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.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Codes

Rules

Legal Dictionaries and Encyclopedias

International Laws of War

International Treaties

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err by refusing to hear and determine Appellant's "*Special Appearance Motion to Dismiss or Intervene*" until Appellant gave his consent to be under the authority of judge Hall?

2. Did the trial court err by refusing to dismiss the case for want of the subject matter jurisdiction needed to clear a void tax title, for a plaintiff that does not have a tax title, issued against land that has never been subjected to the jurisdiction of this State by its owner?

3. Does this State have territorial jurisdiction over Appellant's land?

4. Did the trial court abuse its discretion when it denied intervention to Appellant who is the actual owner of the land in dispute and is therefore a necessary and indispensable party, especially since there is no defendant in the action?

5. Did the trial court err by granting Respondent LB PARK'S motion to refer the case to a master-in-equity when the court is wanting subject matter jurisdiction to proceed and Appellant's rights to a jury trial were disregarded?

STATEMENT OF THE CASE

Nature of the Case

This case presents multiple novel issues of law. The plaintiff, Respondent LB PARK LLC ("LB PARK" hereinafter), requested the trial court clear a tax title but LB PARK admits in its complaint that it has a quitclaim deed, not a tax title. The tax title that LB PARK's quitclaim deed derives from, that it wants cleared, was issued in December 2018 against land that has been owned by Appellant since December of 2012 ("Owner's Private Property" hereinafter). The tax title was issued in the name of the previous owner of Owner's Private Property making it void *ab initio* and unenforceable. Owner has not been named as a party in this case even though he is the actual owner of the land at issue. Owner attempted to intervene in the action but was denied intervention. The trial court also denied dismissing the case for want of subject matter jurisdiction and then ordered the case referred to a Master-in-Equity.

Pertinent Facts

Appellant, Ryan Powell ("Owner" hereinafter), bought the land that is the subject-matter of this action almost seven years ago in December of 2012 from a private business trust named San Juan Holdings ("SJH" hereinafter) [ROA, pgs 46-48]. After SJH sold its "res" to Owner, SJH's purpose of protecting that property had been fulfilled so SJH ceased to exist as a legal entity [ROA, pg 49].

Owner chose to not record his deed [ROA, pgs 46-48] as there is no law, code, statute, ordinance, regulation, or contract that requires him to do so and he has a recognized right to own his property privately and alone (i.e., unrecorded) versus owning his property publicly and in association with others (i.e., recorded). Having not recorded his deed, Owner has never been assessed with any *ad valorem* property taxes.

Owner spent approximately five years trying to get YORK COUNTY to remove Owner's Private Property from their tax rolls. Owner gave YORK COUNTY notice of the sale of SJH's property [ROA, pg 49], but YORK COUNTY ignored that notice. During November of 2017, YORK COUNTY sold the rights to Owner's Private Property but did so in the name of SJH [ROA, pg 10, #10]. On December 26, 2018 YORK COUNTY, issued a tax title granting Owner's Private Property to SB MUNI CUST % LBSC-11 LLC [ROA, pg 10, #10]. On January 7, 2019 SB MUNI CUST % LBSC-11 LLC quitclaimed its non-existent rights to Owner's Private Property to plaintiff, LB PARK [ROA, pg 10, #11].

Course of Proceedings

On January 25, 2019 LB PARK filed this action [ROA, pg 8, #1]. On February 6, 2019 LB PARK served this action on Brett Osborne [ROA, pg 62] who was the trustee

for SJH when that entity existed. Brett Osborne returned all the court papers served on him to the Clerk of Court of the Court of Common Pleas with a letter stating that he neither had any connection with the property nor any duty to defend the property for over six years so he was the wrong person to have been named and served [ROA, pg 62]. Owner was neither named nor did LB PARK publish its summons to give the unknown parties notice of this action [ROA, pgs all].

On April 8, 2019 Owner filed a *Special Appearance Motion to Dismiss or Intervene* ("Owner's Motion" hereinafter) into the case [ROA, pg 42]. Owner's Motion was based mainly on the allegation that the trial court wants subject matter jurisdiction over the action. Owner's Motion requested intervention be granted to Owner if the trial court found that it did in fact have subject matter jurisdiction [ROA, pg 45]. On May 11, 2019 Owner filed a Memorandum of Law in Support of Owner's Motion in which he demonstrated, in section VI., all the elements required in order to be granted intervention [ROA, pgs 56-57]. LB PARK did not file any opposition to either Owner's Motion or his Memorandum of Law in Support thereof [ROA, pgs all].

On May 30, 2019 [ROA, pg 32, line #1] judge Hall heard Owner's Motion [ROA, pg 33, lines #21-#23]. LB PARK did not orally oppose either Owner's Motion or his Memorandum of Law in Support thereof during that hearing [ROA, pgs 32-40]. LB PARK also did not attempt to fulfill its burden to prove subject-matter jurisdiction exists once Owner raised that as an issue [ROA, pgs all]. Nonetheless, without any opposition, arguments, or grounds raised for denial [ROA, pgs 32-40], judge Hall denied Owner's Motion [ROA, pgs 2-4]. Judge Hall did not articulate any grounds for his denial either orally during the hearing [ROA, pgs 32-40] or in his short form order that was entered on

May 31, 2019 [ROA, pgs 2-4]. Judge Hall also entered an order referring the case to a Master-in-Equity on May 31, 2019 [ROA, pgs 5-7]. Owner received both orders on June 6, 2019. On June 8, 2019, Owner served his notice of appeal on all parties and on the trial court. Owner timely ordered the transcript on June 15, 2019 and it was delivered late to Owner on August 23, 2019.

STANDARD OF REVIEW

"This is an action in equity. ... (holding an action to quiet title is equitable in nature). Therefore, this Court may find facts according to our own view of the preponderance of the evidence. In addition, this appeal presents novel issues of law. In such a circumstance, we are free to decide issues presented to us with no particular deference to the trial court's findings.", Johnson v. Arbabi, 553 SE 2d 453 (SC Court of Appeals 2001) (internal citations omitted).

"'(a) legal question in an equity case receives review as in law.' Because questions of law may be decided with no particular deference to the circuit court, this court may correct errors of law in both legal and equitable actions.", North Am Rescue Products v. Richardson, 720 SE 2d 53 (SC Court of Appeals 2011) (internal citations omitted).

"Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.", Catawba Indian Tribe v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

MANDATORY JUDICIAL NOTICE

The judges of this Court are directed to take mandatory judicial notice under Rule 201(d) SCRE of the following facts: In 1861, after the U.S. Congress adjourned "*sine die*" (i.e., "without [a] day" to reconvene), President Lincoln was forced to create a new federal government to replace the defunct Constitutionally created federal government. Under the new military, provisional, occupational government, President Lincoln issued the first ever executive order (General Order 100, a.k.a., the Lieber Codes) wherein he declared martial law. General Order 100 states that the declared martial law would only cease under one of the following two conditions: a special proclamation made by the

commander-in-chief; or a special mention in a treaty of peace concluding the civil war[1]. Neither of those two events has ever taken place which means the United States has been under martial law since 1863 despite the fact that no warnings have ever been given to the inhabitants[2]. Martial law affects mainly the police and the collection of public revenue and taxes so the laws of war (i.e., martial law) that are presently in force in this State are specifically applicable to this [tax collection] case[3].

