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Feb 06 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case # 2020-CP-46-00549

LB PARK, LLC, Plaintiff

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.

Affidavit in Support of Motion for New Trial or to Alter or Amend

FILED-RECEIVED
2022 NOV -4 AM 11:13
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

I, Ryan Powell, ("I", "me", "Me", "my", "My) appearing before the undersigned notary and being duly sworn state, under penalty of perjury, that the following facts are true, correct, complete, and not misleading:

1. I am over the age of 18, I am competent to make this affidavit, and I am making this affidavit of my own free will and on my first hand knowledge.
2. On December 19, 2012 I signed a consensual lien agreement with my mother, Karen Powell so that I could buy my property, the property at issue in this case. That lien is against the land at issue in this case.
3. I closed on the transfer of the property at issue in this case on December 20, 2012. I witnessed a man whom identified himself to me to be Brett Osborne the trustee of San Juan Holdings, sign and seal the deed granting San Juan Holdings' property to me. I saw two witnesses sign the deed. I saw a woman sign the deed and put her notary stamp on the deed. Her notary stamp reads "Joy M. Uter NOTARY PUBLIC State of South Carolina My Commission Expires April 27, 2017.". I was handed the deed after Ms. Uter signed and stamped it. I have had that deed in my possession since December 20, 2012. I have possessed the property at issue since that day.

4. During a hearing of Plaintiff's earlier filed 2019 case, Judge Daniel Hall stated on the court record that if my deed was "put into evidence, it would get recorded". Because of that threat I have been extremely reluctant to ever put my deed into evidence.
5. Before answering the Plaintiff's complaint, I filed a pre-answer motion to dismiss. I attached an affidavit to that motion supporting my claims of being the owner of the property at issue.
6. As acknowledge in the final order, I have been litigating issues involving my property for the past decade. I had to do that because I could not figure out how to get York County to properly update their records. After my property was sold, I finally figured out how to properly get my property off York County's tax roll. Unfortunately for me, it was then too late to get my property off the tax rolls. No man would ever spend a decade fighting to keep his property from being taken if the property he was fighting for was not his property.
7. Under duress, threat, and coercion, I have attached to this affidavit as Exhibit A, a true, exact, complete, and unaltered photocopy of my original three (3) page unrecorded deed excepting the red watermark that reads "EVIDENCE - DO NOT RECORD". I added that watermark so that any person who contemplated recording my deed would receive notice of my intent to not have my deed recorded. As the owner and holder of my original unrecorded deed, I am the only person who can certify a copy of it.
8. I signed my Answer, that I filed into this case on or about October 1, 2020, "*Respectively presented, with all rights reserved, without prejudice*". The rights that I reserved by that statement include, but are not limited to, my common law rights and my Constitutionally protected right to not have my private property taken from me for private use without my consent.
9. Since I cannot prove a negative, that is, I cannot prove that I did not ever give consent to have my private property taken from me, the Plaintiff was required to prove that I did give my consent. There is no findings of facts or conclusions of law in the final order that shows that I ever gave my consent to have my private property taken from me.
10. After being denied discovery for my request pertaining to the legal status of the tax title purchaser, I undertook an extensive internet search to locate the needed information. My search returned no results showing the existence of any legal entity having been registered in any state of the United States with the name "SB MUNI CUST % LBSC-11, LLC".
11. The bidder's information sheet issued by York County to all registered bidders states at the top of the page, in all caps, bolded, and underlined "**THIS FORM IS USED TO PREPARE LEGAL DOCUMENTS PLEASE PRINT CLEARLY**". Under the field for "Name(s) to Appear on Deed or Refund Check" is typed "SBMUNI CUST % LBSC-11, LLC". Then there is an asterisk under that field which states "***If two names are to appear on deed, **AND** is required not "or"***.
12. I also attempted to find out if the federal taxpayer ID that was given to York County by Lambros Xethalis on the bidder's information sheet for the tax title purchaser was a valid

federal taxpayer ID. After locating a publicly available tool, I found that the number given to York County by Lambros Xethalis, 45-3362419 came back as "No Results Found". I then did a search for the taxpayer IDs of LB PARK, LLC, its manager SB MUNICIPAL, LLC, and for LBSC-11, LLC. A search using that tool for those three LLC's federal taxpayer IDs returned valid information pertaining to them.

