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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

Teasa K. Weaver, Master-in-Equity

C.A. No.: 2020-CP-46-00549

LB PARK, LLCRespondent,

v.

San Juan Holdings, Bret 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 250056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 Defendants,

of whom Ryan Powell is theAppellant.

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STATEMENT OF ISSUES ON APPEAL

1. Are Ryan Powell's arguments relating to the master in equity's determinations on the merits in this action preserved given his failure to appear at trial?
2. Given the order of reference which referred this action without limitation, did the master correctly issue orders fully resolving this action on its merits?
3. Did the master have jurisdiction over the Property, which is located in York County, and Powell, who claimed an interest in the Property, in this action to quiet tax title?
4. Did the master correctly determine that LB Park, LLC ("LB Park") was the owner of the Property based on the testimony of the tax collector and the evidence presented at trial and was the relief awarded to LB Park consistent with the pleadings and the evidence?
5. Did the master correctly dismiss Powell's counterclaims?
6. Was the master within her discretion in denying Powell's motion for a continuance?

STATEMENT OF THE CASE & FACTS¹

LB Park brought this action on February 12, 2020 to quiet its tax title to 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 (the “Property”) and to reform the tax deed to correct an erroneous plat reference. (Complaint, R. at ____). LB Park requested the following relief:

1. With respect to Plaintiff’s First Cause of Action, Plaintiff prays that judgment be entered in its favor against the defendants with a finding by the Court that any right, title, claim, interest, or lien in or to the Property arising from the interests of any of the defendants in the Property that they now claim or may claim in the future, be found to be junior or subsequent to Plaintiff’s title, and that Plaintiff be provided a final and complete adjudication of the nature and extent of its title to the Property so that it may own, possess, and transfer clear title to the Property; and that judgment be entered in Plaintiff’s favor against the defendants and any other tenants or parties in possession of the Property with a finding by the Court that Plaintiff is entitled to immediate possession of the Property and ordering the York County Sheriff to evict and remove any tenants or parties in possession of the Property from the Property within a reasonable time as determined by the Court.

2. With respect to Plaintiff’s First Alternative Cause of Action, and only in the event that the tax sale of the Property is set aside or declared void, Plaintiff prays that judgment be entered in its favor against the party challenging the tax sale with a finding by the Court that Plaintiff is entitled to a refund of the tax sale bid, all Property taxes paid, all costs justly chargeable against the Property, and legal interest on the tax sale bid at the rate of 12% from the date of the tax sale on November 6, 2017, until paid, as provided in S.C. Code Ann. §§ 12-51-90, -100, together with pre-judgment interest, and that the Court order the party challenging the tax sale of the Property to refund these amounts to Plaintiff.

3. With respect to Plaintiff’s Second Cause of Action, Plaintiff prays that judgment be entered declaring and reforming the Tax Deed, the quitclaim deed to Plaintiff, and all previous deeds in the chain of title to reflect the correct recording information for the Plat, which is Plat Book 73 at Pages 23-26.

4. Plaintiff also prays that the Court award it such other and further relief as the Court may deem just and proper.

¹ Powell has also appealed two orders in an earlier action, C/A No. 2019-CP-46-00310, Appellate Case No. 2019-000979 (“2019 Case”). Pursuant to Rule 208, SCACR, LB Park adopts by reference its brief in that related action.

(*Id.*, R. at ____).

Powell claims to have an interest in the Property by virtue of an unrecorded “Title to Private Property” dated December 29, 2012.² (Answer at ¶¶ 7, 31-35, R. at ____). He has been litigating the issues of ownership and whether he must pay property taxes on the Property in various actions dating back to 2013.

I. Litigation History Predating the Tax Sale

Shortly after his purported purchase of the Property, Powell petitioned the South Carolina Supreme Court to exercise its original jurisdiction and issue a writ of mandamus ordering the York County Auditor, the York County Treasurer, and the York County Delinquent Tax Collector to update their records to reflect Powell as the owner of the Property, void the tax liens on the Property, void the tax execution on the Property, void the levy and attempted sale of the Property, and return \$5,118 Powell had paid in property taxes. The petition was denied by order dated February 20, 2014. (Tr. Ex. A, R. at ____).

