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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

Case No. 2020-CP-46-00549
Appellate Case # 2022-001650

LB PARK, LLC, Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, Defendants,

of whom Ryan Powell is the..... Appellant.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii
STATEMENT OF WHY THIS REPLY BRIEF IS EVEN BEING FILED.....1
STATEMENT OF ISSUES FOR THIS REPLY BRIEF.....1

1. Was Ryan required to appear at the final hearing in order to preserve all the errors he raised and argued in Appellant's Brief?..... 1

2. Did Respondent show that the Master had subject matter jurisdiction to enter her final order?..... 1

 A. Does the Master get her jurisdiction from Rule 53(b) or from the order of reference?..... 1

 B. Did the order of reference "limit" the Master's jurisdiction or did the order of reference "specify" a "particular purpose" for the reference?..... 1

3. Did Respondent demonstrate that the Master had "jurisdiction over Powell" 1

4. Did Respondent demonstrate that it has standing to clear a tax title granted to a non-party?..... 1

5. Did Respondent demonstrate that its case is ripe?..... 1

 A. Did Respondent have actual, physical possession of Ryan's property before it brought its quiet title action?..... 1

 B. Is Actual/Physical Possession Required Before A Quiet Title Action Can Be Initiated?..... 1

6. Did Respondent demonstrate that the Master Acted within her discretion when she denied Ryan's Motion for a Continuance?..... 1

7. Did Respondent demonstrate that Appellant was given due process before his property was stolen from him?..... 1

8. Did Respondent demonstrate that the Master's denial of Ryan's Motion to Alter or Amend was correct?..... 2

MANDATORY JUDICIAL NOTICE.....2
ARGUMENT.....2

I. Was Appellant Required to Appear At the Final Hearing In Order To Preserve All The Errors He Raised And Argued In Appellant's Brief?.....2

II. Did Respondent Demonstrate that the Master had Subject Matter Jurisdiction to Enter Her Final Order?.....6

 A. Does The Master Get Her Jurisdiction From Rule 53(b) SCRC P Or From The Order Of Reference?.....6

 B. Did the order of reference "limit" the Master's jurisdiction or did the order of reference "specify" a "particular purpose" for the reference?.....7

III. Did Respondent Demonstrate That The Master Had "Jurisdiction Over Powell"?.....8

 A. Is Ryan's property "in this State"?.....8

 B. Does the Court acquire personal jurisdiction over all people who are served process, or does the Plaintiff actually have to make out a *prima facie* case showing personal jurisdiction before personal jurisdiction can be asserted over a non-resident served outside the boundaries of the State?.....9

IV. Did Respondent Demonstrate That It Has Standing To Clear A Tax Title Issued To A Non-Party?..... 10

V. Did Respondent Demonstrate That Its Case Is Ripe?.....	11
A. Did Respondent Have Actual, Physical Possession Of Ryan's Property Before It Brought Its Quiet Title Action?.....	11
B. Is Actual/Physical Possession Required Before A Quiet Title Action Can Be Initiated?.....	12
VI. Did Respondent Demonstrate That The Master Acted Within Her Discretion When She Denied Ryan's Motion For Continuance?.....	14
VII. Did Respondent Demonstrate That Appellant Was Given Due Process Before His Property Was Stolen From Him?.....	16
VIII. Did Respondent Demonstrate That The Master's Denial Of Ryan's Motion To Alter Or Amend Was A Correct Decision?.....	18
<u>CONCLUSION.....</u>	<u>19</u>

TABLE OF AUTHORITIES

Cases

Aldridge v. Rutledge, 238 SE 2d 165.....	17
Bonney v. Granger, 356 SE 2d 138.....	8
Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646.....	14
Burroughs Collins Co. v. Floyd, 98 S.E. 850.....	12
City of Rock Hill v. Thompson, 563 SE 2d 101.....	14
Conits v. Conits, 810 SE 2d 253.....	3
Deep Keel v. Atlantic Private Grp., 773 SE 2d 607.....	8
Dibble v. Bryant, 265 SE 2d 673.....	17
Donohue v. Ward, 378 SE 2d 261.....	17
Ellie, Inc. v. Miccichi, 594 SE 2d 485.....	5
Katzburg v. Katzburg, 764 SE 2d 3.....	7
King v. James, 694 SE 2d 35.....	17
Manji v. Blackwell, 473 S.E.2d 837.....	13
Mennonite Bd. of Missions v. Adams, 462 U.S. 791.....	17
Morris et al. v. Lambert et al., 62 SE 2d 841.....	13
Piper v. Pearson, 2 Gray 120,.....	14
Pollitzer v. Beinkempen, 76 S.C. 517, 57 S.E. 475, 476.....	14
R & G CONST., INC. v. LRTA, 540 SE 2d 113.....	5
Rives v. Balsa, 325 S.C. 287, 478 S.E.2d 878.....	3, 17
Rosenbaum v. SMS 32, 427 SE 2d 897.....	13
Smith Companies of Greenville, Inc. v. Hayes, 428 SE 2d 900.....	8
Smith v. Ocean Lakes Family Campground, 315 S.C. 379, 433 S.E.2d 909.....	7, 8
State v. Williams, 789 SE 2d 582.....	4
Taylor v. Jennings, 233 S.C. 600, 106 S.E.2d 391.....	17
Taylor v. Jennings, 233 S.C. 600, 106 SE 2d 391.....	14
Wachovia Bank Of South Carolina v. <i>Player</i> , 535 SE 2d 128.....	7
Wells Fargo Bank, NA v. Smith, 730 SE 2d 328.....	7

