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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA COURT OF APPEALS
AND FROM THE YORK COUNTY COURT OF COMMON PLEAS
Teasa K. Weaver, Master In Equity

Appeals Court Case # 2022-001650
Supreme Court Case # _____

LB PARK, LLC, Appellee-
Respondent,

v.

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

Of Whom Ryan Powell is the.. Appellant-Petitioner.

**PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS**

Comes now Petitioner Ryan Powell ("Ryan" hereinafter), who pursuant to Rule 242 SCACR moves this Court to grant this Petition for Certiorari to the Court of Appeals. The Court of Appeals dismissed Ryan's appeal by order dated August 8, 2023 ("Dismissal Order") [App. pgs. 1-2]. The dismissal of this appeal became final by the Court of Appeals' September 21, 2023 order ("Final Dismissal") [App. pgs. 3-4].

QUESTIONS PRESENTED FOR REVIEW

- A. Did the Court of Appeals have any legal obligation to hear Ryan's Motion to Reinstate the dismissal of his appeal?

- B. Did the employees of the Court of Appeals have the authority to work together to accomplish a lawful objective using unlawful means in order to avoid having to hear Ryan's appeal?
- C. Did the Clerk of the Court of Appeals have the authority to invent a nonsensical ground in order to dismiss Ryan's appeal believing that once dismissed any motion he made could be denied?
- D. Was it error for the Court of Appeals to construe Ryan's Motion to Reinstate as a petition to rehear when there had been no previous motion or petition heard that could be reheard?
- E. Are the orders dismissing Ryan's appeal void for violating Ryan's constitutionally protected rights to due process?
- F. Did the judges and clerk of the Court of Appeals violate their oath of office when they dismissed Ryan's appeal?

STATEMENT OF THE CASE

The Order on Appeal

This Petition is for an appeal of a final quiet title order that was entered by the York County Master in Equity, Teasa K. Weaver ("Weaver") which allegedly quieted Respondent's quitclaim deed and granted to Respondent possession of the property at issue in the case. Weaver intentionally and knowingly entered her final quiet title order without having subject matter jurisdiction to do so ("Void Order").

Any order entered without the court having subject matter jurisdiction is void, without any legal force or effect, and in the eyes of the law a nullity even before it is overturned or vacated. Accordingly, Weaver's Void Order did not have any legal force or effect on the property at issue in the case. However if this Petition is denied, the case will be remitted back to the lower court where the *lis pendens* will be removed from the records. Respondent will then immediately sell the property at issue to a "*bona fide purchaser for value without notice*". Ryan will forever lose his property on an unlawful, illegal, unenforceable, fraudulent, null and void order.

The Process Used to Finally Dismiss the Appeal

Rule 260(a) SCACR gives the clerk of court the authority to ministerially dismiss any appeal if the appellant fails to follow the requirements of the Rules. Since there was no motion to dismiss Ryan's appeal made, and since the Dismissal Order states that Ryan's appeal was dismissed for his failure to follow the requirements of Rule 210 SCACR, the appeal must have been ministerially dismissed pursuant to Rule 260(a) SCACR. However, the Dismissal Order is signed by Chief Judge H. Bruce Williams ("Williams") not by the clerk of court. Only the clerk is given the authority to ministerially dismiss an appeal under Rule 261(a) SCACR. Because of that fact, it is entirely unclear what authority, if any, was used to dismiss Ryan's appeal.

Ryan made a Motion to Reinstate his appeal under Rule 260(a) SCACR since no motion to dismiss had been made or heard. However, the Court of Appeals construed Ryan's Motion to Reinstate as a petition to rehear which is perplexing since there was no motion to dismiss heard by the court that could have been reheard. The Court of Appeals then denied Ryan's Motion to Reinstate that they construed as a petition to rehear.

The Grounds Used to Dismiss the Appeal

The Dismissal Order states that Ryan's appeal was dismissed because he failed in some unspecified manner to follow the requirements of Rule 210 SCACR and that he also failed in some unspecified manner to comply with the Court's July 28th letter. But Ryan correctly, according to the Rules, followed **all** the requirements of Rule 210 SCACR and to the extent he could even comply with a court order denying a motion, he complied with the Court's July 28th letter. As will be shown herein, the reason Ryan's appeal was actually dismissed has nothing at all to do with anything that he did or did not do. The actual reason for the dismissal of Ryan's appeal is that the Court of Appeals does not want Ryan to keep his property and if they heard his appeal they know they would have to reverse or vacate Weaver's Void Order not only because it is void but also because Respondent's case is non-justicible.

Multiple reasons this Court must grant this Petition

For all the reasons stated in this Petition, which includes the grounds specifically stated in Rule 242 (b)(1), (3) ,(4), and (5) SCACR, this Court must grant this Petition and hear this appeal.

MANDATORY JUDICIAL NOTICE

All judges on this Court are to take mandatory judicial notice under 201(d) SCRE of the following adjudicative fact: Ryan recorded his deed on February 22, 2023 [App. pgs. 5-8]. The adjudicative fact that Ryan's deed has been recorded is not subject to reasonable dispute and is capable of accurate and ready determination by resort to the York County Register of Deeds records whose accuracy cannot reasonably be questioned.