13. I then found, filled out, and mailed an inquiry form to the Baltimore Maryland US Post Office where the P.O. Box that Lambros Xethalis gave to York County on the bidder's information sheet was said to be located. I requested information on the status of the P.O. Box, who opened it, any forwarding address given, etc. A couple months later a return to my request came back to me by mail. On the form I had filled out was what appeared to be an official Post Office stamp in red ink, and the results of my inquiry which stated that the P.O. Box had been closed and that there was no forwarding address given by the former box holder.
14. My demand for a trial by jury was denied by both the Master and the Court of Appeals in contravention of the protections provided to me by the South Carolina Constitution which right I had reserved above my autograph on my Answer filed into the case.
15. Immediately after the remittance of my appeal of the denial of my demand for a trial by jury, I filed a Motion to Amend my answer and I attached to it a proposed amended answer. Those documents were filed on June 8, 2022. Within a couple days of those papers being filed, I emailed Robin Krecek the manager of the York County Equity Court and requested the Master schedule my Motion to Amend to be heard without a hearing and that it be heard as soon as possible. Robin Krecek then emailed both parties stating she would inform Judge Weaver of my request and then asked if the Plaintiff would be filing any response to my motion. The Plaintiff answered that it wanted the motion heard *immediately prior* to the final hearing. There was no final hearing set at that time. I immediately emailed Ms. Krecek back stating I objected to hearing my Motion to Amend my answer *immediately prior* to the final hearing stating that hearing it at the time would ensure my motion be denied because the Plaintiff would be prejudiced. There were no more emails on the subject of the scheduling or hearing of my Motion to Amend.
16. On June 9th, the day after I filed my Motion to Amend my answer, the Court of Appeals released my appeal of the Plaintiff's first case (2019 case) that was being held in abeyance until a final order was entered in this case. The results of that action by the Court of Appeals switched the party that was responsible for making monthly status reports on this case from the Plaintiff to me and the order also stated that my appeal of the Plaintiff's 2019 case would be dismissed if I failed to make a monthly status report.
17. On August 15th I wrote a 5 page letter to Chief Justice Donald Beatty detailing the facts of the actions of the Court of Appeals had taken to switch the party responsible for the monthly status reports. The tracking information I used to mail that letter to Chief Justice Beatty showed it was received by his office on August 19th.

18. In my letter to the Chief Justice I evidenced many facts that showed a high probability that the Master had been conspiring with judges on the Court of Appeals pertaining to this case. I demonstrated that the Court of Appeals had switched the party required to make monthly status report from the Plaintiff to me so that my appeal could be dismissed if/when I failed to make a monthly status report. I showed that this was done after the Master contacted a judge on the Court of Appeals informing him that she was not going to be entering a final order because she did not have jurisdiction to do so. That evidence was strong enough to convince the Chief Justice that something unlawful was going on in this case as the following actions happened within three business days from his receipt of my letter: The Court of Appeals posted my first status report to the online case tracker that had been electronically filed 5 business days earlier but had not been posted to the case; Andrew Rawl, the attorney for the Plaintiff who made an error in his Motion for Order of Reference suddenly left his law firm without having a new job anywhere else as an attorney; and the Master changed her mind about not entering a final order and had her manager, Robin Krecek, send out an email to the parties setting a final hearing to take place on September 27th and scheduling my Motion to Amend my answer to be heard *immediately prior* to that final hearing.
19. Neither party had requested a final hearing be set, neither party was consulted for their availability on the date selected, and neither party was asked the amount of time they needed to present evidence for their claims and defenses.
20. Robert Hartman, the attorney I retained during the Summer of 2021 to handle my case while I was getting married, informed me that Judge Weaver had not been given subject matter jurisdiction to do anything but "receive evidence" which he explained to me meant that she could not enter any final order. I had no reason to not believe Mr Hartman.
21. I also did extensive research in the case law and all the cases I found held that the Master in Equity is a court of limited jurisdiction and that the Master can only exercise the jurisdiction given in the Order of Reference. Further, those cases held that if the Order of Reference specifies or limits the Master's jurisdiction, then the Master only has jurisdiction to exercise that specific or limited purpose. Since the Order of Reference made in this case states the reference was made "for the purpose of receiving evidence", the reference was made for that limited and specific purpose.
22. After the Plaintiff's attorney, Alexander Mende filed his notice of appearance in the case I looked him up on Haynsworth Sinkler Boyd's website. While I was on their website, I also looked up the other three attorneys for the Plaintiff including Andrew Rawl. I found that Andrew Rawl was not listed as a attorney in the law firm of Haynsworth Sinkler Boyd. I then looked at the South Carolina BAR association's directory of attorneys and found Andrew Rawl. His home address was given as his address and his personal gmail address was given as his email address. I then search the archived pages of the internet and found that Andrew Rawl had been deleted from the Haynsworth Sinkler Boyd law firm's website on or about the same day that I received an email from Robin Krecek setting a date for the final trial. In my letter to the Chief Justice of the Supreme Court I alleged "*Because of the incompetent and careless work of the Plaintiff's attorney, Andrew Rawl, who signed an*