All of the above is noticed to this Court to demonstrate that under the laws of war, the **outright taking, seizing or confiscating of <u>private property</u> is absolutely prohibited and may <u>not</u> be done under <u>any</u> circumstance [4],[5],[6]**. As will be demonstrated in this brief, **<u>private property</u>** consists **<u>only</u>** of property that has not been recorded with the Occupying Power (i.e., "this State"), despite popular and unfounded beliefs to the contrary. The Constitution of the State also prohibits these actions but not as clearly as these laws of war do. The codes of this State also do not permit private property to be

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[1] "Martial law does not cease during the hostile occupation, except by special proclamation, ordered by the commander-in-chief, or by special mention in the treaty of peace concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same.", General Orders 100 (a.k.a, <u>Lieber Codes</u>, 1863), Section 2.

[2] "A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the martial law of the invading or occupying army, whether any proclamation declaring martial law, or any public warning to the inhabitants, has been issued or not.", General Orders 100 (a.k.a, <u>Lieber Codes</u>, 1863), Section 1.

[3] "Martial law affects chiefly the police and collection of public revenue and taxes", General Orders 100 (a.k.a, <u>Lieber Codes</u>, 1863), Section 10.

[4] "**Private property may not be confiscated**.", <u>HAGUE IV REG. Article 46</u>.

[5] **"Private real (immovable) property <u>may under no circumstances be seized</u>.",** <u>Law of War- 11.18.6.3</u>

[6] "The prohibition against confiscation of private property extends not only to outright taking in violation of the law of war, **<u>but also to any acts that, through the use of threats, intimidation, or pressure, or by actual exploitation of the power of the Occupying Power,</u>** permanently or temporarily deprive the owner of the use of such property without the owner's consent, or without authority under international law", <u>Law of War - 11.18.6.1</u> *Prohibition on Confiscation of Private Property in Occupied Territory*.

confiscated, seized, or taken but the codes accomplish that goal by not granting the authority to take those actions instead of by prohibiting those actions. Therefore, the cited laws of war are being noticed to ensure this Court understands that affirming the lower court's decisions will allow this State to outright take Owner's Private Property in violation of the international laws of war as well as in violation of the codes of this State and of the Constitution of the State. The footnoted citations #4, #5, & #6 are direct quotes from the Department of Defense's 2016 "Law of War" document that can be found at the DoD's website - http://ogc.osd.mil/images/law_war_manual_december_16.pdf.

ARGUMENT

I. Did the trial court err by refusing to hear and determine Appellant's "*Special Appearance Motion to Dismiss or Intervene*" until Appellant gave his consent to be under the authority of judge Hall?

Judge Hall asked Owner only two significant questions during the short 15 minute "hearing" of Owner's Motion. Judge Hall's first question was - "*your name, Sir, your name?* [ROA, pg 32, line 14 and line 21]. Owner knew that judge Hall was attempting to get Owner to consent to be under his authority using the Uniform Commercial Code ("UCC" hereinafter). Under the UCC, any person who **willingly** gives a name when requested is considered to have consented to be under the authority of the person requesting the name. Owner responded to judge Hall's question by stating that he did not consent to be under judge Hall's authority so he would not be giving a name [ROA, pg 32, lines 22-25 to pg 33, lines 1-2]. Judge Hall responded by saying that if Owner was going to refuse to be under his authority then he was going to refuse to hear Owner's Motion [ROA, pg 33, lines 3-5]. Judge Hall's response conclusively proves that Owner was, and is, correct that it

is the voluntary giving of a name that is presumed to be consent to be under the authority of the person making the request.

Judge Hall lacked authority to refuse to hear Owner's Motion until Owner consented to be under his authority. Once a motion has been filed into a case the judge assigned to the case has a mandatory **ministerial duty**[7],[8] to determine and dispose of the motion[9] and it was also a violation of a judge Hall's Code of Judicial Conduct to refuse to hear a person who has a legal interest in a proceeding[10]. Under the extreme fear, coercion, and duress caused by judge Hall's unlawful refusal to hear and determine Owner's Motion, Owner **objected** and then Owner reluctantly stated his name [ROA, pg 34, line 10].

The giving of a name immediately after Owner specifically objected and stated he did not consent to be under the authority of judge Hall can not be construed as a valid agreement. In order to form a valid agreement, there must be a "*meeting of the minds*" of the parties to the agreement. In other words, all of the parties to the agreement must agree on all of the same things; there must be mutual **assent**. There can be no agreement when one party has the intention to make an agreement, but the other does not.

> **Agreement**. "A meeting of two or more minds; ... In law, a concord of understanding and intention between two or more parties with respect to the effect upon their rights and duties, of certain past or future facts or performance", Black's Law Dictionary, 6th ed., pg 67.

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[7] "the Court could direct a judge to rule on a pending motion because **the act of ruling is ministerial** in nature.", City of Rock Hill v. Thompson, 563 SE 2d 101 (SC Supreme Court 2002).

[8] ministerial duty - "One regarding which nothing is left to discretion - a simple and definite duty, imposed by law,", Black's Law Dictionary, 6th ed., pg. 996.

[9] Cannon 3(B)(1) Code of Judicial Conduct - "A judge **shall** hear and decide matters assigned to the judge".

[10] Cannon 3(B)(7) Code of Judicial Conduct - "A judge **shall** accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.".

> **Assent**. "Compliance; approval of something done; a declaration of willingness to do something in compliance with a request; acquiescence; agreement", Black's Law Dictionary, 6th ed., pg. 115.

Most importantly, Owner came to the hearing of Owner's Motion as a private person making a special appearance and there is no evidence in the record that could refute that status [ROA, pgs all]. The UCC only applies to an artificial "*legal or commercial entity*"[11] and therefore does not apply to a private person, which is in the class of natural persons, who is being forced into a commercial court, without a contractual nexus, against his will, and only to stop his private property from being physically stolen from him.

Judge Hall's use of the UCC to force Owner to "consent" to his authority was an erroneous application of law and an abusive exploitation of power. Also because this is an action in equity[12], judge Hall's use of threats, duress, coercion, and fear to exert authority over a private person making a special appearance is unfair, unjust, inequitable, and also demonstrates **extreme bias**, which constitutes another violation of judge Hall's Code of Judicial Conduct[13]. Bottom line, it is impossible to speculate how this "agreement" ultimately influenced judge Hall's decisions, if at all.

II. Did the trial court err by refusing to dismiss the case for want of the subject matter jurisdiction needed to clear a void tax title, for a plaintiff that does not have a tax title, issued against land that has never been subjected to the jurisdiction of this State by its owner?

