

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Ryan Powell and Karen Powell,

Plaintiffs,

v.

SB Municipal is the Custodian of LBSC-11, LLC; SB MUNI Cust % LBSC, LLC; LB Park, LLC, Joshua Schrager; and Lambros Xethalis,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2023-CP-46-00607

ORDER

RECEIVED
May 11 2023
SC Court of Appeals

This matter came before me on March 27, 2023, upon the (i) Motion to Dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(1) and 12 (b)(6), SCRCPP, (ii) Opposition to Plaintiffs' Expedited Motion for Injunction and (iii) Motion for Sanctions pursuant to Rule 11, SCRCPP and S.C. Code Ann. § 15-36-10 of Defendants SB Municipal, LLC ("SB MUNI"), LB Park, LLC ("LB Park"), Joshua Schrager ("Schrager") and Lambros Xethalis ("Xethalis") (collectively, "Defendants"), as well as the Expedited Motion for Injunction of Plaintiffs Ryan Powell ("Ryan" or "Powell") and his mother Karen Powell ("Karen") (collectively, "Plaintiffs"), and Plaintiffs' Rule 11 Motion for Sanctions and to Strike Defendants' Motion to Dismiss (collectively, "Plaintiffs' Motions"). Plaintiffs appeared *pro se*, and Defendants were represented by Daniel J. Ballou. Based on the papers and documents filed herein, the arguments of counsel for Defendants and the arguments and testimony of the Plaintiffs, I find and conclude as follows:

BACKGROUND

This case involves various claims by Plaintiffs to, among other things, quiet title to certain real property identified as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 (the "Property"). Plaintiffs have made the Property the subject of litigation since 2014, as

recounted in detail in the Final Order issued by the York County Master in Equity on October 24, 2022 (“Judgment”) in the matter *LB Park, LLC v. San Juan Holdings, et al*, Case No, 2020-CP-46-00549 (the “Litigation”). Ryan appealed the Judgment on December 2, 2022 (Appellate Case No. 2022-001650), and the appeal is still pending. Defendants contend that the facts and legal claims asserted in this case are the same as those raised and litigated in the Litigation and which form the basis for the Judgment, and that upon the filing of the Notice of Appeal of the Judgment, the Court of Appeals has exclusive jurisdiction for such claims under Rule 205, SCACR.

Plaintiffs specifically referenced the Judgment and other previous Circuit Court filings in their Complaint and Expediated Motion for Injunction. For purposes of the respective motions before me and pursuant to Rule 201, SCRE, I take judicial notice of the Judgment, including all findings of fact and conclusions of law, as well as the relevant filings in the numerous related actions and appeals and the deed records of the York County Clerk of Court. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (providing that when considering a Rule 12(b)(6) motion, a court may consider documents referenced in or attached to the complaint). For the reasons stated herein, I grant Defendants’ Motion to Dismiss, deny Plaintiffs’ Motions, and partially grant Defendants’ Motion for Sanctions.

FINDINGS OF FACT

This case represents only the latest attempt by Plaintiffs to frustrate the proper collection of ad valorem property taxes by York County on the Property. A review of Plaintiffs’ litigious history is instructive in reaching the findings of fact and conclusions of law herein.

1. The Property was conveyed to Ryan by deed dated December 20, 2012 (the “SJH Deed”) by a now-dissolved trust known as San Juan Holdings (“SJH”). Ryan purposefully did not record the SJH Deed in the York County property records because he believed that by not recording it,

he did not consent to the levy of property taxes by York County. Plaintiffs contend that York County only has the power to collect property taxes under the South Carolina Alternate Procedure for Collection of Property Taxes Act, S.C. Code 12-51-40, et seq. (the “Tax Sale Act”), on property owned by a person having a recorded deed. Ryan asserts that since he did not record the SJH Deed, York County could not tax his Property.

2. Ryan filed his first lawsuit in the original jurisdiction of the South Carolina Supreme Court (Appellate Case No. 2014-000005), seeking 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 that Ryan is 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 the \$5,118 Powell paid to the respondents. The Supreme Court denied Ryan’s petition on February 20, 2014.