On May 1, 2014, Powell filed an action in the York County Court of Common Pleas against Amy Boheler d/b/a York County Auditor, Beth Latham d/b/a York County Treasurer, and Robert

² Powell admitted he did not have a recorded interest in the Property at either the time of the tax sale or the filing of this action. (Answer at ¶ 46, R. at ____). In addition, Powell failed to produce his purported deed until after the trial of this matter. (Motion for a New Trial, or to Alter or Amend, R. at ____).

Only after this appeal was filed did Powell attempt to record the deed (*See* Exhibit to Reply to LB Park, LLC’s “Return to Supersedeas Surety (Bond)” filed February 27, 2023); however, that filing is a nullity by operation of the tax sale statute and the Final Order in this matter. Moreover, Powell and his mother filed another lawsuit regarding the Property on February 24, 2023, in the York County Court of Common Pleas (C/A No. 2023-CP-46-00607) and asserted various claims to recover the Property and for damages. In dismissing that case, Judge William A. McKinnon ruled that Powell’s recorded deed “is declared void and the [ROD] is instructed to strike [Powell’s deed] from its records and to record a copy of this Order to confirm that [Powell’s deed] is void and that Ryan Powell has no interest in the Property.” (Order filed on April 10, 2023, ¶ 3 at 17).

Kiser d/b/a York County Delinquent Tax Collector, seeking a writ of mandamus and asserting numerous causes of action. Judge Jackson Kimball dismissed this action with prejudice for lack of subject matter jurisdiction “to the extent Plaintiff’s complaint challenges the taxing authority of York County,” finding “that [Powell’s] claims are entirely frivolous” and dismissed all claims with prejudice. (Tr. Ex. B at 5-6, R. at ____). Judge Kimball summarized Powell’s arguments as follows:

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

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

(Tr. Ex. B at 3-4, R. at ____). Powell then appealed to this Court, which affirmed in a Rule 220, SCACR opinion. (Tr. Ex. C, R. at ____).

In 2017, Powell filed another action against the York County Assessor in the South Carolina Administrative Law Court. This action was dismissed on November 28, 2017 as being moot because Powell redeemed the Property after a tax sale: “[Powell’s] latest redemption of the Property is thus consistent with his pattern of delaying the payment of his property taxes, yet ultimately claiming his ownership and assuming the obligation to pay the property taxes.” (Tr. Ex. D at 3, R. at ____). A footnote to this sentence further states:

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

(*Id.* at 3 n.6, R. at ____).

II. The 2017 Tax Sale

Thereafter, the taxes assessed on the Property were not paid, and the York County Delinquent Tax Collector (the “Tax Collector”) sold the Property on November 6, 2017 at the York County tax sale (the “Tax Sale”). (Tr. Ex. E, Tr. at 22:1-6, R. at ____). SB MUNI CUST % LBSC-11 LLC (“SB MUNI”) purchased the Property at the Tax Sale with a bid of \$171,000.00. (Tr. Ex. E, R. at ____). After the expiration of the one-year redemption period, the Tax Collector conveyed title to SB MUNI by tax deed dated and recorded on December 26, 2018 (the “tax deed”). (Tr. Ex. E, Tr. at 34:20-36:14, R. at ____). SB MUNI subsequently conveyed the Property to LB Park by quitclaim deed dated January 7, 2019, and recorded on January 10, 2019 (the “quitclaim deed”). (Tr. Ex. F, R. at ____).

The grantee designation in the tax deed of “SB MUNI CUST % LBSC-11 LLC” is an abbreviation for SB Municipal, LLC as custodian for LBSC-11, LLC. (Tr. at 36:13-37:8, R. at ____). The reason for this abbreviation is that the York County software system has a character limitation for the name of the bidder, so bidder names are frequently required to be abbreviated. (*Id.*). The use of abbreviated names and the designation of “custodian” is common when the Tax

Collector's office issues tax deeds, which are prepared and reviewed by the York County Attorney's Office prior to recording. (Tr. at 35:5-37:8, R. at ____).

III. LB Park's Efforts to Quiet its Tax Title

A. The 2019 Case

The history in this action has been set forth in full in the briefing in the 2019 Case, which is incorporated herein by reference. In short, LB Park filed a complaint to quiet its tax title and reform the tax deed on January 25, 2019. Powell was not named as a party because he did not have a record interest in the Property.