[11] In this State's version of the Uniform Commercial Code the definition of person found in SC Code of Laws § 36-1-201 (27) is - ""Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, **or any other legal or commercial entity**.".

[12] "An action to clear title to real property is an action in equity", Rosenbaum v. SMS 32, 427 SE 2d 897 (SC Supreme Court 1993)

[13] Cannon 3(B)(5) Code of Judicial Conduct - "A judge **shall not**, in the performance of judicial duties, by words or conduct manifest bias or prejudice,"

A. Does the trial court have subject matter jurisdiction to make any determination pertaining to land that has never been subjected to the jurisdiction of this State by its owner?

> The term subject-matter is defined to mean: "The subject, or matter presented for consideration; **the thing in dispute**; the right which one party claims as against the other", Black's Law Dictionary, 6th ed. pg 1425.
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> "**jurisdiction is the power to declare law**, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.″, Limehouse v. Hulsey, 744 SE 2d 566 (SC Supreme Court 2013).
>
> "***In rem*** proceedings encompass any action brought against a person in which essential purpose of suit is to determine title to or to affect interests in specific property. ... Actions in which **the court is required to have control of the thing** or object and in which an adjudication is made as to the object which binds the whole world and not simply the interests of the parties to the proceedings.", Black's Law Dictionary, 6th ed. pg 793.
>
> "Jurisdiction *in rem* **depends solely** on the physical control of the *res* by the sovereign exercising jurisdiction." ... "The jurisdiction *in rem* depends upon control of the thing at the time litigation is begun." ... "The jurisdiction of the court to grant such remedy is obviously its **jurisdiction over the *res* and nothing else**", "The Exercise of Jurisdiction *in rem*" Harvard Law Review, VOL. XXVII, December, I9I3, internal citations omitted.

According to the above evidence of law, in order for the trial court to have subject-matter jurisdiction over the action it must have the power to declare law as it pertains to the thing, "res", in dispute, that thing being the land defined in this action as "25056 Timberlake Drive, York County, South Carolina". However, that land belongs to Owner and Owner has never subjected his land to the jurisdiction of this State [ROA, pgs 46-48] so the trial court is wanting authority to declare law as it pertains to Owner's land. Further, since the essential purpose of LB PARK'S action is to quiet a tax title to Owner's Private Property, and dispossess anyone living thereon, then its action is an "*in rem*" proceeding and as such the trial court **must have control of the thing**, i.e., Owner's Private Property. The trial court has neither the authority to declare law as it pertains to

Owner's Private Property nor does it have control of Owner's Private Property as will now be proven.

The definition of property shows that only an owner of property has the dominion or jurisdiction (i.e., the ability to speak the law) pertaining to his property which is needed in order for the owner to enjoy **unrestricted** right of use, disposal, and enjoyment. Dominion over any piece of land is obtained, held, and transferred between men (and also between legal fictions) by and through the title/deed to their land.

> "Property in a thing consists not merely in its ownership or possession, but in the **unrestricted** right of use, enjoyment and disposal.", SC Dept. Hwys. & Pub. Trans. v. Balcome, 345 SE 2d 762 (SC Ct App 1986).
>
> Ownership - "Ownership of property is either **absolute** or **qualified**. The ownership of property is **absolute** when a single person has absolute dominion over it, and may use it or dispose of it according to his pleasure (i.e. unrecorded private property). The ownership is **qualified** when it is shared with one or more persons, when the time of enjoyment is deferred or limited or when the use is restricted. (i.e., recorded *real estate*)", Black's Law Dictionary, 6th ed., pg. 1106.
>
> Private Property - "As protected from being taken for public uses, is such property as belongs **absolutely to an individual**, (i.e., unrecorded) and of which he has the **exclusive** right of disposition. *Scranton v. Wheeler*, 179 U.S. 141, 21 S.Ct. 48, 45 L.Ed. 126.", Black's Law Dictionary, 6th ed., pg. 1217.
>
> "Everyone has a right to own property **alone** (i.e., unrecorded) as well as in association with others" (i.e., recorded), Article 17, "Universal Declaration of Human Rights", an international treaty signed by the United States in 1948 and shortly thereafter ratified making it the law of the land.

As shown in the above definition of "Ownership" it can be **absolute,** when the title has not been recorded, or **qualified**, when the title has been recorded. It follows then that the trial court could never have control over Owner's Private Property since Owner's title/deed has never been recorded so Owner's ownership of his private property is **absolute,** i.e., Owner has absolute dominion over his property. The trial court could only have subject-matter jurisdiction over Owner's Private Property if the ownership of his

land is **qualified,** the title/deed having been recorded, or in other words, when ownership is "*shared with one or more persons*", or "*in association with others*". Accordingly, the trial court does not have subject-matter jurisdiction OR control over Owner's Private Property which is mandatory for any *in rem* action.

But to understand how the recording of a title/deed produces **qualified** ownership one must first understand trust law. For under trust law whenever a person willingly gives any of their property over to another person to hold and protect for them, a resulting (implied) trust is automatically created by operation of law. Accordingly, a resulting trust is automatically created whenever any owner of property (trustor) delivers his deed to the "*XX COUNTY REGISTER OF DEEDS*" (or the " *XX COUNTY CLERK OF COURTS*") to be recorded. The "*XX COUNTY REGISTER OF DEEDS*", becomes the trustee of that resulting trust and has the legal duty to protect that recorded deed (the "*res*" of the trust). Under trust law, a trustee becomes the owner of the "*res*" of the trust. Accordingly, the "*XX COUNTY REGISTER OF DEEDS*" (or the "*XX COUNTY CLERK OF COURT"*) becomes the owner of all recorded deeds *in association with* or *shared with* the owner (trustor) who recorded their deed. Employees of an umbrella of privately held companies known collectively as " *XX COUNTY*" have been designated to act as agents for the trustee and have the duty to manage and administer the resulting trusts. Those agents, under the trust's written instrument/indenture (multiple chapters under Title 12 of SC Code of Laws), have the authority to sell the trust's res (the recorded deed) if the trustor defaults on paying its contractual obligations (i.e., its debts).

If the agents of the trustee (i.e., employees working for "*XX COUNTY*") sell the trust's res (the recorded deed), the tax title purchaser is not put into possession of the "*real estate*"

specified on the tax title **until** that tax title purchaser delivers its tax title to the "*XX COUNTY REGISTER OF DEEDS*" (or the "*XX COUNTY CLERK OF COURT"*) to be recorded. See SC Code of Laws § 12-51-130 "*Delivery of the tax title to the clerk of court or register of deeds is considered 'putting the purchaser, or assignee, in possession*'". Once the tax title purchaser/assignee has recorded its tax title, then and only then does the *COUNTY OF XX* become the new/shared owner of the recorded tax title which is required before the *COUNTY OF XX* Circuit Court can obtain subject-matter jurisdiction over the *real estate* specified on the recorded tax title.

