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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.

REPLY BRIEF OF APPELLANT

Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, SC 29708

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

Brett Osborne
190 Aviation Lane
Gold Hill NC 28071
Pro Se for Respondent San Juan Holdings, Brett Osborne, the trustee, and
Pro Se for Respondent Brett Osborne as Trustee of San Juan Holdings

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STATEMENT OF ISSUES FOR THIS REPLY BRIEF

1. Did Respondent Abandon Its Positions By Failing To Argue Them?

2. Is This Appeal Moot?

3. Does This Court Have To Hear And Decide Only the Issue Of Appellant Being Denied Intervention?

4. Are Respondent's Claims Justicible?

MANDATORY JUDICIAL NOTICE

All judges on this Court are to take mandatory judicial notice under 201(d) SCRE of the following fact: Appellant has registered his deed on February 23, 2023 in the York County Register of Deeds office in book 20628, page 278 ("Registered Deed") thereby putting his property under the jurisdiction of this State and giving him the right to use the courts of this State to protect and defend his property. A copy of Appellant's Registered Deed is attached as Exhibit A and is fully incorporated herein by reference.

ARGUMENT

I. Did Respondent Abandon Its Positions By Failing To Argue Them?

Respondent's initial brief is rather brief, six pages in total. Most of its Argument section cites authority but then states only a single conclusory sentence concluding that the cited authority applies to this case. That single conclusory sentence does not fulfill the requirements this Court has set for a proper argument. Since all of the issues that Respondent raises in its initial brief are new issues, i.e., not a rebuttal of any of appellant's issues raised in his initial brief, then the following holdings apply to Respondent's initial brief.

> "Further, all arguments made are merely conclusory statements. Concomitantly, the Council abandoned the issue on appeal and it need not be addressed by this court." ...*R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.,* 343 S.C. 424, 540 S.E.2d 113 (Ct.App.2000) (declaring an issue is deemed abandoned if argument in appellate brief is only conclusory). ", Mulherin-Howell v. Cobb, 608 SE 2d 587 (2005).

> "Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal.", Ellie, Inc. v. Miccichi, 594 SE 2d 485 (2004).

> "LRTA, citing no authority, makes a conclusory argument in its brief that R & G did not perform the work and is therefore not entitled to payment under the contract. An issue is deemed abandoned if the argument in the brief is only conclusory.", R & G CONST., INC. v. LRTA, 540 SE 2d 113 (2000).

II. Is This Appeal Moot?

When this appeal was first filed, almost four years ago, Respondent moved to have the appeal remanded to the lower court so that it could take a voluntary dismissal of the case upon which the appeal was taken so that it could bring a replacement case naming appellant as a defendant. This Court granted that motion. This Court has never, not once, granted a motion to remand so that the Respondent could dismiss the case that underlies the appeal! All cases that appellant can find in the State Reporters where a remand from an appellate court was ordered, were done to allow a record in the case on appeal to be corrected or rebuilt. In other words, a remand was ordered only to allow the appeal to proceed forward so that it could be heard and decided. Never, not even once, has an appellate court granted a remand so that the underlying case could be dismissed. This Court knowingly and intentionally made the issue of the denial of appellant's intervention moot!

> "[M]oot appeals result when intervening events prevent a decision on appeal from having an immediate impact on the parties." 15 S.C. Jur. *Appeal and Error* § 19 (Supp.2014).", *WACHESAW PLANTATION CMTY. v. Alexander*, 778 SE 2d 898 (SC Supreme Court 2015).

Then this Court held this appeal on its docket for almost four years, why? What was the motive to hold an appeal in abeyance after this Court's action made the main issue on appeal moot?

Had this appeal been allowed to be heard the underlying case would have been found to be non-justicible and Respondent's claims would have been dismissed with prejudice. That would

have happened because Respondent does not have standing to bring a clear tax title action under SC Code of Laws 12-61-10 to 60 when it does not hold a tax title and Respondent's underlying claims were not ripe since Respondent did not have possession of the property upon which it was attempting to clear its quitclaim deed.

