

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case No. 2020-CP-46-00549

LB PARK, LLC,

Plaintiff,

vs.

FINAL ORDER

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; 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.

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SC Court of Appeals

THIS MATTER came before me for a merits hearing upon the action of Plaintiff LB PARK, LLC ("Plaintiff") to quiet its tax title to real property. Plaintiff seeks an order of the Court confirming marketable, fee simple title and reformation.

The hearing occurred on September 27, 2022, and notice was provided to all parties. Plaintiff appeared through its counsel and a corporate representative. Tracy Mattevi, the York County Tax Collector (the "Tax Collector"), appeared as a witness and was represented by counsel. No other party attended the hearing personally, through counsel, or through any other representative.

PRE-TRIAL MOTIONS

Prior to the hearing on the merits, the Court addressed the following pre-trial motions filed by Defendant Ryan Powell (“Powell”): (1) Motion for Leave to Amend Answer to Make a Third-Party Complaint filed on June 8, 2022 (the “Motion to Amend”); (2) Rule 60(b)(4) Motion to Vacate Judgment Denying Owner’s Motion to Return Case to Circuit Court filed on September 6, 2022 (the “Motion to Vacate”); and (3) Motion for Continuance filed on September 16, 2022 (“Motion for Continuance”). By letter and e-mail dated September 9, 2022, Powell withdrew the Motion to Amend and the Motion to Vacate.

~~The Court denies Powell’s Motion for Continuance. This case has been pending since February 12, 2020, and the Court notified the parties of the hearing date of September 27, 2022, by e-mail sent on August 24, 2022, which was over a month before hearing date. Powell did not seek a continuance until September 16, 2022. The Court finds that the Motion for Continuance does not demonstrate good cause and that Powell had ample time to make preparations to attend.~~

As to Powell’s request for his mother to present his case stated in the Motion for Continuance, the Court finds that any participation by Powell’s mother would constitute the unauthorized practice of law, which is prohibited by S.C. Code Ann. § 40-5-310 and South Carolina case law. *See Doe v. McMaster*, 355 S.C. 306, 311, 585 S.E.2d 773, 775 (2003) (“The generally understood definition of the practice of law ‘embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.’”) (citing *State v. Despain*, 319 S.C. 317, 319, 460 S.E.2d 576, 577 (1995) (quoting *In re Duncan*, 83 S.C. 186, 189, 65 S.E. 210, 211

¹ In fact, Powell asked if he could remotely view the hearing without appearing by e-mail on September 26, 2022.

(1909)); accord *State v. Buyers Serv. Co.*, 292 S.C. 426, 357 S.E.2d 15 (1987). The Court also takes judicial notice that in prior litigation commenced by Powell concerning the taxation of the Property, the trial court prohibited Powell's mother from arguing on his behalf, which ruling the South Carolina Court of Appeals affirmed in a Rule 220, SCACR opinion. See *Powell v. Boheler*, 2016 WL 2757344 at *2 (Ct. App. May 11, 2016) ("As to Powell's arguments that the trial court erred in prohibiting Powell's mother from arguing on his behalf and that the supreme court lacks the authority to require a person to obtain a license to practice law: S.C. Code Ann. § 40-5-310 (2011) (stating a person is prohibited from practicing law or soliciting the legal cause of another person unless he or she is a member of the South Carolina Bar);



to SB MUNI CUST % LBSC-11 LLC by Tax Title dated and recorded on December 26, 2018, in the Office of the Register of Deeds for York County in Deed Book 17337 at Page 73; and being the same property conveyed to LB Park, LLC by quitclaim deed dated January 7, 2019, and recorded in the York County Register of Deeds Office on January 10, 2019, in Book 17361, page 145.

TMS# 643-10-01-023.

Prior Litigation Regarding the Property

Powell has litigated the issue of whether the Property is subject to taxes since 2014 in the original jurisdiction of the South Carolina Supreme Court, the York County Court of Common Pleas, the South Carolina Court of Appeals, and the Administrative Law Court.

Powell filed an action in the South Carolina Supreme Court against Amy Boheler d/b/a York County Auditor, Beth Latham d/b/a York County Treasurer, and Robert Kiser d/b/a York County Delinquent Tax Collector, each in their individual and official capacities (Appellate Case No. 2014-000005). In that proceeding, Powell petitioned the South Carolina Supreme Court to exercise its original jurisdiction and issue a writ of mandamus ordering the York County Auditor, the York County Treasurer, and the York County Delinquent Tax Collector to update their records to reflect that Powell is the owner of the Property, void the tax liens on the Property, void the tax execution on the Property, void the levy and attempted sale of the Property, and return the \$5,118 Powell paid to the respondents. By order dated February 20, 2014, the South Carolina Supreme Court denied Powell's petition. A certified copy this Order was entered into evidence as Exhibit A.

On May 1, 2014, Powell filed an action in the York County Court of Common Pleas against Amy Boheler d/b/a York County Auditor, Beth Latham d/b/a York County Treasurer, and Robert Kiser d/b/a York County Delinquent Tax Collector (Case No. 2014-CP-46-01425), and he sought a writ of mandamus and asserted 10 causes of action. Pursuant to an Order Substituting Defendant

and Order of Dismissal, a certified copy of which was entered into evidence as Exhibit B, Judge Jackson Kimball dismissed this action finding:

[Powell's] complaint and legal memoranda read like a doctrinal manifesto. It is a rambling presentation of twisted, disconnected and inapplicable legal theories that contradicts all statutory and case law governing the issues presented. It challenges the right and authority of the County to assess and collect *ad valorem* property taxes on realty, as well as the owner's obligation to pay those taxes.