ineffective motion for an order of reference, the order of reference entered into the case limits the Master's authority to only being able to "receive evidence".

23. I filed a motion to vacate under Rule 60(b)(4) SCRPC the Master's order denying my motion to return the case to the circuit court on the grounds that the Order of Reference was made *"for the purpose of receiving evidence"*.
24. Shortly after filing my motion to vacate, I withdrew the hearing of my Motion to Vacate and my Motion to Amend my answer stating my reason was that I believed that the Master did not have the jurisdiction needed to hear and decide those two motions and also because the scheduling of those two motions to be heard *"immediate prior"* to the final hearing ensured that they would both be denied.
25. Eleven (11) days before the final hearing, I filed a Motion for Continuance stating, among other grounds, that I could not attend the final hearing on September 27th because I had a previous contractual obligation that conflicted with that date. I requested Judge Weaver hear and decide my Motion for Continuance without a hearing and do as soon as possible. I never received any answer to any of my requests for a hearing. It appears from the final order entered, that the Master did hear my Motion for Continuance *immediately prior* to the final trial. However, I never received any notice, and none exists in the record, that could show that my Motion for Continuance was ever going to be heard.
26. I have never been assessed with any debt, assessment, tax, penalty, interest, or any other financial obligation payable to York County or to the State of South Carolina. Having never been assessed with any debt, and having never had any demand made for me to pay any debt, the taking of my property could not be based on any breach of my duty to pay any legal obligation that I have.
27. I never received any notice from York County stating that I owed them a debt, that my property was going to be sold, or that I had a right to redeem my property after it was sold. According to the codes of this State an owner of unrecorded property does not have to be given notice. However, there are many binding precedent cases decided in this State that hold the "true owner" must be given notice which in cases like this one, means that even though my deed is not recorded, I still must have been given notice of the tax sale and of my right to redeem my property, if I had that right.
28. Although I did receive notice that the Plaintiff intended to call Tracey Mattevi as a witness, I never received any notice that the Plaintiff had issued a subpoena to Tracey Mattevi requiring her to attend the final hearing or requiring her to produce any documents at the final hearing. I believed that since the Master knew she did not have jurisdiction to enter a final order and since the Plaintiff had not subpoena any witnesses, that the Master was planning to only "receive evidence" and was not planning to actually enter a final order. That belief is also evidenced by my October status report which I electronically filed with the Court of Appeals one hour prior to the entry of the final order.

29. The reason for my inability to attend the final hearing set without any concern for my availability is the following: I am a professional drummer for a rock band that started up two years ago. Our band is fairly new but we are gaining exposure and name recognition in the music scene. However, after we won an award for the "Rock Band of the Year" this summer, our band was contacted by a bigger name band to join them on their cross country tour. The contract to have our band make that tour was scheduled prior to the August 24th email setting a final hearing date. The band engagements started the last week of September and continued through to the last week of October. I am presently on the last venue of our tour which is in New York. This tour will give our band national exposure. My band professionally recorded our first EP (i.e., album) in a studio in Los Angeles, California last fall. Our band has also recorded two professionally produced music videos in a studio in Atlanta, Georgia this year. Each band member has invested a substantial amount of their personal resources to get the band off the ground. I could not have my band miss any shows where tickets had already been sold and contractual engagements had already been made, for a hearing that could have easily been rescheduled 30 days out. There is no other drummer on earth who knows the band's music or the shows who could have substituted for me during the engagement which I would have had to miss to make the final hearing. My band would have lost money, reputation, and status had I missed any engagement. I could not do that to my band members or to my music career.