Since this appeal was held in abeyance so that appellant could be named in Respondent's replacement case, appellant has suffered four long years of torture attempting to litigate a case that he was prevented from litigating! Appellant was only "permitted" to be made a party so as to give him the false impression that he had the ability to defend his property. In the end, appellant lost his property in a void *ab initio* judgment, based on a void *ab initio* tax title, cleared in a non-justicible case! All of that damage that appellant has suffered would have been entirely avoided had this appeal been allowed to proceed forward as the laws and court procedures of this State required.

Nonetheless, it is not too late to hear this appeal even though the issue of intervention appears to be moot. There are three exceptions to the mootness doctrine, and this appeal fulfills the third exception.

> "In the civil context, there are three general exceptions to the mootness doctrine." ... "Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.", *WACHESAW PLANTATION CMTY. v. Alexander* supra.

A decision in this appeal that Respondent's claims are non-justicible will have collateral consequences for the parties because appellant has lost his property in a case that Respondent claims were the exact same claims as the underlying [dismissed case] for this appeal and those claims are also non-justicible. Accordingly, this appeal falls under one of the exemptions to the

mootness doctrine and can be heard in this appeal even though this Court's decision will have no effect on the, now dismissed, underlying case.

III. Does This Court Have To Hear And Decide Only the Issue Appellant Being Denied Intervention?

Respondent frivolously argues that if this Court hears this appeal, the only issue it can determine is whether or not it was error to deny appellant intervention in the underlying case that was dismissed. Respondent's argument is frivolous for at least the following seven reasons.

First, that argument is not preserved as it was never raised to or ruled upon by any court and it is not an issue that can be heard *sua sponte* by this Court..

Second, appellant's motion to dismiss was literally a part of his motion to intervene so the issues raised in those two motions are inseparable from each other.

Third, the order denying appellant's Motion to Dismiss or Intervene denied the two motions therefore that order covers the issues raised in appellant's motion to dismiss as well as the issue of intervention.

Fourth, this Court is required to *sua sponte* raise issues of standing, ripeness, and mootness in every appeal even if neither party raised any of those issues.

> "Our courts will not address the merits of any case unless it presents a justiciable controversy. *Byrd v. Irmo High Sch.,* 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). In *Byrd,* we stated, "Before any action can be maintained, there must exist a justiciable controversy," and, "This Court will not ... make an adjudication where there remains no actual controversy." *Id.*; *see also Peoples Fed. Sav. & Loan Ass'n v. Res. Planning Corp.,* 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) ("A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy."). "Justiciability encompasses ... ripeness ... and standing.", Jowers v. SOUTH CAROLINA DEPT. OF HEALTH, 815 SE 2d 446 (SC Supreme Court 2018).

Fifth, to even determine if this appeal is moot and then to determine if the appeal fulfills one of the three exceptions to the mootness doctrine, this Court must also determine if Respondent

has standing to even bring its claims because if it does not have standing then determining an exception to the mootness doctrine is unnecessary.

Sixth, to even determine if this appeal is moot and then to determine if the appeal fulfills one of the three exceptions to the mootness doctrine, this Court must also determine if Respondent's claims are ripe because if its claims are not ripe then this Court cannot determine any merits of this appeal.

> "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).

Seventh, this Court is required to raise *sua sponte* the issue of subject matter jurisdiction and territorial jurisdiction even if neither party raised such issues.

> "Issues relating to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by this court on our own motion", WACHOVIA BANK OF SOUTH CAROLINA v. Player, 512 SE 2d 129 (1999).

> "Jurisdiction is of two distinct kinds: (1) jurisdiction of the subject or subject matter[1], and (2) jurisdiction of the person. In determining questions relating to each, different rules apply. Jurisdiction of the subject matter cannot be waived by any act or admission of the parties;", State v. Douglas, 138 SE 2d 845 (SC Supreme Court 1964).