On April 8, 2019, Powell filed a Special Appearance Motion to Dismiss or Intervene and sought to dismiss the action under Rules 12(b)(1) and 12(b)(2), SCRCF, and alternatively sought to intervene. LB Park filed a motion for an order of reference on May 2, 2019. After a hearing, Judge Daniel Hall denied Powell's motions. Powell appealed.

On motion of LB Park seeking a remand to the circuit court "to dismiss the underlying action without prejudice pursuant to Rule 41(a), SCRCF" and stating "[i]f the motion for remand is granted, LB PARK will dismiss the underlying action and refile a new action to include Ryan Powell as a named defendant," this Court remanded the 2019 Case. LB Park filed a Notice of Dismissal on February 12, 2020.

B. The 2020 Case

1. The Parties

Consistent with its motion for remand in the 2019 Case, LB Park filed this action on February 12, 2020. (Complaint, R. at ____). LB Park named as a defendant Brett Osborne as Trustee of San Juan Holdings ("San Juan") as the owner of record according to last deed recorded for the Property (Tr. Ex. G, R. at ____) and the only party to a "Notice of Sale, Transfer or Exchange"

recorded on December 26, 2012 (the “Osborne Notice”) (Tr. Ex. H, R. at ____). The Osborne Notice does not identify a specific grantee, does not meet the requirements for a deed, and did not convey an interest in the Property. (Tr. Ex. H, R. at ____). As to Powell, LB Park alleged:

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

(Complaint at ¶ 7, R. at ____).

LB Park served San Juan and Osborne on March 1, 2020. (Affidavits of Service, R. at ____). In response, Osborne filed a letter on April 1, 2020, advising that he was not the trustee of San Juan, that San Juan is dissolved, that he has no interest in the Property, and no duty to defend the Property. (Letter, R. at ____). There has been no further filing from Osborne in this matter and he is not a party to this appeal. LB Park served Powell on April 14, 2020. (Affidavit of Service, R. at ____).

2. Procedural History

Powell filed Several Motions to Dismiss under Special Appearance on May 14, 2020. (Motion, R. at ____). Thereafter, LB Park filed a motion for order of reference on June 23, 2020 (Motion, R. at ____), and Powell filed a demand for a jury trial on July 14, 2020 (Demand, R. at ____). The circuit court heard these motions on July 22, 2020. In a Form 4 order, the circuit court referred this matter to the master in equity for York County and denied Powell’s motions.³ (Order, R. at ____).

³ Powell appealed this order and filed a notice of appeal on September 8, 2020. (Appellate Case No. 2020-001228). This Court dismissed the appeal “[b]ecause the underlying orders are not immediately appealable” and the remittitur was issued on October 9, 2020.

On October 6, 2020, Powell filed his Answer, Defenses, and Counterclaims and demanded a jury trial. (Answer, R. at ____). Powell generally denied Plaintiff's allegations, asserted 23 defenses, and alleged counterclaims for (1) Sanctions for Frivolous Complaint, (2) Intentional Infliction of Emotional Distress, (3) Declare Void and Set Aside Tax Deed, (4) Intentional Interference with Contract, and (5) Slander of Title (collectively, the "counterclaims"). (*Id.*). LB Park filed and served its reply on October 29, 2020, generally denying Powell's allegations and asserting seventeen defenses. (Reply, R. at ____).

On April 30, 2021, LB Park filed a motion to strike Powell's jury demand. (Motion, R. at ____). Powell filed a Motion to Return Case to Circuit Court on July 13, 2021. (Motion, R. at ____). The master denied Powell's motion by order dated September 20, 2021. (Order, R. at ____). LB Park then scheduled the merits hearing for October 21, 2021, and filed a notice of hearing on September 28, 2022. (Notice, R. at ____).

Powell filed a notice of appeal on October 12, 2021. (Appellate Case Nos. 2021-001192, 2022-000275). Once again, the appeal was dismissed, and the remittitur was issued on May 23, 2022.