State of New Jersey

County of Hudson

The foregoing instrument was sworn to and subscribed before me this the 25th day of October, 2022 by the undersigned affiant.

Ryan Powell
Ryan Powell (Seal)

JOY M ZIENTEK
Notary Public, State of New Jersey
My Commission Expires
July 07, 2026

(Official Seal)

Joy Marie Zientek
Signature of Notary Public

Joy Marie Zientek
Printed Name of Notary Public

My Commission Expires: 07/07/2026

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STATE OF SOUTH CAROLINA)
 : TITLE TO PRIVATE PROPERTY
COUNTY OF YORK)

WHEREAS, SAN JUAN HOLDINGS, a private contractual trust (hereinafter Grantor) is the lawful owner of the private property hereinafter described; and

WHEREAS, Brett Osborn is trustee of SAN JUAN HOLDINGS with power to convey title to the property hereinafter described; said power recorded on June 28, 2000 in Vol 3173, page 344 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, Ryan Whitney of the Powell family (hereinafter "Grantee") is a unmarried, living man, over eighteen years old, a free inhabitant, domiciled outside the territory owned by and subject to the exclusive legislative authority of the United States of America; and

WHEREAS, Grantee is an assignee of the hereinafter described land in an unbroken chain of title from one of the original land grants made by King George II, King of England, said English grants being issued prior to the creation of the United States of America, South Carolina, York County or any other North American municipal corporation. Grantee acknowledges and accepts the property rights as granted by the original English grant for the hereinafter described land; and

WHEREAS, it is the understanding of the parties that the hereinafter described land is not now nor has it ever been owned by the UNITED STATES [federal] corporation or any of its sub [STATE OF, COUNTY OF, CITY OF] corporations; and

WHEREAS, Grantee's acceptance of this contract is evidenced by his seal on this instrument; and therefore

NOW KNOW ALL MEN BY THESE PRESENTS, that SAN JUAN HOLDINGS, by Brett Osborn trustee (Grantor) for and in consideration of the sum of Twenty One Dollars and Zero Cents (\$21.00) tendered in the form of United States' silver Dollars minted and dated prior to 1964 and other good and valuable consideration in hand paid at and before the sealing of these presents by Ryan Whitney of the Powell family (Grantee) the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee, his heirs, successors, and assigns forever:

All that certain piece or lot of land situated, lying or being in or near South Carolina, Camden district, York county, Fort Mill township, being commonly known and designated as Lot 56 of Tega Cay Section 25, all being without the United States, and more particularly described on plat recorded in the Office of the Clerk of Court for York County in Plat Book 131 at page 306, which is incorporated herein as fully and as completely as if set forth here verbatim.

recorded in Deed Book 3173 at page 343, in the Office of the Clerk of Court for York County.

The property is conveyed free and clear of all security interests, liens, claims and encumbrances from any entity or person whatsoever.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever.

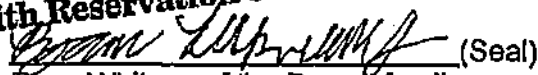
AND THE GRANTOR does hereby bind the Grantor, and the Grantors' heirs executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against the Grantor or the Grantors' heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

After filing for record mail to Grantee: Ryan Whitney
[not a residence address] c/o: 25056 Timberlake Drive
Tega Cay, South Carolina
Without the United States

WITNESS our Hand and Seal this the 20th day of December in the year of our Lord Two Thousand and Twelve and in the two hundred and thirty-sixth year of the independence of the United States of America.