Codes

S.C. Code of Laws 12-61-10 to 60.....	11, 12, 13
---------------------------------------	------------

Rules

Rule 201(d) SCRE.....	2
Rule 220(2) SCACR.....	4
Rule 46 SCRCF.....	5
Rule 53 (c) SCRCF.....	6
Rule 53(b) SCRCF.....	3
Rule 53(e) SCRCF.....	8
Legal Dictionaries and Encyclopedias	
Black's Law Dictionary 6th ed.....	11
Constitutional Provisions	
Article V. Section 9 of the Constitution of the State of South Carolina.....	16

STATEMENT OF WHY THIS REPLY BRIEF IS EVEN BEING FILED

Respondent served and filed its initial brief and designation of matter after its filing deadline expired. That issue was raised and argued fully in Appellant's Motion to Strike Respondent's Initial Brief and Designation of Matter [ROA, Motion to Strike Initial Brief]. However, the clerk refuses to do her ministerial duty to enter an order to hold the timelines for perfecting this appeal in abeyance pending this Court's decision on the Motion to Strike as requested in the motion [ROA, May 18 Ltr to Clerk]. Accordingly, Appellant is being forced to serve and file this Reply Brief before one is even required and one will not be required unless this Court denies Appellant's Motion to Strike.

STATEMENT OF ISSUES FOR THIS REPLY BRIEF

1. Was Ryan required to appear at the final hearing in order to preserve all the errors he raised and argued in Appellant's Brief?
2. Did Respondent show that the Master had subject matter jurisdiction to enter her final order?
 - A. Does the Master get her jurisdiction from Rule 53(b) or from the order of reference?
 - B. Did the order of reference "limit" the Master's jurisdiction or did the order of reference "specify" a "particular purpose" for the reference?
3. Did Respondent demonstrate that the Master had "jurisdiction over Powell"?
4. Did Respondent demonstrate that it has standing to clear a tax title granted to a non-party?
5. Did Respondent demonstrate that its case is ripe?
 - A. Did Respondent have actual, physical possession of Ryan's property before it brought its quiet title action?
 - B. Is Actual/Physical Possession Required Before A Quiet Title Action Can Be Initiated?
6. Did Respondent demonstrate that the Master Acted within her discretion when she denied Ryan's Motion for a Continuance?
7. Did Respondent demonstrate that Appellant was given due process before his property was stolen from him?

8. Did Respondent demonstrate that the Master's denial of Ryan's Motion to Alter or Amend was correct?

MANDATORY JUDICIAL NOTICE

All judges on this Court are to take mandatory judicial notice under 201(d) SCRE of the following fact: Appellant has registered his deed on February 23, 2023 in the York County Register of Deeds office in book 20628, page 278 thereby putting his property under the jurisdiction of this State and giving him the right to use the courts of this State to protect and defend his property [ROA, Ryan's Recorded Deed]. This Court now has a duty and obligation to protect Ryan's property to the fullest extent of the law.

ARGUMENT

I. Was Appellant Required to Appear At the Final Hearing In Order To Preserve All The Errors He Raised And Argued In Appellant's Brief?

Respondent states in its brief that because Ryan didn't appear at the final hearing all of the errors, excepting the issue of the Master lacking subject matter jurisdiction, are not preserved. The following TWO sentences are Respondent's entire "argument" that is supposed to oppose and rebut all of Appellant's questions and issues that he raised and argued in Appellant's Brief.

" 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." [then Respondent cites 2 cases that show an issue has to first be raised and ruled upon to be preserved for review] "As such, the master's orders should be affirmed without argument pursuant to Rule 220, SCACR."

That "argument" a frivolous and conclusory "argument" at best as shown by the following:.

