

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Oct 30 2023**

**SC Court of Appeals**

APPEAL FROM YORK COUNTY  
Court of Common Pleas  
William A. McKinnon, Chief Admin. Judge

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Case No. 2023-CP-46-00067

Appellate Case # 2023- 000775

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Ryan Powell and Karen Powell, . . . . . Appellants,

v.

SB Municipal is the Custodian of LBSC-11, LLC;  
SB MUNI CUST % LBSC-11, LLC;  
LB PARK, LLC; Joshua Schragar; and Lambros Xethalis, . . . . . Respondents.

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**APPELLANTS' INITIAL BRIEF**

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Ryan Powell, Appellant  
287 East Hawfield Drive  
Pittsboro, NC 27312

Karen Powell, Appellant  
c/o 287 East Hawfield Drive  
Pittsboro, NC 27312

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  - E. Does any state court judge have the authority to restrict any person from filing an action in any federal court?

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Plaintiffs/Appellants ("Appellants") brought an independent action to collaterally attack a final quiet title order entered on October 24, 2022 by the York County Master in Equity, Teasa K. Weaver ("Weaver"). That final quiet title order was entered in a case brought by Respondent LB PARK, LLC ("LB PARK's Case"). Weaver made that final quiet title order in total absence of all

jurisdiction ("Void Order"). Appellants' Complaint requests the following legal and equitable relief: enjoin York County Sheriffs from dispossessing Appellants under Weaver's Void Order; quiet Ryan's title; a couple declaratory judgment actions; and multiple tort actions for damages.

### **Pertinent Facts**

On December 20, 2012, San Juan Holdings ("SJH") conveyed to Ryan the land that is the subject-matter of Appellants' quiet title action ("Ryan's Property") [ROA, Complaint, #17-#19]. Ryan choose to not record his deed at that time because he wanted to own his property privately and alone, and both federal and State laws recognize and support that right. However, since Ryan's deed was not recorded his property was not the same property that was the subject matter of LB PARK's Case. Notwithstanding, Ryan was erroneously named and served as a party in LB PARK's Case even though he was considered an outsider/trespasser on that case so his claims and motions were not heard or considered by any court in that case. Appellants were never informed of this issue and only discovered it after the Void Order had been entered. However, since that Void Order is a legal nullity, it has no legal force or effect and can be collaterally attacked in any court, at any time.

During November 2017, SJH's property was auctioned off by York County for its failure to pay an assessment that was made against them for property that it did not own at that time [ROA, Complaint, #17-#19, #23]. Ryan's Property was neither sold nor was his title taken from him in that tax sale of SJH' property. During that auction, Respondent Lambros Xethalis registered as an agent of the non-existent Respondent SB MUNI CUST % LBSC-11, LLC ("SB MUNI"). Xethalis ended up being the highest bidder on SJH's property [ROA, Complaint, #21-#23]. On December 26, 2018, York County issued a tax title conveying SJH's non-existent property rights to the non-existent Respondent SB MUNI [ROA, Complaint, #24]. On January 7, 2019, Respondent Joshua Schragger,

acting as an agent of the non-existent Respondent SB MUNI, signed a quitclaim deed conveying SB MUNI's non-existent property rights to Respondent LB PARK [ROA, Complaint, #25].

February 2020, LB PARK brought LB PARK's Case to clear a tax title that had been granted to the non-existent entity SB MUNI [ROA, Complaint, #40]. LB PARK's attorney moved to have LB PARK's Case referred to Teasa Kay Weaver, the York County Master in Equity, "*for the purpose of receiving evidence*" ("Motion for Order of Reference") [ROA, Complaint, Exhibit A]. That motion was granted by a York County Circuit Court judge without any further specification or expansion of the authority LB PARK requested ("Order of Reference") [ROA, Complaint, Exhibit B].

Since Weaver was only given the subject matter jurisdiction to "*receive evidence*" by the Order of Reference, she did not have any authority to hear or decide any motion or enter any order including her final quiet title order (i.e., Void Order). Being that LB PARK did not have possession of Ryan's Property, its case was not ripe so it needed some method to dispossess Ryan from his property. Without any notice or opportunity to be heard, Weaver ordered Ryan and all occupants of his property to be dispossessed in her Void Order [ROA, Complaint, Exhibit C].

### **Course of Proceedings**

Before Appellants brought their independent collateral action, Ryan recorded his deed so that he would have the right to use the courts of the State to recover his property and so he could quiet his recorded title [ROA, Complaint, #6]. Appellants had possession of Ryan property at the time of filing their Complaint [ROA, Complaint, #19].

On or about February 24, 2023 Appellants filed and served their Summons and Complaint on three (3) of the five (5) Respondents. Appellants were unable to serve their Summons and Complaint on two (2) of the Respondents because those two (2) alleged limited liability companies could not be located as there are no records in any state within the United States showing that they

were ever created [ROA, Ryan's Aff of Service]. Respondents' attorney, Daniel Ballou ("Ballou") committed fraud on the court by pretending to have a retainer agreement signed by an authorized agent/manager of those two (2) non-existent Respondents [ROA, Tr, pgs 27, line 3 - pg 32, line 15]. Any attorney worth his retainer would have raised the issue that two of his "clients" had not been served but Ballou did not raise that issue because he would have then had to explain why those two Respondents could not be located in order to be served.

On March 27, 2023, a hearing was held before Judge William A. McKinnon ("McKinnon") to hear and decide Appellants' Expedited Motion for Injunction ("Motion for Injunction"), Respondents' Motion to Dismiss and Sanction ("MTDS"), and Appellants' Rule 11 Motion For Sanctions To Strike Defendants' Motion to Dismiss ("Motion to Strike") [ROA, Dismissal Order, pg 1, para. 1].

On April 10, 2023 McKinnon entered his order dismissing this case ("Dismissal Order") in which he ordered the following: 1) dismissed this case finding the court does not have subject matter jurisdiction to hear and decide the case; 2) dismissed every one of Appellants' ten (10) causes of action individually and collectively for failure to state a claim; 3) denied both of Appellants' motions on the merits after refusing to hear them because he found he did not have subject matter jurisdiction to hear or decide the case; 4) granted Respondents all the relief they requested in their MTDS including sanctioning Appellants with a gatekeeper order to permanently restrict them from ever seeking any relief or remedy in any court, state or federal, pertaining to Respondents' theft of their property; 5) canceled Appellants' *lis pendens* filed for the case; and 6) struck Ryan's deed from the York County Register of Deeds records as being a "*nullity without any legal significance*".

Appellants received written notice of the entry of McKinnon's Dismissal Order on April 15, 2023. Appellants filed and served their Rule 59(e) SCRPC Motion to Alter or Amend on April 22,

2023. Appellants received written notice of the entry of the order denying that motion on April 30, 2023. In that order the court denied their motion even though it also altered some of the decrees made in the Dismissal Order. Appellants filed and served their Notice of Appeal on May 11, 2023.

### **STANDARD OF REVIEW**

"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).

"Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo. When a statute's language is plain and unambiguous and conveys a clear and definite meaning, the court has no right to impose another meaning.", Bone v. US Food Service, 744 SE 2d 552 (SC Supreme Court 2013).

"When considering the motion to dismiss for failure to state a claim, the trial court must base its ruling solely upon the allegations made on the face of the complaint."..."The court of appeals applies the same standard of review that was implemented by the trial court. In determining whether the trial court properly granted the motion to dismiss, we must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.", Nelson v. OHG of South Carolina Inc., 580 SE 2d 171.

"The determination of whether a court should impose sanctions pursuant to Rule 11, SCRCP, or the Act is a matter of equity. In an action in equity tried by the judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. However, when the appellate court agrees with the circuit court's findings of fact, it reviews the circuit court's imposition of sanctions under an abuse of discretion standard. Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions.", Holmes v. HAYNSWORTH, SINKLER & BOYD, PA, 760 SE 2d 399, 408 SC 620 (SC Supreme Court 2014).

"This court may correct errors of law in both legal and equity actions.", Dept. of Transp. v. M & T ENTER. OF MT. PLEASANT, LLC, 667 SE 2d 7.

### **ARGUMENT**

#### **I. Was it error to conclude that there is no legitimate basis for Appellants' collateral attack on Weaver's Void Order?**

The Dismissal Order makes the following erroneous conclusion - "*I therefore dismiss this cause of action as well because there is no legitimate basis for any collateral attack on the Judgment.*"

[ROA, Dismissal Order, #9, pg. 10]. The specific cause of action that McKinnon dismissed will be briefed below but this conclusion of law affects the entire case so it will be briefed hereinafter.

The lower court neither heard nor decided the issue of whether or not Weaver had subject matter jurisdiction to enter her Void Order and that is the legal basis which gave Appellants the right to bring their independent collateral action to attack her Void Order [ROA, Complaint, #39-#49].

The first obvious reason this conclusion is error is that there are no findings of facts in the entire Dismissal Order that support it. Notwithstanding, the Order of Reference entered in LB PARK's Case states "*After careful consideration, Plaintiff's Motion for Order of Reference to the Master in Equity is GRANTED*" [ROA, Complaint, Exhibit B]. Since that Form 4 order does not state what specific relief was granted, when LB PARK's Motion for Order of Reference was granted, one must look to the relief requested in the motion being granted to determine exactly what relief was granted. LB PARK's Motion for Order of Reference requests the Court "*issue an Order of Reference, referring this equitable proceeding to the Honorable Teasa Kay Weaver, Master in Equity for York County, for the purpose of receiving evidence and with all appeals to be made directly to the South Carolina Court of Appeals.*" [ROA, Complaint, Exhibit A].

Accordingly, LB PARK's Motion for Order of Reference gave Weaver **only** the jurisdiction to *receive evidence* and no other authority as proven by the following *stare decisis* holdings -

"The master has no power or authority except that which is given to him by the order of reference. *See* Rule 53(c), 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).

"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) .

According to Smith v. Ocean Lakes Family Campground *supra*, since the Order of Reference in Respondent's Case was specifically and only for the *purpose of receiving evidence*, and since the

Order of Reference did NOT provide Weaver authority to make findings of facts, conclusions of law, or enter ANY order, then Weaver did not have subject matter jurisdiction to make or enter her final quiet title order (i.e., Void Order), making it void -

"A master who acts after the reference terminates does so without subject matter jurisdiction, and the resulting orders are void.", Bunkum v. Manor Properties, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (1996).

Therefore, Weaver's Void Order is clearly void, *ab initio* so the lower court's conclusion that there is no legitimate basis to make a collateral attack on it is an error of law that must be reversed.