According to [Powell], no land owner is required to pay property taxes, unless the owner's deed has been recorded. Instead, property owners elect to pay property taxes when they choose to record their deeds. [Powell] asserts that a property owner can avoid any liability for property taxes by simply choosing not to record his deed. Because [Powell] chose not to record his deed, [Powell] contends that York County cannot assess taxes against his real property, which is a conclusion unrelated to any personal liability for taxes. Applying such "logic", [Powell] asserts that he is not liable for property taxes on a parcel that he owns in York County, and that the County lacks the authority to collect such taxes through the delinquent tax collection process Nevertheless, [San Juan Holdings] remains the record owner of the property.

(Exhibit B at pp. 3-4.)

Based on the Revenue Procedures Act and the exclusive authority of the Administrative Law Court, the complaint was dismissed for lack of subject matter jurisdiction "to the extent Plaintiff's complaint challenges the taxing authority of York County" (*Id.* at p. 5.) The court further found and concluded "that [Powell's] claims are entirely frivolous" and dismissed all claims with prejudice. (*Id.* at p. 6.)

Next, Powell appealed to the South Carolina Court of Appeals. In a Rule 220, SCACR opinion, the Court of Appeals affirmed, noting that Powell asserted that "the trial court erred in (1) dismissing his claim for lack of subject matter jurisdiction, (2) dismissing his tort claims as barred by the South Carolina Tort Claims Act, (3) dismissing his breach of contract claim, and (4) prohibiting his mother from representing him and speaking on his behalf." *Powell v. Boheler*,

2016 WL 2757344 at *1 (Ct. of App. 2016) (a copy of which was entered into evidence as Exhibit C.)

In 2017, Powell filed an action against the York County Assessor in the South Carolina Administrative Law Court (Docket No. 17-ALJ-30-0358-IJ). This action was dismissed on November 28, 2017. A certified copy of the Order of Dismissal was entered into evidence as Exhibit D. In this administrative action, Powell contended:

[B]ecause property tax is assessed based upon the deed recorded with the County Register of Deeds pursuant to S.C. Code Ann. § 12-37-610 (2014), and he was not required to, nor did, record the deed as the owner of the property, neither the property nor he, as the owner of the property was subject to taxation. Therefore, [Powell] has repeatedly refused to pay the assessed property taxes.

(Exhibit D at p. 2.) The Administrative Law Court dismissed the action as being moot because Powell redeemed the Property after a tax sale: “[Powell’s] latest redemption of the Property is thus consistent with his pattern of delaying the payment of his property taxes, yet ultimately claiming his ownership and assuming the obligation to pay the property taxes.” (*Id.* at p. 3.) In the footnote to the foregoing sentence, Judge Ralph King Anderson, III ruled:

I use the term ‘ownership’ above only for the sake of argument because I find that [Powell] failed to established [sic] standing as the owner of the property to contest the payment of taxes. Though he argues through his averments that he established ownership of the property, he has not presented a deed or court order establishing that fact. In fact, the deed he submitted does not identify him as the owner but an “unenfranchised living man” which is inconsistent with [Powell’s] claim to be a “free man.” Further, simply stating that you own property without a legal document to support ownership does not establish a legal right to the property. It appears under the facts of this case that the only way for Petitioner to establish ownership would be a quiet title action.

(*Id.* at p. 3 n.6.) Judge Ralph King Anderson, III also noted:

Though [Powell] appears to be abusing South Carolina’s tax system, the ALC does not have the jurisdiction to address that issue. Also, in light of the disposition of this case, the Court need not address whether [Powell] entered into the agreement to transfer the deed with the intent to evade taxes or defraud or deceive York in violation of S.C. Code Ann. §§ 12-2-40 (2014) and 27-23-20 (2007).

(*Id.* at p. 2 n.3.)

The Tax Sale Proceedings

Thereafter, the taxes assessed on the Property were not paid, and the Tax Collector sold the Property at the York County tax sale held on November 6, 2017 (the “Tax Sale”). SB MUNI CUST % LBSC-11 LLC (“SB MUNI”) purchased the Property at the Tax Sale with a bid of \$171,000.00.

After the expiration of the one-year redemption period, the Tax Collector conveyed tax title to SB MUNI by tax deed dated and recorded on December 26, 2018, in the York County Register of Deeds Office (the “ROD”) in Book 17337, page 73 (the “Tax Deed”). A certified copy the Tax Deed was entered into evidence as Exhibit E. SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded in the ROD on January 10, 2019, in Book 17361, page 145 (the “Quitclaim Deed”). A certified copy the Quitclaim Deed was entered into evidence as Exhibit F.

The grantee designation in the Tax Deed of “SB MUNI CUST % LBSC-11 LLC” is an abbreviation for SB Municipal, LLC as custodian for LBSC-11, LLC. As the Tax Collector testified, the reason for this abbreviation is that the York County software system has a character limitation for the name of the bidder, so bidder names are frequently required to be abbreviated. The Tax Collector further testified that the use of abbreviated names and the designation of “custodian” is common when her office issues tax deeds, which are prepared and reviewed by the York County Attorney’s Office prior to recording.

