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Dec 12 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master In Equity

Case No. 2020-CP-46-00549
Appellate Case # 2022-001650

LB PARK, LLC, Respondent,

v.

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 643-10-001-023, 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, Defendants,

of whom Ryan Powell is the..... Appellant.

REPLY TO LB PARK, LLC'S RETURN TO PETITION FOR INJUNCTION

Appellant Ryan Powell ("Ryan"), makes this reply under Rule 240 (f) SCACR to oppose Respondent LB PARK, LLC's ("LB PARK") "RETURN TO VERIFIED EMERGENCY EX-PARTE PETITION FOR INJUNCTION" ("Return").

LB PARK's Return fails to argue, rebut, disprove, **or cite a single authority** to support any of its opposition to Ryan's Petition. LB PARK's Return contains only selected text extracted from its Complaint and from the final order. LB PARK's Return

must be seen for what it is, a frivolous non-response that must be construed as LB PARK's agreement for this Court to issue an injunction.

Non-Response of Ryan's Issue #1, Master Lacked Subject Matter Jurisdiction To Make Or Enter Her Final Order

LB PARK's Return states - "The matter was referred to the Master without limitation by order dated August 20, 2020.", [Return, pg 3, para 1]. That statement just repeats the finding/conclusion that Judge Weaver made in her final order. LB PARK failed to argue, prove, or cite one single authority that could show that finding/conclusion is correct.

LB PARK's Return also does NOT rebut Ryan's arguments made in his Petition which proved that since the reference was made ONLY for the **specific purpose** "of receiving evidence" that Judge Weaver only had the jurisdiction to "receive evidence" and nothing else. See for example the following unopposed authority -

"When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, **unless the order of reference specifies or limits his powers**", Smith Companies of Greenville, Inc. v. Hayes, 428 SE 2d 900 (1993) [emphasis mine].

LB PARK's frivolous Return fails to cite a single case to prove Judge Weaver made the correct decision on the issue of her having jurisdiction to make and enter her final order.

Non-Response of Ryan's Issue #2, Judge Weaver Executed Her Void Final Order Within Her Void Final Order

LB PARK states in its Return that because it did not have possession of Ryan's private property when it initiated its "case" (i.e., its case is not ripe), and because it requested possession in its Complaint, that it was correct for Judge Weaver to order Ryan's dispossession during the final quiet title hearing.

LB PARK's Return fails to address or disprove any of Ryan's arguments showing that taking possession of property is a separate at law special proceeding that can only be

initiated **after** a quiet title order has become final and then only on a motion which includes a rule to show cause order which must be personally served on the party remaining in possession, and then after a hearing is held and a writ of assistance is issued. None of those required court proceedings ever took place but according to LB PARK they were not required because it requested possession in its Complaint! Utter nonsense.

Non-Response of Ryan's Issue #3, Non-justicibility of LB PARK's Claims

LB PARK starts off its frivolous non-responsive Return by stating "This case stems from LB Park's years long efforts to quiet tax title **and to obtain possession** of 25056 Timberlake Drive, York County, South Carolina" [Return, pg 2, para 1.]. LB PARK's frivolous Return fails to address or disprove that its claim to take possession of Ryan's private property proves its case is not ripe.

As Ryan proved in his Petition, the Plaintiff must have possession of the property at issue to even bring any kind of quiet title action in any court of this State. See for example the Supreme Court's holding made for a **quiet tax title case** -

"This case was a suit brought for the purpose of setting aside **a tax deed** as a "cloud on the title of the plaintiffs." ... "In reversing the lower Court and finding for the defendant, this Court held that a suit to remove a cloud from the title was **premature** for the reason that the plaintiffs were not in possession of the property in question", Taylor v. Jennings, 106 SE 2d 391 (SC Supreme Court 1958) [emphasis mine].

Premature as used in Taylor v. Jennings supra means not ripe! No where in its Return does LB PARK show, address, or cite a single authority that could disprove Ryan's arguments proving LB PARK's claims are not ripe and therefore non-justicible.

Non-Response of Ryan's Issue #4, Judge Weaver Seized Private Property Which The Law Prohibits Doing

No where in its Return does LB PARK show, address, or even mention the issue of Judge Weaver seizing private property in violation of the law that prohibits doing such.

Conclusion

Hearing and deciding Ryan's Petition for Injunction requires this Court to determine the merits of LB PARK's claims to take possession of Ryan's private property. But before this Court can determine the merits of any claim, it MUST determine if the claim is ripe for judicial determination:

Likewise, "before addressing merits of any appeal, [the court] must be convinced that the claim in question is ripe for review, even if neither party has raised the issue.", Eagle Container v. County of Newberry, 622 SE 2d 733 (2005) [bracketed text in original].

After this Court determines LB PARK's claim to take possession of Ryan's private property is **not ripe**, it must grant Ryan's Petition for Injunction.

Or in the alternative, if it is possible, after this Court determines that LB PARK's claim to take possession of Ryan's private property is not ripe, this Court may be able to dispense with this appeal by entering an order that orders the following relief: 1) dismisses with prejudice LB PARK's case as being non-justicible; 2) vacates or reverses Judge Weaver's final order on appeal that is damaging Ryan; 3) orders the York County Register of Deeds to expunge or cancel Judge Weaver's final order from its records; and 4) remands Ryan's counterclaims to the Circuit Court for a hearing by a court of competent jurisdiction.

With Reservation of all rights without prejudice,

December 12, 2022

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

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of whom Ryan Powell is the..... Appellant.

Certificate of Service For Reply To LB PARK's Return to Petition for Injunction

I certify that I served all Respondents with a copy of my Reply to LB PARK's Return to my Emergency Ex Parte Petition for Injunction by and through their attorney of record by First Class Mail with proper postage affixed on the below date addressed as follows:

Sara P. Spruill
P.O. Box 2048 (29602),
Greenville, SC 29601
Attorney for Respondent LB PARK, LLC

12/12/2022
Date

/s Ryan Powell
Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina
(919) 400-6339