**II. Was it error to sua sponte take judicial notice of court records from one related and two unrelated cases and make a new order by basically copying the contents of those court records?**

McKinnon *sua sponte* took judicial notice of matter from Weaver's Void Order and court filings from two unrelated cases. He basically copied the contents of Weaver's Void Order and then re-ordered it in his Dismissal Order. McKinnon took this action because he, Weaver, and Ballou all know that her Void Order is void and has not legal force or effect. After this Court determines that McKinnon's taking of judicial notice was error, the entire Dismissal Order must be reversed as the noticed matter is the only thing that is supporting the entire Dismissal Order.

**A. Was this issue preserved for review?**

The taking of judicial notice had to have been the lower court's *sua sponte* decision made after the hearing because it was neither requested nor mentioned in Respondents' MTDS [ROA, MTDS, pgs all] and it was neither requested nor mentioned during the hearing [ROA, Tr. pgs all]. However, Rule 201(e) SCRE protects Appellants' due process rights to have an opportunity to be heard on the propriety of the lower court taking judicial notice even after notice was taken -

"Rule 201(e) SCRE - "A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. **In the absence of prior notification, the request may be made after judicial notice has been taken.**"

Appellants timely objected to McKinnon taking judicial notice of the matter that he judicially noticed in their Rule 59(e) SCRPC Motion to Alter or Amend [ROA, MTAA, #1-#7, pgs 1-3]. Therefore this error is preserved for review.

**B. Was it error to take judicial notice of court records based on an unsupported finding that there are references to those court records in Appellants' Complaint and Expedited Motion for Injunction?**

The Dismissal Order makes the following erroneous finding - "*Plaintiffs specifically referenced the Judgment<sup>1</sup> and other previous Circuit Court filings in their Complaint and Expedited Motion for Injunction. For purposes of the respective motions before me and pursuant to Rule 201, SCRE, I take judicial notice of the Judgment, including all findings of fact and conclusions of law, as well as the relevant filings in the numerous related actions and appeals and the deed records of the York County Clerk of Court. Brazell v. Windsor, 384 S.C. 512*", [ROA, Dismissal Order, pg 2, para 1]. That "finding" is what allegedly gave McKinnon the authority to take judicial notice of all those court records.

However, there is not a single reference to any "*other previous Circuit Court filings*" in either of Appellants' Complaint [ROA, Complaint, pgs all] or their Expedited Motion for Injunction [ROA, Motion for Injunction, pgs all] and Appellants never attached or incorporate Weaver's entire Void Order into their Complaint. McKinnon then cited Brazell v. Windsor, 384 S.C. 512, 682 SE 2d 824 as the legal authority that allowed him to take judicial notice of all those court records.

However, he intentionally misinterpreted Brazell v. Windsor supra because the Brazell Court held that any document that a plaintiff references in their complaint **AND** which they state has been "*attached and incorporated by reference*" into their complaint brings that document to the attention of trial court and to the defendants. Since there were neither references in Appellants' documents to

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<sup>1</sup> "the Judgment" mentioned in the Dismissal Order is Weaver's Void Order

any of those "*other previous Circuit Court filings*" nor did Appellants ever state that any of those court records were attached and incorporated into their Complaint, it was error for the lower court to take judicial notice of all those court records.

**C. Can this Court even review this issue when the judicially noticed matter is not in the Record on Appeal because it was never put into the record of the lower court?**

Respondents did not attach to their MTDS any of the matter upon which the lower court took judicial notice [ROA, MTDS, pgs all] and Respondents did not enter any of that matter into the record during the hearing of their MTDS [ROA, Tr. pg 3, line 5]. McKinnon did not take mandatory judicial notice of anything because for a mandatory judicial notice the matter has to be supplied to the Court -

Rule 201(d) SCRE "When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information."

There was also no testimony, affidavits, or other evidence entered into the record during the hearing that produced the Dismissal Order [ROA, Tr. pg 3, line 5].

As a result none of the matter that was judicially noticed can be found in the Record on Appeal ("ROA") so this Court can not consider any of that matter for this appeal as this Court's review is strictly limited to the record made in the lower court that is designated to be part of the ROA -

Rule 210(h) SCACR - "Except as provided by Rule 212<sup>2</sup> and Rule 208(b)(1)(C)<sup>3</sup> and (2)<sup>4</sup>, the appellate court will not consider any fact which does not appear in the Record on Appeal." [footnotes added].

Since the equitable standard of review **requires** this Court to determine its own findings of facts based on the evidence contained within the ROA, and through no fault of the Appellants there is no evidence in the ROA other than their Complaint, this Court cannot review **most** of the errors raised and argued in this appeal.

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<sup>2</sup> Rule 212 SCACR deals with a Supplemental Record.

<sup>3</sup> Rule 208(b)(1)(C) SCACR deals with the statement of the case found in Appellant's Brief.

<sup>4</sup> Rule 208(b)(2) SCACR deals with the statement of the case found in Respondent's Brief

Accordingly, this Court must reverse every finding of fact, statement, opinion, or conclusion of law that is not based solely on the Complaint as there is no other source of "evidence" in the ROA that can support anything stated in the Dismissal Order.

**D. Was it error to *sua sponte* take judicial notice of any matter during the pre-answer stage of proceedings?**

The factual allegations in Appellants' Complaint are the only facts in the record that could have been proven or disproved by taking judicial notice since Respondents had not yet made an answer. Until a defendant answers a complaint, the truth of the allegations in the Complaint are not even in issue as they are presumed to be true.

"Generally, at the pleadings stage, the factual allegations made by the plaintiff in regards to his claim are taken as true. *Accord Bankers Trust Co. v. Braten*, 317 S.C. 547, 455 S.E.2d 199 (Ct.App.1995)", Tanner v. Florence County Treasurer, 521 SE 2d 153 (SC Supreme Court 1999).

In a recent appeal of an order entered by the York County Master in Equity, this Court stated that it was "*problematic*" for the York County Master to *sua sponte* take judicial notice of who was the record owner of the property that was at issue in that case during the motion to dismiss stage of proceedings. This Court then affirmed the order on appeal in that case on other grounds but made it clear that they would have reversed the order on appeal for that reason alone -

"The Master's use of judicial notice at the motion to dismiss stage in these circumstances was problematic, but this appeal may be decided by a more fundamental issue", ALTERNA TAX ASSET GROUP v. York County, 863 SE 2d 465 (2021).

Alterna Tax Asset Group supra dealt with just one simple adjudicative fact having been judicially noticed *sua sponte* from one deed found in the public York County land records. On the other hand, the Dismissal Order's twenty-two (22) pages of "findings" and "conclusions of law" were **all just copied** mainly from Weaver's Void Order but also from other court records of the two unrelated cases.

This Court in Alterna Tax Asset Group supra found that the Master in Equity's use of *sua sponte* judicial notice of one simple adjudicative fact that was actually alleged in the Complaint to be problematic during the pre-answer stage of proceedings. Therefore, this case must be **extremely problematic** since the judicially noticed matter has nothing at all to do with Appellants' Complaint and the irrelevant matter judicially noticed forms the factual and legal basis of the Dismissal Order.

**E. Was it error to take judicial notice of any matter in a facially void order?**

The Dismissal Order states in pertinent part - "*Plaintiffs specifically referenced the Judgment<sup>5</sup> and other previous Circuit Court filings in their Complaint and Expedited Motion for Injunction. For purposes of the respective motions before me and pursuant to Rule 201, SCRE, I take judicial notice of the Judgment," [ROA, Dismissal Order, pg 2, para 1].*

Appellants attached as exhibits to their Complaint LB PARK's Motion for Order of Reference [ROA, Complaint, Exhibit A] and the Order of Reference that granted that motion [ROA, Complaint, Exhibit B]. Those two documents became part of Appellants' Complaint -

"A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading. Rule 10(c) SCRC.P.", Brazell v. Windsor, 384 S.C. 512, 682 SE 2d 824 (SC Supreme Court 2009).

"On review of a demurrer, it is necessary to keep in mind that the facts alleged in the complaint and all reasonable inferences derivable therefrom are taken as true in the consideration of the appeal.", Tyler v. MACKS STORES OF SC INC., 272 SE 2d 633 (SC Supreme Court 1980).

Those two Exhibits indisputably prove that Weaver's Void Order is void. Refer to argument section I above for a complete briefing on this issue. A void order is a nullity and carries no legal force or effect and must be treated as such even before it is reversed -

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

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<sup>5</sup> "the Judgment" mentioned in the Dismissal Order is Weaver's Void Order.

"The law is well-settled that a void order or judgment is void even before reversal", Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116 (1920).

To take judicial notice of any fact, the fact has to be indisputable. This case on appeal was brought to collaterally attack Weaver's Void Order so the very existence of this case is clear and convincing evidence that her Void Order is in dispute. It was an error of law for McKinnon to just basically copy Weaver's Void Order which is unquestionably in dispute and then re-order most of the findings, conclusions, statements, opinions, etc. that are found within it.

**F. Was it error to take judicial notice of irrelevant court records?**

The Dismissal Order states in pertinent part - "*Plaintiffs specifically referenced ... other previous Circuit Court filings in their Complaint and Expedited Motion for Injunction. For purposes of the respective motions before me and pursuant to Rule 201, SCRE, I take judicial notice of ... as well as the relevant filings in the numerous related actions and appeals*", [ROA, Dismissal Order, pg 2, para 1].

Judicial notice is used as an quick and efficient method to prove a simple fact in a case -

"Judicial notice takes the place of proof.", Masters v. RODGERS DEVELOPMENT GROUP, 283 S.C. 251, 321 SE 2d 194 (1984).

If the noticed matter does not help to establish a fact in the case, it is not relevant to the case; if it is not relevant to the case, it is not an adjudicative fact in the case.

The factual allegations within Appellants' Complaint were the only facts that could have been proved or disproved by taking judicial notice during the pre-answer stage of proceedings. Therefore, any noticed material would have to be relevant to the allegations made in the Complaint. Relevancy is defined by Rule 401 SCRE as follows-

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination **of the action** more probable or less probable than it would be without the evidence."

In this case there is not a single finding of fact, conclusion of law, opinion, or statement in any of the irrelevant matter that was judicially noticed that could prove or disprove **any** factual allegation found within Appellants' Complaint.

Since irrelevant evidence is inadmissible then none of the matter found in the records of any of the cases that McKinnon took judicial noticed of, were proper -

See Rule 402 SCRE - "Evidence which is not relevant is not admissible."