In this case, the bidder name exceeded the character limitation and the abbreviation of “SB MUNI CUST % LBSC-11 LLC” was necessary. The record in this case demonstrates that Powell has repeatedly asserted that the Tax Deed is invalid because “SB MUNI CUST % LBSC-11 LLC”

is a non-existent entity. However, and as Powell states in his proposed First Amended Answer, Defenses, Counterclaims and Third Party Complaint attached as Exhibit A to the Motion to Amend, SB Municipal, LLC is a Florida limited liability company. LBSC-11, LLC is a South Carolina limited liability company. The use of an abbreviation for SB Municipal, LLC was required, and the Court finds that the use of this abbreviation is proper, that the Tax Deed is valid, and that the abbreviation of the grantee name does not render the Tax Deed invalid. Accordingly, the Court rejects Powell's arguments concerning the designation of the grantee in the Tax Deed.

Procedural History and Relevant Title History

Prior Action to Quiet Tax Title

Based on the records in the York County Clerk of Court's Office, the Court recognizes that the saga of Plaintiff's claims to quiet tax title to the Property began in a prior action filed on January 25, 2019, captioned *LB PARK, LLC v. San Juan Holdings, Brett Osborne, the trustee, Brett Osborne as Trustee of San Juan Holdings, et al.* (Case No. 2019-CP-46-00310). Through a Special Appearance Motion to Dismiss filed on March 11, 2019, Karen Marie Powell ("Ms. Powell") claimed to hold an unrecorded lien on the Property, and Ms. Powell sought to dismiss the action on various grounds including Rules 12(b)(1), 12(b)(2), and 12(b)(7), SCRCPP, and argued that the Property is not subject to taxation. After a hearing on this motion was held on April 1, 2019, Judge Daniel Hall denied the motion pursuant to a Form 4 order filed on April 3, 2019.

On April 8, 2019, Powell filed a Special Appearance Motion to Dismiss or Intervene and sought to dismiss the action under Rules 12(b)(1) and 12(b)(2), SCRCPP, and alternatively sought to intervene. Plaintiff filed a motion for an order of reference on May 2, 2019. The hearing occurred on May 30, 2019. Through separate Form 4 orders filed on May 31, 2019, Judge Hall

denied Powell's motion to dismiss and granted Plaintiff's motion for an order of reference. Powell appealed both orders and filed his Notice of Appeal on June 11, 2019.

Pursuant to an Order filed in the South Carolina Court of Appeals on October 15, 2019, the South Carolina Court of Appeals granted Plaintiff's motion to remand for the limited purpose of allowing Plaintiff to file a motion to dismiss the underlying action without prejudice. This Order was filed with the York County Clerk of Court with a Notice of Order Granting Motion to Remand on February 12, 2020. The Notice of Dismissal Without Prejudice was also filed on February 12, 2020.

The Current Action to Quiet Tax Title

On February 12, 2020, Plaintiff commenced this action to quiet tax title and for reformation by filing its Summons, Complaint, and Notice of Lis Pendens (collectively, the "Pleadings").

By deed dated June 1, 2000, and recorded on June 27, 2000, in the ROD in Book 3173, page 343, Defendant San Juan Holdings, Brett Osborne, the trustee ("San Juan"), obtained title to the Property. A certified copy this deed was entered into evidence as Exhibit G. By virtue of this deed, San Juan was the defaulting taxpayer and last record owner of the Property prior to the Tax Sale. Through this action, Plaintiff has eliminated all interests that San Juan had or may claim to have in, to, or upon the Property.

Plaintiff named Defendant Brett Osborne as Trustee of San Juan Holdings ("Osborne") as a party due to the Notice of Sale, Transfer or Exchange dated December 20, 2012, and recorded on December 26, 2012, in the ROD in Book 13103, page 241 (the "Osborne Notice"). A certified copy the Osborne Notice was entered into evidence as Exhibit H. The Osborne Notice does not identify a specific grantee, does not meet the requirements for a deed, and did not convey an interest in the

Property. Through this action, Plaintiff has eliminated all interests that Osborne had or may claim to have in, to, or upon the Property.

As to Powell, Plaintiff alleged:

Plaintiff is informed and believes that Defendant Ryan Powell has claimed to possess an unrecorded ownership interest in the Property. While Plaintiff denies that Defendant Ryan Powell has any interest in the Property, Plaintiff has named Defendant Ryan Powell as a party to provide him with notice of this proceeding and the opportunity to protect any interest he claims to have in the Property.

(Complaint at ¶ 7.)

Plaintiff named John Doe and Mary Roe as fictitious defendants to represent the interests of any unknown persons or entities claiming any right, title, interest, estate in, or lien upon the Property, but Plaintiff elected not to proceed against the unknown defendants. Accordingly, the unknown defendants are dismissed as parties to this action without prejudice.

Reformation of Legal Description

In its Complaint, Plaintiff asserted a second cause of action for reformation. In relevant part, the legal description in the Tax Deed refers to a “. . . plat recorded in the Office of the Clerk of Court for York County in Plat Book 85 at Page 129, and on Plat Book 73 at Pages 22-26 . . . ” (the “Plat”). (Emphasis added.) A certified copy of the Plat was entered into evidence as Exhibit I. According to the applicable records for the Property maintained in the ROD, the Plat was actually recorded in the ROD in Plat Book 73 at Pages 23-26, not Pages 22-26. (Emphasis added.) Throughout the chain of title for the Property, the Plat is incorrectly referenced as being recorded in Plat Book 73 at Pages 22-26. Consequently, Plaintiff asserted a cause of action to reform the Tax Deed, the Quitclaim Deed, and all previous deeds in the chain of title to reflect the correct recording information for the Plat, which was actually recorded in Plat Book 73 at Pages 23-26.