The resulting implied trust that is automatically created upon the recording of a deed will **automatically cease to exist** when the purpose of that resulting trust has been fulfilled[14]; the purpose being to protect the recorded deed. So when a recorded deed becomes obsolete, it no longer needs to be protected and the resulting trust collapses (i.e., ceases to exist). In this case, at the moment that the former trustee of SJH signed a new deed transferring SJH's property to Owner, the resulting implied trust that had been automatically created upon the recording of SJH's deed automatically collapsed and subsequently ceased to exist. Thereafter, the employees working for YORK COUNTY no longer had any legal claim or legal authority whatsoever over the land that was described on SJH's recorded deed whether or not those employees knew about the sale of SJH's property or not. However, those employees were given actual notice of the sale of SJH's property which they chose to ignore making every action they took after December 20, 2012 pertaining to Owner's Private Property illegal, unlawful, and in fact criminal under the international laws of war. All of the above demonstrated trust law is well

[14] "the trust estate will not be continued beyond the purposes of its creation as set forth in the trust instrument. When these purposes are accomplished, the trust estate ceases to exist", Macaulay v. WACHOVIA BANK OF SC, 508 SE 2d 46 (SC Court of Appeals 1998).

explained in American Jurisprudence (AmJur) Second Edition (2nd), is known to every attorney and is therefore beyond dispute.

In this case, although it is alleged that the trial court has jurisdiction over the subject-matter [ROA, pg 10, #8] the issue of whether the trial court actually has, or does not have, such jurisdiction can only be resolved by determining if SJH was the owner of Owner's Private Property at the time of the tax sale. As will be shown in subparagraph **II.D** below, the preponderance (i.e., all) of the evidence in the record made shows that the land that is the subject-matter of this action was NOT owned by SJH for over five (5) years prior to the illegal tax sale. Since Owner's deed was not recorded then he remains the **absolute** owner of his land and his land is therefore under the **exclusive jurisdiction** of Owner.

B. Does the plaintiff have any rights to the land in dispute that could be used to invoke the trial court's subject matter jurisdiction?

> The term subject-matter is defined to mean: "*The subject, or matter presented for consideration; the thing in dispute;* ***the right which one party claims as against the other***", Black's Law Dictionary, 6th ed. pg. 1425.

LB PARK claims to have a quitclaim deed that allegedly derives from a tax title that allegedly took the rights to Owner's Private Property away from the non-existent trust named SJH. But LB PARK has no claim to Owner's Private Property as its alleged quitclaim deed is derived from a null, void, unenforceable, lacking in any legal force or effect whatsoever tax title that was made against a non-existent person (SJH) who had no ownership interests or rights to Owner's Private Property at the time the tax sale was conducted. It is literally, and legally, impossible to transfer **any** ownership interests away from a non-existent person (SJH) as a non-existent person has no rights, and property is the rights in a thing and not the thing itself. Further, even if SJH did still exist at the time

of the tax sale, SJH had no ownership interests in Owner's Private Property so there was absolutely **no rights or interests transferred from SJH to the tax title purchaser** -

> "Moreover, this Court has previously stated that a purchaser at a judicial sale secures the same title and rights in the property as the person whose interest was sold. ... We therefore hold, **as a matter of law**, a purchaser at a tax sale acquires only that interest held by the owner of the property at the time of the tax sale.", F.C. Enterprises, Inc. v. Dibble, 516 SE 2d 459 (SC Court of Appeals 1999).

> "No deed can convey an interest which the grantor does not have in the land described in the deed, even though by its terms the deed may purport to do so.", Cummings v. Varn, 413 SE 2d 829 (SC Supreme Court 1992)

There are no *stare decisis* cases that fit the facts of this case exactly i.e., where a tax title was made against the previous owner of a piece of land after the actual owner of that land intentionally chose to own his property privately and alone. However, there are many binding *stare decisis* cases where a tax title was made against, or in the name of, a person who was not the actual owner of the land which fits exactly with the facts of this case. In those *stare decisis* cases this Court, as well as the Supreme Court, have steadfastly held that an execution must be issued in the name of the **true owner** of the land and if not done in such a name then the tax title is void and that such a defect is **jurisdictional**.

> "Tax sale under an execution issued against one who is not the owner of the land is void... Because a tax execution is issued against the defaulting taxpayer, **not the property**, a sale of land under a tax execution issued on an assessment against one not the owner is **void**. ... **this defect is jurisdictional**", Donohue v. Ward, 378 SE 2d 261 (1989).

There are also many *stare decisis* cases that hold that notice must be given to the owner (the actual, true owner, not the pretended owner) giving him due process of law before his property is taken from him. If such notices are not given to the owner, as in this case, the resultant tax title is void and these defects are also jurisdictional.

> "This Court reasoned that the constructive notice to the owner provided by the levy, advertisement and sale **in his name** is normally deemed to be sufficient notice for due process purposes.", Aldridge v. Rutledge, 269 S.C. 475 (1977).
>
> "Failure to give the required notice is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely **void**." ... "holding where a defect in notice is **jurisdictional**, such a defect 'invalidates the tax proceeding'", King v. James, 694 SE 2d 35 (SC Court of Appeals 2010).

There are also many *stare decisis* cases that hold that that these notice requirements are applicable to every case notwithstanding the circumstances of any particular case, which must include a case where the true owner has not subjected his land to the jurisdiction of this State.

> "we find the requirements of notice to the **owner** and possession by the executing officer to be of **universal application**, notwithstanding the particular circumstances of a case.", Dibble v. Bryant, 274 S.C. 481 (1980).

There are also many *stare decisis* cases that hold that if the land is not liable for any tax at the time the tax sale is accomplished, the tax sale is void. SC Code of Laws § 27-1-10 shows that land becomes liable for a tax when the owner of the land is a "*person liable*". Since Owner has never been assessed with any tax, debts, duties, or demands then he is not a *person liable*. Therefore, Owner's Private Property was not liable to, or chargeable for, any debt at the time it was sold, also voiding the tax sale[15].

> "the law seems plain that a tax sale is **void** unless the property seized was liable for all of the taxes for which it was sold." ..."The decisions generally recognize the following fundamental rules: That a tax sale is invalid for every purpose unless the property was at the time liable for all the taxes for which it was sold", Taylor v. Jennings, 233 S.C. 600 (1958).

[15] SC Code of Laws 27-1-10 "Houses, land and other hereditaments and real estate situated or being within this State, **belonging to any person indebted**, (a) shall be liable to and chargeable with all just debts, duties and demands, of whatever nature or kind whatsoever, owing by any such person, (b) shall and may be assets for the satisfaction thereof and (c) shall be subject to the like remedies, proceedings and process as personal estates.

Many of the above cited *stare decisis* tax sale cases are based on, or derived from, the taxing code SC Code of Laws § 12-49-10[16] which states that only property that actually belongs to the person charged with a debt can be taken to satisfy that person's debt and then only if the assessment was legally made. The assessment in this case was illegally made and the tax title issued for Owner's Private Property was illegally issued because SJH was not the owner of Owner's Private Property at the time that either the illegal assessment, or the illegal tax title, were made.