There is not a single precedent case in this State, or any state or federal court, that permits judicial notice to be taken of court records from cases that had different parties, different claims, requested different relief, and were heard in different courts, i.e., on court records that are entirely irrelevant to the case being heard. A properly noticed fact must answer the questions of who, what, where, when, and what motive gave rise to the lawsuit that is being heard. An unrelated case can not possibly answer any of those questions, and in this case they did not -

"Adjudicative facts are about the particular event which gave rise to the lawsuit and ... [help] explain who did what, when, where, how and with what motive and intent.", Rule 201 SCRE Note Section.

**G. Was it error to take judicial notice of any matter that is in dispute or disputable?**

To take judicial notice under Rule 201 SCRE, the fact noticed must be indisputable. This is required by both Rule 201(b) SCRE and the case law that has construed that rule -

Rule 201(b) SCRE - "A judicially noticed fact must be one **not subject to reasonable dispute**", [emphasis added].

"Adjudicate facts of which trial court may take notice **if fact is not subject to reasonable dispute**, are those to which law is applied in process of adjudication; they are facts that, in jury case, normally go to jury.", Black's Law Dictionary, 6th ed. pg. 42.

"Unless the fact is either of such common or general knowledge that it is accepted by the public without qualification or contention, or its accuracy is capable of verification by reference to readily available sources of **indisputable** reliability, it is not subject to

judicial notice.", Masters v. RODGERS DEVELOPMENT GROUP, SC, 321 SE 2d 194 (1984).

“But “[f]acts adjudicated in a prior case,” or in this instance, a prior trial in the same case, “do not meet either test of **indisputability** contained in Rule 201(b)”, United States v. Zayyad, 741 F.3d 452, 464 (4th Cir. 2014).

“We agree [with the Second and Eleventh Circuits] that courts generally cannot take notice of findings of fact from other proceedings for the truth asserted therein because these are **disputable** and usually are **disputed**.”, Taylor v. Charter Medical Group, 162 F.3d 827, 830 n.18 (5th Cir. 1998); Gen. Elec. Capital Corp. v. Lease Resolution, 128 F.3d 1082 (7th Cir. 1997).

Even findings of facts that are noticed from records taken from court records made in the **same** case with the **same** parties are still not proper matter for judicial notice because such findings of facts are almost always in dispute or disputable.

"Likewise, a Court can take judicial notice that court filings contained certain allegations, or that findings of fact were made by another Court. But the **truth** of these allegations and **findings are not proper subjects of judicial notice**.", Stephen A. Saltzburg et. al., 1 FEDERAL RULES OF EVIDENCE MANUAL § 201.02[3] (10th ed. 2011).

"This case presents the issue of whether a court may properly take judicial notice of the truth of factual findings made by a judge who sat as a trier of fact in a previous case. We hold that the court **may not** take judicial notice of the **truth** of those factual findings.", Sosinsky v. Grant (1992 ) 6 Cal.App.4th 1548 (1992).

There is not a single fact alleged in the Complaint, the truth of which could be determined by a jury based on anything stated in any of the court filings for the cases upon which judicial notice was taken. Therefore, no finding of fact in any of those court records could be properly noticed.

#### **H. Was it error to take judicial notice of conclusions of law and unpublished appeal opinions from unrelated cases?**

The Dismissal Order states in pertinent part - "*I take judicial notice of the Judgment, including ... and conclusions of law, as well as ... appeals*", [ROA, Dismissal Order, pg 2, para 1].

Judicial notice can only be used to prove **adjudicative facts**, not conclusions of law especially those made by another judge, in another court, in an unrelated case. This is clearly shown by Rule

201(a) SCRE - "This rule governs only judicial notice of adjudicative **facts**". A legal conclusion is not a fact -

Conclusion of law - "Propositions of law which judge arrives at after, and as a result of, finding certain facts in case tried without a jury.", Black's Law Dictionary, 6th ed., pg 290.

Since there are no precedent cases in this State that even address this topic, Appellants must rely on cases decided in other states that have the same rules for judicial notice -

"Legal conclusions are not the proper subject of judicial notice.", Boyce & Isley, PLLC v. Cooper, 153 N.C. App. 25, 38 (N.C. Ct. App. 2002); In re EGM, 750 SE 2d 857 (2013).

Even if a conclusion of law could be judicially noticed it would have to come from the court records of the **same case** having the **same parties** and the **same claims** as held in the following South Carolina precedent case:

"It is not error for a judge to take judicial notice of what was stated in a former opinion in a prior action **of the same case**. Thus, it was proper for the court to take judicial notice of the consent to dismiss with prejudice **in its own order issued nine days earlier** and of the effect of the dismissal., Freeman v. McBee, 313 SE 2d 325.

As far as taking judicial notice of an unpublished appeal opinion, Rule 268(d)(2) SCACR states - "*unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.*". An unpublished appeal order made in an entirely different case with entirely different parties, different claims, requested different relief, made by different judges, and heard in different courts cannot possibly be "directly involved" with this case. If such an appeal order has no precedential value and cannot be cited then certainly it cannot be used to prove the truth of any matter in this case via judicial notice.

It was clearly error of law to take judicial notice of conclusions of law and unpublished appeal orders from other cases unrelated to this one.

**I. Was it error to take judicial notice of Ryan's entire chain of title from the deed records of the York County Clerk of Court?**

The Dismissal Order states in pertinent part - "*I take judicial notice of ... and the deed records of the York County Clerk of Court*", [ROA, Dismissal Order, pg 2, para 1]. It is unclear what deed records were judicially noticed or what findings of facts were drawn from those records but as shown in ALTERNA TAX ASSET GROUP v. York County supra, at the pre-answer stage of proceedings this Court found it "*problematic*" for a Master in Equity to have taken judicial notice of one simple fact, that being who was the current owner of record on the property at issue in that case.

The ROA reveals that McKinnon only pretended to look at the deed records so that he could then make his predetermined conclusion that Ryan's deed is a "nullity" because it was recorded after Respondent LB PARK's title. However, had McKinnon actually looked at the deed records he would have seen that LB PARK paid a whopping \$5.00 for its quitclaim deed. Under the Recording Act, which was used to determine that Ryan's deed is a nullity, for any defendant to rely upon a bona fide purchaser for value affirmative defense it has to actually pay value for the property. Five (5) dollars is not value for a property that was bought over ten (10) years ago for \$225,000.00 [ROA, Complaint, #7]. McKinnon then fraudulently struck Ryan's deed from the county land records because he concluded it is a "nullity" because Respondent LB PARK's deed was recorded before Ryan's deed. This error will be fully briefed in section V.B below.

It was also a violation of McKinnon's code of judicial code to do any independent investigation into the facts of the case<sup>6</sup>. It is also an indisputably error of law to do a title search *sua sponte* to decide the merits of a quiet title action for a motion to dismiss hearing especially when Respondents had not yet even answered making a claim to quiet LB PARK's deed!

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<sup>6</sup> "A judge must not independently investigate facts in a case and must consider only the evidence presented.", Rule 501, Cannon 3B(7) commentary.

### **III. Was it error to dismiss the case for lack of subject matter jurisdiction?**

Conclusion of law #1 finds that Weaver's Void Order is on appeal and uses that finding to dismiss the case because this Court has exclusive jurisdiction over all the claims/issues in this case (i.e., lack of subject matter jurisdiction) [ROA, Dismissal Order, #1, pg 7]. But there are neither any allegations in the Complaint nor is there any evidence in the ROA that could support such a conclusion and that conclusion is also a misinterpretation of the Appellate Court Rules.

The lower court intentionally misconstrued Rule 205 SCACR to conclude that jurisdiction over a different case allegedly on appeal somehow deprived it of subject matter jurisdiction to hear Appellants' independent action brought to collaterally attack Weaver's Void Order. Presuming for the sake of argument that there is an appeal of Weaver's Void Order, Rule 205 SCACR would have restricted the lower court's jurisdiction over the case wherein Weaver's Void Order was entered and on appeal NOT an entirely different independent case brought to collaterally attack that order -

Rule 205 SCACR - "Upon the service of the notice of appeal, the appellate court shall have **exclusive jurisdiction over the appeal**," [emphasis added].

Neither this court nor the Supreme Court has ever had an occasion to construe Rule 205 SCACR in the context of the bringing of an independent collateral action. Nonetheless, "independent", according to Black's Law Dictionary, 6th ed. pg 770, means "*not dependent; not subject to control, restriction, modification, or limitation from a given outside source*". Therefore, since this case on appeal is an independent action brought to collaterally attack a void order, it could never have been subject to any *control* or *restriction* by any *outside source* which would include any *control* or *restriction* by this Court, even if LB PARK's Case was on appeal.

The lower court's conclusion is also proved to be error by Rule 60(b) SCRCR which reads -

"This rule does not limit the power of a court to **entertain an independent action to relieve a party from a judgment**, order, or proceeding, or to set aside a judgment for fraud upon the court."

" It is clear and well established law that a void order can be challenged in any court", Old Wayne Mut.L.Assoc. v. McDonough, 204 U.S. 8, 27 S. Ct. 236 (1907).

If Rule 60(b) SCRCP does not limit the power of a trial court to entertain an independent action, then it follows that the circuit courts, being courts of general jurisdiction, have the power to entertain independent actions brought to collaterally attack a void order even during an appeal.

The lower court's conclusion is also proved to be error by the following precedent case -

"Subject matter jurisdiction is defined as "the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Tort suits are within the circuit court's jurisdiction. Here, on its face, this complaint alleges a tort and therefore is not subject to dismissal for lack of subject matter jurisdiction.", McCullar v. Estate of Campbell, 672 SE 2d 784 (SC Supreme Court 2009).

Since Appellants' Complaint alleges multiple torts [ROA, Complaint, #67- #115] then it was not subject to dismissal for lack of subject matter jurisdiction.

**A. Was it error to order relief for Respondents after deciding the court did not have subject matter jurisdiction to hear the case?**

The lower court's conclusion of law that it was deprived of subject matter jurisdiction by Rule 205 SCACR to hear and decide Appellants' independent collateral action is in direct conflict with the remainder of its Dismissal Order -

"Without jurisdiction, **a court cannot proceed at all in any cause**; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact **and dismissing the cause**." 32A Am.Jur.2d *Federal Courts* § 581 (2007).", Limehouse v. Hulsey, 744 SE 2d 566 (SC Supreme Court 2013).

"A court lacking subject matter jurisdiction, however, **has no authority to act**", Dove v. Gold Kist, Inc., 442 SE 2d 598 (SC Supreme Court 1994).