3. On May 1, 2014, Ryan filed a second action in the York County Court of Common Pleas, and he again sought a writ of *mandamus* and asserted 10 causes of action, all based upon his erroneous theory to avoid paying property taxes. Judge S. Jackson Kimball dismissed this second action on June 25, 2014, finding:

[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. *See*, Order Substituting Defendant and Order of Dismissal, *Powell v. Boheler, et al.*, Case No. 2014-CP-46-01425, June 25, 2014.

Ryan then appealed Judge Kimball’s Order to the South Carolina Court of Appeals, which summarily affirmed the trial court’s decision. Ryan subsequently filed a petition for a writ of *certiorari* to the South Carolina Supreme Court, which was likewise denied.

4. Next, Ryan sued the York County Assessor in the South Carolina Administrative Law Court (“Case 3”), again asserting the same theories rejected previously that York County had no power to collect property taxes under the Tax Sale Act. The Administrative Law Court dismissed this third action as being moot because Ryan redeemed the Property after a tax sale, noting that:

“[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.”

Judge Ralph King Anderson, III elaborated:

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.

(Order of Dismissal, *Powell v. York County Assessor*, Docket No. 17-ALJ-30-0358-IJ, November 28, 2017, at p. 3 n.6.)

5. Undaunted by defeat at each step of this litigious journey, Ryan again failed to pay property taxes on the Property. Predictably, the York County Tax Collector sold the Property at the York County tax sale held November 6, 2017 (the “Tax Sale”). SB Municipal, LLC, as custodian for LBSC-11, LLC (“SB MUNI”), purchased the Property at the Tax Sale with a bid of \$171,000.00. After the statutory one-year redemption period had expired, the Tax Collector conveyed title to SB MUNI by tax deed recorded on December 26, 2018, in the York County Register of Deeds Office in Book 17337, page 73 (the “Tax Deed”). SB MUNI subsequently conveyed the Property to LB Park by quitclaim deed dated January 7, 2019, and recorded on January 10, 2019, in Book 17361, page 145 (the “Quitclaim Deed”).

6. On January 25, 2019, LB Park brought an action to quiet tax title (Case No. 2019-CP-46-00310). In response, Karen filed a Special Appearance Motion to Dismiss on March 11, 2019, claiming to hold an unrecorded lien on the Property, and arguing that the Property is not subject to taxation. Judge Daniel Hall rejected these contentions by order dated April 3, 2019. On April 8, 2019, Ryan filed a similar Special Appearance Motion to Dismiss or Intervene. On May 31, 2019, Judge Hall denied Ryan's motion to dismiss and ordered the case referred to York County Master in Equity.

7. Ryan appealed both the order denying his motion to dismiss and the order of reference on June 11, 2019. On October 15, 2019, the South Carolina Court of Appeals granted LB Park's motion to remand for the limited purpose of allowing it to file a motion to dismiss the underlying action without prejudice. The Notice of Dismissal Without Prejudice was filed on February 12, 2020, and LB Park filed a second action to quiet tax title naming Ryan as a defendant the same day.

8. Ryan generally denied Plaintiff's allegations, asserted 23 defenses, and alleged counterclaims for (1) sanctions for frivolous complaint, (2) intentional infliction of emotional distress, (3) to declare void and set aside tax deed, (4) intentional interference with contract, and (5) slander of title (collectively, the "Counterclaims"). LB Park filed a Motion for Order of Reference on June 23, 2020, and Powell demanded a jury trial under Rule 38(b), SCRCPP, on July 14, 2020. On August 20, 2020, Judge Hall denied Ryan's motions and granted LB Park's motion for an order of reference. Ryan appealed this order on September 8, 2020.

9. On September 15, 2020, the South Carolina Court of Appeals dismissed Ryan's appeal as involving matters not immediately appealable. Ryan then filed a series of unfounded procedural

and dispositive motions, each of which was denied by Judge Hall, who again referred the case to be heard by the York County Master in Equity.

10. The merits hearing was scheduled for October 21, 2021, but nine days before the hearing, Ryan appealed the Judge Hall's order of reference. The Court of Appeals denied this appeal on May 23, 2022. Ryan then filed a Motion to Amend on June 8, 2022, and after the merits hearing was set for September 27, 2022, Ryan filed a Motion to Vacate on September 6, 2022. Ryan withdrew both his Motion to Amend and Motion to Vacate but then filed a Motion for Continuance on September 16, 2022, which was denied.