Finally, all property taxing *stare decisis* cases hold that the taxing codes are **mandatory** and must be strictly complied with.

> "The sound view is that all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded **mandatory**, and are to be **strictly enforced**.", Taylor v. Jennings, 233 S.C. 600 (1958).
>
> "The divestiture of a person's property due to outstanding tax obligations is a **drastic and serious measure**.", Johnson v. Arbabi, 347 S.C. 132 (2001).

Now imagine, if you can, just how **drastic and serious** a measure it is to: take a man's private property without providing him a scintilla of due process of law, without his consent, without any measure of any legal or lawful authority, without a notice, demand, or a bill ever being issued to him; and then forcing him into a commercial court, without a contractual nexus, while denying him the ability to participate in the action that is stealing his private property when he had NO TAX OBLIGATION whatsoever!

The above shown defects are always held to be jurisdictional and must be so because when a tax sale is accomplished outside of the statutory scheme allowing a tax sale such

[16] SC Code of Laws § 12-49-10 "All taxes, assessments and penalties **legally assessed** shall be considered and held as a debt payable to the county **by the person against whom they shall be charged**".

sales are done without authority of law and are therefore void, illegal, unlawful, unenforceable and, under the facts of this case, criminal.

> "As there must be express statutory authority for selling land for taxes, and as such sale is in the nature of an *ex parte* proceeding, there must be, in order to make out a **valid title** ... compliance with the provisions of the law authorizing the sale. A statutory power, to be validly executed, must be executed according to the statutory directions.", *Marx v. Hanthorn,* 148 U.S. 172, 180, 13 S.Ct. 508, 510, 37 L.Ed. 410.

Void[17] means a nullity[18] without any legal force or effect, as if it did not even exist. So even thought there may exist a piece of paper that says it is a tax title (no tax title can be found in the record [ROA, pgs all]), in the eyes of the law there is no such piece of paper since there was no legal authority to have make the piece of paper.

The following cases involve void judgments and void orders but the legal principles espoused in these cases apply equally to a void tax title, which according to *Marx v. Hanthorn, supra*, is an *ex parte* (court) proceeding -

> A *void judgment* is one that, from its inception, is a complete nullity and is without legal effect." Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 457 S.E.2d 340 (1995). The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." Tyron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. Grannis v. Ordean, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be

[17] Void - "Null; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which is was intended...An instrument or transaction which is wholly ineffective, inoperative, and incapable of ratification and which thus has no force or effect so that nothing can cure it... **is incapable of being enforced by law.**", Blacks Law Dictionary, 6th ed., pg. 1573.

[18] Nullity - "an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect.", Blacks Law Dictionary, 6th ed., pg. 1067.

heard."); S.C. Dep't of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

All of the above cited *stare decisis* tax sale cases hold that the defects found in those tax titles are **jurisdictional**. Since no court can ever enforce a void tax title that means no court has the jurisdiction to determine any action based on a void tax title as there is no law to declare when a tax title is void *ab initio*. Further, when a tax title is void *ab initio* it doesn't exist in the eyes of the law so there is no tax title that can be used to invoke the jurisdiction of the court.

C. Does the trial court have subject matter jurisdiction to hear or determine a case to clear a tax title for a plaintiff that does not have a tax title?

LB PARK brought its action by invoking a statutory, limited jurisdiction of the Circuit Court under SC Code of Laws §§ 12-61-10 to 60 [ROA, pg. 8, #1]. That Chapter provides a special remedy that the legislature created ONLY for the use and benefit of persons who have purchased a tax title at or through a tax sale.

> "The elementary and cardinal rule of statutory construction is that courts must ascertain and effectuate actual intent of the legislature. ... 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. S-M-S 32, 427 S.E.2d 897 (1993)

But LB PARK is not a purchaser of property at or through a tax sale. LB PARK's complaint admits it only has a quitclaim deed [ROA, pg 10, #10, #11 & #12] which it purchased from another person who purchased a tax title at a tax sale.

> "It is a well-established rule that **one holding a sheriff's deed** for land purchased at a delinquent land sale for the nonpayment of taxes has *prima facie* good title", Dibble v. Bryant, 265 SE 2d 673 (SC Supreme Court 1980).

> "The deed of conveyance from a tax sale must be held and taken as prima facie evidence of a good title **in the holder**, that all proceedings have been regular and that all legal requirements have been complied with. S.C. Code Ann. § 12-51-160

(Supp. 1996).” Wilson v. Moseley, 327 S.C. 144, 488 SE 2d 862 (SC Supreme Court 1997).

Dibble v. Bryant supra and Wilson v. Moseley supra, as well as many other similar cases, show that to receive the benefit of the presumption of having a "*prima facia* good title" the person must be "*holding a sheriff's* [tax] *deed*" or must be "*the holder*" of the tax deed. Clearly then the "*prima facia* good title" attribute attaches **only** to those persons who are grantees on tax titles, which does not include LB PARK.

No sane tax title purchaser who allegedly spent $171,000.00 for a tax title [ROA, pg 10, #10] would sell its rights to another person for $5.00 but that is what has occurred in this case [ROA, pgs all - LB PARK's quitclaim deed as well as the tax title are suspiciously absent from the record]. SB MUNI CUST % LBSC-11 LLC, the alleged purchaser of the tax title, granted its tax title to LB PARK [ROA, pg 10, #10, #11] in order to evade taxes and also to shelter its substantial assets from being held liable to pay damages for the harm it is knowingly doing to Owner. LB PARK must pay the consequences for the games it has been playing and those consequences include being prohibited from using SC Code of Laws §§ 12-61-10 to 60 that it is not authorized to use.

LB PARK admits in its Complaint that it does not come within the requirements of SC Code of Laws §§ 12-61-10 to 60 [ROA, pg 8, #1 & pg 10, #11]. So LB PARK's complaint fails to invoke the subject matter jurisdiction of the Circuit Court for the class

of cases emanating from the limited jurisdiction given by the legislature in SC Code of Laws §§ 12-61-10 to 60 [19],[20],[21].

> "The jurisdiction of a court or of a particular judge over the subject matter of a proceeding **depends upon the authority granted by** the Constitution and **laws of the state**", Harden v. SC State Highway Dept., 266 S.C. 119 at 124, 221 SE 2d 851 (SC Supreme Court 1976).

Accordingly, the trial court wants subject matter jurisdiction over LB PARK's action so it was error for judge Hall to have moved the action forward when clearly the complaint is defective upon its face for lack of jurisdiction, requiring dismissal of its case.

D. Can the trial court use a suggestion to dismiss a case for want of subject matter jurisdiction that is made by a John Doe party before becoming a named party?

> "To take away all remedy for the enforcement of a right is to take away the right itself. But that is not within the power of the State.", Poindexter v. Greenhow, 114 U.S. 270, 303.