Service of the Pleadings and Status of the Defendants

Plaintiff caused the Pleadings to be served upon San Juan and Osborne on March 1, 2020, as evidenced by the separate Affidavits of Service both filed on March 9, 2020. In response, Osborne filed a letter on April 1, 2020, advising that he was not the trustee of San Juan, that San Juan is dissolved, that he has no interest in the Property, and no duty to defend the Property.

Plaintiff caused the Pleadings to be served upon Powell on April 14, 2020, as evidenced by the Affidavit of Service filed on April 20, 2020. In response, Powell filed Several Motions to Dismiss under Special Appearance on May 14, 2020, which sought to dismiss this action on various grounds.

Additional Procedural and Appellate History³

Plaintiff filed a Motion for Order of Reference on June 23, 2020, and Powell filed a Demand for Jury Trial under Rule 38(b), SCRCPP, on July 14, 2020. The hearing on the pending motions occurred on July 22, 2020, and pursuant to a Form 4 order filed on August 20, 2020, Judge Hall denied Powell's motions and granted Plaintiff's motion for an order of reference. Powell appealed this order and filed his Notice of Appeal on September 8, 2020.

By Order filed in the South Carolina Court of Appeals on September 15, 2020, which was attached to the Remittitur filed in the York Court Clerk of Court's Office on October 14, 2020, the South Carolina Court of Appeals dismissed Powell's appeal "[b]ecause the underlying orders are not immediately appealable"

On October 6, 2020, Powell filed his Answer, Defenses, and Counterclaims and demanded a jury trial. Powell generally denied Plaintiff's allegations, asserted 23 defenses, and alleged

³ For the sake of brevity, the various memoranda filed in support of or in opposition to the numerous motions referenced in this section are omitted.

counterclaims for (1) Sanctions for Frivolous Complaint, (2) Intentional Infliction of Emotional Distress, (3) Declare Void and Set Aside Tax Deed, (4) Intentional Interference with Contract, and (5) Slander of Title (collectively, the “Counterclaims”). Plaintiff timely filed and served its Reply on October 29, 2020, which generally denied Powell’s allegations and asserted 17 defenses.

Powell filed a Motion to Strike Plaintiff’s Reply to Counterclaim on December 4, 2020. The hearing occurred virtually on January 29, 2021, and through a Form 4 order filed on January 27, 2021, Judge Hall denied Powell’s motion to strike.

Powell next filed a Motion for Judgment on the Pleading, Motion to Determine Sufficiency of Admissions and Objections, and Motion to Compel Plaintiff to Answer Interrogatories on February 8, 2021. The hearing occurred on March 30, 2021, and through a Form 4 order filed on March 31, 2021, Judge Hall denied Powell’s motions.

On April 30, 2021, Plaintiff filed a Motion to Strike Powell’s Demand for a Jury Trial and to Maintain the Existing Order of Reference. Relying on *Rosenbaum v. S-M-S* 32, 311 S.C. 140, 427 S.E.2d 897 (1993), Plaintiff argued that Powell has no right to a jury trial and asserted additional grounds for striking Powell’s demand for a jury trial. Powell filed a Motion to Return Case to Circuit Court on July 13, 2021. Among other arguments, Powell asserted that this Court lacks jurisdiction because “Plaintiff’s Motion for an Order of Reference requests the Court ‘*issue an Order of Reference, referring this equitable proceeding to the Honorable Teasa Kay Weaver, Master in Equity for York County, for the purpose of receiving evidence and will all appeals to be made directly to the South Carolina Court of Appeals.*’” (See Motion to Return Case to Circuit Court at p. 7 (emphasis in original).) Powell requested that this Court decide this matter without a hearing, and by Form 4 order filed on September 20, 2021, this Court concluded that Powell is not entitled to a jury trial and denied his motion.

Rule 53(c), SCRCP, provides, “Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.” The Note to the 1986 Amendment of Rule 53 states, “Rule 53(c) is amended to make clear that the master has the same powers as a court sitting without a jury unless the order of reference limits his authority.” In this case, there is no limitation on this Court’s authority so this Court “shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.” Rule 53(c), SCRCP. Therefore, this Court has full jurisdiction over the parties to and all subjects of this case.

After the denial of Powell’s motion, Plaintiff scheduled the merits hearing for October 21, 2021, and filed Notice of Hearing on September 28, 2022. Powell appealed the order denying his Motion to Return Case to Circuit Court and filed his Notice of Appeal on October 12, 2021. The remittitur from the South Carolina Court of Appeals was filed with the York County Clerk of Court on May 23, 2022.

Powell then filed the Motion to Amend on June 8, 2022. By e-mail sent on August 24, 2022, this Court notified the parties that it would hear the Motion to Amend immediately prior to trial. This Court also notified the parties that if the Motion to Amend was denied, the trial would proceed, but if the Motion to Amend was granted, the trial would be continued. The trial date was set for September 27, 2022. On August 25, 2022, Plaintiff filed and served Notice of Hearing on September 27, 2022. Powell then filed the Motion to Vacate on September 6, 2022. By e-mail and letter dated September 9, 2022, which was filed on September 13, 2022, Powell withdrew his request for a hearing on the Motion to Amend and the Motion to Vacate.

Powell next filed the Motion for Continuance on September 16, 2022, which motion this Court has denied.

Evidence Presented at the Hearing

Tracy Mattevi, the Tax Collector, testified that all notices of delinquent taxes, the execution, levy, posting, advertisements, tax sale, and notices of the approaching end of redemption period sent to the interested parties entitled to notice were performed in accordance with the usual procedures of her office and were in strict conformity with all statutory requirements.