11. Following a merits' hearing on September 27, 2022, which neither Ryan nor Karen attended, the Judgment issued by Judge Weaver confirmed LB Park's fee simple title to the Property and denied each of Ryan's counterclaims. Ryan appealed the Judgment to the Court of Appeals on November 28, 2022 (Appellate Case No. 2022-001650).

12. As provided in the Judgment and pursuant to Rule 261, SCACR, there is no automatic stay of the Judgment during any appeal of it and LB Park was entitled to possession of the Property. In order for Ryan to remain in possession during any appeal, he was required to post a bond of \$180,000. Ryan made several attempts in the South Carolina Court of Appeals to enjoin and otherwise prevent LB Park from gaining possession of the Property and to avoid posting the bond or reducing the bond amount, all of which attempts failed.

13. After Ryan's tactics failed in the South Carolina Court of Appeals, Plaintiffs filed the instant action on February 24, 2023, alleging claims for (1) quiet title, (2) adverse possession, (3) declaratory judgment as to the order of reference to the Master in Equity in the Litigation, (4) declaratory judgment as the identity of the high bidder at the Tax Sale as noted in the Judgment, (5) slander of title, (6) intentional infliction of emotional distress, (7) intentional interference with

contract, (8) piercing the corporate veil as to the individual defendants, (9) violation of S.C. Code Ann. § 15-67-410 for “illegal desseizure,” (10) collection of lien and (11) violation of S.C. Code Ann. § 15-75-60 for alleged sham legal process.

14. Ryan recorded the SJH Deed from 2012 on February 22, 2023, York County Clerk of Court’s Office in Book 20628, page 278. See, Complaint at para. 6. Recording occurred two days before Plaintiffs filed this action and six years after the Tax Sale. Plaintiffs contend that the recording of the SJH Deed allows them to bring this action as a “collateral attack” on the Judgment.

CONCLUSIONS OF LAW

Dismissal of this Case is Proper Under Rules 12(b)(1) and (6), SCRCP.

1. Plaintiffs base each cause of action on the same nucleus of operative facts that were raised in the Litigation, were decided in the Judgment and are within the exclusive jurisdiction of the Court of Appeals under Rule 205, SCACR.

2. The only new fact identified by Plaintiffs that was not before the Master in Equity is the recording of the SJH Deed. Plaintiffs contend that such recording now creates new circumstances under which they can contest the Tax Sale, the Tax Deed and the Judgment. However, it is undisputed that the recording of the SJH Deed occurred long after any interest Ryan or SJH may have had in the Property was divested and forfeited to York County under the Tax Sale Act, and after the confirmation of LB Park’s title to the Property through the Judgment. At best, Ryan was an unrecorded deed holder, and based upon the clear statutory language of the Recording Act, S.C. Code Ann. § 30-7-10, LB Park has priority over Ryan because, among other reasons, LB Park’s deed was recorded more than four years before Ryan recorded the SJH Deed. Accordingly, I find and conclude that the recently recorded SJH Deed is a nullity and of no legal significance.

3. Plaintiffs assert that this case is brought properly under Rule 60(b), SCRCR, although no Rule 60(b) motion was ever filed. Moreover, it is undisputed that leave to file such a motion or to file this case was not obtained from the Court of Appeals, as required by that rule. Nevertheless, the claims asserted in this case are a rehash of the same allegations decided and ruled upon in the Judgment.

4. Plaintiffs' First Cause of Action seeks to quiet title in the SJH Deed, which was not recorded until February 22, 2023. This claim repeats the allegations contained in Ryan's First Amended Answer and Counterclaim in the Litigation regarding the existence of SB MUNI that were rejected in the Judgment. In her Final Order, Judge Weaver detailed the corporate status of the high bidder at the Tax Sale and the process by which LB Park came to hold title. Since this claim seeks to relitigate the findings and conclusions of the Judgment, as well as the final orders in the previous cases cited above, such matters are barred by the doctrine of collateral estoppel and cannot be relitigated here. *Kunst v. Loree*, 404 S.C. 649, 746 S.E.2d 360 (Ct App. 2013); *Carman v. S.C. Alcoholic Beverage Control Comm'n.* 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994)(holding, "[u]nder the doctrine of collateral estoppel, when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.")

