovered evidence proves that the non-party tax title holder does not exist and has never existed and therefore the tax title granted to it, is void *ab initio*. Appellant also discovered that at least two of Respondent's managers are running, and have been for a long time, a federal income tax evasion and money laundering criminal conspiracy in this State. Because of their criminal conspiracy, every single tax title that Respondent has ever cleared in the courts of this State have been void *ab initio* and every single defendant that Respondent has ever taken property from was done under false pretenses which constitutes a felony crime for each such occurrence pursuant to S.C.Code Ann. 16-13-240. Appellant's motion for leave to amend his Answer has not been heard or decided yet, nor has Respondent filed any opposition to it (Exhibit 5).

Further, Spruill's entire argument for why this appeal should continue being held in abeyance is based on her tainted allegations that are supposed to show that the 2020 Case has been going on for an excessively long time. First, this appeal of Respondent's 2019 case, had it been allowed to be perfected and heard, would have ended Respondent's

claims with prejudice, so there would have been no need for Respondent bringing its 2020 Case. Second, it is very reasonable for a case brought to take a man's private property would require many years to complete. Third, no Court has the authority to have a "*merits hearing*" when Respondent's claims are nonjusticiable and when the court wants jurisdiction over the subject matter of Respondent's claims (i.e., Appellant's private property). Fourth, the time and expense of any litigation is not a valid basis for a claim of prejudice and is also not a valid basis to continue doing a wrong to Appellant by holding his appeal in abeyance until it becomes moot. Fifth, Respondent received notice before it purchased its quitclaim deed that Appellant's private property did not belong to the entity in whose name it was sold i.e., "San Juan Holdings, Brett Osborne, the trustee". Had Respondent done its required due diligence, it could have avoided both its 2019 Case and its 2020 Case. The bottom line is that all of Respondent's grounds for why this appeal should continue to be held in abeyance are founded upon Respondent's own actions, inactions, and wrong doings!

Further, if Appellant's appeal is continued to be held in abeyance until a final order is entered in the 2020 Case, this appeal will be absolutely moot and of no effect whatsoever. This appeal should have been dismissed when the remand was granted, if it was going to be held in abeyance until it became moot. Appellant has been unable to find any authority ever being given to any court of review which allows them to intentionally CAUSE an appeal to become moot.

And finally, while the Code of Judicial Conduct only requires a judge to give the appearance of impartiality (See Rule 501, Cannon 2A), instead of actually being impartial, the Remand Order and the Changed Remand Order give the appearance of partiality as they have allowed monthly *ex parte* communications between this Court and Respondent's attorney for the past almost three years. What bona fide reason could this Court have to know the monthly status of Respondent's 2020 Case that is not under this Court's jurisdiction? Whatever the actual motive might have been, it appears that the motive was to utilize those monthly reports so that this Court could direct the outcome of the 2020 Case while it was in the lower court.

Wherefore, Respondent's Motion to Continue must be denied so that this appeal can proceed forward as stated is to happen in the Court's June 9, 2022 letter (Exhibit 1). Spruill's suggestion in her letter to stay the briefing schedule must also be denied as this appeal has already been delayed for almost three years. If a stay is not granted and served on Appellant before July 10, 2022, and if Respondent fails to file and serve its initial brief by that time, then Appellant will have no choice but to move forward with perfecting his appeal.

June 24, 2022
Date

/s Ryan Powell
Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
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June 09, 2022

Ryan Powell
25056 Timberlanke Drive
Fort Mill SC 29708

Mr. A. Parker Barnes, III, Esquire
PO Box 11889
Columbia SC 29211

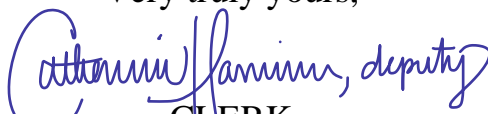
Mrs. Sarah P. Spruill, Esquire
PO Box 2048
Greenville SC 29602

Re: Ex Parte Ryan Powell (LB Park, LLC v. San Juan Holdings)
Appellate Case No. 2019-000979

Dear Mr. Powell and Counsel:

The Court is in receipt of the respondent's latest status update filed May 31, 2022. Accordingly, this appeal is no longer held in abeyance. Our records reflect the appellant's initial brief and designation of matter were filed in September 2019. The respondent must file the respondent's initial brief and designation of matter within 30 days of the date of the letter, or the Court will proceed to review the appeal without the consideration of the respondent's brief.