Specifically, the Tax Collector testified that based upon the records of the York County Assessor's Office and the ROD, San Juan was the defaulting taxpayer and was the last record owner of the Property prior to the Tax Sale. On or about April 1, 2017, the Tax Collector's office mailed the execution notice described in S.C. Code Ann. § 12-51-40(a) to San Juan Holdings, Brett Osborne Trustee, at 9127 Dalmeny House Lane, Charlotte, NC 28215 (the "Charlotte Address"). A certified copy this Tax Sale notice was entered into evidence as Exhibit J. The Tax Collector testified that the York County Assessor's Office provided the Charlotte Address and that it is the same address provided for San Juan on the Osborne Notice. (*See* Exhibit H.) This execution notice was mailed by regular mail, and the Tax Collector testified that the United States Postal Service did not return this notice to her office.

With respect to the notice described in S.C. Code Ann. § 12-51-40(b), the Tax Collector testified that her office mailed this notice to San Juan Holdings, Brett Osborne Trustee, at the Charlotte Address by certified mail, return receipt requested-restricted delivery on July 24, 2017. The Tax Collector testified that the United States Postal Service returned this notice marked, "Return to Sender, Not Deliverable as Addressed, Unable to Forward." A certified copy this Tax Sale notice and the returned envelope were entered into evidence as Exhibit K. Accordingly, the Tax Collector's office took exclusive possession of the Property by posting the Property with notice of the Tax Sale, as provided in S.C. Code Ann. § 12-51-40(c), which posting occurred on

September 7, 2017. Certified copies of the field report and the notice posted on the Property were entered into evidence as Exhibits L-1 and L-2.

As required by S.C. Code Ann. § 12-51-40(d), the Tax Collector testified that her office advertised the Property for sale at public auction in The Herald on October 16, October 23, and October 30, 2017. The Tax Collector also testified that The Herald is a newspaper of general circulation within York County and that the records of her office reflected that the Property was advertised for sale at public auction for three consecutive weeks prior to the date of the Tax Sale. Certified copies of the newspaper advertisements were entered into evidence as Exhibits M-1, M-2, and M-3.

The Tax Collector testified that the Tax Sale occurred on November 6, 2017, and that SB MUNI purchased the Property for \$171,000.00. The Tax Collector also testified that her office sent a courtesy notice of the Tax Sale on November 13, 2017, to the Charlotte Address by regular mail, and that the United States Postal Service did not return this notice to her office.

After the Tax Sale, the next statutorily required notice was the notice of approaching end of redemption period described in S.C. Code Ann. § 12-51-120 (the "Redemption Notice"). In preparing to send the Redemption Notice, the Tax Collector testified that her office obtained a title search to identify any grantees, mortgagees, or lessees of record of the Property. Based on the title search her office received, San Juan was the only party with an interest of record in the Property, no mortgages encumbered the Property, and Powell had no interest in the Property.

The Tax Collector testified that her office sent the Redemption Notice to five separate addresses. The Tax Collector's office sent a Redemption Notice to San Juan Holdings, Brett Osborne Trustee, at the Charlotte Address by certified mail, return receipt requested-restricted delivery on September 24, 2018. The Tax Collector testified that the United States Postal Service

returned this notice marked, "Return to Sender, Not Deliverable as Addressed, Unable to Forward." Certified copies of this Redemption Notice with the e-certified log and returned envelopes were entered into evidence as Exhibits N-1, N-2, and N-3.

The Tax Collector's office sent a Redemption Notice to San Juan Holdings, Brett Osborne Trustee, addressed to 112 Highway 218 West, Monroe, NC 28110, by certified mail, return receipt requested-restricted delivery on September 24, 2018. The Tax Collector testified that her office obtained this address from additional research and the deed conveying the Property to San Juan. (*See Exhibit G.*) The Tax Collector also testified that her office sent this Redemption Notice as an additional attempt to provide notice of the approaching end of the redemption period. The Tax Collector testified that the United States Postal Service returned this notice marked, "Return to Sender, Attempted – Not Known, Unable to Forward." Certified copies of this Redemption Notice with the e-certified log and returned envelopes were entered into evidence as Exhibits N-1, N-2, N-3.

The Tax Collector's office sent a Redemption Notice to San Juan Holdings/Ryan Powell addressed to 25056 Timberlake Drive, Tega Cay, SC 29708, by certified mail, return receipt requested-restricted delivery on September 24, 2018. The address used is the Property address. The Tax Collector testified that her office sent a Redemption Notice to Powell, even though he did not have an interest of record in the Property, because her office was aware that he claimed an interest in the Property, so her office provided this Redemption Notice as an additional attempt to provide as much notice as possible regarding the approaching end of the redemption period. The Tax Collector testified that the United States Postal Service returned this notice marked, "Return

to Sender, Unclaimed, Unable to Forward.”⁴ Certified copies of this Redemption Notice with the e-certified log and returned envelopes were entered into evidence as Exhibits N-1, N-2, and N-4.

The Tax Collector’s office sent a Redemption Notice to San Juan Holdings/Ryan Powell addressed to 25056 Timberlake Drive, Fort Mill, SC 29715, by certified mail, return receipt requested-restricted delivery on September 24, 2018. The Tax Collector testified that her office obtained this address from additional research, and pursuant to Rule 201, SCRE, the Court takes judicial notice that this is the same address Powell provided as his address in several filings in this case. The Tax Collector testified that her office sent this Redemption Notice to Powell, even though he did not have an interest of record in the Property, because her office was aware that he claimed an interest in the Property, so her office provided this Redemption Notice as an additional attempt to provide as much notice as possible regarding the approaching end of the redemption period. The Tax Collector testified that the United States Postal Service returned this notice marked, “Return to Sender, Unclaimed, Unable to Forward.” Certified copies of this Redemption Notice with the e-certified log and returned envelopes were entered into evidence as Exhibits N-1, N-2, and N-4.