5. Moreover, to the extent that Plaintiffs claim a defect in the Tax Sale process, such matters likewise fail for several reasons. One reason is that Ryan admittedly failed to record the SJH Deed during the relevant tax sale proceedings and Karen never recorded her alleged lien. Because they had no interest of record in the Property, the Tax Sale Act did not require any notice to Plaintiffs, although the Judgment demonstrates that several redemption notices were mailed to Ryan.

Another reason is that the statute of limitations to recover the Property expired two years from November 6, 2017, the date of the tax sale. S.C. Code Ann. §§ 12-51-90(c) and 12-51-160. Even if Plaintiffs' claims were not subsumed within the Judgment and in the exclusive jurisdiction of the Court of Appeals, they are barred by the Tax Sale Act, the two-year statute of limitations, laches and the doctrine of collateral estoppel.

6. Plaintiffs' First Alternative Cause of Action for adverse possession also fails as a matter of law. By Plaintiffs' account, Ryan owned the Property from 2012 until it was lost at the Tax Sale. Ryan could not have held title adversely to any one until York County took title pursuant to the Tax Sales Act in November of 2017. LB Park did not obtain title to the Property until the Tax Deed was issued in December of 2018, so any period of possession adverse to LB Park would have begun then. While Ryan may have been hostile to York County's efforts to collect property taxes, neither JSH nor anyone else contested Plaintiffs' occupation of the Property until after the Tax Deed was issued. Consequently, Plaintiffs fail to state any facts that would bring them within the legal requirements of adverse possession. See, *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986).

7. Plaintiffs' Second Cause of Action for declaratory judgment rehashes Ryan's arguments regarding the jurisdiction of the Master in Equity and is inextricably intertwined within the issues on appeal and within the exclusive jurisdiction of the Court of Appeals. Accordingly, this claim is also dismissed.

8. Plaintiffs' Third Cause of Action for declaratory judgment likewise seeks to relitigate the identity and existence of SB MUNI as the successful bidder at the Tax Sale, raising the exact arguments that the Master in Equity specifically rejected, and which are currently on appeal.

Consequently, this cause of action raises no legitimate basis for any collateral attack on the Judgment and is dismissed.

9. Plaintiffs' Fourth Cause of Action characterizes the recording of the Tax Deed and the Quitclaim Deed as a slander of title. While Plaintiffs assert this claim against Defendants Xethalis and Schrager individually, the claim duplicates the allegations of Ryan's Fifth Counterclaim dismissed by the Master in Equity, and I therefore dismiss this cause of action as well because there is no legitimate basis for any collateral attack on the Judgment.

10. Plaintiffs' Fifth and Sixth Causes of Action for Intentional Infliction of Emotional Distress and Intentional Interference with Contract mirror the Second and Fourth Counterclaims in the Litigation. Even if they were not barred as an improper attempt to relitigate matters on appeal, they relate to LB Park's effort to avail itself of the statutory process of quieting a tax title and are dismissed for the same reasons detailed by Judge Weaver in the Judgment.

11. Plaintiffs' Seventh Cause of Action seeks to impose individual liability upon Xethalis and Schrager for the same frivolous and unfounded claims that the Master in Equity dismissed and are likewise dismissed herein. I further find and conclude that the Complaint fails to allege sufficient facts to constitute any claim for veil piercing under South Carolina law, and that even if it did, such facts are within the scope of the Judgment on appeal and within the exclusive jurisdiction of the Court of Appeals.

12. Plaintiff's Eighth, Ninth and Tenth Causes of Action allege acts by York County and Judge Weaver, who are not parties to this action. However, these claims are so specious and unfounded that they fail to state any cause of action under South Carolina law against anyone. Because these causes of action ostensibly seek to relitigate the matters resolved in the Judgment, Plaintiffs may not relegate them here under the guise of a collateral attack, and these claims are dismissed.