Following the remittitur of his second interlocutory appeal, Powell filed a series of motions designed to further delay a merits hearing in this matter: (1) Motion for Leave to Amend Answer to Make a Third-Party Complaint filed on June 8, 2022 (the "motion to amend," R. at ____); (2) Rule 60(b)(4) Motion to Vacate Judgment Denying Owner's Motion to Return Case to Circuit Court filed on September 6, 2022 (the "motion to vacate," R. at ____); and (3) Motion for Continuance filed on September 16, 2022 ("motion for continuance," R. at ____). By e-mail sent on August 24, 2022, the master notified the parties that it would hear the motion to amend immediately prior to trial. (Email, R. at ____). The master also notified the parties that if the

motion to amend was denied, the trial would proceed. The trial date was set for September 27, 2022. By letter and e-mail dated September 9, 2022, Powell withdrew the motion to amend and the motion to vacate. (Email, R. at ____).

On September 27, 2022, the master called this case for hearing. (Tr., R. at ____). Powell did not attend. (Tr. at 5:12-14, R. at ____). The master first considered Powell's sole remaining motion, the motion for continuance. (Tr. at 6:1-4, R. at ____). As set forth in the written order,

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

As to Powell's request for his mother to present his case stated in the Motion for Continuance, the Court finds that any participation by Powell's mother would constitute the unauthorized practice of law, which is prohibited by S.C. Code Ann. § 40-5-310 and South Carolina case law.

(Order at 2, R. at ____). The master further noted, "In fact, Powell asked if he could remotely view the hearing without appearing by e-mail on September 26, 2022." (*Id.*).

The master then heard the case on the merits, including testimony from Tracy Mattevi, the Tax Collector, who detailed the processes involved in the underlying tax sale and authenticated the documents admitted into evidence from her file. (Tr. 6:12-53:9, R. at ____). The Tax Collector further testified that all notices of delinquent taxes, the execution, levy, posting, advertisements, tax sale, and notices of the approaching end of redemption period sent to the interested parties entitled to notice were performed in accordance with the usual procedures of her office and were in strict conformity with all statutory requirements. (Tr. at 13:8-37:5, R. at ____).

After considering the evidence, the master entered a detailed final order setting forth findings of fact and conclusions of law on October 24, 2022. (Order, R. at ____). In the order,

the master found that the Tax Sale was valid and that LB Park was the owner of the Property and that LB Park's title "is incontestable on procedural or other grounds and all claims against or challenges to the Tax Sale of the Property are barred by the two-year statute of limitations set forth in S.C. Code Ann. §§ 12-51-90(c) and 160, because more than two [years] have passed since the date of the Tax Sale." (Order, R. at ____). The master further found that the tax deed should be reformed to correct an erroneous plat reference. (Order, R. at ____).

In addition, the master dismissed all of Powell's counterclaims for the following independent reasons: (1) "Powell bases the Counterclaims on the allegations that the Property is not subject to taxes because he, as the alleged owner, has not recorded his alleged deed. The Court finds that these are the same arguments that Powell has previously litigated and that have previously been dismissed;" (2) "Powell did not appear at the final hearing and thus abandoned and failed to prosecute the Counterclaims, which is sufficient alone to dismiss the Counterclaims with prejudice;" (3) "Powell lacks standing to assert any counterclaim concerning the Property because he has never produced a deed for the Property, he admittedly has no interest of record in the Property, and the South Carolina Administrative Law Court has previously found that Powell failed to establish he was the owner of the Property. Additionally, the doctrines of *res judicata* and collateral estoppel bar Powell from re-litigating whether he has any interest in the Property;" and (4) the Recording Act, S.C. Code Ann. § 30-7-10, bars all of Powell's claims because "in order for a deed to be valid as to subsequent purchasers without notice, the deed must be recorded and that priority between a subsequent purchaser of real estate without notice 'is determined by the time of filing for record.'" The master then found that each of the counterclaims failed on its merits. (Order, R. at ____).

Powell moved for a new trial or to alter or amend by motion filed on November 4, 2022. (Motion, R. at ____). The motion was denied by order dated November 10, 2022. (Order, R. at ____). This appeal followed.

ARGUMENT

The Property was not seized or taken. Property taxes were not paid, and the Property was sold by York County consistent with the tax sale statutory scheme and with notice to the required parties. By virtue of its quitclaim deed from the tax deed holder and as expressly authorized by statute, LB Park sought to clear its tax title and to take possession of the Property. After delaying this relief for years through a series of frivolous filings and interlocutory appeals, Powell did not appear at the trial and, therefore, presented no evidence or argument to support any of his defenses or counterclaims. As discussed below, Powell’s arguments are either unpreserved or meritless, and the master’s orders should be affirmed in full.