ARGUMENT

A. Did the Court of Appeals have any legal obligation to hear Ryan's Motion to Reinstate the dismissal of his appeal?

Soon after filing his Notice of Appeal for this case, Ryan discovered why Weaver was willing to make her clearly void final quiet title order that she knew could not survive any review. Ryan received irrefutable evidence that shows Weaver was given assurance that there was a plan in place ("The Plan") to dismiss Ryan's appeal so that her Void Order would stand unchallenged. This is the reason why her Void Order is thirty-one (31) pages long and contains copious amounts of erroneous findings and conclusions as it was not written to survive a review but was written to give the *bona fide purchaser for value*, which Respondent intends to defraud into purchasing Ryan's property as soon as this Petition is denied, the affirmative defense of not having received notice that Ryan is **still** the legal and lawful owner of the property at issue.

The Plan involved defrauding Ryan into making a procedural error so that his appeal could then be "legally" dismissed. However once the appeal was perfected and ready to be heard, The Plan was changed into conjuring up any ground that could be imagined and then denying whatever motion Ryan made to reinstate it. But if Ryan has a right to appeal Weaver's Void

Order, and he does, then does he not also have the right to have his Motion to Reinstate his clearly erroneously dismissed appeal heard? THAT is the question that needs to be answered and it will be answered in the positive in this argument section.

So how could a defendant have a right to an appeal but NOT also have a right to have any of their motions heard? Rule 201(b) SCACR gives **any party** aggrieved the right to appeal a final judgment. However as Ryan finally found out, because he had not recorded his deed he did not have any claim, right, title, or interest in the "real estate" that is the subject matter of this case. Therefore when Weaver made her void order, and also when Ryan initiated his appeal, he was in this case as a trespasser and as such his claims (motions) could not be heard by the courts.

This conclusion be proven by the description found in the caption of this case which shows that only persons "*having or claiming to have any right, title, or interest in or to, or lien upon, the **real estate** described as*" can be made parties to the case. Since Ryan did not record his deed until February 22, 2023, his property was not owned by his estate so it was not legally considered "real estate", i.e., real property owned by an estate according to the following definition -

"Estate. The degree, quantity, nature, and extent of interest which a person has in real and personal property", Black's Law Dictionary, 6th ed., pg 490.

It therefore appears that Ryan should have never been named and joined to this case as he did not have any claim, right, interest, or title to the "real estate" that is the subject matter of the case. So how did Ryan even get named and joined as a defendant?

Respondent first brought its claims in January 2019 ("First Case"). Ryan found out about that case and attempted to intervene. The circuit court judge who heard Ryan's motion to intervene denied it but also did not state the reason(s) for his denial. Ryan appealed the order denying him intervention (appellate case #2019-00979). That appeal has been held in abeyance

for the past four (4) years and will not be heard because it was intentionally made moot by the Court of Appeals.

Respondent immediately moved to dismiss that appeal and the Court of Appeals **denied** their motion [App. pgs. 9-10]. When that appeal was heard the Court of Appeals would have affirmed the lower court's order **correctly** denying Ryan intervention but it would have also dismissed Respondent's First Case because it is non-justicible as Respondent was not in possession of the property at issue so its claims were not ripe. Justicibility must be present in all cases before the merits of any appeal can be reached and it is an essential element that every Court must decide even if no party raises it as an issue. That appeal would have put a **final end** to Respondent's attempts to **steal** Ryan's property.

Respondent knew it was going to lose that appeal so it moved to remand the appeal ("Motion to Remand"). On the first page of that motion [App. pg. 11] Respondent states it wanted a remand so that it could dismiss the case upon which the appeal was taken and then refile the same [non-justicible] case again wherein it would name Ryan as a defendant. Both the Respondent's attorney and the Court of Appeals knew that the Ryan could not be made a party since he had no claims, rights, interest, or title to the "real estate" at issue in this case.

Notwithstanding, in October of 2019 Williams signed the order granting Respondent's Motion to Remand ("Remand Order") [App. pgs. 12-13] knowing full well that the Court did not have the jurisdiction to grant the relief Respondent had requested -

"To constitute [jurisdiction] there are three essentials: First, the court must have cognizance of the class of cases to which the one to be adjudicated belongs; second, the proper parties must be present; and third, the point decided upon must be in substance and effect within the issue." Reynolds v Stockton, 140 U.S. 254, 268.

The second and third essential elements that constitute jurisdiction were missing for Williams to have jurisdiction to grant that relief [App. pg. 11]. Williams hid the fact that he acted without

jurisdiction by omitting language from his Remand Order that would have disclosed the reason he was granting a remand, i.e., to allow Respondent to name and join Ryan as a party [App. pg. 11; App. pg. 12-13].

There can be no doubt that Williams knew that by giving Respondent the **ability** to prevent that meritorious appeal from being heard and allowing Respondent to bring a new case (i.e., this case) naming Ryan as a defendant, he would end up losing his property. Once this case was filed and Ryan served, he became a trespasser on the case where the courts could not concern themselves with hearing any of his claims (motions) because his private property was not the subject matter of this case! Respondent's First Case and its appeal is being mentioned in this Petition **only** to show that the dismissal of this case and this appeal was not done in error or by accident but is part of The Plan to take Ryan's property by any means necessary.

However, on February 22, 2023 upon the recording of Ryan's deed his property legally became "real estate" and he became a proper party because he now has a claim, interest, and title to the property that is at issue in the case, so he is no longer a trespasser on the case. See the second page of Respondent's Complaint [App. pg 14]. "**The Property**" section reads -

"Derivation: This being property conveyed to San Juan Holdings, Brett Osborne, the trustee, by Deed from Paramount Properties, Mark Muccl, the trustee, dated June 1, 2000 (**probate says** June 15, 2000), ...". [bolding and underlying mine].