First, Ryan raised many of the errors in Judge Weaver's facially void final quiet title order in his Motion to Strike Plaintiff's Reply to Counterclaim [ROA, Motion to Strike Respondent's Reply to Counterclaim]. When Ryan filed that motion, the scheduling clerk of the circuit court scheduled that motion to be heard by a circuit court judge instead of by Judge Weaver

("Weaver"). Since at that time Ryan had just filed his Answer demanding a jury trial, Ryan thought that the case had been returned to the circuit court as Rule 53(b) SCRCP states will happen¹. Rule 53(b) SCRCP reads as though the matter being returned to the circuit court happens automatically since it does not say "upon motion" it says "upon the filing of a jury demand". Nonetheless, the circuit court judge, acting after the case had been referred, denied Ryan's Motion to Strike Plaintiffs Reply to Counterclaim in his January 27, 2021 order [ROA, McKinnon's denial order]. Because Ryan was denied an opportunity to attend the final hearing, and because Weaver misapplied all of Respondent's legally inapplicable affirmative defenses in her final order, Ryan requested Weaver rule on all those same issues in Ryan's Motion to Alter or Amend. When Judge Weaver denied Ryan's Motion to Alter or Amend, Ryan received a ruling on those issues that he had raised in his Motion to Strike Plaintiff's Reply to Counterclaim. The preservation rules just require the error be raised and ruled upon in the lower court. Ryan raised those issues in his Motion to Strike and Weaver ruled upon them in her order denying Ryan's Motion to Alter or Amend.

"See Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994) (an issue neither raised nor ruled upon below will not be considered on appeal); *Noisette v. Ismail*, 304 S.C. 56, 403 S.E.2d 122 (1991) (where a trial court does not explicitly rule on an argument raised, and appellant makes no Rule 59 motion to obtain a ruling, the appellate court may not address the issue); *Hoffman v. Powell*, 298 S.C. 338, 380 S.E.2d 821 (1989) (an appellate court will not consider issues raised for the first time on appeal).", *Rives v. Balsa*, 325 S.C. 287, 478 S.E.2d 878 (1996);

" *See Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) ("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner.").", *Conits v. Conits*, 810 SE 2d 253 (SC Supreme Court 2017).

¹ Rule 53(b) SCRCP states in pertinent part - "Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, **upon the filing of a jury demand**, the matter **shall be returned** to the circuit court."

"However, this court has found an issue preserved when a party raises for the first time in a motion for reconsideration the court failed to use the proper standard." State v. Williams, 789 SE 2d 582 (2016).

"Our supreme court has observed "it may be good practice for us to reach the merits of an issue when error preservation is doubtful. "[W]here the question of preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation"", *id.*

Accordingly, all of those particular errors raised and argued in Appellant's Brief have been preserved for review by this Court.

Second, Respondent, in its two sentence "argument", requested this Court not rule on Weaver's order "without argument" pursuant to Rule 220(2) SCACR. Rule 220(2) SCACR reads- "The Court of Appeals need not address a point which is manifestly without merit.". So how is this Court suppose to make the judicial determination that all of the questions, issues, errors presented in Appellant's Brief are "manifestly without merit" without argument? Respondent's mere suggestion demonstrates desperation. Further and most importantly, how is this Court supposed to determine if any of Ryan's issues and assignments of error are not preserved without searching through the entire Record on Appeal, one error/issue at a time, and determining whether each issue/error raised was properly preserved since Respondent failed to demonstrate a SINGLE issue/error was not preserved.

Third, many of the other errors that Ryan raised and argued in Appellant's Brief were issues/errors that were raised in Ryan's Several Motions to Dismissed that is on appeal and upon which Ryan received a ruling from Circuit Court Judge Daniel Hall who denied that motion. So all those errors/issues are preserved.

Fourth, many of the remaining errors/issues fall under the category of errors/issues that Ryan could not address until Weaver's Final Order was made and entered. According to Rule 46

SCRCP² it is not necessary to raise specific objections to the content of an order if the objection could not have been raised before the order is made.

Rule 46 SCRCP "EXCEPTIONS UNNECESSARY Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; **and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.**"

Weaver's Final Order was made almost a month after the final hearing and is 31 pages long [ROA, Final Order]. Ryan was denied any opportunity to object to Weaver's Final Order before it was made and entered.

Fifth, a few of the errors/issues that Ryan raised and argued do not have to be preserved, although they were, because they can be raised for the first time on appeal. Those few errors/issues are: 1) lack of subject matter jurisdiction of Weaver to enter her facially void final quiet title order; 2) lack of subject matter jurisdiction of any court in the State to judicially determine title to private property; 3) lack of "ripeness" of Respondent's claims; and 4) whether or not the courts of this State have territorial jurisdiction over private property which is needed in order to make an *in rem* order.

The fact that Respondent just made the conclusory statement that all of Ryan's errors raised and argued were not persevered instead of pointing out ANY **specific error** means that Respondent's "argument" is conclusory and therefore has been abandoned.

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

"An issue is deemed abandoned if the argument in the brief is only conclusory.", R & G CONST., INC. v. LRTA, 540 SE 2d 113 (2000).

Ryan raised every error/issue that he argued in Appellant's Briefs and received a ruling on every error/issue that he raised, therefore all errors have been properly preserved.