If the lower court did not have subject matter jurisdiction over this case on appeal then it had no authority to **adjudicate anything**, including, *inter alia*, canceling Appellants' *lis pendens*, declaring Ryan's recorded deed to be a nullity, striking Ryan's recorded deed from the county land records, and issuing a permanent pre-filing injunction/gatekeeper order against Appellants.

Most importantly, after concluding the lower court lacked subject matter jurisdiction the **only** authority it had was the authority to dismiss the case. In other words, the lower court either erred by dismissing Appellants' case under Rule 12(b)(1) or it erred by making **all** of its other findings, conclusions, and decrees. Accordingly, this Court must reverse the Rule 12(b)(1) dismissal or reverse all the other findings, conclusions, and grants of relief in the Dismissal Order.

**B. Was it error to dismiss the case for lack of subject matter jurisdiction "with prejudice" instead of "without prejudice"?**

Assuming for the sake of argument that the lower court's ruling that Rule 205 SCACR deprived the lower court of subject matter jurisdiction to hear Appellants' independent collateral attack action, then when the remittance of the case that is allegedly on appeal is returned to the lower court, the lower court would then have subject matter jurisdiction over this case. Accordingly, the dismissal of this case should have been amended to be "without prejudice" instead of "with prejudice" as Appellants' requested in their motion to alter or amend [ROA, MTAA, #14, pg 5].

**IV. Was it error to dismiss all of Appellants' ten (10) causes of action and their entire Complaint under Rule 12(b)(6) SCRCF for failure to state a claim?**

**A. Was it error to consider any matter outside of Appellants' Complaint when doing a Rule 12(b)(6) SCRCF analysis?**

Rule 12(b)(6) SCRCF requires all courts, including this Court, that decide a motion to dismiss for failure to state a claim to do their analysis **solely** on the allegations made in the Complaint -

"A Rule 12(b)(6) motion to dismiss for failure to state a cause of action **must be** resolved by the trial judge based **solely** on the allegations established in the complaint.", Jennings v. Jennings, 697 SE 2d 671 (2010) [emphasis added].

Notwithstanding, Rule 10(c) SCRCF allows the court doing that analysis to consider all exhibits attached to a Complaint since the attached exhibits become part of the Complaint -

Rule 10(c) SCRCF "A copy of any plat, photograph, diagram, document, or **other paper** which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading."

However, Appellants attached only eight select pages of Weaver's Void Order to their Complaint and they attached those specific "other papers" to demonstrate that Weaver had dispossessed Appellants from Ryan's Property. Those "other papers" were the only part of Weaver's Void Order that became part of the Complaint so they were the only part of her Void Order that could be used in the lower court's analysis of the Complaint for dismissal under Rule 12(b)(6) SCRPC.

It was an error of law for the lower court to use the missing twenty-three pages of Weaver's Void Order that were not attached to the Complaint and were not incorporated by reference in the lower court's analysis of Respondents' Rule 12(b)(6) SCRPC motion to dismiss.

**B. Was it error to base Rule 12(b)(6) SCRPC dismissals on affirmative defenses that are not evident on the face of Appellants' Complaint and where the facts of the case are in dispute?**

Every one of Respondents' Rule 12(b)(6) SCRPC motions to dismiss for failure to state a claim was dismissed on the basis of some affirmative defense imagined, and sometimes even on ones actually raised in their MTDS. While defendants do have the option to raise **certain** affirmative defenses in their Rule 12(b)(6) SCRPC motion to dismiss, they can do so **only** if the facts alleged on the face of the Complaint show the existence of that affirmative defense or if the facts that support the affirmative defense are not in dispute -

"Most courts allow such defenses to be raised in a motion to dismiss under Rule 12(b) when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense.", Spence v. Spence, 628 SE 2d 869 (SC Supr. Ct. 2006).

Appellants' Complaint does not evidence the availability of **any** of the affirmative defenses Respondents' raised, or that the lower court used to dismiss Appellants' ten (10) causes of action and to dismiss their entire Complaint. Also there is not one single fact raised in Appellants' Complaint

that is not in dispute as evidenced by Respondents' MTDS, by the twenty-two (22) page Dismissal Order, and by the ROA.

**C. Was it error to dismiss any of Appellants' claims and issues under the doctrines of collateral estoppel or res judicata based on Weaver's Void Order?**

The following five (5) errors apply to ever dismissal made under Rule 12(b)(6) of any cause of action as briefed in the following sub-sections of this argument section that were dismissed on a finding/conclusion that res judicata or collateral estoppel prevented their "re-litigation".

First, Appellants' brought their independent action to collaterally attack Weaver's Void Order. So any finding, conclusion, statement, opinion, or anything else written in that order cannot be relied upon in this case because all void orders, including Weaver's Void Order, carries no legal force or effect whatsoever. If a void order could be used to support res judicata or collateral estoppel then that would mean it carries a legal force of effect, which it cannot do -

"A void judgment is one that, from its inception, is a complete nullity and is without legal effect."..."A judgment of a court without subject[-]matter jurisdiction is void.", Kosciusko v. Parham, 836 SE 2d 362, 428 SC 481 (2019).

"The law is well-settled that a void order or judgment is void even before reversal", Valley v. Northern Fire & Marine Ins. Co., 254 U.S., 348, 41 S.Ct. 1161 (1920).

This is also proven by well-settled case law that holds both res judicata and collateral estoppel require that the order being used to preclude re-litigation must be a valid order -

"The essential elements of res judicata require: "(1) **the judgment must be final, valid** and on the merits; (2) the parties in the subsequent action must be identical to those in their first; and (3) the second action must involve matter properly included in the first action.""", McEachern v. Black, 496 SE 2d 659 (1998).

"Under the doctrine of collateral estoppel, also known as issue preclusion, when an issue has been actually litigated **and determined by a valid and final judgment**, the determination is conclusive in a subsequent action whether on the same or a different claim.", Zurcher v. Bilton, 666 SE 2d 224 (SC Supreme Court 2008).

Second, collateral estoppel is an issue preclusion defense NOT a claim preclusion defense as erroneously concluded in multiple Rule 12(b)(6) dismissals, see Zurcher v. Bilton supra.

Third, not a single fact that would be needed to satisfy the elements required to be present in order to use the affirmative defense of collateral estoppel are found in the Complaint. Those required elements are shown in the following precedent case -

"The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.", Carolina Renewal, Inc. v. Dept. of Transp., 684 SE 2d 779 (2009).

Fourth, not a single fact that would be needed to satisfy the elements required to be present in order to use the affirmative defense of res judicata are found in the Complaint. Those required elements are shown above in McEachern v. Black supra -

Fifth, there are no findings of fact in the Dismissal Order that demonstrate the elements required to support the affirmative defense of either res judicata or collateral estoppel were found to be present in the Complaint which is necessary in order to support any conclusion of law that a claim or issue is precluded from being "re-litigated".

Therefore, every single dismissal of any of Appellants' causes of action that were dismissed based on some claim or some issue having already been decided in Weaver's Void Order is an error of law and must be reversed.

**D. Was it error to dismiss Appellants' action to quiet Ryan's title?**

Conclusion of law #4 states that Appellants' first cause of action mirrors a cause of action that was allegedly raised in some first amended answer. There is no first amended answer in the ROA and no mention of any first amended answer in the Complaint [ROA, pgs all]. The conclusion goes on to state that these claims were rejected in Weaver's Void Order so the doctrine of collateral estoppel prevents Appellants' from re-litigating a claim for quiet title [ROA, Dismissal Order, #4,

pg 8]. This conclusion is an error of law as briefed above in sub-section C of this argument section. Weaver's Void Order is a nullity that carries no legal force or effect so it cannot be used to preclude any issue or any claim from being re-litigated.

Conclusion #5 then states that Appellants cannot bring a quiet title action because the statute of limitations has run out [ROA, Dismissal Order, #4, pg 8]. The two listed statutes of limitations in the Dismissal Order have nothing at all to do with this case, and even if they did apply to this case they would not have even begun to run until Ryan was dispossessed from his property which had not happened before Appellants filed and served their Complaint -

"Furthermore, assuming the statute of limitations applied in the present case, we do not believe it would prevent McMillan from challenging Johnson's deed. Although Johnson filed an eviction action, Hallman continued to live in the Residence as McMillan's tenant, and the magistrate never issued an eviction order. **Because Johnson did not oust McMillan of possession**, Johnson could not be said to have "withheld possession" from McMillan so as **to trigger the statute of limitations**. Accordingly, we reverse the circuit court's holding that the two-year statute of limitations barred McMillan's action to set aside Johnson's tax deed for the Residence.", Forfeited Land Com'n of Bamberg v. Beard, 817 SE 2d 801 (2018) [emphasis added].

Conclusion #5 then states that " *Even if plaintiffs' claims were not subsumed within the Judgment and in the exclusive jurisdiction of the Court of Appeals, they are barred by the Tax Sale Act, the two-year statute of limitations, laches and the doctrine of collateral estoppel.*" [ROA, Dismissal Order, #5, pgs 8-9]. Appellants' claims were not "subsumed" in Weaver's Void Order as briefed above in sub-section C of this argument section and the Court of Appeals did not have "exclusive jurisdiction" over this case or any issue in this case as briefed in argument section III above.

The affirmative defenses of the Tax Sale Act and laches were never even raised in Respondents' MTDS [ROA, MTDS, pgs all] or during the hearing [ROA, Tr., pgs all] so those findings/conclusions are not supported by the ROA and therefore constitute an error of law. There

are no allegations in the Complaint that could show these affirmative defenses were even available to Respondents had they actually been raised. Further there are no findings of facts in the Dismissal Order that support a conclusion that either of those two affirmative defenses actually apply to this cause of action [ROA, Dismissal Order, pgs all]

The erroneous dismissal of this cause of action must be reversed by this Court.

**E. Was it error to dismiss Appellants' adverse possession action?**

Conclusion #6 states - "*By plaintiffs' account, Ryan owned the Property from 2012 until it was lost at the Tax Sale*" [ROA, Dismissal Order, #6, pg 9]. There are no allegations in the Complaint that allege that Ryan's Property or his title were ever lost at, by, or through any tax sale of SJH's property [ROA, Complaint, pgs all]. In fact just the opposite is alleged in Appellants' Complaint which states that the tax title issued to the non-existent entity SB MUNI is void for having been made in the name of one not the owner of the property [ROA, Complaint, # 28]. That tax title is also void for having been granted to a non-existent entity [ROA, Complaint #24-#27]. A void deed/title carries no legal force or effect just as a void court order carries no legal force or effect so this conclusion is an unsupported error of law.