How and why would probate have anything to "say" pertaining to the derivation of the property at issue? Because recorded deeds are passed over to the Probate Court after being recorded where the real property gets added to the estate of the owner(s) listed on the deed. The property then becomes owned by the estate which is a government created corporate artificial person.

By recording his deed Ryan's property is now owned by his estate (i.e., a corporate artificial person), has been subjected to the jurisdiction of the State (i.e., the State now has an ownership

interest in it), there is now a commercial nexus between Ryan's claims and Respondent's claims, and it is now within the taxing power of the State -

“Generally speaking, every person **who subjects himself or his property** to the jurisdiction of the state comes within its taxing power”, Corpus Juris Secundum, §84 TAXATION, §59 Persons Liable (a).

The situs of Ryan's property also changed when he recorded his deed -

"Situs - Situation; location; e.g. location or place of crime or business. Site; position; the place where a thing is considered, for example, with reference to jurisdiction over it, or the right or power to tax it.", Black's Law Dictionary, 6th ed., page 1387.

Ryan's property can now be taxed **if** this Petition is granted so his appeal can be heard -

"Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located”, S.C. Code of Laws § 12-37-610.

After Ryan recorded his deed the courts of this State undisputedly could thereafter hear any of Ryan's claims (motions) pertaining to the "real estate" owned by Ryan's estate which is the subject matter of this case.

Further, as shown on the top of the first page of Ryan's recorded deed [App. pg. 5], Ryan paid \$850.00 in stamp taxes/recording taxes in order to record his deed. So Ryan has already provided sufficient financial support to the government which gives the government, including the courts, the obligation to protect his property. See Geoffrey, Inc. v. SC Tax Com'n, 437 SE 2d 13 (SC Supreme Court 1993) which cites Virginia v. Imperial Coal Sales Co., Inc., 293 U.S. 15, 20, 55 S.Ct. 12, 14, 79 L.Ed. 171, 175 (1934):

"It is not the character of the property that makes it subject to such a tax, but the fact that the property has a situs within the state and that the owner should give appropriate support **to the government that protects it**. That duty is not less when the property is intangible than when it is tangible. Nor are we able to perceive any sound reason for holding that the owner must have real estate or tangible property within the state in order to subject its intangible property within the state to taxation.", .

If this appeal is heard, Ryan's estate will become the owner of record and will become liable for on-going financial support to the State via annual *ad valorem* property taxes.

Ryan believes, and the evidence suggests, that after Ryan recorded his deed there was **no** *bona fide* legal basis for the Court of Appeals to not be able to hear and consider any of his motions including his Motion to Reinstate his appeal. The Court of Appeals erred by using unlawful and criminal means in order to manipulate Ryan's appeal so that it could be unlawfully dismissed. If this Petition is denied this Court will be condoning the use of actual fraud, mail fraud, false pretenses, and intentional harm being done to a litigant that were committed by multiple judges, two clerks of the Court of Appeals, and Respondent's attorney in order to unlawfully take Ryan's property that he still legally and lawfully owns.

B. Did the employees of the Court of Appeals have the authority to work together to accomplish a lawful objective using unlawful means in order to avoid having to hear Ryan's appeal?

The reason the Court of Appeals does not want to hear meritorious Ryan's appeal is that they **know** Weaver's Void Order is void, unlawful, null, and without any legal force and effect -

"A void judgment is one that, from its inception, is a complete nullity and is without legal effect", Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).

The Court of Appeals also **knows** that Respondent's case is non-justicible. If they had heard Ryan's appeal they knew they would have been obligated to vacate and/or reverse Weaver's Void Order for one or both of those reasons. But for whatever reason entirely unknown to Ryan, that Court did not want to do their jobs if it will help Ryan keep his property even though the law, Rules, codes and their oaths of office require them to do so.

As shown below Williams, the Clerk of the Court of Appeals Jenny A. Kitchings ("Kitchings"), and Respondent's appeal attorney Sarah P. Spruill ("Spruill") worked together

using fraud and false pretenses in order to manipulate Ryan's appeal so that they could pretend there were grounds to dismiss it. Upon dismissal, for any reason whatsoever even a concocted fraudulent one, they erroneously believed that any motion Ryan made to reinstate his appeal could be denied. But as Ryan proved above in argument **A**, after he recorded his deed he is now a proper party to this case and Ryan's property is now the same property that is at issue in this case, so his Motion to Reinstate should have been heard and granted.

Nonetheless, whether or not the courts of this State could hear Ryan's motions they do **NOT** have the authority to use fraud, false pretenses, and other crimes in order to prevent having to hear an appeal. Fraud vitiates everything it touches so the two dismissal orders that were produced through fraud are void according to U.S. vs. Throckmorton, 98 U.S. 61 -

"Fraud **vitiates** the most solemn contracts, documents, and even judgments, ab initio."