II. Did Respondent Demonstrate that the Master had Subject Matter Jurisdiction to Enter Her Final Order?

Respondent failed to demonstrate that Weaver had subject matter jurisdiction to enter her final quiet title order as Ryan conclusively proved in Appellant's Brief. The Clerk of this Court, Jenny A. Kitchings, her deputy clerk, V. Claire Allen, and Respondent's appeal attorney Sarah P. Spruill ("The Conspirators") would not have colluded, conspired, and committed fraud on the court in order to attempt to dismiss Ryan's two appeals **IF** his two appeals were **without merit** [ROA, Motion to Strike Respondent's Initial Brief]. The fact that The Conspirators went to such great lengths demonstrates very clearly that they know that Ryan is correct about this issue as no one would jeopardize their careers, their liberty, and their personal assets without having a very strong motive for doing so! The Conspirators all know that Weaver acted without subject matter jurisdiction, Respondent's previous attorney who was fired from his lawfirm for making the defective motion for order of reference knows it, Weaver knows it, Ryan knows it, and every judge on this Court knows it. The issue is too obvious and too indisputable for anyone with even a scintilla of legal knowledge to not know it. This is why Respondent failed to "disprove" this issue, it cannot be disproved.

A. Does The Master Get Her Jurisdiction From Rule 53(b) SCRCPC Or From The Order Of Reference?

Respondent's opposition to the most important error in this appeal is frivolous, at best. Respondent's entire argument in opposition rests on the words and notes of Rule 53 (c) SCRCPC as cited in its brief -

“[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." [Respondent's Brief, pg 13, 1st para].

Ryan clearly proved in Appellant's Brief that it is the order of reference, and only the order of reference, that gave Weaver jurisdiction. See for example all the following precedent case cites, that Respondent ignored [all emphasis in the following cites are mine]:

"Thus, once the case is referred to the Master, he has subject matter jurisdiction to resolve the action **to the extent the order of reference provides**", Wells Fargo Bank, NA v. Smith, 730 SE 2d 328 (2012) [emphasis mine];

"The master has no power or authority **except that which is given to him by the order of reference.**", Smith v. Ocean Lakes Family Campground, 315 S.C. 379, 433 S.E.2d 909 (1993);

" After the master has exercised that authority, **the order of reference terminates**, and the power to dispose of the case returns to the circuit court.", Smith v. Ocean Lakes Family Campground, 315 S.C. 379, 433 S.E.2d 909 (1993);

"The master-in-equity is considered a division of the circuit court and **obtains jurisdiction through an order of reference** from the circuit court. See S.C.Code Ann. § 14-11-15 (Supp. 2013); Rule 53(b), SCRPC.", Katzburg v. Katzburg, 764 SE 2d 3 (2014);

"The proper construction of **the order of reference** is that it **gives the master jurisdiction over the case** and all matters arising from it until the master has performed all the duties assigned to him", Wachovia Bank Of South Carolina v. Player, 535 SE 2d 128 (SC Supreme Court 2000).

Ryan clearly proved that the Master gets subject matter jurisdiction by and through the order of reference and only the order of reference. Respondent's off-point, strawman argument is frivolous, at best.

B. Did the order of reference "limit" the Master's jurisdiction or did the order of reference "specify" a "particular purpose" for the reference?

Ryan proved that the order of reference can limit **OR** specify a particular purpose and when it does, that is the only authority the Master has over the case. As Ryan clearly demonstrated in

Appellant's Brief, the order of reference in this case gave Weaver **only** the authority to "receive evidence" [all emphasis in the following cites are mine]:

"Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, **unless the order of reference specifies or limits his powers.**", Smith Companies of Greenville, Inc. v. Hayes, 428 SE 2d 900 (1993) [emphasis mine];

"SCRCP ("[T]he order of reference to the master **may specify or** limit his powers and **may direct him ... to do or perform a particular act...**");", Smith v. Ocean Lakes Family Campground, 315 S.C. 379, 433 S.E.2d 909 (1993) [emphasis mine];

"Rule 53(e) SCRCP states that the master shall direct entry of judgment in the action without further order of court **if the order of reference so provides.**", Bonney v. Granger, 356 SE 2d 138 (1987) [emphasis mine];

This Court vacated a single finding in a case because the Master had to consider evidence in that case which he was not authorized to consider when he made that particular finding. The following case PROVES that the order of reference can be **very specific**, down to the level of making a specific finding -

"The order did not authorize the master to decide any issues regarding Rohlfling's and Caldwell's liability on the guaranties; it specifically restricted the master from doing so. **Because finding 18 exceeded the scope of the order of reference, we vacate the finding.**", Deep Keel v. Atlantic Private Grp., 773 SE 2d 607 (2015).