The U.S. Supreme Court in Poindexter v. Greenhow supra held that the State is without the power to take away all remedy as that would be equivalent to taking away the right itself. There is no evidence, and there can be no evidence, that shows that people do NOT have the right to own private property. IF people did NOT have the right to own private property, the legislature would be required to give the people notice that they do not have that right by making the recording of deeds mandatory and also declaring a penalty for failing to fulfill that mandatory duty. But the legislature has not done that as

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[19] "Where a court's power to act is controlled by statute, the court is governed by the rules of limited jurisdiction, and courts exercising jurisdiction over such matters must proceed within the strictures of the statute.", In Interest of M.V., 288 Ill.App.3d 300, 681 N.E.2d 532 (1st Dist. 1997).

[20] "Though a court be one of general jurisdiction, when its power to act on a particular matter is controlled by statute, the court is governed by the rules of limited jurisdiction.", Vulcan Materials Co. v. Bee Const. Co., Inc., 101 Ill.App.3d 30, 40, 427 N.E.2d 797 (1st Dist. 1981).

[21] "But when a court acts by virtue of a special statute conferring jurisdiction in a certain class of cases, it is a court of inferior or limited jurisdiction for the time being, no matter what its ordinary status may be.", Heydenfeldt v. Superior Court, 117 Cal. 348, 49 Pac. 210; Cohen v. Barrett, 5 Cal. 195; 7 Cal. Jur. 579.

they have no authority to take that right away from the people. Therefore, no court of this State has the authority to make valid the illegal taking of private property from a man as a penalty for him exercising his recognized right.

Further, as shown in Exhibit B attached to Owner's Memorandum of Law in Support of Owner's Motion, a tax attorney for the California Board of Equalization issued a legal opinion letter declaring that an owner of property found on an unrecorded deed has the right to have his property taken off the tax rolls. Obviously, the STATE OF CALIFORNIA is not the same corporation as the STATE OF SOUTH CAROLINA but they are both sister corporations under US Inc.[22] (which is located in the District of Columbia[23]), their property laws and their property taxation codes are very similar, and their prohibitions against seizing, confiscating, and taking private property are exactly the same. Owner did not find out about the remedy described in that legal opinion letter in time to get his property taken off the tax rolls. Nevertheless, dismissing this case for want of subject matter jurisdiction is not only an effective post deprivation remedy, it may be the **only remedy** that Owner has, since Owner can not bring a collateral action in any court that pertains to his property because no court of this State would have jurisdiction over the subject-matter of that action.

There are very strict rules and protections pertaining to the issue of subject-matter jurisdiction and there must be, in order to keep the commercial courts from interfering in the people's private rights and private property. Accordingly, subject-matter jurisdiction is the ONLY legal issue that: can not be waived; can be raised at any time including for the first time on appeal; has to be proven to exist when challenged; can be raised *sua*

[22] 28 U.S.C. 3002 (15) - "United States" means— (A) a Federal corporation;"

[23] "Location of debtor ... (h) The United States is located in the District of Columbia.", SC Code of Laws § 36-9-307.

sponte by any court; can be suggested by a non-named party; will strip a judge of his judicial immunity if he acts without having it; and can stop any court case dead in its tracks.

The Rules of Civil Procedures were written in order to allow a person with an interest in a case, but who has not yet been named in that case, to raise the suggestion that the court lacks subject matter jurisdiction. This can be found in Rule 12(h)(3) SCRCP which states "*Whenever it appears by suggestion of the parties **or otherwise** that the court lacks jurisdiction of the subject matter, the court shall dismiss the action*.". Rule 12(h)(3) SCRCP allows for a non-named party, which is a party nonetheless because of their interest in the case even before becoming a named party, to raise the suggestion that the court is wanting subject-matter jurisdiction just as Owner did in this case. Further, the trial court not only had the ability but the DUTY to *sua sponte* dismiss the case when it became clear that it wants subject-matter jurisdiction.

E. Does the preponderance of the evidence in the record made show want of subject matter jurisdiction?

> "Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter.", McNutt v. GMAC, 298 US 178. "The law provides that once State and Federal jurisdiction has been challenged, it must be proven." Main v. Thiboutot, 100 S. Ct. 2502 (1980); see also Hagens v. Lavine, 415 U.S. 533.

The record made shows that the LB PARK not only did NOT fulfill its burden to prove jurisdiction exists, after it was raised as an issue, but shows that LB PARK did not even attempt to do so [ROA, pgs all]. LB PARK failed its burden of proof as it can never prove jurisdiction exists because to do so it would have to prove that **SJH was the owner of the land** at issue when the tax sale took place.

The evidence in the record showing the court **has** subject matter jurisdiction is the following:

LB PARK made a conclusion of law in its unverified complaint that the court has subject matter jurisdiction over the case [ROA, pg 10, #8].

The evidence in the record showing **want** of subject matter jurisdiction are the following:

First, LB PARK admitted the trial court wants subject matter jurisdiction by averring the Notice of Sale [ROA, pg 49] and requesting the court remove the *cloud* that Notice creates on its quitclaim deed [ROA, pgs 9-10, #4, #5, #6]. While LB PARK did not attach a copy of that Notice of Sale to its complaint, Owner did attach a copy of it to Owner's Motion [ROA, pg 49]. The Notice shows that the previous owner of Owner's Private Property, SJH, in whose name the tax title was made, sold their property over six years prior to the illegally issued tax title and that SJH then terminated as a legal entity having fulfilled its purpose.

Second, the answer/letter/response from Brett Osborne, who was the former trustee of the former trust that was the former owner of Owner's Private Property, wherein he states that he was not the proper party to be named in the action since he has had no dealings with the land that is the subject-matter of this action for over six years [ROA, pg 62].

Third, Owner's affidavit attached to Owner's Motion [ROA, pgs 46-48], testifies, *inter alia*, that he is the actual owner of the land that is the subject-matter of this case and that he did not record his deed. Owner could NOT put his private, unrecorded deed into the public evidence file for fear that it would find itself recorded without his consent. This especially became an issue after judge Hall threatened to record Owner's deed if it was

put into evidence during the hearing of Karen Powell's (the holder of a lien against Owner's Private Property) Motion to Dismiss. Nonetheless, since ownership of property is a simple fact and Owner has the requisite knowledge, Owner's claims of ownership made in his unrebutted affidavit should have been all the evidence needed to make a proper ruling on the issue of subject-matter jurisdiction.

> Ordinarily, ownership of property is a simple fact, to which a witness having the requisite knowledge can testify directly., 31 Am Jur 2d, Expert and Opinion Evidence §§ 70, 136 et seq.

F. What jurisdictional findings did the trial court make?

Since the hearing of Owner's Motion was a pre-trial motion hearing, judge Hall should have used the affidavits and other evidence supplied to him, as detailed immediately above in paragraph **II.E**, to make a determination on the issue of jurisdiction.

> "motion to dismiss may be supported by, and the court may consider, affidavits or other evidence proving lack of jurisdiction.", Baird v. Charleston County, 511 SE 2d 69 (SC Supreme Court 1999).