The Tax Collector’s office sent a Redemption Notice to San Juan Holdings/Ryan Powell addressed to 3459 Mill Run, Raleigh, NC 27612, by certified mail, return receipt requested-restricted delivery on September 24, 2018. The Tax Collector testified that her office obtained this address from additional research. The Tax Collector also testified that her office sent this Redemption Notice to Powell, even though he did not have an interest of record in the Property,

⁴ While the Tax Collector obtained exclusive possession of the Property by posting, as provided in S.C. Code Ann. § 12-51-40(c), the Court notes that “[p]ursuant to [Chapter 51 of Title 12 of the South Carolina Code of Laws] the return of the certified mail ‘undelivered’ is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record.” S.C. Code Ann. § 12-51-120.

because her office was aware that he claimed an interest in the Property, so her office provided this Redemption Notice as an additional attempt to provide as much notice as possible regarding the approaching end of the redemption period. The Tax Collector further testified that the United States Postal Service returned this notice marked, "Return to Sender, Unclaimed, Unable to Forward." Certified copies of this Redemption Notice with the e-certified log and returned envelopes were entered into evidence as Exhibits N-1, N-2, and N-5.

After sending the foregoing five Redemption Notices, the Tax Collector testified that no party redeemed the Property before the redemption period expired on November 7, 2018. In reviewing the Tax Deed, the Tax Collector testified that the York County Attorney's Office prepares its tax deeds and reviews them before recording. As to the designation of the grantee in the Tax Deed as "SB MUNI CUST % LBSC-11, LLC," the Tax Collector testified that it is not unusual for the names of tax sale bidders to be abbreviated because of the limitation of characters in the York County software system. The Tax Collector also testified that it is common practice for her office to issue tax deeds with abbreviated names and with the designation as "custodian."

In sum, all of the testimony and evidence presented at the hearing demonstrates that the Tax Collector strictly complied with the tax sale statutes in all respects, and that the Tax Sale of the Property should be upheld. Additionally, all of Powell's claims and challenges concerning the Tax Sale of the Property or Plaintiff's title to the Property are barred by the two-year statute of limitations set forth in S.C. Code Ann. §§ 12-51-90(c) and 12-51-160.

It is also noted that while Powell asserted a counterclaim to "Declare Void and Set Aside Tax Deed," Powell failed to name the Tax Collector as a party. The taxing authority is a necessary party when a tax sale is challenged because the desired result is a finding that the taxing authority failed to adhere to the tax sale statutes and an order vacating the resulting tax deed. Because

Powell did not name the Tax Collector as a defendant, the Tax Collector is not subject to jurisdiction in this action, and thus, the relief Powell seeks could not be awarded, even assuming that grounds existed for challenging the Tax Sale, which they do not.

No other witnesses were called to testify by Plaintiff and none appeared on behalf of any other interested party, including Powell or any other defendant.

Dismissal of Counterclaims

Powell bases the Counterclaims on the allegations that the Property is not subject to taxes because he, as the alleged owner, has not recorded his alleged deed. The Court finds that these are the same arguments that Powell has previously litigated and that have previously been dismissed. The Court also finds that the Counterclaims lack merit and that neither Plaintiff, nor anyone acting on Plaintiff's behalf, has engaged in any actionable conduct.

As an initial matter, Powell did not appear at the final hearing and thus abandoned and failed to prosecute the Counterclaims, which is sufficient alone to dismiss the Counterclaims with prejudice. The Court also finds that Powell lacks standing to assert any counterclaim concerning the Property because he has never produced a deed for the Property, he admittedly has no interest of record in the Property, and the South Carolina Administrative Law Court has previously found that Powell failed to establish he was the owner of the Property. Additionally, the doctrines of *res judicata* and collateral estoppel bar Powell from re-litigating whether he has any interest in the Property.

Even if Powell could establish standing, the Recording Act bars all of this claims. In relevant part, this statute provides:

All deeds of conveyance of lands . . . either in fee simple or for life . . . and generally all instruments in writing conveying an interest in real estate required by law to be recorded in the office of the register of deeds . . . are valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors), or

purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds . . . of the county in which the real property affected is situated. In the case of a subsequent purchaser of real estate . . . the instrument evidencing the subsequent conveyance . . . must be filed for record in order for its holder to claim under this section as a subsequent . . . purchaser for value without notice, and the priority is determined by the time of filing for record.

S.C. Code Ann. § 30-7-10.

This statute makes clear that in order for a deed to be valid as to subsequent purchasers without notice, the deed must be recorded and that priority between a subsequent purchaser of real estate without notice “is determined by the time of filing for record.” Thus, section 30-7-10 bars all of Powell’s Counterclaims.

Each Counterclaim also fails on the merits. As to Powell’s first counterclaim for Sanctions for Frivolous Complaint, this counterclaim lacks any merit. Plaintiff is following the statutory procedure set forth in S.C. Code Ann. § 12-61-10 to -60 and asserts valid causes of action. Section 12-61-10 is titled, “Persons who may institute action to clear tax title” and provides, in relevant part:

[A]ny person or the executors, administrators, successors, assigns or grantees thereof, which has purchased at or acquired through a tax sale and obtained title to any real or personal property, may bring an action in the court of common pleas of such county for the purpose of barring all other claims thereto.