Conclusion #6 then states - "*Ryan could not have held title adversely to any one until York County took title pursuant to the Tax Sales Act in November of 2017*" [ROA, Dismissal Order, #6, pg 9]. That conclusion constitutes an error of law as adverse possession means possessing someone else's property without their permission. If Ryan did not have adverse possession before "*York County took title*" then Ryan must have been the owner of the property. That means the lower court found that Ryan **was the owner of his property** prior to the tax sale which is in direct conflict with the remainder of the Dismissal Order. After McKinnon found Ryan's recorded deed is a "*nullity without any legal significance*" [ROA, Dismissal Order, #2, last sent. pg 7], Ryan would have been

possessing his property adversely to whomever the actual owner was for all those years before "*York County took title*". Also there are no allegations in the Complaint that support any of those findings for this conclusion [ROA, Complaint, pgs all].

Nevertheless, this claim was alleged to be an alternative cause of action that Appellants stated would be pursued only if it is found as a result of an actual merits hearing that Ryan is not the owner of Ryan's Property. Clearly **after the lower court found** Ryan's deed was a "*nullity without any legal significance*", then Ryan's possession of the property for over 10 years is adverse to whomever the true owner actually was during that time period. Accordingly, this cause of action became immediately pursuable so it should not have been dismissed.

The erroneous dismissal of this cause of action must be reversed by this Court.

**F. Was it error to dismiss Appellants' action to declare void Weaver's Void Order?**

Conclusion of law #7 states that Appellants' cause of action to declare Weaver's Void Order to be void is "*intertwined*" with the issues on appeal in a different case [ROA, Dismissal Order, #7, pg 9]. There are no allegations in the Complaint showing Weaver's Void Order is on appeal [ROA, Complaint, pgs all]. Then the lower court dismissed this cause of action on the basis that the Court of Appeals has exclusive jurisdiction over this issue. As briefed above in argument section III, this conclusion is an error of law.

Notwithstanding, the lower court utilized the wrong analysis to determine if this cause of action fails to state a claim. Had the lower court analyzed the Complaint to see if a cause of action had actually been plead, it would have had to find that such a cause of action had indeed been sufficiently plead. The erroneous dismissal of this cause of action must be reversed by this Court.

**G. Was it error to dismiss Appellants' action to declare void Respondent SB MUNI CUST % LBSC-11, LLC's tax deed?**

Conclusion #8 states that the existence of defendant SB MUNI CUST % LBSC-11, LLC was litigated and addressed in Weaver's Void Order so it cannot be re-litigated [ROA, Dismissal Order, #8, pgs 9-10]. This conclusion is an error of law as briefed above in sub-section C of this argument section. Weaver's Void Order is a nullity that carries no legal force or effect so it cannot be used to preclude any issue or any claim from being re-litigated.

**H. Was it error to dismiss Appellants' slander of title action?**

Conclusion #9 addresses Appellants' cause of action for slander of title and states that a similar slander of title claim was dismissed in Weaver's Void Order so it cannot be re-litigated [ROA, Dismissal Order, #9, pg 10]. This conclusion is an error of law as briefed above in sub-section C of this argument section. Weaver's Void Order is a nullity that carries no legal force or effect so it cannot be used to preclude any issue or any claim from being re-litigated.

That conclusion then states "*I therefore dismiss this cause of action as well because there is no legitimate basis for any collateral attack on the Judgment.*". Even though this conclusion was made for only this particular cause of action, it is a global issue that affects the entire case and has therefore been briefed above in argument section I.

The dismissal of this cause of action is an error of law that must be reversed and the dismissal of Appellants' slander of title action reversed.

**I. Was it error to dismiss Appellants' intentional infliction of emotional distress and their intentional interference with contract actions?**

Conclusion of law #10 dismisses Appellants claim for Intentional Infliction of Emotional Distress and Appellants' claim for Intentional Interference with Contract actions because the lower court found that these two claims have already been decided in Weaver's Void Order [ROA, Dismissal Order, #10, pg 10]. This conclusion is an error of law as briefed above in sub-section C

of this argument section. Weaver's Void Order is a nullity that carries no legal force or effect so it cannot be used to preclude any issue or any claim from being re-litigated.

The erroneous dismissal of these two causes of action must be reversed by this Court.

**J. Was it error to dismiss Appellants' action for piercing the corporate veil?**

Conclusion of law #11 erroneously dismissed Appellants' claim for Piercing the Corporate Veil [ROA, Dismissal Order, #11, pg 10] by stating that this issue was dismissed in Weaver's Void Order. This conclusion is an error of law as briefed above in sub-section C of this argument section. Weaver's Void Order is a nullity that carries no legal force or effect so it cannot be used to preclude any issue or any claim from being re-litigated presuming it even was litigated.

This conclusion then goes on to state that Appellants did not allege facts sufficient to constitute this cause of action but the Dismissal Order fails to point out any factual elements that are missing. This information is required in order to not violate Appellants' right to amend their pleadings since pro se litigants are held to a less stringent pleading standards [ROA, Complaint, pg 1, judicial notice section]-

"pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims.", Haines v Kerner, 404 U.S. 519 (1972).

"court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings.", Platsky v. C.I.A. 953 F.2d. 25.

Then the conclusion states that none of that matters because these issues are within Weaver's Void Order that is on appeal and therefore under the exclusive jurisdiction of this Court. As briefed above in argument section **III**, if that case is on appeal the jurisdiction of the Court of Appeals would be over that case only, not over this independent case.

The erroneous dismissal of this cause of action must be reversed by this Court.

**K. Was it error to dismiss Appellants' actions for Desseizing The Owner Of His Property Using Force And Arms, Collection of Lien, and Taking Property on a Sham Legal Process?**

Conclusion of law #12 dismissed Appellants' "Desseizing The Owner Of His Property Using Force And Arms", "Collection of Lien" and "Taking Property on a Sham Legal Process" causes of action. That conclusion finds that these claims are "*specious and unfounded*" [ROA, Dismissal Order, #12, pg. 10]. But how could the lower court make any finding that the allegations in the Complaint are "*specious and unfounded*" without a hearing on the merits? Especially when the allegations in the Complaint must be taken as true since the case was in the pleading stage<sup>7</sup> and also because Appellants verified their Complaint under penalty of perjury so the allegations therein rise to the level of evidence<sup>8</sup>? Further, the lower court dismissed the case for lack of subject matter jurisdiction so a merits hearing, had one actually been held, would have been an error of law. Accordingly this conclusion constitutes an error of law as it is not supported by any evidence.

Then the conclusion states that since "York County" and "Judge Weaver" are not parties to the action the claims "*fail to state any cause of action*". That is an incorrect analysis under Rule 12(b)(6) SCRCP. If Respondents wanted to dismiss these three causes of action because an indispensable party had not been named and joined, then they were required to raise and argue that error in a Rule 12(b)(7) SCRCP motion. However, Respondents failed to raise or argue a Rule 12(b)(7) SCRCP motion [ROA, pgs all].

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<sup>7</sup> See Tanner v. Florence County Treasurer supra.

<sup>8</sup> See In re Veiga, 746 F. Supp. 2d 27 (D.D.C. 2010); Gonzales v. Brevard, 531 F. Supp. 2d 1019 (W.D. Wis. 2008); Hayes v. Compass Grp. USA, Inc., 343 F. Supp. 2d 112 (D. Conn. 2004); Davis v. Frapolly, 756 F. Supp. 1065 (N.D. Ill. 1991); Owens-Corning Fiberglas Corp. v. U.S. Air, 853 F. Supp. 656 (E.D.N.Y. 1994); In re McGuire, 450 B.R. 68 (Bankr. D.N.J. 2011); Lelieve v. Orosio, 846 F. Supp. 2d 1294 (S.D. Fla. 2012). 4 See Gibbs v. Titelman, 369 F. Supp. 38 (E.D. Pa. 1973), rev'd on other grounds, 502 F.2d 1107 (3d Cir. 1974).

Also since a Rule 12(b)(7) motion can be heard even up until the time of a trial on the merits<sup>9</sup> it follows that Appellants have up to the time of a trial on the merits to move to join those parties under Rule 19 SCRPC after those above three claims became fully ripe, if those two persons are or became indispensable parties.

Further, misjoinder and non-joinder of parties is not a proper ground to dismiss an action-

"Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.", Rule 21 SCRPC.

It was an error of law to dismiss these three causes of action under Rule (12)(b)(6) SCRPC for an allegation of failure to join parties that is at the time of pleadings were not necessary or indispensable.

Then conclusion #12 states that these three causes of action were resolved in Weaver's Void Order. This conclusion is an error of law as briefed above in sub-section C of this argument section. Weaver's Void Order is a nullity that carries no legal force or effect so it cannot be used to preclude any issue or any claim from being re-litigated had these issues actually been litigated in LB PARK's Case.

The erroneous dismissals of these three causes of action must be reversed by this Court.

**L. Was it error to dismiss Appellants' entire complaint under Rule 12(b)(6)?**

Conclusion of law #13 states - "*entire Complaint is premised upon an abusive and erroneous interpretation of the property tax laws and tax systems of the State*" [ROA, Dismissal Order, #13, pg 13]. Respondents failed to even raise this as an issue in their MTDS [ROA, MTDS, pgs all] and they failed to argue it at the hearing [ROA, Tr., pgs all]. Nonetheless, the Complaint barely even mentions any tax system or any property tax laws other than a few allegation pertaining to one of

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<sup>9</sup> Rule 12(h)(2) SCRPC "a defense of failure to join a party indispensable under Rule 19, and ... may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits."

the named, but non-existent, Respondents having been granted a tax title [ROA, Complaint, #24-#28]. This finding/conclusion is totally without any evidentiary support.

Further, and most importantly, there is evidence that proves the contrary, that is when Ryan recorded his deed [ROA, Complaint, #6] he made himself liable for property taxes so how could that be an abusive interpretation of the property tax laws and tax systems of the State?

Then the conclusion states that "*All of Plaintiffs' claims derive from the fact that Ryan refused to pay property taxes.*" [ROA, Dismissal Order, #13, pg 11]. There is no evidentiary support for this finding [ROA, pgs all]. Further, how could Ryan "*refuse to pay property taxes*" when there is no evidence anywhere in the record, or elsewhere, that could show that he was ever assessed with owing any property taxes [ROA, pgs all]? No one can refuse to pay a debt they do not owe or have never been assessed with owing.