But instead of considering **any** evidence in the record to make a proper judicial decision on this MOST CRUCIAL ISSUE, judge Hall decided instead that he did not even need to consider the issue of subject-matter jurisdiction because as he stated on the record - "*he* [Owner] *believes the court doesn't have jurisdiction but that is an issue between him and someone else*" [ROA, pg 39, lines 8-12]. That outrageous statement begs the question - since subject matter jurisdiction is the power and authority of a court to hear a particular case, just exactly whom would that "*someone else*" be that the issue of jurisdiction involves if not the judge assigned to hear the case? More likely than not, judge Hall was just "*passing the buck*" on deciding the issue by deferring its decision to whichever

"*someone else*" (i.e., Master-in-Equity) is assigned to hear the case. But no such decision could ever be made since Owner was denied intervention!

III. Does this State have territorial jurisdiction over Appellant's land?

> "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 jurisdiction.", Ex parte First Pa. Banking & Trust Co., 148 SE 2d 373 (SC Supreme Court 1966).
>
> "**In rem** proceedings encompass any action brought against a person in which essential purpose of suit is to determine title to or to affect interests in specific property **located within territory over which court has jurisdiction**.", Black's Law Dictionary, 6th ed., pg. 793.
>
> "Although territorial jurisdiction is not a component of subject matter jurisdiction, we hold that it is a fundamental issue that may be raised by a party or by a court at **any point in the proceeding**. ... The exercise of extraterritorial jurisdiction implicates the state's sovereignty, a question so elemental that we hold it cannot be waived by conduct or by consent.", State v. Dudley, 614 SE 2d 623 (SC Supreme Court 2005).

S.C. Code of Laws § 12-37-210 reads in pertinent part - "*All real ... property in this State ... shall be subject to taxation.*". Owner has never been assessed with any *ad valorem* tax so it follows that Owner's land is not *subject to taxation*, which must lead to the conclusion that Owner's land is not "*in this State*". That conclusion must be correct because, as shown above, it is the act of an owner recording his deed which gives *this State* ownership of the recorded deed and that ownership is what puts the real property/real estate listed on the recorded deed "*in* [the books and records of] *this State"*.

That conclusion is also entirely consistent with SC Code of Laws § 1-1-10 which reads - "*the sovereignty and* [territorial] *jurisdiction of this State extends to all place**s** within its bounds...*". In that code section the use of the word place**s**, i.e., the plural of place, is key for if that declaration was meant to mean "*all land and water", or "all area*" or even "*everyplace*" it would have had to declare that but it did NOT because some

area/land/places have clearly been excluded by the legislature from being within the sovereignty and territorial jurisdiction of *this State*. So then the question that must be answered is .... exactly which ***places*** does the *sovereignty and* [territorial] *jurisdiction of this State* extend?

There can be only one answer and that one answer must be .... *this State* **only** has sovereignty and territorial jurisdiction over those places that it owns or has an ownership interest in (i.e., recorded properties). This must be true for at least the following three reasons: 1) as was conclusively shown above in section **II.A,** the owner of land is the one who has the authority to declare law as it pertains to his land; 2) land owned absolutely (unrecorded) cannot be taxed, regulated, seized, confiscated, or taken so *this State* cannot claim sovereignty over land that it cannot control; and 3) *this State* is a corporate fiction and a corporate fiction never has sovereignty over that which does not a exists by its authority or was not introduced by its permission within its boundaries (e.g., land) according to the U.S. Supreme Court in Frick v. Pennsylvania, 268 US 473, 69 L Ed 1058; Thompson v. Kentucky, 209 US 340, 52 L Ed 822; and M'Culloch v. Maryland, 4 US 316, 4 L Ed 579.

Therefore, clearly it is only those ***places*** that are owned by *this State* or in which *this State* has an ownership interest (i.e., recorded properties) that are within the sovereignty and territorial jurisdiction of this State. Since Owner did not **attorn** his deed over to the ownership of COUNTY OF YORK, *this State* does not own or have an ownership interest in Owner's Private Property so his land is outside the sovereignty and territorial jurisdiction this State. Therefore and accordingly, this action must be dismissed for this State wants territorial jurisdiction over Owner's Private Property.

IV. Did the trial court abuse its discretion when it denied intervention to Appellant who is the actual owner of the land in dispute and is therefore a necessary and indispensable party, especially since there is no defendant in the action?

Standard of Review specific to this assignment of error

> "The decision to grant or deny a motion to ... intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court.... This Court will not disturb the lower court's decision on appeal unless a manifest abuse of discretion is found resulting in an error of law. Moreover, the error of law must be so opposed to the lower court's sound discretion as to amount to a deprivation of the legal rights of the party.", Ex parte Government Employee's Ins. Co., 644 SE 2d 699 (SC Supreme Court 2007). "Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected.", In re Horry County State Bank, 604 SE 2d 723.

A. What were the grounds used to deny Appellant intervention?

The second of the two significant questions that judge Hall asked Owner during the short 15 minute hearing of Owner's Motion was a hypothetical situation in which judge Hall was clearly trying to show Owner that if Owner did not record his deed then Owner would not be able to use the courts of this State to settle any issues that could arise pertaining to his private property [ROA, pg 38, lines 9-20]. However, by asking that question judge Hall demonstrated that he absolutely knew that the trial court cannot hear **any case** where the subject-matter of the case is Owner's Private Property [ROA, pg 38, lines 13-23], which includes this case. Failing to get Owner to agree to **attorn** ownership of his private property over to the privately held company that employs judge Hall (COUNTY OF YORK), judge Hall then penalized Owner for exercising his recognized rights by refusing to dismiss the case for want of subject-matter jurisdiction and refusing to allow Owner to intervene into the action [ROA, pgs 2-4].

It's impossible to **speculate** what grounds judge Hall used, if any, to deny Owner intervention because there were no grounds raised by LB PARK orally [ROA, 32-41], or

in writing [ROA, pgs all] and there were no findings or conclusions issued by judge Hall either orally [ROA, pgs 32-41] or in writing [ROA, 2-4]. Whatever the grounds were, if any, judge Hall raised them *sua sponte*[24] and decided them without any input or argument from either party, and without disclosing what his grounds were as was typically done in star-chambers[25] before they were abolished in 1621.

B. Are there any *bona fide* grounds that could have been used to deny intervention to the actual owner of land at issue in an action?

The caption of this case includes as potential defendants "*John Doe and Mary Roe representing* ***all unknown persons***....". Those words prove that the case provides for the intervention of persons with unrecorded claims as the only way that a person could be unknown is for them to have an unrecorded claim. If an unknown person is NOT allowed to intervene into a clear tax title action, because their claims are not recorded, then it would be impossible for there EVER to be an unknown person who has a claim. Further, under the code that LB PARK brought its action SC Code of Laws §§ 12-61-10 to 60, section 20 acknowledges that an unknown person may intervene into a clear tax title action and, most importantly, acknowledges that an unknown person may even have a superior, previously issued title to the tax title being cleared -

> SC Code of Laws § 12-61-20 - Procedure; defendants.
>
> "...and there may be made defendants to the action ... **any** other person **or** legal entity who has or claims any right, title, ... forever barred by the judgment and decree of the court if such are found to be **junior** or **subsequent** to the **title of the county** or any person purchasing at or acquiring title to property through a tax sale.".