S.C. Code Ann. § 12-61-10. In addition,

[Chapter 61] shall be liberally construed to the end that it shall afford a complete remedy to any plaintiff claiming property by forfeiture unto him for nonpayment of taxes or by acquisition at or through a tax sale, so that he can under this chapter obtain a final and complete adjudication of the nature and extent of the title thereto and, in any event, procure a valid sale of the property from the proceeds of which the unpaid taxes shall be paid.

S.C. Code Ann. § 12-61-60.

Plaintiff is merely trying to confirm its tax title to the Property, and there is no basis in law or in fact to find Plaintiff's claims as being frivolous. Accordingly, Powell's first counterclaim for Sanctions for Frivolous Complaint is dismissed with prejudice.

Powell bases his second counterclaim for Intentional Infliction of Emotional Distress on Plaintiff following the statutory procedure for quieting tax title. The elements for a claim of intentional infliction of emotional distress are: (1) the tortfeasor intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was severe so that 'no reasonable man could be expected to endure it. *See Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). Within the confines of Rule 11, SCRPC, Powell cannot allege the existence of any of these elements. Plaintiff is simply seeking to avail itself of the legal process created by the legislature to quiet tax title to the Property, pursuant to S.C. Code Ann. §§ 12-61-10 to -60. Consequently, Powell's second counterclaim for Intentional Infliction of Emotional Distress is dismissed with prejudice.

Powell's third counterclaim to Declare Void and Set Aside Tax Deed must also be dismissed with prejudice. This counterclaim is superfluous and unnecessary, as the Tax Deed would necessarily be rendered void if Plaintiff was not able to demonstrate its case in chief. Moreover, Powell has not established any interest in the Property, and even if Powell possessed a valid deed to the Property, Powell admitted he never recorded it, so Powell would not be entitled to any Tax Sale notice. Finally, this counterclaim is barred by the two year statute of limitations

set forth in S.C. Code Ann. §§ 12-51-160 and 12-51-90(C). Therefore, Powell's third counterclaim to Declare Void and Set Aside Tax Deed is dismissed with prejudice.

Powell asserted a fourth counterclaim for Intentional Interference with Contract, which the Court presumes is for tortious interference with a contract. The elements of this claim are (1) the existence of a valid contract; (2) the defendant has knowledge of the contract; (3) the defendant intentionally procures its breach; (4) the defendant acted without justification; and (5) the plaintiff suffers prejudice. *See Broach v. Carter*, 399 S.C. 434, 441, 732 S.E.2d 185, 188 (Ct. App. 2012) (citing

established that he possesses an estate or interest in the Property and has admitted he never recorded his alleged deed. The Court also notes that the South Carolina Administrative Law Court previously found that Powell failed to establish standing as the owner of the Property. (*See Exhibit D at p. 3 n.6.*)

Moreover, the filing of a lis pendens is absolutely privileged under South Carolina law and cannot give rise to claim for slander of title. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 22-23, 567 S.E.2d 881, 892-93, 897 (Ct. App. 2002) (holding that all pleadings, including the filing of a lis pendens, are absolutely privileged and cannot form the basis of an action for slander of title.). Therefore, Powell's fifth counterclaim for slander of title is also baseless and is dismissed with prejudice.

Appellate Bond

In the event that Powell appeals any ruling in this Final Order and as requested by Plaintiff at the hearing, the Court finds that there is no automatic stay applicable and the Property must be delivered to the Plaintiff. *See generally* Rule 261, SCACR. The ordered relief will only be stayed if Powell provides the bond required by S.C. Code Ann. § 18-9-170, which provides in relevant part:

If the judgment appealed from direct the . . . delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking.

S.C. Code Ann. § 18-9-170.

The Court finds that a bond in the amount of \$180,000.00 is appropriate. This amount is based on a monthly rental value of \$3,000 per month for a period of five years.

CONCLUSIONS OF LAW

Based upon the pleadings, motions, and orders filed, the testimony and evidence presented, and the arguments of counsel at the merits hearing, I make the following conclusions of law:

1. Any finding of fact stated above that is also a conclusion of law is incorporated herein by reference.

2. This matter is properly before the Court. Notice of the Hearing was properly given to all defendants, and the Court has personal jurisdiction over all defendants. Further, this matter is within the subject matter jurisdiction of this Court, pursuant to Rule 53, SCRCP, with any appeal to the Court of Appeals of South Carolina.

3. The Court denies the Motion for Continuance.

4. Prior to the Tax Sale of the Property, San Juan was the defaulting taxpayer and was the last record owner of the Property, pursuant to the deed dated June 1, 2000, and recorded on June 27, 2000, in the ROD in Book 3173, page 343. (*See Exhibit G.*)

5. In strict accordance with all statutory requirements, the Tax Collector provided all required notices to all interested parties entitled to notice, properly executed and levied upon the Property, and thereafter properly advertised and sold the Property to SB MUNI at the Tax Sale.

6. After providing the statutorily required notice of the approaching end of the redemption period to all interested parties entitled to notice in strict compliance with S.C. Code Ann. § 12-51-120, the Tax Collector conveyed the Property to SB MUNI through the Tax Deed.

7. The Court finds that the use of the abbreviated name of "SB MUNI CUST % LBSC-11, LLC" for the bidder in the Tax Deed was proper and was required by York County's software

system. The Court further finds that the Tax Deed is valid in all respects and that the Tax Deed conveyed title to the Property to SB Municipal, LLC as custodian for LBSC-11, LLC.