Vitiate is defined as being null and void according to Black's Law Dictionary, 6th ed. pg 1572 -

Vitiate. "To impair; to make void or voidable; to cause to fail of force or effect. To destroy or annul, either entirely or in part, the legal efficacy and binding force of an act or instrument;"

No one has the right to commit crimes for **any** reason whatsoever even if the reason is to achieve some "lawful" objective. This is especially true when two or more persons work together to achieve that "lawful" objective. See the following definition of conspiracy found in this State's criminal code that proves this to be true -

SC Code of Laws 16-17-410 "Conspiracy. The common law crime known as "conspiracy" is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object **or lawful object by unlawful means.**"

If the ends of the conspiracy to execute The Plan was "lawful", even after Ryan recorded his deed, the means by which it was accomplished involved fraud, mail fraud, taking property on false pretenses, taking property on a sham legal process, and multiple other felony crimes.

No one is above the law not even judges, clerks, or attorneys. In fact, those who hold positions of authority are required to be especially prudent in their dealings as they set the standard by which the rest of society is expected to conform according to the US Supreme Court-

"Decency, security, and liberty alike demand that government officials be subjected to the same rules of conduct that are commands to the citizen. In a Government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Crime is contagious. If government becomes a lawbreaker, it breeds contempt for the law...it invites every man to become a law unto himself...and against that pernicious doctrine, this court should resolutely set its face." Olmstead v U.S., 277 US 348, 485; 48 S. Ct. 564, 575; 72 LEd 944.

The oath of office that every bar member swears or affirms before taking their office proves the expectation of this high standard of dealings with **all** litigants that come before them (see argument section **F.** below).

C. Did the Clerk of the Court of Appeals have the authority to invent a nonsensical ground in order to dismiss Ryan's appeal believing that once dismissed any motion he made could be denied?

Rule 210(a) SCACR clearly states that an appellant is required to serve their Record on Appeal within 30 days of the date the last brief is due to be filed -

Rule 210(a) SCACR - "**Within thirty (30) days after service of the last brief**, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief."

On April 24, 2023 Respondent's initial brief ("Brief") and designation of matter ("DOM") were due to be filed and served as shown on the last extension order granted to it [App. pgs 15-16]. After April 24th when Respondent missed its filing and service deadline, Ryan correctly, according to the Rules, timely filed and served his Record on Appeal ("ROA") on April 28, 2023 [App. pg. 17]. Since Respondent missed its April 24th filing/service deadline for its Brief and DOM, Rule 210(a) SCACR placed no obligation whatsoever on Ryan to serve a copy of his ROA on the Respondent, so he did not do so. See Ryan's Certificate of Service for his ROA [App. pg. 17] and the following -

Rule 210(a) SCACR - "Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal **on each party who has served a brief**".

On May 2, 2023 Ryan correctly, according to the Rules, timely file and served his Final Brief [App. pg. 18]. Upon the filing and service of his Final Brief, the appeal became perfected, the clerk should have marked it with the status of "ready to be heard", and the appeal documents should have been submitted to the Court for its hearing and decision.

However on May 4th, two days after the appeal had been perfected, Kitchings mailed a letter to the parties [App. pg. 19] wherein she **admitted** that Respondent had missed its initial brief filing/service deadline but then gave the Respondent 10 more days in which to file its initial brief. Kitchings' May 4th letter **proves** that Ryan complied with Rule 210 SCACR because on May 4th had Ryan not timely and properly filed/served his ROA, Kitchings would have dismissed the appeal. Kitchings had no legal authority to *sua sponte* change the requirements of the Rules especially without the agreement of the parties and without the Courts' approval according to Rule 261(c) SCACR¹.

If Respondent wanted to file its Brief and DOM after its deadline had expired, it was required to make a motion to the Court for an order granting it leave to do so. But Respondent never made any such motion because Spruill and Kitchings were pretending (i.e., committing fraud) that the appeal was being held in abeyance with the hope that Ryan would miss his deadline for filing/service his Final Brief. But that did not happen. On May 12th when Respondent finally filed/served its Brief and DOM [App. pg. 20-22], those two documents were late and could not be made part of the record that should have already been submitted to the Court of Appeals for its hearing and decision.

¹ Rule 261(c) SCACR "Any agreement to modify a requirement of these Appellate Court Rules must be approved by the appellate court."

Moreover, if Rule 210 SCACR did create any obligation on Ryan to re-serve his ROA, Kitchings would have immediately communicated that obligation to Ryan on or shortly after May 12, 2023 when Respondent filed its Brief and DOM [App. pg. 20-22]. Or, more likely than not, Kitchings would have just dismissed the appeal for Ryan's supposed failure to comply with Rule 210 SCACR. But, Kitchings did not dismiss the appeal or make any demand that Ryan re-serve his April 28th ROA until **almost three months later and three month after the appeal had been perfected** in her July 25th letter [App. pg. 23]. Why did Kitchings pass up such a golden opportunity to dismiss the appeal that she has been so zealously working to dismiss since the day Ryan's Notice of Appeal was filed? Obviously because Rule 210 SCACR does not create any obligation on any appellant to re-serve their already correctly served Record on Appeal.

Ryan's appeal was dismissed not only on the basis that he allegedly failed to follow the requirements of Rule 210 SCACR but also for his alleged failure to comply with the Court's July 25th letter. That letter threatened to dismiss Ryan's appeal if he did re-serve his ROA that had been correctly and timely filed and served three months earlier on April 28th [App. pg. 17]. Ryan responded to Kitchings' July 25th letter stating, among other things, that he believed she was committing the federal felony crime of RICO/mail fraud.