> "Although neither Dudley nor the State specifically raised or argued extraterritorial jurisdiction, the original panel implicitly recognized that extraterritorial jurisdiction is a theory under the general concept of subject matter jurisdiction. *See Weinhauer v. State,* 334 S.C. 327, 513 S.E.2d 840 (1999) (stating issues involving subject matter jurisdiction may be raised at anytime, including for the first time on appeal); *State v. Brown,* 351 S.C. 522, 570 S.E.2d 559 (Ct.App.2002) (stating issues related to subject matter jurisdiction can be raised at anytime, can be raised for the first time on appeal, and can be raised *sua sponte* by the Court).", State v. Dudley, 581 SE 2d 171 (2003).

> "It is frequently declared that statutes can have no extraterritorial effect. By this statement, it is meant that legislative enactments can only operate, *proprio vigore*, upon persons and things within the territorial jurisdiction of the lawmaking power, and that no law has any effect, of its own force, beyond the territorial limits of the sovereignty from which its authority is derived. Thus, the general rule is that no state or nation can, by its laws, **directly affect, bind, or operate upon property or persons beyond its territorial**

[1] SUBJECT-MATTER. The cause, the object, the thing in dispute.

jurisdiction. A statute which purports to have such operation is invalid. * * *" 50 Am. Jur., Statutes, Section 485.", Ex parte First Pa. Banking & Trust Co., 148 SE 2d 373 (SC Supreme Court 1966) [emphasis mine].

IV. Are Respondent's Claims Justicible?

> "Our courts will not address the merits of any case unless it presents a justiciable controversy. In *Byrd,* we stated, "Before any action can be maintained, there must exist a justiciable controversy," and, "This Court will not ... make an adjudication where there remains no actual controversy." *see also Peoples Fed. Sav. & Loan Ass'n v. Res. Planning Corp.,* 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) ("A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy."). "Justiciability encompasses ... ripeness ... and standing."", Jowers v. South Carolina Dept. of Health, 815 SE 2d 446 (SC Supreme Court 2018) [internal citations omitted].

As shown in Jowers v. South Carolina Dept. of Health supra, the issue of justicibiliy is a fundamental issue and must be addressed *sua sponte* if neither party raises the issue.

A. Can A Plaintiff Have Standing To Bring A Clear A Tax Title Claim Under S.C. Code of Laws §§ 12-61-10 to 60 When It Admits It Does Not Hold A Tax Title?

LB PARK brought its quiet tax title case under - S.C. Code of Laws §§ 12-61-10 to 60 [ROA, Complaint #1]. Therefore for LB PARK to having standing, LB PARK must satisfy the requirements of one who has the right to bring an action under that code chapter. S.C. Code of Laws § 12-61-10 is fittingly titled "*Persons who may institute action to clear tax title* ", and it clearly specifies who may bring an action under that chapter.

> "Any ... person ..., which has **purchased at or acquired through a tax sale and obtained title to any real ... 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 of Laws § 12-61-10

However, LB PARK admits it did **NOT** "purchase at or acquired through a tax sale and obtained [tax] title to any real property". LB PARK admits that SB MUNI purchased the tax title that LB PARK is attempting to quiet [ROA, Complaint, #10-#11]. Clearly then LB PARK does not have standing to quiet a tax title issued to another entity that is not a party to this action.

> "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right.", Wilson v. Dallas, 743 SE 2d 746 (SC Supreme Court 2013), citing Michael P. v. Greenville County Dep't of Soc. Servs., 385 S.C. 407, 684 S.E.2d 211 (2009).

> "Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." Youngblood v. Dept. of Social Services, 741 SE 2d 515 (SC Supreme Court 2013)

> "stating the issue of statutory standing as "whether this plaintiff has a cause of action under the statute", Youngblood v. Dept. of Social Services, 741 SE 2d 515 (SC Supreme Court 2013) citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 97 n. 2, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998).

The requirement that the plaintiff in a quiet tax title action must be the holder of a tax title is not only found in S.C. Code of Laws § 12-61-10 but is also found in S.C. Code of Laws § 12-61-60 **-**

> "This chapter shall be liberally construed to the end that it shall afford a complete remedy to any plaintiff claiming property by **forfeiture unto him.**".

The property at issue in this case was forfeited unto SB MUNI and was never forfeited unto LB PARK [ROA, Complaint #10 - #11].