Respondent failed to rebut this argument and failed to show any of the precedent case citations that Ryan relied upon are distinguishable and therefore not applicable to this case or that they are no longer "good law". Respondent basically just ignored everything Ryan proved. Respondent failed to raise any real opposition to this issue because it cannot do so.

III. Did Respondent Demonstrate That The Master Had "Jurisdiction Over Powell"?

A. Is Ryan's property "in this State"?

Respondent frivolously argues in its brief that Ryan's property is "in this State" because his deed says that his property is in South Carolina. That "argument" would be correct if and only if South Carolina and "this State" are one and the same entity. But they are not Anytime "South

Carolina" is used in the codes/statutes it refers to a geographic area. Look at any map of the United States and you will never see the "State of South Carolina" shown on the map because it is a governmental entity, NOT a geographical area. Clearly since "this State is a governmental entity, then real, immovable property cannot be "in" it unless or until the government shares an ownership interest in said real, immovable property.

At the time Respondent brought its action in the lower court, until after Weaver made her facially void quiet title order, "this State" did not have any ownership interest in Ryan's private property so Ryan's private property was not "in this State". Ryan's property was not under the jurisdiction of "this State" which means no court of "this State" had the authority over Ryan's private property which is needed to enter any "*in rem*" order pertaining to the property. All of these issues are clearly demonstrated in Appellant's Brief, which Respondent did not rebut.

B. Does the Court acquire personal jurisdiction over all people who are served process, or does the Plaintiff actually have to make out a *prima facie* case showing personal jurisdiction before personal jurisdiction can be asserted over a non-resident served outside the boundaries of the State?

Respondent starts out its strawman argument, to supposedly oppose Ryan's argument that the lower court could not assert personal jurisdiction over him, by alleging that Ryan was served therefore the lower court had personal jurisdiction over him. The following is the gist of Respondent's strawman argument:

"In addition, the record shows that Powell was served (a fact he does not deny "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."

Ryan never denied he was served. Respondent is deliberately confusing service, with personal jurisdiction over a non-resident served outside the boundaries of the State. Ryan demonstrated in Appellant's Brief that in order for a court to assert personal jurisdiction over a non-resident

served outside the boundaries of the State, the plaintiff must make out a *prima facie* case showing, in its complaint or affidavit, the connection the non-resident has with the State so that the due process rights of the non-resident are not violated. Service alone proves nothing when the party was served outside the boundaries of the State. Of course Respondent could not make a meritorious argument that addresses the actual issue so it had to come up with a strawman argument³ in order to be able to prove its "fallacy" is correct.

Ryan proved in Appellant's Brief that plaintiff failed to show personal jurisdiction over Ryan so the court could not assert personal jurisdiction over Ryan and therefore could not affect Ryan's property. Weaver's final order is void for want of personal jurisdiction over Ryan so it must be vacated.

IV. Did Respondent Demonstrate That It Has Standing To Clear A Tax Title Issued To A Non-Party?

Although Section **II B.** of Respondent's Brief is titled to suggest Respondent is addressing Ryan's allegation that it lacked "standing" to bring its claims, the section argues that Respondent had possession of the property when it brought its defective claims and also some nonsense about an inapplicable statute of limitations⁴. Nevertheless, possession is an issue of ripeness not an issue of standing. Respondent intentionally conflates "ripeness" with "standing" in order to avoid having to actually prove that it has standing and also to confuse the two separate and distinct legal doctrines.

³ "A Strawman argument, or *strawman fallacy*, is a type of logical fallacy that occurs when someone deliberately distorts or misrepresents their opponent's position to make it easier to defeat.", <https://fallacyinlogic.com/strawman-argument>.

⁴ Respondent had five months in which to prepare its brief but its brief reads as though its attorney spent a day or two preparing it. The brief is unorganized and multiple issues are twisted and contorted into multiple illogical arguments. This makes it extremely difficult for Appellant to properly reply to their disorganized "arguments".

Ryan clearly proved that Respondent does not have standing to bring a clear tax title action under S.C. Code of Laws 12-61-10 to 60 because it does not hold a tax title. Since Respondent did not rebut Ryan's meritorious arguments, Ryan's arguments are unopposed so they must be correct; LB PARK does not have standing to clear a tax title issued to a non-party!

V. Did Respondent Demonstrate That Its Case Is Ripe?

A. Did Respondent Have Actual, Physical Possession Of Ryan's Property Before It Brought Its Quiet Title Action?

Respondent lamely argues in its brief that the non-existent entity named SB MUNI CUST % LBSC-11, LLC ("SB MUNI") was "put into possession" of Ryan's property when it recorded its facially void tax deed. And therefore Respondent was also "put into possession" when SB MUNI granted to Respondent its non-existent rights to Ryan's property. Here is the gist of Respondent's lame argument:

"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." ... "LB Park received the Property via quitclaim deed from the tax sale purchaser. 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)." [Respondent's Initial Brief, pg 13, last para to page 14, 1st para, sentence 1-2].