8. The Court finds that after the issuance of the Tax Deed, SB MUNI conveyed its tax title to Plaintiff through the Quitclaim Deed, which the Court finds is also valid in all respects and conveyed title to the Property to Plaintiff.

9. Plaintiff timely and properly served San Juan and Osborne, as evidenced by the affidavits of service filed herein. Despite being timely and properly served, San Juan and Osborne failed to answer and, thus, defaulted to the Complaint and are in default.

10. After being timely and properly served, Powell served and filed the various motions and pleadings above described. Neither Plaintiff, nor anyone acting on Plaintiff's behalf, has engaged in any actionable conduct, and for the reasons set forth above more particularly, which are incorporated herein by reference, and pursuant to Rule 41, SCRCF, all of the Counterclaims are dismissed with prejudice.

11. At all times concerned, the provisions of Chapter 51 of Title 12 of the South Carolina Code of Laws entitled, "Alternative Procedure for Collection of Property Taxes," controlled. At the hearing, no issues were raised concerning the actions of the Tax Collector, and based upon the testimony of Tracy Mattevi and the other evidenced received, I find that all requirements of the South Carolina Code of Laws with regard to the Tax Sale of the Property were properly followed and were in strict compliance therewith.

12. Because the Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any of the defendants in, to, or upon the Property were extinguished by the Tax Sale. Accordingly, all rights, titles, claims, interests,

estates, liens, mortgages, judgments, and any other creditors' claims that any of the defendants had or claim to have in, to, or upon the Property are hereby extinguished, and all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any person or entity claiming under, by, or through any of the defendants in, to, or upon the Property are hereby extinguished. Thus, all adverse claims to the Property are forever barred, and Plaintiff's marketable, fee simple title to the Property is certain and free from all reasonable doubt.

13. Additionally, Plaintiff's title is incontestable on procedural or other grounds and all claims against or challenges to the Tax Sale of the Property are barred by the two-year statute of limitations set forth in S.C. Code Ann. §§ 12-51-90(c) and 160, because more than two have passed since the date of the Tax Sale.

14. The Tax Deed, the Quitclaim Deed, and all prior deeds in the chain of title for the Property should be reformed, *nunc pro tunc*, to reflect the correct recording information for the Plat, which was actually recorded in the ROD in Plat Book 73 at Pages 23-26 (not Pages 22-26).

15. Any person occupying the Property must vacate the Property and remove all items of personal property as set forth below, and any person occupying the Property shall maintain the condition of the Property without causing any harm or damage to the Property.

NOW, THEREFORE, based upon the foregoing, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Motion for Continuance is denied.
2. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any of the defendants in, to, or upon the Property are forever barred, including, but not limited to, all ownership or other interests of any of the defendants.

3. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any other person or entity claiming under, by, or through any of the defendants in, to, or upon the Property are forever barred.

4. The Tax Sale extinguished all rights, titles, claims, interests, estates, liens, mortgages, judgments, and other creditors' claims in, to, or upon the Property, and all claims to the Property adverse to Plaintiff are forever barred.

5. The two-year statute of limitations of S.C. Code Ann. §§ 12-51-90(c) and 160 render Plaintiff's tax title incontestable and bar any and all post, present, and future claims concerning the Tax Sale of the Property.

6. Pursuant to Rule 41, SCRPC, Powell's Counterclaims are all dismissed with prejudice.

7. This Court hereby quiets and confirms marketable, fee simple title to the Property in Plaintiff, LB PARK, LLC, and the marketable, fee simple title of Plaintiff, LB PARK, LLC, to the Property is certain and free from all reasonable doubt.

8. The Tax Deed, the Quitclaim Deed, and all prior deeds in the chain of title for the Property are hereby reformed, *nunc pro tunc*, to reflect the correct recording information for the Plat, which was actually recorded in the ROD in Plat Book 73 at Pages 23-26.

9. The York County Register of Deeds shall record a copy of this Final Order.

10. The Court also notes that Andrew M. Rawl, Esq. is no longer employed by Haynsworth Sinkler Boyd, P.A. and is relieved as counsel for Plaintiff.

11. In the event that any person is occupying the Property, Plaintiff shall provide a copy of this Final Order to the York County Sheriff or his authorized deputies (collectively the

“Sheriff”), and upon receipt of a copy of this Final Order, the Sheriff is hereby ordered to perform as follows:

a. The Sheriff is hereby ordered, directed, and authorized to post a copy of this Final Order upon the Property and/or to serve a copy of this Final Order upon any person occupying the Property;

b. Not less than 15 days after said posting or service, the Sheriff shall be authorized to enter upon the Property, by force if necessary, and to seize the Property and to remove any and all persons occupying the Property from the Property, together with all of his/her/their personal property and possessions, and to put Plaintiff in full, peaceful and quiet possession of the Property without delay, and thereafter, within ten (10) days, make due Return to the Clerk of Court for York County, South Carolina, showing how this Final Order has been executed; and

c. The Sheriff shall have discretion to extend the date of seizure, but not more than 30 days from the date of said service or posting, absent a further Order.

AND IT IS SO ORDERED.

JUDGE’S SIGNATURE PAGE TO FOLLOW

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-46-00549

LB PARK LLC

San Juan Holdings, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Alexander G. Mende, Esq.

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: See attached Final Order.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Action to Quiet Tax Title

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment

RECEIVED
NOV 28 2022
SC Court of Appeals



York Common Pleas

Case Caption: Lb Park Llc VS San Juan Holdings , defendant, et al
Case Number: 2020CP4600549
Type: Master/Order/Quiet Title and Form 4

So Ordered

s/ Teasa K. Weaver 3084