Very truly yours,


CLERK

The South Carolina Court of Appeals

Ex Parte, Ryan Powell, Appellant,

In re LB PARK, LLC, Respondent,

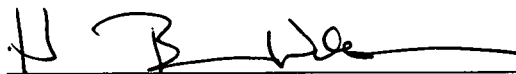
v,

San Juan Holdings, Bret Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 250056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, Respondents.

Appellate Case No. 2019-000979

ORDER

LB PARK, LLC's motion to remand this case for the limited purpose of allowing LB PARK to file a motion to dismiss the underlying action without prejudice pursuant to Rule 41(a), SCRPC, is granted. This appeal shall be held in abeyance pending the lower court's consideration of the motion. LB PARK shall provide this court with status updates every thirty days.



FOR THE COURT

FILED

October 15, 2019

Columbia, South Carolina

cc:

Ryan Powell

A. Parker Barnes, III, Esquire

Sarah P. Spruill, Esquire

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case No. 2019-CP-46-00310

LB PARK, LLC,

Plaintiff,

vs.

STIPULATION OF DISMISSAL

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023,

Defendants.

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure, Plaintiff LB Park, LLC hereby provides notice that the above captioned action is dismissed without prejudice.

Andrew M. Rawl
A. Parker Barnes III, SC Bar No. 68359
pbarnes@hsblawfirm.com
Andrew M. Rawl, SC Bar No. 102807
drawl@hsblawfirm.com

Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779-3080

February 12, 2020

Attorneys for Plaintiff

The South Carolina Court of Appeals

Ex Parte, Ryan Powell, Appellant,

In re LB PARK, LLC, Respondent,

v,

San Juan Holdings, Bret Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 250056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, Respondents.

Appellate Case No. 2019-000979

ORDER

Appellant has filed a motion to revive this appeal, which we construe as a motion to allow the briefing in this appeal to proceed. The motion is denied. In the interest of judicial economy, Respondent's request to continue to hold this appeal in abeyance is granted, and this appeal shall be held in abeyance pending the circuit court's issuance of a final order in related case, C/A No. 2020-CP-46-00549. Respondent shall provide this court with status updates every thirty days.



FOR THE COURT

Columbia, South Carolina

cc:

Ryan Powell

A. Parker Barnes, III, Esquire

Sarah P. Spruill, Esquire

FILED
May 20 2020



York County Sixteenth Judicial Circuit Public Index



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Switch View

Lb Park Llc VS San Juan Holdings , defendant, et al

Case Number:	2020CP4600549	Court Agency:	York County Common Pleas	Filed Date:	02/12/2020
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:	Weaver, Teasa Kay		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

[Case Parties](#)
[Judgments](#)
[Tax Map Information](#)
[Associated Cases](#)
[Actions](#)
[Financials](#)

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Lb Park Llc	Motion For Leave To Amend Answer To Make ThirdParty Complain	Motion		06/08/2022-11:18		
	Remittitur From Court Of Appeals	Filing		05/23/2022-09:20		
Powell, Ryan	Appeal/Notice of Appeal to Court of Appeals/Cert of Service	Filing		10/12/2021-11:00		
Lb Park Llc	NEF(09-28-2021 09:49:02 AM) Notice/Notice of Hearing and...	Filing		09/28/2021-09:53		
Lb Park Llc	Notice/Notice of Hearing and Service	Filing		09/28/2021-09:49		
Lb Park Llc	NEF(09-20-2021 09:30:18 AM) Order/Electronic Form 4	Filing		09/20/2021-09:30		
Lb Park Llc	Order/Electronic Form 4/Motion Denied	Order		09/20/2021-09:30		
Lb Park Llc	NEF(07-26-2021 12:44:28 PM) Memo in Opposition	Filing		07/26/2021-12:52		
Lb Park Llc	Memo in Opposition	Filing		07/26/2021-12:44		
Lb Park Llc	NEF(07-26-2021 11:44:44 AM) Memo in Opposition	Filing		07/26/2021-12:10		
Lb Park Llc	Service/Certificate Of Service	Filing		07/26/2021-11:44		
Powell, Ryan	Motion To Return Case To Circuit Court	Motion		07/13/2021-14:03		
Powell, Ryan	Proof of Service	Filing		07/13/2021-14:03		
Powell, Ryan	Letter	Filing		07/13/2021-14:03		

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Certificate of Service

I certify that I have served all Respondents a copy of Appellant's Return in Opposition to LB PARK's Motion to Continue Holding Appeal in Abeyance by First Class Mail with proper postage affixed on the date below shown and addressed as follows:

Sarah Spruill
P.O. Box 2048(29602)
Greenville, SC 29601

June 24, 2022

/s Ryan Powell
Ryan Powell,
c/o 25056 Timberlake Drive
Fort Mill, South Carolina