[24] A judge is suppose to be a neutral arbitrator and most issues not raised by a party are deemed abandoned. So there are only a few issues that a judge can ever even raise on his own initiative, i.e., *sua sponte*.

[25] star chamber - "characterized by secrecy and often being irresponsibly arbitrary and oppressive", Merriam-Webster's Dictionary.

Further SC Code of Laws § 12-61-20 admits that even a private person or natural person may become a defendant as it states "***any other person*** *or legal entity who has or claims...".*

Judge Hall failed to issue an order permitting intervention as he "*shall*" do when a timely application is made "*unless*" Owner's interest can be represented by another party. But that is impossible in this case because the only other party in the action is LB PARK and its interests are undeniably opposed to those of Owner's. See Rule 24(a)(2) SCRCP which shows the trial court was REQUIRED to permit Owner to intervene as *shall* is usually construed in statutes and rules to be mandatory[26].

> Rule 24(a)(2) SCRCP - "Upon timely application anyone **shall** be **permitted to intervene** in an action: ... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, **unless** the applicant's interest is adequately represented by existing parties."

The record made shows that Owner demonstrated all the elements required of anyone seeking to intervene in an action [ROA, pgs 56-57]. Owner demonstrated the following: that his application was timely made - his application was made within two months of the action being presumably served on the named defendants; that Owner has an interest in the property that is the subject of the matter of this action - Owner is the owner of the land whose title and possession are being decided in this action; that the other parties would not be prejudiced by Owner's intervention - there are no other parties in this action; and that Owner cannot bring a collateral action as the trial court would not have subject-matter jurisdiction to hear any such case. Accordingly, it was an abuse of

[26] "Ordinarily the use of the word `shall' in a statute means that the action referred to is mandatory.", In re Matthews, 550 SE 2d 311 (SC Supreme Court 2001).

discretion rising to the level of an error of law to have denied Owner intervention into this action so that he can defend his title to, and possession of, his private property.

C. Is it not mandatory that Appellant be brought into the case as a necessary and indispensable party even if such relief was not requested?

Since Owner is the actual owner of the land that the trial court has been requested to quiet the title to, and dispossess any people living thereon, then Owner is absolutely a party whose rights **must** be determined before any such relief can be granted.

> "This Court, however, will remand for a necessary party to be brought into an action **even when that party has not requested relief**. ...A necessary party is one whose rights must be ascertained and settled before the rights of the parties to the action can be determined. ... It is **mandatory** that a **necessary party** be brought into the action.", Slatton v. Slatton, 345 SE 2d 248 (SC Supreme Court 1986).

Slatton v. Slatton supra is a case where the "*certificate of title*" holder for a vehicle was required to be brought into a family court case that was determining ownership of that vehicle. Substitute "*certificate of title"* to a vehicle for "*absolute title"* to land and Slatton v. Slatton supra would be extremely similar to this case. Owner being the absolute title holder to the land whose title and possession are being determined in this action is therefore a **necessary and indispensable party** and it is **mandatory** that Owner be brought into this action whether Owner even requested that relief or not.

D. Did the trial court err by not realigning the parties *sua sponte*?

> Rule 21 SCRCP **-** "Misjoinder of parties is not ground for dismissal of an action. Parties may be **dropped or added** by order of the court on motion of any party **or of its own initiative** at any stage of the action and on such terms as are just.".

If Owner is not made a party, there will be no party to oppose LB PARK because the named defendants do not exist as legal entities [ROA, pg 49] and even if those named defendants did exist, since they do not own the property that is the subject-matter of the action [ROA, pg 49] they do not have standing or any motivation whatsoever to be part

of this action [ROA, pg 62]. Therefore, since there is no defendant in this action there is no case according to McCullar v. Estate of Campbell, 672 SE 2d 784. But there is no party that can raise this fatal issue in order to get a ruling on it. A classic catch-22!

A clear tax title action and an eviction action are *in personam* and *in rem* actions so such actions **must** be instituted against some actual, real, existing person/entity that has an actual interest in the action. The fact that the named defendants neither exist nor have standing is an incontrovertible basis for dismissal of this case. Nevertheless, the trial court was **required** to either allow Owner to intervene in the action under Rule 24(a)(2) SCRCP as it "shall" do when timely requested, add Owner as a party to the action on its own initiative under Rule 21 SCRCP, or make Owner a party on its own initiative because Owner is a necessary and indispensable party under Slatton v. Slatton supra.

V. Did the trial court err by granting Respondent LB PARK'S motion to refer the case to a master-in-equity when the court is wanting subject matter jurisdiction to proceed and Appellant's rights to a jury trial were disregarded?

Since the trial court was clearly acting in absence of all jurisdiction, it could not enter any orders that move the case forward, the only authority it had was to dismiss the case -

> "**Without jurisdiction, a court cannot proceed at all in any cause**; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.", Limehouse v. Hulsey, 744 SE 2d 566 (SC Supreme Court 2013).

By granting Respondent's motion to refer the case, judge Hall erroneously moved the case forward knowing he was acting without jurisdiction (see section **IV.A** above).

Since Owner and LB PARK are both claiming title to Owner's Private Property, this case will transform into a law case when Owner answers the complaint because equity cannot try actions of competing titles to the same lands [ROA, pg 59] -

> "a court of equity has no authority, in general, to try questions of title to lands, where the parties claim by distinct titles", BRAMLETT ET AL. v. YOUNG ET AL., 93 SE 2d 873 (SC Supreme Court 1956).
>
> "When the defendant's answer raises an issue of paramount title to the land, such as would, if established, defeat the plaintiff's action, it is an issue for the jury, unless jury trial is waived.", Estate of Tenney v. SOUTH CAROLINA DEPT. OF HEALTH, 712 SE 2d 395 (SC Supreme Court 2011).

Judge Hall's order referring the case to a master-in-equity was prejudicial error and must be reversed so that Owner's right to a jury trial is not violated.

CONCLUSION

Order the dismissal of the action for want of subject matter jurisdiction and/or want of territorial jurisdiction. If this Court determines that the issue of subject matter jurisdiction and territorial jurisdiction can not be decided without a judge seeing Appellant has a deed to the property, then remand the case with instructions that the case must be dismissed for want of subject matter jurisdiction upon Appellant producing his deed and also to allow Appellant to produce his deed "*in camera*" or "*in chambers*" so that it cannot be removed from the evidence file and recorded against his will.

If this Court does not order the dismissal of this case, then reverse both orders on appeal in order to both allow Appellant to intervene into the case and uphold Appellant's right to demand that a jury decide if Appellant has a superior title to the property at issue made prior to the tax sale.

Respectfully Submitted,

April 17, 2023

__/s Ryan Powell_____
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