That "argument" is absurd, erroneous, and frivolous for the following reasons.

First, a "tax title purchaser" is not put into possession of a property when it records its tax deed. Possession is defined in Black's Law Dictionary 6th ed. on pg 1163 to mean - "*That condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons*" [emphasis mine]. At best, the tax title purchaser is put into "constructive possession" when it records its tax deed. Constructive possession is defined in Black's Law Dictionary 6th ed. on pg 1163 to mean - "*Possession not actual but assumed to*

exist, which one claims to hold by virtue of some title, without having actual occupancy..."
[emphasis mine].

Second, Respondent mis-cited the case Floyd v. Floyd. The actual case is "Burroughs Collins Co. v. Floyd, 98 S.E. 850 (S.C. 1919)" and it has NOTHING at all to do with possession or possession being a "right" that transfers from a grantor to a grantee on a deed. The actual case cited dealt with reforming a deed. That mis-cited case is very distinguishable from this case and therefore not applicable.

Third, even if Respondent's mis-cited case actually held what is cited in its brief, actual physical possession is not a "right" that transfers from grantor to grantee, although the right to seek and be granted actual possession does transfer. Accordingly, if someone is occupying a property after a grantee takes title to it, the grantee has the obligation to bring an eviction, or other similar, action to remove that person from the grantee's property before it can quiet its title or occupy the property.

Respondent never evicted Ryan or even attempted to evict Ryan. Accordingly, Respondent was never in "possession" of Ryan's property so its quiet title claims were not ripe when it initiated its action in the lower court.

B. Is Actual/Physical Possession Required Before A Quiet Title Action Can Be Initiated?

Ryan clearly demonstrated in Appellant's Brief that physical possession of ANY property (excepting vacant land) is required before ANY plaintiff can bring ANY type of quiet title claim. Respondent's opposition to that argument is lame, conclusory, and frivolous.

Respondent states in its brief that actual physical possession is not required in order to bring a quiet title action under S.C. Code of Laws 12-61-10 to 60. The following is the gist of Respondent's argument -

"The statute [12-661-10 to 60] 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." [Respondent's Initial Brief, pg 14, para, 1].

As usual, Respondent does not back-up that frivolous, conclusory claim with any actual legal authority, just a conclusory statement that it is so because Respondent says so.

However, in 100% of cases ever brought under S.C. Code of Laws 12-61-10 to 60 that made it to either of the appellate courts, the Plaintiff was in physical possession of the property. See for example the following:

"In December of 1990, respondent instituted this action **pursuant to S.C.Code Ann. § 12-61-10, et seq.** (1976), seeking a declaration of clear title. *See* S.C.Code Ann. § 12-61-20 (1976). Appellant answered by way of general denial and counterclaimed asserting a cause of action for trespass to try title, seeking damages for trespass **following its alleged unlawful ouster,** Rosenbaum v. SMS 32, 427 SE 2d 897 (SC Supreme Court 1993)/

Further, Ryan cited many cases in Appellant's Brief that proves that ANY plaintiff bringing ANY quiet title action, including a case brought under S.C. Code of Laws 12-61-10 to 60, must have physical possession. The following are just a couple sample cases that specifically deal with quieting **tax deeds**:

"It should further be stated that the action before us, which is primarily for the recovery of the possession of land, is incompatible with an equitable suit for the removal of a tax deed as a cloud upon the title, because, generally speaking, **in order to maintain a suit to quiet title** the claimant must have legal title **and be in possession of the property at the time of the institution of the suit.** 44 Am. Jur. 32-33", Morris et al. v. Lambert et al., 62 SE 2d 841 (SC Supreme Court 1950);

"The delinquent tax collector delivered a tax deed to Manji on October 28, 1993, transferring complete title to the property to Manji. Blackwell, however, **refused to vacate the property. As a result, Manji brought this eviction action against Blackwell.**", Manji v. Blackwell, 473 S.E.2d 837 (1996);

"This case was a suit brought for the purpose of **setting aside a tax deed** as a "cloud on the title of the plaintiffs." From a judgment in favor of the plaintiffs an appeal was prosecuted to this Court. In reversing the lower Court and finding for the defendant, this Court held that a suit to remove a cloud from the title **was premature for the reason that the plaintiffs were not in possession** of the property in question", Taylor v.

Jennings, 233 S.C. 600, 106 SE 2d 391 (SC Supreme Ct 1958) discussing Pollitzer v. Beinkempen, 76 S.C. 517, 57 S.E. 475, 476 [emphasis mine].

Respondent made a lame, frivolous, conclusory "argument" and did not cite a single legal authority to back up his conclusions. Since there is no opposition, Ryan's position must be correct, Respondent was required to have physical possession, Respondent did not have physical possession, therefore Respondent's claims were not ripe and must be dismissed and both orders on appeal reversed,

VI. Did Respondent Demonstrate That The Master Acted Within Her Discretion When She Denied Ryan's Motion For Continuance?