I. Powell’s arguments are not preserved because he did not appear at the merits hearing to present any evidence, to object to the testimony presented, or to make any arguments to the master.

Powell’s failure to appear at the hearing on his motion for continuance and at trial renders all of his arguments, with the exception of those implicating subject matter jurisdiction, unpreserved. To be preserved for appellate review, an argument must have been raised to and ruled on by the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998). A post-trial motion will not correct the failure to raise an issue at trial. *See MailSource, LLC v. M.A. Bailey & Assocs., Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003) (“[a] party cannot raise an issue for the first time in a Rule 59(e), SCRPC motion”); *Com. Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999) (holding issue not preserved

for appellate review where it was raised for the first time in a Rule 59(e), SCRCF motion). As such, the master's orders should be affirmed without argument pursuant to Rule 220, SCACR.

II. The master had jurisdiction over Powell and the Property.

A. This action was properly referred to the Master.

In dismissing each of Powell's interlocutory appeals relating to the reference of this action to the master, this Court and the South Carolina Supreme Court have found there was not a right to a jury trial in this matter. This result is consistent with the applicable case law. In actions to quiet tax title, there is no right to a jury trial, even if the defendant asserts a counterclaim stating a cause of action at law. *Rosenbaum v. S-M-S* 32, 311 S.C. 140, 427 S.E.2d 897 (1993). As stated there:

Considering the unique circumstances existing in a tax forfeiture acquisition, and the prevailing statutory provisions governing suits to clear tax titles, we conclude that the appellant may not evade the intent of the legislature and obtain the right to a jury trial by interposing a counterclaim designed to thwart the reasonable and practical implication of Chapter 61.

Id.

Similarly, an action concerning the validity of a tax sale is an action in equity. *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115 (2003) (citing *Bryan v. Freeman*, 253 S.C. 50, 52, 168 S.E.2d 793, 793-94 (1969) ("An action to remove a cloud on and quiet title to land is one in equity.")); *see also Godfrey v. Webb*, 277 S.C. 246, 247, 285 S.E.2d 883, 884 (1982) (holding that an action to set aside a tax deed and an action to confirm the same tax sale were both actions in equity); *Cathcart v. Jennings*, 137 S.C. 450, 463, 135 S.E. 558, 562 (1926) ("[a] court of equity has jurisdiction to remove a cloud upon title.") (internal citations omitted). As such, this case was properly referred to the master upon LB Park's motion. Rule 53, SCRCF.

Once this action was referred, the master had full authority to hear and decide this case in full. Rule 53(c), SCRCP provides, “[o]nce referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.” The Note to the 1986 Amendment of Rule 53 states, “Rule 53(c) is amended to make clear that the master has the same powers as a court sitting without a jury unless the order of reference limits his authority.” In this case, the order of reference simply provides “[a]fter careful consideration, Plaintiff’s Motion for Order of Reference to the Master in Equity is GRANTED.” (Order, R. at ____). This plain language does not place any limitations on the reference to the master, and, therefore, the master correctly handled this case through its final disposition, which included granting LB Park possession of the Property as demanded in the complaint and providing for a bond in the event of an appeal.⁴ See Rule 62, SCRCP; Rule 241, SCACR; see S.C. Code Ann. § 18-9-170.

B. LB Park had standing to bring this action, which presents a ripe case or controversy.

“Delivery of the tax title to the . . . register of deeds is considered ‘putting the purchaser, or assignee in possession.’” S.C. Code Ann. § 12-51-130. As a result, SB MUNI acquired legal possession of the Property when the tax deed was delivered to the York County Register of Deeds on December 26, 2018. (Tr. Ex. E, R. at ____). SB MUNI’s tax deed is “prima facie evidence of a good title in the holder” and any action for recovery of land sold in a tax sale must be “brought within two years from the date of sale.” S.C. Code Ann. § 12-51-160. Neither Powell nor anyone

⁴ Powell petitioned this Court multiple times for relief from the stay and bond provisions of the order and was rejected each time.

else brought an action or asserted any claim to recover the Property within that two-year window, which closed on November 7, 2019.