Grantor, SAN JUAN HOLDINGS:

By Brett Osborne Trustee (Seal)

Grantee:
With Reservation of All Rights

Ryan Whitney of the Powell family, a free inhabitant, without the United States

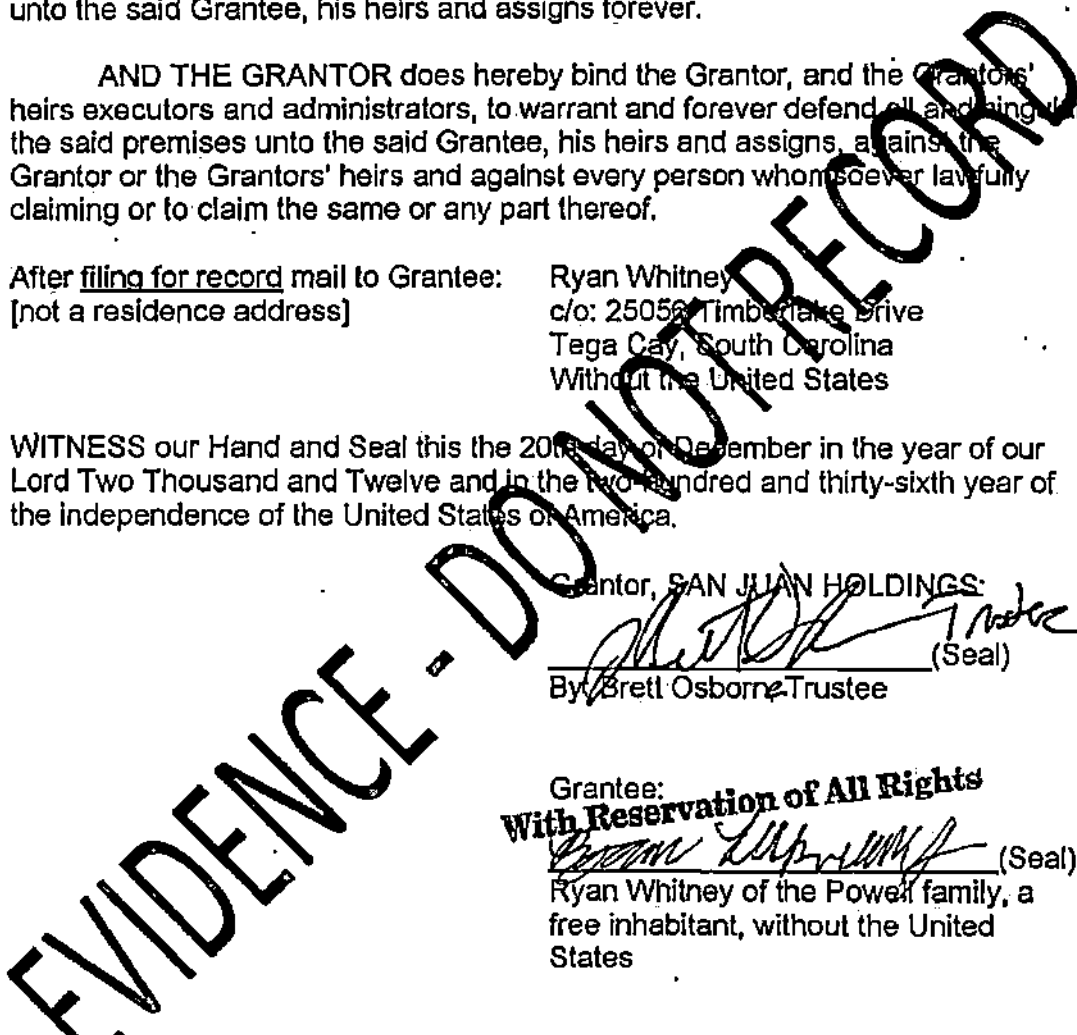
Signed and Sealed in the presence of:


Witness #1 Signature

Brenda K. Callicutt
Witness #1 Printed Name


Witness #2 Signature

A. Aaron Swain



Personally appeared before me the undersigned witness and made oath that (s)he saw the within-name Grantor sign, seal and, as his act and deed, deliver the within written Deed to the within-name Grantee who then as his freewill act and deed did sign and seal the instrument and that (s)he, with the other witnesses subscribed above, witnessed the execution thereof.

SWORN to before me this
20th day of December, 2012

Brenda K. Carver
Witness #1

Joy M. Uter
Notary Public for State of South Carolina
My Commission Expires: ~~12/30/12~~ April 27, 2017

Joy M. Uter
NOTARY PUBLIC
State of South Carolina
My Commission Expires
April 27, 2017.

EVIDENCE - DO NOT RECORD