Ryan then refused to re-serve his ROA because if he had done so he would have had to violate both Rule 210(a) & (c) SCACR. Ryan would have had to violate Rule 210(a) SCACR if he re-served his already timely served ROA because it would have been seventy-four (74) days after Respondent filed its Brief and DOM on May 12, 2023 [App. pgs. 20-22] -

Rule 210(a) SCACR - "**Within thirty (30) days after service of the last brief**, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief."

Ryan would have also had to violate Rule 210(c) SCACR if he re-served his already timely served ROA without adding the matter that Respondent designated it wanted included in its DOM [App. pgs. 20-22] that it filed after its deadline expired without leave of court to do so -

Rule 210(c) SCACR - "The Record on Appeal **shall include all matter designated to be included by any party** under Rule 209 and shall comply with the requirements of Rule 267."

Kitchings letter did not demand that Ryan include Respondent's designated matter. Kitchings was most likely reserving that issue for a later date so that she could use it to demand that Ryan go back and recreate his ROA to include that matter.

Ryan knew if he violated any Rule his appeal would be dismissed. In other words, Kitchings placed Ryan into a contrived situation where if he didn't succumb to her false and fraudulent demands his appeal would be dismissed and if he did succumb to her false and fraudulent demands he would then have violated the Rules and his appeal would have been dismissed!

Fourteen (14) days after Kitchings' mailed her July 25th letter [App. pg. 23] in which she gave Ryan ten (10) days to violate Rule 210(a) & 210(c) SCACR or suffer having his appeal unlawfully dismissed, Kitchings admitted to having committed the felony crime of RICO/mail fraud by refusing to sign the order dismissing the appeal under Rule 260(a) SCACR. She chose instead to pass that duty off to Williams.

Then once the Dismissal Order was entered, The Plan was to deny any motion Ryan made to reinstate his appeal. Before Ryan recorded his deed he **may** have not had a right to be granted any relief since he was an "trespasser" on the case but once Ryan recorded his deed he had a right to use the courts to defend his "real estate" that is the subject matter of this case.

If the courts of this State could not provide Ryan any relief, before or even after his deed was recorded, the conspiracy that has clearly been on-going for the past five (5) years used unlawful

and criminal means to achieve that "lawful" objective, if it was lawful. In other words, the means never justify the ends!

D. Was it error for the Court of Appeals to construe Ryan's Motion to Reinstate as a petition to rehear when there had been no previous motion or petition heard that could be reheard?

A petition to rehear by definition means a second hearing (i.e., rehearing) of some earlier hearing of a motion or petition. However in this case there could not have been any "rehearing" since there was never a motion or petition heard that could have been reheard. But in order to conceal the fact that it was Kitchings' and Spruill's RICO/mail fraud that got Ryan's appeal dismissed, Williams agreed to sign the order to dismiss Ryan's appeal which was then mailed to Ryan through the US mail system. The Dismissal Order is more evidence of the RICO/mail fraud having been committed to conceal the conspirator's goal and that goal was to dismiss Ryan's appeal no matter how many torts and crimes had to be committed in order to achieve it.

E. Are the orders dismissing Ryan's appeal void for violating Ryan's constitutionally protected rights to due process?

The judges of all courts of this State have a duty to uphold the federal and State Constitutional rights of all parties in all cases. In other words, as shown below in the argument section **F.**, the oath that all judges swear (or affirm) before they enter into their offices does not have any exceptions in it that allows them to ignore their oath for any particular class of litigants in any case.

No Court has the authority to enter any order unless and until there is a motion made by a party. Courts are dead artificial entities that can only act when a living person "moves" it [awakens it from the dead] to hear and decide some issue. Yet we are expected to believe that Williams somehow knew there was an issue that needed to be resolved, knew what the issues were, knew what the grounds were, and then wrote and entered his Dismissal Order without any

living person moving him to do so? Obviously Kitchings requested that Williams sign her Dismissal Order because Ryan had just made a accusation that she was committing RICO/mail fraud. Kitchings proved Ryan's accusation was meritorious by her refusing to take any further fraudulent actions on the fraudulent and illegal taking of Ryan's property.

According to the Rules of appellate procedure, for any appellate court to dismiss any appeal the due process rights of the appellant **mandate** that there first be a motion made and notice of it given so that the party affected has an opportunity to be heard before his appeal is dismissed. Those failures to act according to the Rules violated Ryan's due process rights and made the Dismissal Order and the Final Dismissal order void -

"It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights.", Blanton v. Stathos, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (2002).

"The definition of "void" under the rule only encompasses judgments from courts which failed to provide proper due process", Linda Mc Co., Inc. v. Shore, 703 SE 2d 499 (SC Supreme Court 2010).

If Ryan violated Rule 210 SCACR then it is the clerk who is required to enter the order of dismissal. Rule 260(a) SCACR clearly specifies this authority -

"Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, **the clerk shall issue an order of dismissal**".

The clerk's authority is ministerial because the Rules of this Court are precise, certain, and are based entirely on the fixed facts that are found in the documents filed, or not filed, into the record made for each and every appeal. The clear language of Rule 260(a) SCACR proves the clerk's authority to dismiss an appeal when the appellant fails to comply with the Rules is ministerial since no motion is required for her to enter a dismissal order.