LB Park received the Property via quitclaim deed from the tax sale purchaser. (Tr. Ex. F, R. at ____). Therefore, LB Park has all the rights in the Property that belonged to the tax sale purchaser. *Floyd v. Floyd*, 112 S.C. 106, 107, 98 S.E. 850, 850 (1919) (noting that a grantee stands in the shoes of the grantor). Moreover, “any person or the executors, administrators, successors, assigns or grantees thereof, which has purchased at or acquired through a tax sale and obtained title to any real or personal property” may bring an action “for the purpose of barring all other claims” to the property. S.C. Code Ann. § 12-61-10 (emphasis added). The statute does not impose any requirement that the plaintiff must have physical possession of the property prior to filing, and any such requirement would cause an absurd result. Nor is there any requirement that a defendant in an action to clear tax title consent to the relief requested. In fact, the code sections relating to actions to clear tax title must be construed to allow tax sale purchasers (and their successors and assigns) to “obtain a final and complete adjudication of the nature and extent of the title[.]” S.C. Code Ann. § 12-61-60.

Thus, LB Park had standing to bring this action, which presented a ripe case or controversy as set forth in S.C. Code Ann. § 12-61-10. The proceedings were consistent with the applicable provisions of the South Carolina Code of Laws, and there has been not confiscation or seizure of private property.

C. The master had jurisdiction over the Property and Powell.

Without question and as stated in the legal description of the tax deed, the Property is located within the boundaries of South Carolina. All real property in this state is subject to taxation. S.C. Code Ann. § 12-37-210. Although there are some general exemptions, none apply

here. S.C. Code Ann. § 12-37-220. The code further provides for tax sales in the event property taxes are not paid (Title 12, Chapter 51) and for actions to clear tax title (Title 12, Chapter 61). Powell's refusal to record his deed does not change anything about the Property's location within this state or the fact that the Property is subject to taxation.

In addition, the record shows that Powell was served (a fact he does not deny). (Affidavit of Service, R. at ____). "An affidavit of service is Prima facie evidence of service which may be impeached by extrinsic evidence." *Richardson Const. Co. v. Meek Eng'g & Const., Inc.*, 274 S.C. 307, 311, 262 S.E.2d 913, 915–16 (1980). Here, Powell did not present extrinsic evidence showing he was not served. He appears to contend there was some defect in terms of the application of the long arm statute, S.C. Code Ann. § 36-2-803. However, that statute provides for jurisdiction arising from a person's "having an interest in, using, or possessing real property in this State[.]" *Id.* at § (A)(6). LB Park alleged that Powell claimed an interest in the Property, which Powell admitted. (Complaint ¶ 6, Answer ¶ 7, R. at ____). Thus, the long arm statute applies and confers jurisdiction over Powell with respect to this action.

Moreover, S.C. Code Ann. § 12-61-20 permits the following parties to be made defendants in suit to clear tax title,

[T]here may be made defendants to the action the former owner of such property, his heirs, executors, administrators, successors or assigns and *any other person or legal entity who has or claims any right, title, claim, interest or lien in or to such property*, to the end that such rights, titles, interests, claims or liens may be adjudicated in such action and 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.

(Emphasis added). This provision would be nonsensical if there was not personal jurisdiction over persons that claimed an interest in the property (regardless of the merits of that claim). Quite

simply, there is personal jurisdiction over all persons claiming an interest in South Carolina real property.

D. The record clearly establishes that Powell was afforded due process and equal protection under the laws.

The standards that apply to due process arguments in South Carolina are well established.

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. Rather, due process is flexible and calls for such procedural protections as the particular situation demands.

Kurschner v. City of Camden Plan. Comm’n, 376 S.C. 165, 171–72, 656 S.E.2d 346, 350 (2008) (citations omitted). “In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004).

With respect to equal protection,

The South Carolina Constitution provides that no “person shall be denied the equal protection of the laws.” S.C. Const. art. I, § 3. “The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment.” *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995); *see also Sloan v. Bd. of Physical Therapy Exam’rs*, 370 S.C. 452, 481, 636 S.E.2d 598, 613 (2006) (“A crucial step in the analysis of any equal protection issue is the identification of the pertinent class”). Not all classifications are unconstitutional, however, for “[t]he equal protection clause only forbids irrational and unjustified classifications.” [*In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 147, 568 S.E.2d 338, 351 (2002)].