Weaver had no subject matter jurisdiction, no personal jurisdiction over Ryan, and no *in rem* jurisdiction, therefore she had no discretion according to the following:

"Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction." Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872).

However, ruling on a motion is a ministerial act and there is no discretion when exercising a ministerial act.

"In at least one other instance, this Court has recognized that mandamus may lie to compel a judicial officer to perform a ministerial duty." ... "Similarly, 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) [emphasis mine].

So Weaver refusing to rule on Ryan's Motion for Continuance BEFORE the final hearing was a violation of her ministerial duties NOT an abuse of discretion. Ryan would have brought an original petition in the Supreme Court of South Carolina to compel Weaver to rule on his Motion for Continuance had the available time allowed for such.

Assuming for the sake of argument that a decision to not timely hear a motion is a judicial act, and not a ministerial act, Weaver had 11 days from the time Ryan requested a continuance

until the time the final hearing was set. Eleven days was plenty of time to hear and decide a simple request to set a different date for the final hearing. But Weaver intentionally and knowingly refused to hear Ryan's Motion for Continuance.

The actual reason that Weaver refused to hear Ryan's motion is because she is one of The Conspirators discussed above in question II, page 6. The conspiracy started after Ryan wrote a letter to Chief Justice Beatty requesting that he execute his oversight duties over the courts of the State [ROA, Letter withdrawing Ryan's two motions]. In that letter, Ryan showed that Weaver was refusing to move the case forward, hear his motion to amend his answer, or return the case to the circuit court because she knew she did not have subject matter jurisdiction to do anything on the case but "*receive evidence*". However, three (3) days after the Chief Justice received Ryan's letter, Weaver's manager emailed the parties setting a final hearing date. Neither party had requested a final hearing and in fact since Ryan's Motion for Weaver to Amend Answer was awaiting a hearing, the case was no where near ready for a final hearing [ROA, Letter withdrawing Ryan's two motions].

Nonetheless, Weaver's refusal to hear and decided any of Ryan's three motions that were awaiting a hearing from her [ROA, Letter withdrawing Ryan's two motions] was intentional and was done because The Conspirators could not achieve their goal of stealing Ryan's property if Ryan was not dispossessed shortly after his inevitable appeal was initiated. If any other order was entered, Ryan could have appealed just that order without being dispossessed. For example, there would be no way to dispossess Ryan in a continuance order. The Conspiracy's goal required Ryan to be dispossessed

This is why Weaver made an illegal and unlawful dispossession order in her facially void quiet title order so that after The Conspirators dismissed Ryan's appeal, by defrauding Ryan into

making a procedural error during his appeal, Respondent could quickly sell Ryan's property to a "*bona fide purchaser for value without notice*". Since at that time Ryan's deed was not recorded, Ryan would have then lost his property "legally" and Respondent would have been made financially whole (along with an additional two hundred percent profit for its "inconvenience").

No Judge in any court of any State of the United States has discretion to specifically and intentionally refuse to hear a motion so that the judge could illegally and unlawfully dispossess a party from their property in order to allow the opposing party the opportunity to quickly steal and sell the property. If Weaver had discretion, and she did not, she clearly abused it.

VII. Did Respondent Demonstrate That Appellant Was Given Due Process Before His Property Was Stolen From Him?

Respondent spent a great deal of words and pages of its brief attempting to demonstrate that Ryan received due process because, as the delinquent tax collector testified, Ryan was sent multiple pieces of mail addressed to San Juan Holdings pertaining to the sale and/or redemption of San Juan Holdings' property. However, none of that testimony or related findings rebutted Ryan's position that to give him due process, York County was required to issue all its notices **in Ryan's name** showing that **he** owed a debt, that **his** property was going to be sold for **his** debt, and that **he** had a right to redeem **his** property.

Ryan's position, unlike Respondents, is actually supported by numerous precedent cases, most of which were decided by the South Carolina Supreme Court⁵ or the Supreme Court of the United States⁶, which have held the following:

⁵ Article V. Section 9 of the Constitution of the State of South Carolina reads- "The decisions of the Supreme Court shall bind the Court of Appeals as precedent."