13. Plaintiffs' entire Complaint is premised upon an abusive and erroneous interpretation of the property tax laws and tax system of this State. All of Plaintiffs' claims derive from the fact that Ryan refused to pay property taxes. None of the issues asserted in this action overcomes Plaintiffs' burden of showing any prejudicial error or harm. *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26 (S.C. App. 1987)(noting that "whatever doesn't make any difference, doesn't matter"). Consequently, Plaintiffs' entire Complaint fails as a matter of law and is dismissed with prejudice.

Plaintiffs' Notice of *Lis Pendens* is Cancelled.

14. In light of the findings of fact and conclusions of law above, pursuant to S.C. Code Ann. §15-11-40, and the inherent authority of the Court, the Court hereby cancels, terminates, nullifies, and declares void and of no legal effect the *Lis Pendens* filed by Plaintiffs on February 24, 2023 (*Lis Pendens* No. 2023LP4600078 and Case No. 2023-CP-46-00607).

The SJH Deed is Declared Void.

15. The Court hereby nullifies and declares void and of no legal effect the SJH deed of "Brett Osborne trustee of SAN JUAN HOLDINGS" to "Ryan Whitney of the Powell family" executed on December 20, 2012, and recorded on February 22, 2023, in the York County Register of Deeds Office in Book 20628, page 278. The York County Register of Deeds is instructed to strike the SJH Deed from its records and to record a copy of this Order to confirm that the SJH Deed is void and that Ryan Powell has no interest in the Property.

Plaintiffs' Motion for Injunction Is Denied.

16. Plaintiffs' Motion for Injunction seeking to prevent LB Park from evicting them from the Property is also denied. The purpose of a preliminary injunction is to preserve the status quo until a matter has been adjudicated, avoiding the possibility of irreparable injury to the aggrieved party until a full hearing on the merits can be had. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674

S.E.2d 505, 509 (Ct. App. 2009). To prevail on a claim for preliminary injunction, a party must demonstrate (1) irreparable harm, (2) likelihood of success on the merits, and (3) no adequate remedy at law. *Scratch Golf Co. v. Dunes West Residential Golf Prop., Inc.*, 603 S.E.2d 905 (S.C. 2004). An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff. *Id.* At a minimum, a plaintiff's complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct.App.2005). A motion for injunction requires the court to balance the equities of the case by looking at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief. 674 S.E.2d at 508.

17. Here, Plaintiffs contend that without an injunction, they will “suffer life threatening stress, insult, degradation, and loss of personhood from being thrown out of their home on the street with all their personal property.” Expedited Motion for Injunction at 2. These purported harms are of the Plaintiffs’ own making, the result of the years-long scheme to avoid paying property taxes rightfully owed to York County, and the willful failure or refusal to post the bond set forth in the Judgment. In light of my decision to dismiss the Complaint with prejudice, Plaintiffs do not prevail and cannot establish any basis for injunctive relief. Moreover, Plaintiffs have an adequate remedy at law, and have exercised that remedy by appealing the Judgment. *Strategic Resources v. BCS Life Ins. Co.*, 367 S.C. 540, 627 S.E.2d 687 (2006)(noting that “the right to appeal provides ... an adequate remedy at law.”). Plaintiffs have failed to establish any grounds for injunction and their Motion is therefore denied.

Defendants' Motion for Sanctions is Granted in Part.

18. Defendants seek an order for sanctions against Plaintiffs pursuant to Rule 11, SCRCP, and S.C. Code Ann. § 15-36-10 for instituting frivolous proceedings and filing frivolous documents in this action. Specifically, Defendants seek (1) an award of attorney's fees in the amount of \$12,500.00 incurred in defending this action, and (2) a pre-filing injunction order prohibiting the Plaintiffs from filing any action or court filing arising out of or related to the Property or the Tax Sale, possession of the Property, the eviction of Ryan and any other occupants from the Property, and any other matters concerning the Property.