S.C. Code of Laws § 12-61-10, and S.C. Code of Laws § 12-61-60 are absolutely clear as to who can bring an action under Chapter 61 of Title 12. There is not one single case in all the State Reporters wherein a plaintiff brought an action to quiet a tax title under S.C. Code of Laws §§ 12-61-10 to 60 and that plaintiff did not hold a tax title, not one single case!.

To determine if LB PARK has a right to sue under S.C. Code of Laws §§12-61-10 to 60, this Court will have to determine the intent of the legislature when they created that remedy. But the Supreme Court has already determined that intent and they determined it as follows -

> "In our view, the legislative intent supporting S.C. Code Ann. Chapter 61 (1976) is that **purchasers of property at tax sales** in South Carolina be provided an efficient, unencumbered method of clearing those titles. ", Rosenbaum v. SMS 32, 427 SE 2d 897 (SC Supreme Ct 1993) [emphasis mine].

Ascertaining the intent of the legislature is the main method used to construe a statute -

> "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. The primary purpose in construing a statute is to ascertain legislative intent.", Eagle Container v. County of Newberry, 622 SE 2d 733 (2005).

Since LB PARK was not a purchaser of property at a tax sale and they do not hold a tax title, then they do not have standing to bring a quiet tax title case under that code chapter.

B. Is A Quiet Title Action Ripe When The Plaintiff Admits That It Does Not Have Possession Of The Property At Issue?

The procedure that must be followed in a suit to clear/quiet a tax title is found in S.C. Code of Laws § 12-61-20 , which states in pertinent part -

> "such action shall be commenced, conducted and concluded by decree **as are similar actions** in such court", S.C. Code of Laws § 12-61-20 [emphasis mine].

A similar action to a clear/quiet tax title action is a regular quiet title action. All quiet title actions in this State can only be commenced by plaintiff's who are in possession of the property to which they want their titles quieted and clouds removed, according to the following-

> S.C. Code of Laws § 15-67-10 . "Persons who may bring action to determine adverse claim. **Any person in possession of real property**, by himself or his tenant, or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively." [emphasis mine].

> "This case was a suit brought for the purpose of setting aside a tax deed as a "cloud on the title of the plaintiffs." From a judgment in favor of the plaintiffs an appeal was prosecuted to this Court. 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, 233 S.C. 600, 106 SE 2d 391 (SC Supreme Ct 1958) speaking of Pollitzer v. Beinkempen, 76 S.C. 517, 57 S.E. 475, 476 [emphasis mine]

> "As we stated in the beginning, this is a case to remove a cloud on and quiet title to the land in question. Such an action **could not be maintained by the respondent if he were not in possession** of the land at the time of the institution of the action. If the respondent were not in possession, his remedy would be to bring an action on the law

> side of the Court to recover possession and thus test the title to the land.", Mullis v. Winchester, 118 SE 2d 61 (SC Supreme Court 1961) [internal citations omitted, emphasis mine].

> "Regarding the complaint, ..., as one to remove cloud on title, it follows that appellants, who the undisputed facts show **are not in possession, cannot maintain this action**.", Priester v. Brabham, 95 SE 2d 167 (SC Supreme Ct 1956) [emphasis mine].

Further, this Court is required to determine if LB PARK's claims are ripe before even hearing this appeal -

> "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, 634 (2005) [bracketed text in original].

LB PARK is undisputedly NOT in possession of Appellant's Private Property [ROA, Complaint, #15 & WHEREFORE clause #1]. LB PARK's claims are not ripe and therefore not justicible.

CONCLUSION

The issues raised in Respondent's initial brief should be found to have been abandoned for containing only conclusory statements and/or this Court must find the issues raised in Respondent's initial brief as having not been preserved.

If this Court determines that this appeal is moot it must find that the appeal fulfills the third exception to the mootness doctrine and therefore this appeal must be heard in full considering all issues that must be decided in any appeal which includes issues of subject matter jurisdiction, territorial jurisdiction, standing, and ripeness.

Respectfully Submitted,

March 20, 2023

_/s Ryan Powell__________

Ryan Powell
c/o 25056 Timberlake Drive
Fort Mill, SC 29708