⁶ The Constitution of the United States is the Supreme Law of the land and under the supremacy clause of that Constitution every State Court is bound to follow the decisions of the Supreme Court of the United States

"Prior to an action that will affect an interest in life, liberty, or **property protected by the Due Process Clause**, a State must provide: notice reasonably calculated, under all the circumstances, **to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.**", Menonite Bd. of Missions v. Adams, 462 U.S. 791 (1983);

"A tax execution is not issued against the property, it is issued against the defaulting tax payer. **Due process of law requires** some sort of notice **to a landowner** before he is deprived of his property. The taxing statutes and a legion of cases interpreting these statutes make it **clear that property shall be listed, assessed, levied upon, advertised, and sold in the name of the true owner.**", Rives v. Bulsa, 325 S.C. 287, 478 S.E.2d 878 (1996);

"The statute is explicit that lands shall be listed and assessed and levied on and sold in the name of the true owner. Does the failure to do so in this instance vitiate the tax sale? "It is a common assumption that a tax execution is issued against the property; such is not the case; it is issued against the defaulting taxpayer." ... "Section 2569. Civil Code, 1932, (Section 65-2701, 1952 Code of Laws), declares that: 'All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State **by a party against whom the same shall be charged.**' **"And the taxes may be made out of any property the taxpayer has.** It is thus seen that the execution must issue **against the true owner of the property.**", Taylor v. Jennings, 233 S.C. 600, 106 S.E.2d 391(1958);

"Although the Tax Collector testified that Franklin D. Aldridge had **notice by mail** of the levies and pending sale, this cannot circumvent the requirement that the levy, advertisement and sale **must be made in the name of the true owner.** Without strict compliance with the statutory requirements, a tax sale may not be upheld.", Aldridge v. Rutledge, 238 SE 2d 165 (SC Supreme Court 1977);

"It is a well-established principle that **due process of law requires** some sort of **notice to a landowner** before he is deprived of his property. It is an anomalous situation that the statutes of this State require actual notice to a mortgagee of land about to be sold for taxes, and make no such requirement for actual notice to the owner. It would appear that the constructive notice provided by the levy, advertisement and sale **in the owner's name** is deemed sufficient.", Dibble v. Bryant, 265 SE 2d 673 (SC Supreme Court 1980);

"We next turn to the execution, levy, advertisement, and sale of the property. We hold these requisite steps in the tax proceeding, as to each appellant except Donohue, were not done in the name of the owner. The taxing statutes and a legion of cases interpreting these statutes make it clear that property shall be listed, assessed, levied upon, advertised, and sold **in the name of the true owner.**", Donohue v. Ward, 378 SE 2d 261 (1989); and

"Failure to give the required notice [of a tax sale] is a fundamental defect in the tax sale proceedings **which renders the proceedings absolutely void.**", King v. James, 694 SE 2d 35 (2010).

Not only do the above precedent cases show that all steps leading up to a valid and enforceable tax sale and tax title have to be conducted in the name of the true owner of the property, including all notices issued, but if it is not done in the true owner's name then the tax sale is absolutely null, void, and legally unenforceable.

Respondent failed to prove that one single notice was ever issued in Ryan's name, i.e., in the name of the true owner. Therefore the tax sale should have been vacated but that was not done because of the fraud and conspiracy that has been perpetrated on Ryan in order to steal his property.

VIII. Did Respondent Demonstrate That The Master's Denial Of Ryan's Motion To Alter Or Amend Was A Correct Decision?

Respondent starts off its opposition to Ryan's post-trial motion with the following disgusting statement:

" 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 late⁷."

Of course the "evidence" was presented "without contest or objection" because Ryan was intentionally deprived of an opportunity to "contest or object" to anything. When the judges, the clerks, the opposing party and their attorneys, are all conspiring against you, it is fairly easy to steal someone's property. After all, The Conspirators basically "own" the "justice system".

As shown above, Ryan was specifically and intentionally deprived of an opportunity to participate in the final hearing. See section VI. on pages 12-14 of this brief. Not that Ryan's participation would have made any difference as it is clear The Conspirators' goal would have been achieved one way or the other. Nonetheless, Respondent failed to rebut any of the errors

⁷ "too little, too late" pretty much sums up Respondent's Brief. Too little in substance, and "too late" as it was served and filed after its deadline had expired.

that Ryan raised and argued in Appellant's Brief. Further, this error/issue does not really matter because as proven in Appellant's Brief, and also in this brief, Weaver did not have subject matter jurisdiction to enter her facially void quiet title order, Respondent's claims were not ripe, Respondent didn't have standing to bring its claims, and the lower Court could not assert personal jurisdiction over Ryan, which it must have to affect him or his property.

CONCLUSION

Respondent's Brief is "too little, too late". Too little in substance and legal authority, and too late as it was served and filed after its deadline had expired. Respondent missed its deadline on purpose. Most likely it did so because its attorney believed that Respondent had a higher chance of "winning" this appeal by defrauding Ryan into making a procedural error, than it did arguing the merits of this appeal. Unfortunately for Respondent, it failed on both counts.

For all the reasons stated herein and in Appellant's Brief this Court must order the following: vacate or reverse the two orders on appeal; dismiss Respondent's claims for being non-justicible; and remit the case back to the circuit court so that Ryan's counterclaims can be heard and decided.

May 22, 2023

/s Ryan Powell
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