Bodman v. State, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013). Here, Powell was given notice and opportunities to be heard, and the Tax Collector treated all properties in the same manner for

purposes of the tax sale process.⁵ Therefore, there has not been any due process or equal protection violation.

1. As reflected in the evidence presented at trial, York County complied with the tax sale statutes and provided notice to all required parties.

The master's final order contains a thorough summary of the Tax Collector's testimony regarding the tax sale process for the Property (Tr. at 13:8-37:13, R. at ____), as follows:

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

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

With respect to the notice described in S.C. Code Ann. § 12-51-40(b), the Tax Collector testified that her office mailed this notice to San Juan Holdings, Brett Osborne Trustee, at the Charlotte Address by certified mail, return receipt requested-restricted delivery on July 24, 2017. The Tax Collector testified that the United States Postal Service returned this notice marked, "Return to Sender, Not Deliverable as Addressed, Unable to Forward." A certified copy this Tax Sale notice and the returned envelope were entered into evidence as Exhibit K. Accordingly, the Tax Collector's office took exclusive possession of the Property by posting the Property with notice of the Tax Sale, as provided in S.C. Code Ann. § 12-51-40(c), which posting occurred on September 7, 2017. Certified copies of

⁵ To the extent Powell argues the master in some way acted impartially or unfairly, those arguments are unpreserved as Powell never sought recusal. *Parker v. Shecut*, 340 S.C. 460, 496, 531 S.E.2d 546, 566 (Ct. App. 2000), *rev'd on other grounds*, 349 S.C. 226, 562 S.E.2d 620 (2002).

the field report and the notice posted on the Property were entered into evidence as Exhibits L-1 and L-2.

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

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

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

The Tax Collector testified that her office sent the Redemption Notice to five separate addresses. The Tax Collector's office sent a Redemption Notice to San Juan Holdings, Brett Osborne Trustee, at the Charlotte Address by certified mail, return receipt requested-restricted delivery on September 24, 2018. The Tax Collector testified that the United States Postal Service returned this notice marked, "Return to Sender, Not Deliverable as Addressed, Unable to Forward." Certified copies of this Redemption Notice with the e-certified log and returned envelopes were entered into evidence as Exhibits N-1, N-2, and N-3.

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

The Tax Collector's office sent a Redemption Notice to San Juan Holdings/Ryan Powell addressed to 25056 Timberlake Drive, Tega Cay, SC 29708, by certified mail, return receipt requested-restricted delivery on September 24, 2018. The address used is the Property address. The Tax Collector testified that her office sent a Redemption Notice to Powell, even though he did not have an interest of record in the Property, because her office was aware that he claimed an interest in the Property, so her office provided this Redemption Notice as an additional attempt to provide as much notice as possible regarding the approaching end of the redemption period. The Tax Collector testified that the United States Postal Service returned this notice marked, "Return to Sender, Unclaimed, Unable to Forward." Certified copies of this Redemption Notice with the e-certified log and returned envelopes were entered into evidence as Exhibits N-1, N-2, and N-4.

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

The Tax Collector's office sent a Redemption Notice to San Juan Holdings/Ryan Powell addressed to 3459 Mill Run, Raleigh, NC 27612, by certified mail, return receipt requested-restricted delivery on September 24, 2018. The Tax Collector testified that her office obtained this address from additional research. The Tax Collector also testified that her office sent this Redemption Notice to Powell, even though he did not have an interest of record in the Property, because her office was aware that he claimed an interest in the Property, so her office provided this Redemption Notice as an additional attempt to provide as much notice as possible regarding the approaching end of the redemption period. The Tax Collector further testified that the United States Postal Service returned this notice marked, "Return to Sender, Unclaimed, Unable to Forward." Certified copies of this Redemption Notice with the e-certified log and returned envelopes were entered into evidence as Exhibits N-1, N-2, and N-5.

After sending the foregoing five Redemption Notices, the Tax Collector testified that no party redeemed the Property before the redemption period expired on November 7, 2018.