Then the conclusion erroneously states that Appellants have shown "*no prejudicial error or harm*" so their Complaint is "*dismissed with prejudice*". Appellants alleged in their Complaint that their very valuable property worth \$225,000.00 ten (10) years ago has been illegally and unlawfully stolen from them through Respondents' fraud and Weaver's Void Order. Respondents committed fraud by having a tax title granted to the non-existent Respondent SB MUNI so that they could evade their federal income tax obligations and launder their untaxed monies [ROA, Complaint, #51-#65], and by Weaver's Void Order that was produced through the incompetence of Respondents' attorney. The theft of very valuable property is quite a lot of harm and prejudice. This entire conclusion is not based on the actual Complaint which constitutes an error of law.

Since Rule 12(b)(6) SCRCF deals with individual causes of action, it was an error of law to use Rule 12(b)(6) to dismiss, with prejudice, an entire Complaint that contains ten (10) different causes of action because the Complaint is supposedly premised on some imagined and unsupported

"*abusive interpretation*" of some property tax system when there is no possible way that a reasonable mind could interpret Appellants' Complaint to contain any such imaginings [ROA, Complaint, pgs all].

The erroneous dismissal of Appellants' entire Complaint must be reversed by this Court.

**V. Was it error to grant Respondents relief before they even filed and served a pleading requesting any relief?**

In order to be granted any relief by any court a claim must first be made in a pleading requesting the relief. That claim must then be supported by proper factual allegations that show the pleader is entitled to receive the relief they have requested. These court procedures are required, *inter alia*, by Rule 12 SCRCP to protect the opposing party's due process right to object and have any erroneous defense or counterclaim dismissed, stricken, or clarified.

The fact that McKinnon granted Respondents relief before they had even filed an answer requesting any relief is evidence of his abuse of power, misconduct, and his violation of Appellants' due process rights making the Dismissal Order void and of no legal force or effect -

"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).

McKinnon and Ballou were clearly acting to protect Weaver, McKinnon's co-worker and friend, and Ballou's clients, the Respondents. They both, being officers of the court, were working together (i.e., conspiring) to clean up the record so that any *purchaser for value* that LB PARK sells Ryan's Property to while this appeal is pending will not get any notice that Ryan is **still** the legal and lawful owner of the property that its managers will be fraudulently selling. However, their conspiracy to commit fraud on the court means the Dismissal Order is void, and any *purchaser for value without notice* will not have the right to use that equitable affirmative defense -

"Fraud upon the court has been defined as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." H. Lightsey, J. Flanagan, *South Carolina Civil Procedure*, 408 (2nd Ed. 1985).", Evans v. Gunter, 366 SE 2d 44; See also 7 Moore's Federal Practice, 2d ed., p. 512, 60.23.

"Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."; ... "attorney subornation of perjury **and false statements** to trial court constitute fraud upon the court" ... "Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice.", Chewning v. Ford Motor Co., 579 SE 2d 605 (SC Supreme Court 2003).

Fraud makes void everything it touches according to the United States Supreme Court -

"Fraud vitiates the most solemn contracts, documents, and even judgments, ab initio.", U.S. vs. Throckmorton, 98 U.S. 61.

Vitiate is defined as being null and void according to Black's Law Dictionary -

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"; Black's Law Dictionary, 6th ed. pg 1572.

Accordingly, this Court must reverse all relief fraudulently granted in the Dismissal Order or vacate the entire order for fraud on the court and/or for a violation of Appellants' due process rights.

**A. Was it error to cancel Appellants' *lis pendens* while litigation is still pending?**

The conclusion of law #14 [ROA, Dismissal Order, #14, pg 11] and the relief granted in decree #2 [ROA, Dismissal Order, #2, pg 17] was a gift that McKinnon and Ballou gave to his clients by fraudulently sneaking it into his proposed order that he refused to serve on Appellants [ROA, pgs all]. This constitutes not only an error of law but also violates Appellants' due process rights and Ballou's standard of ethics that he is required to follow.

That conclusion states - "*In light of the findings of fact and conclusions of law above, pursuant to S.C. Code Ann. §15-11-40, and the inherent authority of the Court, the Court hereby cancels, terminates, nullifies, and declares void and of no legal effect the Lis Pendens filed by plaintiffs on*

February 24, 2023 (*Lis Pendens* No. 2023LP4600078 and Case No. 2023-CP-46-00607)." [ROA, Dismissal Order, #14, pg 11].

S.C. Code of Laws § 15-11-40 does **not** give a court the authority to cancel a *lis pendens* because it derives its authority from S.C. Code of Laws § 15-5-190 and that code section no longer exists so it can not possibly give the court any authority to cancel a *lis pendens* -

"The court in which the action was commenced, in its discretion at any time after the action is settled, discontinued, or abated, **as provided in Section 15-5-190**", S.C. Code of Laws § 15-11-40.

No court has "inherent authority" to cancel a *lis pendens* according to the South Carolina Supreme Court which held that a *lis pendens* that meets the statutory requirement for filing **may not be canceled** during the pendency of litigation -

"The statute permits a court to cancel a *lis pendens* "authorized by this chapter" "at any time after the action is settled, discontinued, or abated." By implication, **a *lis pendens* that meets the statutory requirement for filing may not be canceled during the pendency of litigation**. However, if the court finds that the *lis pendens* does not "affect[] the title to real property" as required under § 15-11-10, the *lis pendens* is not authorized by the statute and the statute does not limit the court's power to cancel it.", Carolina Park Associates, LLC v. Marino, 732 SE 2d 876 (SC Supreme Court 2012).

Since a *lis pendens* is authorized for any action that affects title to real property, and Appellants' quiet title cause of action affects title to real property [ROA, Complaint, #15-#31], then Appellants' *lis pendens* was authorized by that chapter and should not have been canceled.

Further, presuming for the sake of argument that an order dismissing a case for lack of subject matter jurisdiction can even be "executed", the Dismissal Order could not have been executed until at least 10 days after its entry, according to Rule 62(a) SCRPC<sup>10</sup>. Appellants' appeal of the Dismissal Order automatically stayed any relief ordered during the appeal under Rule 241(a) SCACR. So the Dismissal Order should have been stayed and the *lis pendens* should not have been

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<sup>10</sup> Rule 62(a) SCRPC "Automatic Stay; Exceptions--Injunctions, Receivership, and Accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry."

cancelled. However, **immediately** after McKinnon's order was entered, he directed the clerk of court to cancel and remove the *lis pendens* from the court record [ROA, screenshot of docket 4/10].

There is neither any evidence in the ROA nor in the law books that could support any finding or conclusion that the *lis pendens* is "void and of no legal effect". That conclusion constitutes an error of law and it and the order to cancel Appellants' *lis pendens* must be reversed.

**B. Was it error to declare Ryan's recorded deed a nullity of no legal significance and strike it from the land records which in effect quieted Respondent LB PARK's title?**

After McKinnon determined that he couldn't hear Appellants' Motion for Injunction because he didn't have subject matter jurisdiction to hear the case [ROA, Tr., pg 33, lines 1-5] and without any hearing [ROA, Tr. all] or evidence whatsoever [ROA #5, pg 3] he quieted LB PARK's quitclaim deed by finding that Ryan's deed is a "*nullity of no legal significance*" and ordered it stricken from the county land records [ROA, Dismissal Order, #15, pg 11; ROA, Dismissal Order #2, pg. 17].

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

This ruling not only violates **all** the rules of civil procedure, **all** the State codes/statutes, and **all** precedent case law, but it also violates Appellants' due process rights making the Dismissal Order null and void according to Blanton v. Stathos supra, as well as numerous other similar cases.

Presuming that McKinnon had the authority to even hear and decide the merits of anything after he decided that he didn't have subject matter jurisdiction to hear the case, and that he had the authority to hear the merits of a non-existent counterclaim to quiet LB PARK's title, the findings/conclusions stated in conclusion #2 and in #15 constitute errors of law. Even if those findings were supported by some actual evidence, none of those findings or conclusions would make Ryan's deed a "*nullity of no legal significance*".

Under the Recording Act found in S.C. Code of Laws § 30-7-10 (the code that supposedly allowed McKinnon to strike Ryan's deed) any "*purchasers for valuable consideration without notice*" had to purchase the property from the same seller as Ryan's deed and LB PARK had to pay market value for Ryan's Property. Where is the evidence that LB PARK purchased its property from the same seller as Ryan? Where is the evidence that LB PARK paid market value for Ryan's Property? And where is the evidence that LB PARK did not know that the property it was purchasing under a **quitclaim** deed was derived from an **uncleared** tax deed? The Recording Act does not even govern deeds that result from tax sales -

"Having determined that the recording act does not govern relationships arising out of a State tax lien and tax sale, we reverse the judgment of the circuit court and remand the case for entry of judgment consistent with the decision herein.", Von Elbrecht v. Jacobs, 332 SE 2d 568 (1985).

Conclusion #2 and #15 constitute a disgusting abuse of power, an abuse of discretion, a fraud upon the court, a violation of Appellants' due process rights, an error of law, and they must be reversed and/or the entire Dismissal Order vacated.

**VI. Was it error to deny Appellants Motion for Injunction?**

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff. The plaintiff's complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation." AJG HOLDINGS, LLC v. Dunn, 674 SE 2d 505 (2009).

Conclusion #17 states - "*These purported harms are of the plaintiffs' own making, the result of the years-long scheme to avoid paying property taxes rightfully owed to York County, and the willful failure or refusal to post the bond set forth in the Judgment. In light of my decision to dismiss the Complaint with prejudice, plaintiffs do not prevail and cannot establish any basis for injunctive relief. Moreover, plaintiffs have an adequate remedy at law, and have exercised that remedy by appealing the Judgment. Strategic Resources v. BCS Life Ins. Co., 367 S.C. 540, 627 S.E.2d 687 (2006)(noting that "the right to appeal provides ... an adequate remedy at law."*). Plaintiffs' Motion for Injunction have failed to establish any grounds for injunction and their Motion is therefore denied" [ROA, Dismissal Order, conclusion #17, pg 12].

To reach any of those findings/conclusions the lower court relied upon facts not in evidence and conclusions not based on any findings of facts. How could Appellants "*avoid paying property taxes rightfully owed to York County*" when there is no evidence anywhere that they have ever been assessed with any property taxes? No one can fail to pay a debt that they do not owe or have never been assessed with. That finding is erroneous as a matter of law. Then that conclusion falsely states "*willful failure or refusal to post the bond*". There is no allegations in the Complaint or evidence in the record that could support that finding, which constitutes an error of law.