Assuming arguendo that the Court of Appeals has the authority to usurp the ministerial authority given **only** to the clerk by Rule 260(a) SCACR, Williams still would have had to comply with the requirements of Rule 260(a) SCACR. Rule 260(a) SCACR allows a clerk to dismiss an appeal, but only on the **single** ground that the appellant has failed to comply with the Rules -

"Whenever it appears that an appellant or a petitioner **has failed to comply with the requirements of these Rules**, the clerk shall issue an order of dismissal".

However, the Dismissal Order states that it is grounded on **both** Ryan's unspecified failure to comply with Rule 210 SCACR **and** on Ryan's unspecified failure to comply with Kitchings' July 25th letter. That means the Dismissal Order could not have been a ministerially decided order made pursuant to Rule 260(a) as such a dismissal can **only** be grounded on an appellant's failure to comply with the Rules. So, for the dismissal of the appeal to be grounded in any way on Kitchings' July 25th letter, a finding/conclusion would have needed to be judicially made which determined that letter placed some obligation on Ryan to do something upon which he failed to comply. Accordingly, the Dismissal Order was made by Williams without the **required** due process requirements of a motion, notice, and an opportunity to be heard making it **void**.

If Ryan actually failed to comply with Rule 210 SCACR, what specific section, paragraph, sentence, or language in that Rule did Ryan fail to comply with? Kitchings' July 25th letter does not state [App. pg. 23]. If the Court's June 28th order created some requirement on Ryan to re-serve his already timely filed and served ROA, then what language in that court order states that requirement [App. pgs. 24-25]? That order is silent on any obligation being placed on Ryan to do anything. Due process of law mandates that every party to an appeal be given notice by and through the orders of the Court and the Rules so that they can comply and have their appeals heard.

If any Rule is so vague as to not be understood by even a pro se appellant, then it is void for vagueness -

"The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." Consequently, a statute may be unconstitutionally vague where "(1) it does not provide fair notice of the conduct proscribed," or "(2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed[.]", DEPT. OF SOCIAL SERVICES v. Michelle G., 757 SE 2d 388 (SC Supreme Court 2014).

While the concept of a Rule being void for vagueness, instead of a statute being void for vagueness, may be a novel issue in this State how can a rule also not be void for vagueness when both rules and statutes proscribe conduct that must be complied with and they both use the same rules for construction and interpretation -

"In interpreting the language of a court rule, we apply the same rules of construction used in interpreting statutes.", Green v. Lewis Truck Lines, Inc., 443 SE 2d 906 (SC Supreme Court 1994).

Ryan was never given any notice from the language of Rule 210 SCACR that he had any obligation to re-serve his previously filed and served ROA after Respondent failed to make its filing/service deadline. That makes Rule 210 SCACR void for vagueness, if there is such a requirement.

Finally no judge or clerk has yet to give Ryan a fair or unbiased hearing or fair treatment because of the conspiracy against him that has been ongoing since at least October of 2019 when Williams made his void Remand Order in Respondent's First Case that guaranteed Ryan would lose his property and guaranteed Respondent would not lose its \$171,000.00 its managers paid for the void tax title. As was shown above, The Plan to dismiss this appeal has been in place even before this appeal was filed. The Plan required the commission of multiple felony criminal and unlawful acts.

As just one of numerous examples of the evil outcome produced by The Plan, Ryan's motion to reduce the outrageous amount of an appeal bond that Weaver set in her Void Order, was either not submitted to the Court of Appeals for its decision or, more likely than not, was submitted to it and that Court refused to rule on the motion. In Kitchings' deputy clerk Allen's March 21 letter to the parties [App. pg. 26] she declares the judgment of the Court pertaining to Ryan's motion to reduce the appeal bond amount instead of the Court declaring its own judgment in an order as is required of **every** decision made by **every** court. That letter alone proves that the Court of Appeals knew they had an obligation to hear Ryan's claims (motions) after he recorded his deed but they did not want to have to provide any relief or remedy to Ryan. Further, that Court's criminal and unlawful actions are evidence of their bias and prejudice against Ryan -

"It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution. *In re Murchison*, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955).", Mallett v. Mallett, 473 SE 2d 804 (1996).

When all the judges in the State are all conspiring against one party and are using fraud and other felony crimes to steal that party's property, that party can never get a "fair or impartial" hearing.

F. Did the judges and clerk of the Court of Appeals violate their oaths of office by dismissing Ryan's appeal?

The oath that every judge is required to take before he/she enters into their office is documented in Rule 502.1 SCACR. Before September 22, 2004, the oath that all members of the bar were required to take prior to entering into their office was found in the State of South Carolina Constitution, Article III, Section 26. That oath ends with the sentence "**So help me God.**".

Why did that constitutionally required oath of office need to be changed? And from whence did this Court get the authority to change that constitutional requirement? According to Article

XVI, Section 1 of that constitution, an amendment can only be made after the qualified electors of the State vote in favor of an amendment that has been proposed by the Senate or House of Representatives. No where in the constitution is this Court given the authority to amend any constitutional language or requirement on its own initiative.

By putting the constitutionally required clause "So help me God" within brackets [] in the new oath found in Rule 502.1 SCACR (reproduced below), that clause is no longer part of the required oath. In other words, no oath taker is required to request that his/her creator help them uphold their pledge to act honestly, impartially, justly, with integrity, fairly, or respectfully.