19. Under the South Carolina Frivolous Civil Proceedings Act ("SCFCPA"), S.C. Code Ann. § 15-36-10, et seq. a pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the pro se litigant failed to comply with one of the following conditions:

- (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
- (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based. *Id.*

20. Similarly, Rule 11 of the South Carolina Rules of Civil Procedure states that the written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

21. Section 15-36-10(E) of the SCFCPA sets forth the elements a Court should consider when determining whether a party has violated the provisions of the Act, stating the Court shall take into account the following:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or *pro se* litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
- (4) information disclosed or undisclosed to the attorney, party, or *pro se* litigant through discovery and adequate investigation;
- (5) previous violations of the provisions of this section;
- (6) the response, if any, of the attorney, party, or *pro se* litigant to the allegation that he violated the provisions of this section; and
- (7) other factors the court considers just, equitable, or appropriate under the circumstances.

22. In this case, Plaintiffs have repeated the previously asserted specious and frivolous claims based upon an interpretation of the South Carolina property tax and related laws that has been repeatedly rejected by all courts of this state. The Plaintiffs have filed and made frivolous allegations, assertions, and claims against York County, the County Tax Assessor, the Circuit Court Judges, the Master in Equity, the successful bidder at the Tax Sale, the Defendants and their counsel. Plaintiffs' claims continue a pattern of a "rambling presentation of twisted, disconnected and inapplicable legal theories that contradicts all statutory and case law governing the issues presented." Moreover, Plaintiffs have threatened "2 to 5 years or more" of continued appeals and collateral attacks if they are not restrained.

23. This Court has the inherent authority to enter pre-filing injunctions — also referred to as gatekeeper orders — restricting individuals from filing new lawsuits or other papers without court approval, when necessary to prevent abuse of the judicial process and protect other parties. See *Rutland v. Holler, Dennis, Corbett, Ormond & Garner*, 371 S.C. 91, 98, 637 S.E.2d 316, 320 (Ct. App. 2006)(noting that “the primary purpose for which the proceedings were initiated ‘was not that of securing the proper ... adjudication of the civil proceedings.’”). Section 15-36-10(G) of SCFPCA sets forth allowable sanctions, including (1) reasonable costs and attorneys’ fees; (2) a reasonable fine to the court; or (3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

24. Having reviewed and considered the storied litigation history, current posture, all materials submitted, and oral arguments, I find that the Plaintiffs have engaged in a deliberate pattern of litigation abuse and willfully filed frivolous pleadings, motions, and appeals for purposes of delay, harassment and imposition of legal expense to LB Park and others in connection with the lawful collection of property taxes against the Property.

25. I incorporate by reference the Plaintiffs’ history of litigation cited hereinabove and in the Judgment as the factual basis for the relief sought by Defendants. I further note that at the hearing on Defendants’ Motion to Dismiss, Karen admitted in open court that the filings in the prior actions were frivolous. While Plaintiffs contend that the present case is somehow meritorious or made less frivolous because Ryan recorded the SJH Deed, I find such contention meritless and groundless in law and in fact.

26. I find and conclude that the Plaintiffs’ claims in this case, like the claims and defenses filed and asserted in the various litigation dating back to 2014 that have preceded it, are not warranted under existing law and that a good faith or reasonable argument did not exist for the extension,

modification, or reversal of existing law, that they are intended merely to harass or injure the opposing party, are not reasonably founded in fact, but are interposed merely for delay, or merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based. Although I find that the facts and circumstances of this case warrant the award of attorney's fees against the Plaintiffs, I decline to make such an award, in part, because I do not believe that such an award will deter the Plaintiffs from continuing to file frivolous claims or motions.

27. However, under the facts of this case, sanctions are in fact necessary and proper. I therefore order that Plaintiffs are, individually and collectively, prohibited from filing any pro se complaint, action, paper, pleading or any other court filing, in any state or federal court, of any type arising out of, related to, concerning, referencing, implicating or mentioning the taxes assessed or owed upon the Property, the Tax Sale, the Property, the Tax Sale of the Property, any action to quiet tax title to the Property including Case No. 2020-CP-46-00549, possession of the Property, the eviction of Plaintiffs or any other occupants from the Property, and any other matters concerning the Property (collectively, the "Filings") without prior leave of court. Any Filings on behalf of Plaintiffs must be (1) signed by a duly licensed South Carolina attorney subject to Rule 11 of the South Carolina Rules of Civil Procedure, or (2) certified by a South Carolina Circuit Court Judge as being compliant with Rule 11, which certification must be filed with any Filings.