(Order at 14-18, R. at ____ (emphasis added and footnote omitted)). This testimony shows compliance with the applicable notice requirements for tax sales, S.C. Code Ann. §§ 12-51-40 to -120. It further shows that the Tax Collector went above and beyond those requirements in an effort to provide notice to Powell.⁶ In addition, this testimony shows that the sale was handled in the same manner as all tax sales in York County.

2. The master acted within her discretion in denying the request for a continuance.

“[A] motion for a continuance is addressed to the sound discretion of the trial judge, whose judgment will be reversed only on showing an abuse of discretion.” *Crout v. S.C. Nat. Bank*, 278 S.C. 120, 123, 293 S.E.2d 422, 423 (1982). “An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions.” *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008)

Here, the master’s ruling is supported by the chronology set forth in the Final Order: this case had been pending for well over a year, Powell had notice of the hearing more than a month in advance, Powell did not move for a continuance until eleven days before the hearing and provided only a vague reason why he sought to further delay a final order in this matter. (Order at 2, R. at ____). Given these facts, the master did not find good cause why the matter should be continued and denied the motion. This ruling is supported by the evidence and must be affirmed.

⁶ Powell concedes in Argument I of his brief that “the property tax notice statutes do not require notice be given to an owner whose deed is not recorded[.]”

III. The master correctly denied the motion for a new trial or to alter or amend.

A. LB Park is the owner of the Property.

As discussed above, LB Park is the owner of the Property following a valid tax sale as reflected in the evidence presented at trial without contest or objection. Powell's arguments in the post-trial phase were too little, too late.

B. The master correctly dismissed Powell's counterclaims for each of the independent reasons given in the final order.

As an initial matter and in addition to the preservation argument raised above, Powell concedes that his counterclaims were abandoned in Argument 9D of his brief ("The ruling that Ryan abandoned his counterclaims when he failed to show up for the hearing is the correct ruling.")⁷ As such, the master's order dismissing the counterclaims should be affirmed without further discussion. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive); *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

In addition, Powell did not present any deed, much less a recorded one, prior to filing his post-trial motion. Therefore, there was no evidence showing he held an ownership interest in the

⁷ In addition, Powell did not appeal the rulings on the merits as to four of his counterclaims (Sanctions for Frivolous Complaint, Intentional Infliction of Emotional Distress on Plaintiff, Intentional Interference with Contract, and Slander of Title) as set forth in pages 20-23 of the final order. (R. at ____). As such, these rulings are the law of the case and require affirmance. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding unappealed ruling is law of the case). LB Park will not reargue these points, but submits the maser's rulings are also correct on the merits and should be affirmed for the reasons given in the final order.

Property, and the master correctly found that he lacked standing to assert any counterclaims relating to the Property.

Further, the South Carolina Administrative Law Court previously found that Powell failed to establish he was the owner of the Property. Therefore, the master correctly found that he was barred from relitigating this issue. *See Beall v. Doe*, 281 S.C. 363, 370–71, 315 S.E.2d 186, 190–91 (Ct. App. 1984) (finding that collateral estoppel prevents a party from relitigating issues actually determined in an earlier action if that party had a full and fair opportunity to litigate the issue in the first action and there are no circumstances justifying allowing that party to retry the issue.).

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

All deeds of conveyance of lands . . . either in fee simple or for life . . . and generally all instruments in writing conveying an interest in real estate required by law to be recorded in the office of the register of deeds . . . are valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors), or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds . . . of the county in which the real property affected is situated. In the case of a subsequent purchaser of real estate . . . the instrument evidencing the subsequent conveyance . . . must be filed for record in order for its holder to claim under this section as a subsequent . . . purchaser for value without notice, and the priority is determined by the time of filing for record.

S.C. Code Ann. § 30-7-10. As set forth there, a deed must be recorded in order for a deed to be valid as to subsequent purchasers without notice. In addition, priority between a subsequent purchaser of real estate without notice “is determined by the time of filing for record.” Here, it is undisputed that Powell did not have an interest of record at the time the tax deed was recorded or at the time LB Park’s deed was recorded.

CONCLUSION

For all of these reasons and those set forth in the orders themselves, the orders on appeal should be affirmed. Powell's pattern of delay and obstruction must stop here, and LB Park must be afforded the all rights inherent in property ownership, including the right to possession, without any further frivolous and costly interruptions.

Respectfully submitted,

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