So without the help of God, how is **any** oath taker going to be able to uphold any moral qualities in this sinful, godless, fallen world? They won't and that appears to be the goal of the change in oaths required of all members of the bar. Unfortunately for the people affected by the decisions made by the judges sitting on the courts of this State, only a few judges are God fearing men and woman. However, there appears to be three justices sitting on this Court who have confessed in their online bios to at least having a belief in God.

The new oath documented in Rule 502.1 SCACR that became effective on September 22, 2004, is the following [bolding and underlying mine] -

"I pledge to uphold the **integrity** and independence of the judiciary;
I pledge, in the discharge of my duties, to treat all persons who enter the courtroom with civility, **fairness**, and respect;
I pledge to listen courteously, sit **impartially**, act promptly, and rule after careful and considerate deliberation;
I pledge to seek **justice, and justice alone**.
[So help me God.]"

Does "**integrity**" mean the commission of actual fraud so that the oath taker can intentionally steal Ryan's valuable property without any legal or lawful basis? Does "**fairness**" mean creating a nonsensical ground to dismiss an appeal of an order that all oath

takers know is void, unlawful, unenforceable and was made in a case that was non-justicible? Does "**impartially**" mean to gift the Respondent with a financial gain of \$621,000.00² at the expense of Ryan who lost his very valuable property for no legal or lawful reason whatsoever? Does "**justice and justice alone**" mean to take the above actions to steal Ryan's very valuable property and then unjustly enrich a governmental subdivision of their employer, i.e., York County, with the \$161,000.00 overages that should have, at the very least, been given to Ryan? Not a single one of the oath taker's pledges has been fulfilled by any member of the bar in this matter including, but not limited to, Weaver, Williams, Kitchings, Allen, and Spruill.

CONSIDERATIONS SUPPORTING A WRIT OF CERTIORARI

The following four (4) considerations requires this Court issue a Writ of Certiorari:

- I. There are multiple novel questions of law in this case;**
- II. The decision of the Court of Appeals is in conflict with every prior decision of this Court;**
- III. Substantial Constitutional violations have taken place in this case;**
- IV. The Court of Appeals' decision to dismiss this appeal is in conflict with multiple decisions of the Supreme Court of the United States;**

The four (4) above considerations will be further explained in the sections below.

I. There are multiple novel questions of law in this case

There are no precedent cases in any of the South Carolina Reporters which address any of the legal issues raised in this Petition, making all of them novel. Most importantly, there is no case law in this State nor in the US Supreme Court that addresses what happens when a party has

² The order remanding the appeal of Respondent's First Case [App. pgs. 12-13] saved Respondent from losing the \$161,000.00 that its managers paid to purchase the tax title and guaranteed that Respondent would take Ryan's property worth at the time of taking was worth at least \$450,000.00. Or in other words, Williams gifted Respondent with a financial gain of \$621,000.00 at Ryan's expense as he would not have lost his property had that appeal of Respondent's First Case been heard as it should have been.

been intentionally denied access to the Courts because they had not recorded their deed and then that party records their deed. Do the courts then have any duty or obligation to hear that party's motions? A novel question that only this Court can answer especially since judges on the Court of Appeals have been implicated in criminal activity.

II. The decision of the Court of Appeals is in conflict with every prior decision of this Court

Weaver's order on appeal, the Dismissal Order, and the Final Dismissal order are all in conflict with every prior decision of the Supreme Court of South Carolina and they are also in conflict with every prior decision of the South Carolina Court of Appeals, including every case cited in this Petition and also any case cited in any document found in the Appendix.

III. Substantial Constitutional violations have taken place in this case

The following provisions of both the South Carolina Constitution, made mandatory by Article 1 Section 23 of the Constitution³, and the Constitution of the United States are binding on all courts of this State because every judge in this State has sworn an oath to uphold these constitutional mandates:

1. Constitution of the state of South Carolina Article 1 Section 3 - "nor shall **any person** be deprived of life, liberty, or **property** without due process of law"; and
Constitution of the United States, Amendment V - "**No person** shall ... be deprived of life, liberty, or **property**, without due process of law;"

As demonstrated above, this case has illegally and unlawfully stolen Ryan's property by denying him all his due process rights by the Court of Appeal's unlawful actions taken to dismiss this appeal.

2. Constitution of the state of South Carolina Article 1 Section 3 - "nor shall **any person** be denied the **equal** protection of the laws."

³ "The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory".

As demonstrated above, Ryan has been deprived of the equal protection of all laws recognized in this State. In all title dispute and eviction/dispossession actions, the owner in possession of his land is guaranteed the equal protections of the law which includes the right to make claims (motions) especially after he has recorded his deed. But in this case, Ryan has been unequally deprived of all those protections, as well as all other protections of the law.

3. Constitution of the state of South Carolina Article 1 Section 13 - "private property **shall not be taken** for private use without the consent of the owner."

The outcome of this case stole Ryan's property, dispossessed him and threw him, his family, and their personal belongings out onto the street using force and guns. In this State each owner of land must first submit their property to the jurisdiction of the State by recording their deed in order to give their consent to have their property taken. But Ryan did not give his consent to have his property taken before it was taken by Weaver's Void Order which multiple employees of the Court of Appeals had to commit fraud in order to keep from being vacated or reversed.

4. Constitution of the state of South Carolina Article V, Section 9 - "The decisions of the Supreme Court shall **bind** the Court of Appeals as precedents."

Every precedent case decision ever made by this Court has been violated by the two orders dismissing this appeal.