28. Any party or person aggrieved by a violation or a potential violation of this Order shall be entitled to file a Petition for a Rule to Show Cause against Plaintiffs, requiring them to appear and to show cause as to why they have not violated this Order and why they are not in contempt of court. If the Plaintiffs are found to be in contempt, the aggrieved party shall be entitled to recover his, her, its, or their reasonable attorney's fees and costs from Plaintiffs, as well as additional relief.

Plaintiffs' Motion for Sanctions and to Strike is Denied.

29. Finally, for the reasons set forth above, I also deny Plaintiffs' Motion for Sanctions and to Strike Defendants' Motion to Dismiss. Plaintiffs' claim that counsel for Defendants "is perpetrating a fraud on this Court" is unfounded, meritless and false, and is based upon the same specious assertions made as to the legal existence of SB MUNI that was expressly addressed by the Master in Equity in the Judgment. The assertions contained in Plaintiffs' Motion further substantiate the good cause necessary to award sanctions as set forth above.

NOW THEREFORE, IT IS ORDERED that:

1. Plaintiffs' Complaint is dismissed with prejudice;
2. Plaintiffs' Lis Pendens is dissolved and cancelled;
3. The SJH Deed to Ryan Powell is declared void and the York County Register of Deeds/Clerk of Court is instructed to strike the SJH Deed from its records and to record a copy of this Order to confirm that the SJH Deed is void and that Ryan Powell has no interest in the Property;
4. Plaintiffs' Motion for Injunction is denied;
5. Plaintiffs are individually and collectively prohibited from filing any pro se complaint, action, paper, pleading or any other court filing, in any state or federal court, of any type arising out of, related to, concerning, referencing, implicating or mentioning the taxes assessed or owed upon the Property, the Tax Sale, the Property, the Tax Sale of the Property, any action to quiet tax title to the Property including Case No. 2020-CP-46-00549, possession of the Property, the eviction of Plaintiffs or any other occupants from the Property, and any other matters concerning the Property without prior leave of court. Any Filings on behalf of Plaintiffs must be (1) signed by a duly licensed South Carolina

attorney subject to Rule 11 of the South Carolina Rules of Civil Procedure, or (2) certified by a South Carolina Circuit Court Judge as being compliant with Rule 11, which certification must be filed with any Filings; and

6. Plaintiffs' Motion for Sanctions and to Strike Defendants' Motion to Dismiss is denied.

This the _____ day of _____.

Hon. William A. McKinnon
Chief Administrative Judge
Sixteenth Judicial Circuit

RECEIVED

May 11 2023

SC Court of Appeals

FORM 4

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

CASE NO. 2023 CP-46-00607

Ryan Powell

SB Municipal is the Custodian of LBSC-11, LLC;
SB MUNI Cust % LBSC, LLC; LB Park, LLC,
Joshua Schragger;

Karen Powell

and Lambros Xethalis,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Daniel J. Ballou

Attorney for : [] Plaintiff X [] Defendant
or
[] Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- [] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
[] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
[] ACTION DISMISSED (CHECK REASON): [] Rule 12(b), SCRPC; [] Rule 41(a), SCRPC (Vol. Nonsuit); [] Rule 43(k), SCRPC (Settled); [] Other
[] ACTION STRICKEN (CHECK REASON): [] Rule 40(j), SCRPC; [] Bankruptcy; [] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [] Other
[] STAYED DUE TO BANKRUPTCY
[] DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): [] Affirmed; [] Reversed; [] Remanded; [] Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: [] See attached order (formal order to follow) [] Statement of Judgment by the Court:

ORDER INFORMATION

This order [] ends [] does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Rows show dollar amounts.

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



York Common Pleas

Case Caption: Ryan Powell , plaintiff, et al VS Sb Municipal Custodian , defendant,
et al
Case Number: 2023CP4600607
Type: Order/Form 4

So Ordered

/s William A. McKinnon, #2761, Resident Circuit
Judge and Chief Admin. Judge for CP, 16th Cir.