The lower court also misapplied Strategic Resources v. BCS Life Ins. Co. supra which is factually distinguishable from the case on appeal. Strategic Resources dealt with an arbitration

issue that the SC Supreme Court determined could be appealed while the rest of the case was being litigated without causing any harm to the parties. The lower court in this case construed Strategic Resources v. BCS Life Ins. Co. supra to mean that in every case where an injunction is requested it can be denied if an appeal was taken in another case. That conclusion is clearly an error of law for the following three reasons: 1) there is no evidence in the record that could support a finding that Weaver's Void Order is on appeal; 2) presuming Weaver's Void Order was on appeal, Appellants were about to be irreparably harmed by their illegal and unlawful dispossession from Ryan's Property that was to happen within a few days of that hearing. An injunction's main purpose is to prevent irreparable harm and to keep the status quo according to AJG HOLDINGS, LLC v. Dunn supra; and 3) Supreme Court Justice Pleicones dissented in the Strategic Resources v. BCS Life Ins. Co. opinion stating that he was concerned that the majority's opinion may wrongly be construed to mean that the ability to take an appeal from a final judgment is ALWAYS an adequate remedy that precludes the issuance of an injunction. See Strategic Resources v. BCS Life Ins. Co. where Justice Pleconies wrote "*I write separately, however, because of my concern that the majority's opinion may be read to hold that the ability to appeal from final judgment is always an adequate remedy at law such that an injunction will never lie. I do not agree.*".

It was an error of law to deny Appellants an injunction as the required elements were plead, and at the pre-answer stage of proceedings the allegations in the Complaint must be accepted as true. Especially since Respondents did not enter any affidavit or evidence disputing any allegation made in Appellants' Complaint verified under penalty of perjury that supported their Motion for Injunction.

- A. Was it a violation of Appellants' due process rights to refuse to hear their Motion for Injunction because the Court decided it lacked subject matter jurisdiction but then deny that same motion on the merits in its dismissal order?**

McKinnon refused to even hear Appellants' Motion for Injunction during the March 27th hearing because he decided to dismiss the case for lack of subject matter jurisdiction [ROA, Tr., pg 33, lines 1-5]. But then in the Dismissal Order, McKinnon changed his oral decision and dismissed Appellants' Motion for Injunction on the merits without any hearing [ROA, Dis. Ord. #16-#17, pgs 11-12]. That constitutes a violation of Appellants' due process rights to have had an opportunity to be heard on the matter of their Motion for Injunction. Further, this is just more evidence that McKinnon knew he had subject matter jurisdiction and he just made that preposterous ruling so that he could more easily avoid having to hear or grant any of Appellants' motions that were before the court. The Dismissal Order is void for failure to provide proper due process and must be vacated.

**VII. Was it a violation of Appellants' due process rights to sign and enter the dismissal order when there was no evidence in the record showing Respondents had serve their proposed order on Appellants?**

According to Rule 5(a) SCRCP and Rule 5(b)(3) SCRCP a proposed order must be served on all parties to give them their due process right to have input on the proposed order before it is entered. The Code of Judicial Conduct also requires that a proposed order be served on all parties for their input. See commentary under Rule 501, Cannon 3B(7) which reads "*A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.*". Ballou never served his proposed order on Appellants. There is no evidence in the record that shows the Ballou's proposed order was ever served on Appellants. This refusal by Ballou violates Appellants due process rights. Ballou refused to serve his proposed order on Appellants because he knew that his proposed order was fraudulent and he knew that McKinnon was going to sign anything he put in front of him. The Dismissal Order is void for failure to provide proper due process to Appellants and it must be vacated [ROA, MTAA, #8, pg 3].

**VIII. Was it error to deny Appellants' Motion for Sanctions To Strike Defendant's Motion to Dismiss?**

Conclusion #17 states "*Finally, for the reasons set forth above, I also deny Plaintiffs Motion for Sanctions and to Strike Defendants' Motion to Dismiss. Plaintiffs' claim that counsel for Defendants "is perpetrating a fraud on this Court" is unfounded, meritless and false, and is based upon the same specious assertions made as to the legal existence of SB MUNI that was expressly addressed by the Master in Equity in the Judgment.*".

There no evidence in the record that could support any of these findings or conclusions. The only facts in the record, i.e, Appellants' verified under penalty of perjury Complaint, **proves** the very opposite. Even if Weaver addressed those same "*unfounded, meritless and false*" and "*specious assertions*", since Weaver's Void Order is null and void, it carries no legal force or effect as briefed above in argument section IV, sub-section C.

That conclusion then goes on to state "*The assertions contained in Plaintiffs' Motion further substantiate the good cause necessary to award sanctions as set forth above*". That conclusion is more evidence that the sanctions ordered are not grounded on any actual evidence or law but are grounded in McKinnon's desire to protect Weaver. That is not a proper basis to sanction a party.

**A. Was there any evidence in the record that could rebut Appellants' allegations in their verified under penalty of perjury Complaint showing that two of the Respondents do not exist so Respondents' attorney was committing a fraud upon the court by pretending they do exist?**

It was error of law for McKinnon to deny Appellants' Motion for Sanctions when the Complaint, verified under penalty of perjury, clearly alleges that two of the named Respondents do not exist and have never existed. The Complaint also has multiple pieces of evidence attached to it that support those allegations [ROA, Exhibits D & Exhibit E] Since this case was at the pre-answer stage of proceedings, all of those allegations are accepted as true -

"Generally, at the pleadings stage, the factual allegations made by the plaintiff in regards to his claim are taken as true.", Tanner v. Florence County Treasurer, 521 SE 2d 153 (SC Supreme Court 1999).

Respondents were required to provide evidence demonstrating that the two entities exist if they wanted to defeat Appellants' verified and evidenced allegations in their Complaint. That would have been a very simple task. Respondent Schragger and Respondent Xethalis have both pretended to be managers of those two non-existent entities so either one of them could have attached an affidavit to their response in opposition to Appellants' Motion for Sanctions and to Strike Defendants' MTDS testifying to which state or jurisdiction the articles of organization have been filed for either of those two limited liability companies. But they did not do so [ROA pgs all] because Appellants are correct those two entities do not exist.

Further, there is evidence in the record that shows those two non-existent Respondents were not served and they were not served because they could not be located [ROA, Ryan's Aff of service]. Any attorney worth his retainer would have raised that issue in his motion to dismiss, but Ballou did not do so [ROA, MTDS, pgs all] because to raise that as an issue would have opened him up to having to explain why those two Respondents could not be located in order to be served.

Respondents failed and refused to enter any evidence that could rebut Appellants' allegations in their Complaint which are undisputed, true, and as shown above, evidenced. Therefore, it is clear that Ballou committed a fraud upon the court<sup>11</sup> by pretending he has a retainer agreement signed by agents/managers of those two non-existent entities. Appellant's Motion to Strike must be reversed.

**IX. Was it error to enter a permanent "gatekeeper" order that restricts Appellants from ever filing any action in any court anywhere that deals with the theft of their property?**

Respondents allege in their MTDS that Appellants filed many papers in past irrelevant and unrelated cases and appeals in which the trial judges hearing those cases/appeals found those papers

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<sup>11</sup> See Chewning v. Ford Motor Co., 579 SE 2d 605 (SC Supreme Court 2003) supra  
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to be frivolous, therefore Appellants should be sanctioned under the South Carolina Frivolous Civil Proceedings Sanctions Act ("FCPSA") found in S.C. Code of Laws § 15-36-10 and also under Rule 11 SCRCF. The error with that line of reasoning is that there is no evidence in the record that could show that either Appellant has ever been sanctioned for filing any document in any case. Most importantly, both Rule 11 and the FCPSA require the findings and conclusions of frivolousness to be based **solely** on the filings actually made in the case before the court.

**A. Is there any evidence in the record that could support sanctions being ordered against Appellants?**

As briefed above in the second argument section (II.), it was demonstrated to be error for the lower court to take judicial notice of Weaver's Void Order and also of the filings in two irrelevant and unrelated cases.

According to Rule 11 and the FCPSA the only filings that can be used for a determination of frivolous filings are those documents filed in the case being heard. How could a later judge who didn't hear those earlier cases, where those other parties were not even before his court, decide that the filings in those earlier cases were frivolous when the judges who heard those cases had not even made such rulings? Insane! Nonetheless, this Court can only use Appellants filings in this case at bar to determine if sanctions were proper. See Rule 11 SCRCF -

"The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.", Rule 11(a) SCRCF.

Therefore, it was error for the lower court to have ordered sanctions based on filings in cases that were not before him. The sanctions ordered constitute an error of law as they are entirely unsupported by any evidence.

**B. Was it error to sanction Appellants under the Frivolous Civil Proceedings Sanctions Act at the pleading stage of proceedings?**

Respondents MTDS specifically alleged that Appellants violated S.C. Code of Laws § 15-36-10 (C)(1)(a-c) [ROA, MTDS, pg 13, second para, (a), (b), and (c)]. Therefore, Appellants ' were put on notice that they had to defend against those specific allegations, and the associated requirements for those specific allegations.

However, S.C. Code of Laws § 15-36-10 (C)(1)(a-c) only allows for the ordering of sanctions upon a motion that is filed **after** the case is decided **on the merits**<sup>12</sup>. See S.C. Code of Laws § 15-36-10 (C)(1) -

"At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous...".

There are no findings in the Dismissal Order that could show that any of the aforementioned conditions have been met for ordering sanctions under S.C. Code of Laws § 15-36-10 (C)(1)(a-c). Since Respondents' motion for sanctions was part of their pre-answer motion to dismiss, it was undisputedly premature. Accordingly, all findings, conclusions, and orders that ordered sanctions under the FCPSA constitute error of law and must be reversed as Respondents' MTDS was undisputedly premature.

### **C. Was it error to sanction Appellants under Rule 11 SCRPC?**

As shown immediately above, Respondents' frivolous allegations that Appellants violated FCPSA were premature. That leaves only Respondents' frivolous allegations that Appellants violated Rule 11 SCRPC. Since Rule 11 SCRPC sanctions are always and only based on the filings made in the case being heard, then the lower court was required to analyze Appellants' Complaint and their two motions in order to determine if those filings were frivolous under Rule 11 SCRPC -

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<sup>12</sup> "Motions made pursuant to the FCPSA are post-trial motions.", Holmes v. EAST COOPER COMMUNITY HOSP. INC., 758 SE 2d 483 (SC Supreme Court 2014).

"The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.", Rule 11(a) SCRPC.

There is not a single finding of fact or conclusion of law in the Dismissal Order that shows that Appellants filed their Complaint or their motions in order to cause any delay or harass any Respondent nor are there any findings/conclusions that show Appellants did not believe their claims were well grounded in the facts and law that they raised. In fact, there is proof in the record of the very opposite. Karen testified under penalty of perjury [ROA. Tr. pg 23, line 22- pg 24 line 1] that Appellants had consulted a local attorney who told them that their Complaint was well written and maybe as well or better than that attorney could produce [ROA. Tr. pg 34, line 24 - pg 35, line 17].