5. Constitution of the United States, Amendment VIII - "Excessive bail shall not be required, **nor excessive fines imposed**, nor cruel and unusual punishments inflicted."

In Weaver's Void Order she set a bond amount that Ryan would have to post if he wanted to not be illegally and unlawfully thrown off his property at \$180,000.00. That amount was supposedly determined by multiplying an unreasonable monthly rental rate of \$3000.00 by sixty months (i.e., FIVE YEARS). Since when does an appeal take five years to complete? Never! Weaver was clearly attempting to prevent Ryan from keeping possession of his property during his appeal. This amounts to an excessive fine. Then after Ryan recorded his deed the Court of

Appeals refused to hear Ryan's motion to reduce that excessive fine amount and refused to even enter an order denying his motion as was detailed above [App. pg. 26].

6. Constitution of the United States, Amendment IX - "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

All of Ryan's rights to his property have been denied and disparaged whether or not they have been enumerated in the Constitution or elsewhere.

7. Constitution of the United States, Amendment XIV, Section 1 - "nor shall any State deprive **any person** of life, liberty, or **property**, without due process of law; nor deny **to any person** within its jurisdiction **the equal protection of the laws**."

As shown above Ryan was denied due process of law and the equal protection of the laws both before and after he recorded his deed.

All of the above Constitutional mandates require every judge who hears this matter to apply those provisions to every person in every case according to the following US Supreme Court precedent cases:

"The Constitution is a written instrument. As such, its meaning does not alter. That which it meant when it was adopted, it means now." South Carolina v. United States, 199 U.S. 437, 448 (1905).

"The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary, as distinguished from technical meaning; where the intention is clear, there is no room for construction, and no excuse for interpolation or addition." Tennessee v. Whitworth, 117 U.S. 139; Lake County v. Rollins, 130 U.S. 662; Hodges v. United States, 203 U.S. 1; Edwards v. Cuba R. Co., 268 U.S. 628.

"It cannot be presumed that any clause in the constitution is intended to be without effect;"; Marbury v. Madison, 5 U.S. 137, 174 (1803).

"Constitutional provisions for the security of person and property should be liberally construed. It is the duty of the courts to be watchful of constitutional rights against any stealthy encroachments thereon.", Boyd v. U.S., 116 U.S. 635.

"The right to property...is not ex gratia from the legislature, but ex debito from the Constitution...It is sometimes characterized judicially as a sacred right, the protection of which is one of **the most important objects of government**." 16 Am. Jur 2d, Sec 362.

IV. The Court of Appeals' decision to dismiss this appeal is in conflict with multiple decisions of the United States Supreme Court

The following U.S. Supreme Court precedent cases were violated by the Court of Appeals when they entered their two orders dismissing this appeal. All these cases were cited above but are repeated below for this Court's ease of reference.

Reynolds v Stockton, 140 U.S. 254, 268;
Virginia v. Imperial Coal Sales Co., Inc., 293 U.S. 15, 20, 55 S.Ct. 12, 14;
U.S. vs. Throckmorton, 98 U.S. 61;
Olmstead v U.S., 277 US 348, 485; 48 S. Ct. 564, 575; 72 L.Ed 944;
In re Murchison, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942;
South Carolina v. United States, 199 U.S. 437, 448 (1905);
Tennessee v. Whitworth, 117 U.S. 139;
Lake County v. Rollins, 130 U.S. 662;
Hodges v. United States, 203 U.S. 1;
Edwards v. Cuba R. Co., 268 U.S. 628;
Marbury v. Madison, 5 U.S. 137, 174; and
Boyd v. U.S., 116 U.S. 635.

CONCLUSION

Since Weaver acted in clear absence of all jurisdiction when she made her Void Order and since Ryan recorded his deed well before his appeal was dismissed, the Court of Appeals was required to hear his Motion to Reinstate his appeal that had been dismissed using fraud and false pretenses. That Court's use of fraud and false pretenses in order to not hear the appeal makes their two order dismissing Ryan's appeal null and void as fraud vitiates everything it touches. For these and all the foregoing reasons this Court must issue a writ of certiorari to the Court of Appeal so that it can hear this appeal.

October 17, 2023

/s Ryan Powell
Ryan Powell, Petitioner
287 East Hawfields
Pittsboro, NC 27312

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Oct 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA COURT OF APPEALS
AND FROM THE YORK COUNTY COURT OF COMMON PLEAS
Teasa K. Weaver, Master In Equity

Appeals Court Case # 2022-001650
Supreme Court Case # _____

LB PARK, LLC, Appellee-Respondent,

v.

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

Of Whom Ryan Powell is the..... Appellant-Petitioner.

Certificate of Service For Petition for Certiorari

I certify that I served Appellant's Petition for Certiorari to the Court of Appeals, its Appendix,
and a copy of this Certificate of Service on Respondent by and through their attorney of record
by First Class Mail with proper postage affixed. I certify that also I served Appellant's Petition
for Certiorari to the Court of Appeals and a copy of this Certificate of Service on the Clerk of the
Court of Appeals. Both services have been done on the date below shown and addressed as
follows:

Sarah P. Spruill
P.O. Box 2048 (29602)
Greenville, SC 29601

Clerk of Court of Appeals
ctappfilings@sccourts.org

October 17, 2023

/s Ryan Powell
Ryan Powell, Appellant
287 East Hawfields
Pittsboro, NC 27312