Rule 11 sanctions can only be ordered if the actual filing made in the case before the lower court are "patently without merit" -

"While Rule 11 is evaluated by a subjective standard, the rule still may be violated with a filing that is **so patently without merit** that no reasonable attorney could have a good faith belief in its propriety.", Ex parte Bon Secours-St. Francis Xavier Hosp., Inc., 713 SE 2d 624 (SC Supreme Court 2011).

The only finding/conclusion made in the Dismissal Order that could arguably support sanctions is that Appellants have continued to abuse the courts using their tortured understanding of the property tax system [ROA, #22, pg. 14]. However, an actual analysis of the verified under penalty of perjury Complaint and Appellants' actual motions will find no mention whatsoever of any tax system and will find only a few allegations that the non-existent Respondent named "SB MUNI CUST % LBSC-11, LLC" was granted a tax title by York County to SJH's property [ROA, Complaint, #24-#28].

Furthermore, since Ryan undisputedly recorded his deed before bringing this case [ROA, Complaint, #6], he put himself in the position of becoming a property taxpayer after his title is

quieted which can in no way be found to be an abuse of the property tax system of this State. So the imagined continuation of the imagined abusing of the property tax system is just that, unfounded imaginings not supported by any evidence.

This is the first time that Karen has even been named as a party in any case that has had anything to do with the property at issue. The ordering of a pre-filing injunction against Karen in this case is without any factual support whatsoever since the grounds for the sanction ordered is based entirely on filings in two irrelevant and unrelated case to which Karen was not a party.

Since the sanctions ordered in this case is a pre-filing injunction, Respondents were required to demonstrate all the facts necessary in order to be granted an injunction in their pleading that they never even made. Nonetheless, Respondents' MTDS does not allege any of the following required elements needed in order to be granted any injunction -

"A plaintiff must establish three elements in order to receive an injunction: "(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." Compton v. S.C. Dep't of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

Respondents failed to allege, and the lower court failed to find, **any** of those three elements are present. Respondents will not suffer any immediate irreparable harm as they can always seek monetary sanctions. Respondents did not show they could ever succeed on the merits of this case. And Respondents have an adequate remedy at law in the form of monetary sanctions. Accordingly, injunctive relief was not available to Respondents and it was error to have ordered such relief.

Appellants were put on notice that Respondents were attempting to "bar" them from "filing any motion or new civil matter in this Court" (i.e., the Circuit Court) [ROA, MTDS, pg 13, par 2]. But Appellants could not find any kind of similar order in the Reporters of this State that bars a litigant from bringing any action in any court. Then, after the Dismissal Order was entered and served, it was clarified that the relief Respondents sought was called a "gatekeeper order" or a "pre-filing

injunction". Even with the proper names given to the relief Respondents sought, and were granted, Appellants still could not find any such order specifically recognized in this State.

However, Appellants did find such orders recognized in a few other states including the State of North Carolina where such orders are extremely rare<sup>13</sup> and can only be used when the following conditions are met: 1) The gatekeeper order should be a last resort after other attempts to control the litigant, such as Rule 11 sanctions, have failed; 2) As with any disciplinary matter, the subject must be given notice of the proposed order and a chance to respond before it is entered; and 3) the injunction order should include an opportunity for modification in the future. In this case there are no findings that could show any of these or even similar conditions have been met. In fact, a pre-filing injunction being a "last resort" when there is no evidence or findings that either of Appellants has **ever** been sanctioned in the past. That alone is enough to prove the lower court abused its discretion in making its sanction order.

In the very limited jurisdictions where gatekeeper orders are even recognized, they are considered a **drastic remedy** that must be used **sparingly**, especially against pro se litigants because those jurisdiction recognize that such orders violate the constitutionally protected rights of the subjects of those orders. See Cromer v. Kraft Foods North American, Incorporated supra-

"Such a drastic remedy must be used sparingly, however, consistent with constitutional guarantees of due process of law and access to the courts. U.S. Const. amend. XIV, § 1. These rights are longstanding and of fundamental importance in our legal system."

Much of the requirements in Rule 11 SCRPC and FCPSA call for pro se litigant's filings be held to a standard that a "reasonable attorney" would make. But that is an inappropriate and unconstitutional standard to hold pro se litigants to for the following reasons: 1) no "reasonable

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<sup>13</sup> The leading 4th Circuit federal case for a pre-filing injunction order is Cromer v. Kraft Foods North American, Inc., 390 F.3d 812 (4th Cir. 2004), in which that court held that a pre-filing injunction is a drastic remedy to be used sparingly and only when exigent circumstances justify it and it also held that use of such measures against a *pro se* litigant should be approached with particular caution.

attorney" would ever make any claim, argument, defense, etc. that points out the wrongdoing of the judiciary, like in this case, even if those filings were completely meritorious because they all know that they will never be allowed to win another case in that court again which would bankrupt them and/or their law firm; 2) pro se litigants are not learned in the law so they have been given greater latitude in their pleadings and held to a lower pleading standard than attorneys by the U.S. Supreme Court<sup>14</sup> [ROA, Complaint, pg 1, judicial notice]; and 3) the "reasonable attorney" standard violates pro se litigants rights to free speech that is protected by the Constitution of the State of South Carolina and the Constitution of the United States both of which every judge in every court of this State have taken an oath to uphold.

Both Rule 11 and the FCPSA allow for the ordering of a "*directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith*", Runyon v. Wright, 471 SE 2d 160 (SC Supreme Court 1996). However, the sanction ordered in this case goes way beyond the discretionary limits given to a judge in ordering such a sanction. The Dismissal Order forces Appellants to seek "leave of court" before they file "any paper" in any court state or federal [ROA, Dismissal Order, #5, pgs 17-18]. However, that is an impossibility as there is no "case" within which to file a motion to get the required "leave of court" since this case has been dismissed with prejudice.

It is obvious that the pre-filing injunction was ordered for the main purpose of protecting Weaver from being held personally liable for stealing Appellants' valuable property on an order that she entered knowing she did not have subject matter jurisdiction to do so. The lower court using a gatekeeper order to protect Weaver, McKinnon's colleague and friend, from being held personally liable is not a proper motive for ordering such a drastic sanction. The lower court clearly abused its

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<sup>14</sup> See Haines v Kerner, 404 U.S. 519-421 and Platsky v. C.I.A. 953 F.2d. 25  
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discretion. Accordingly, the pre-filing injunction findings and conclusions #18, pg 13 to #28, pg 16, and The Order #5 on pgs 17-18 must be reversed.

**D. Was it an abuse of discretion to order a gatekeeper order for a first time sanction?**

In 2019 the California BAR association proposed new rules to handle vexatious complainants. They proposed that any complainant that files TEN (10) OR MORE frivolous complaints within the preceding TWO (2) YEARS should be labeled as a vexatious complainant and dealt with accordingly. The following is the California BAR's proposed rule of procedure:

"Proposed Rule of Procedure 2605 would grant the Office of Chief Trial Counsel ("OCTC") authority to apply a vexatious complainant designation to complainants who have filed 10 or more complaints in the preceding two-year period that were closed at the inquiry stage due to a finding that the complaints lacked sufficient factual or legal grounds to warrant investigation. Upon such a designation, OCTC would not be required to review or process subsequent complaints from the vexatious complainant unless the complaint is verified under penalty of perjury and submitted on the complainant's behalf by an active licensed attorney.",

<https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2019-Public-Comment/Proposed-New-and-Amended-Rules-of-Procedure-of-the-State-Bar-Regarding-Vexatious-Complainants>.

There is no evidence in the record that could come anywhere near that standard. In fact had any evidence actually been entered, Ryan would have been found to have filed three (3) cases in the last ten (10) years including this case and Karen would have been found to have filed one (1) case in the last (10) years which is this case. On the other hand, Respondent LB PARK filed two cases pertaining to Appellants property in the last four (4) years! If any party in the case on appeal is a vexatious complainant it would be respondent LB PARK. The lower court indisputably abused its discretion in granting such unwarranted and drastic sanctions on Appellants as a first time sanction presuming of course that any of their filings are actually frivolous.

**E. Does any state court judge have the authority to restrict any person from filing an action in any federal court?**

Respondents requested in their MTDS an order barring Appellants from "filing any new motion or civil matter in this Court" in relation to Ryan's Property [ROA, MTDS, pg 13, para 2]. However, McKinnon then ordered not only the relief requested but also enjoined Appellants from filing any action in the federal courts without any notice or opportunity to object to such an injunction. The Dismissal Order restricts Appellants' access to the federal courts which the judges of this State's Courts do not have the legal authority to order [ROA, Dismissal Order, #5, pgs. 17-18]. According to the All Writs Act codified in 28 U.S.C. § 1651(a) only federal judges are given the authority to restrict access to the federal courts -

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law".

"Although federal and state courts form one system of jurisprudence," ... "**there is nothing a state court can do to affect federal practice and procedure.**" 21 C.J.S. *Courts* § 274 (Supp.2013).", Limehouse v. Hulsey, 744 SE 2d 566 (2013).

Only a federal court judge has the jurisdiction to restrict a person's access to a federal court. Accordingly, the lower court exceeded its jurisdiction by restricting Appellants' access to all federal courts to seek a remedy for the fraudulent theft of their property. This clearly proves McKinnon's motive for his "gatekeeper" sanction was to prevent Appellants' from seeking their remedy from a federal court. This Court must reverse all the findings and conclusions supporting the "gatekeeper" "pre-filing injunction" decrees or at the very least this Court must reverse the ruling that restricts Appellants' access to federal courts.

### **CONCLUSION**

The Dismissal Order is clear and convincing evidence that two officers of the court - McKinnon and Ballou - intentionally committed fraud on the court so that they could re-order the contents of Weaver's Void Order to make it a legal and binding order because they both **know** that her order is

void. If they succeed in their fraud, Appellants will no longer have any meritorious claims against Weaver. Their actions clearly taken to protect Weaver constitute fraud on the court and require this Court to vacate the entire Dismissal Order.

WHEREFORE Appellants requests this Court order the following:

If this Court determines that the lower court: did not have subject matter jurisdiction; violated Appellants' due process rights; or committed fraud on the court, then vacate the Dismissal Order. Otherwise, reverse the Dismissal Order in whole or in those parts which this Court finds reversible error has been committed.

October 30, 2023

/s Ryan Powell  
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/s Karen Powell  
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