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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

C.A. No.: 2023-CP-46-00067

Appellate Case No. 2023-00775

RYAN POWELL and KAREN POWELL ..... Appellants

v.

SB MUNICIPAL IS THE CUSTODIAN OF LBSC-11, LLC; SB MUNI CUST % LBSC, LLC; LB PARK, LLC, JOSHUA SCHRAGER AND LAMBROS XETHALIS .....Respondents.

INITIAL BRIEF OF RESPONDENT

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February 1, 2024

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STATEMENT OF THE CASE & FACTS[1]

Appellants appeal the Order of Dismissal ("Order") issued by the Honorable William A. McKinnon on April 10, 2023. This appeal continues an extended campaign by the Appellants seeking to frustrate the property tax collection laws of this State and deprive the Respondent LB Park, LLC ("LB Park") of the ownership of real property located at 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023 (the "Property"). This case was filed on February 24, 2023, by Appellants Ryan Powell ("Ryan") and his mother Karen Powell ("Karen"), on the heels of and for the express purpose of continuing to litigate matters resolved in a judgment entered by the York County Master in Equity ("MIE") on October 24, 2022, in Civil Action 2020-CP-46-00549 (the "2020 Case"). The 2020 Case resulted in a judgment dated October 24, 2022 ("Judgment"), quieting title to the Property in the name of LB Park, whose title derives from a lawful tax sale conducted by York County on November 6, 2017. (Motion to Dismiss, Ex. D, R. at __).

More specifically, the Judgment in the 2020 Case fully adjudicated and resolved with finality all of the material factual and legal issues raised by Appellants in this case. However, as set forth below, Appellants have raised these same issues repeatedly over the past decade to avoid the collection of *ad valorem* taxes. Central to their argument is the contention that the Property was conveyed to Ryan by means of an unrecorded "Title to Private Property" on December 29, 2012, and that since the deed was not recorded, Ryan was not required to pay property taxes. The MIE rejected this argument in its entirety in the 2020 Case as did other courts before the 2020 Case. (Motion to Dismiss, Ex. D, R. at __). Appellants appealed the Judgment, contending that it

1 Pursuant to Rule 208, SCACR, Respondents adopt by reference LB Park, LLC's brief in Appellate Case No. 2022-001650, and the various orders incorporated by reference therein.

was void. (Appellate Case No. 2022-001650). That appeal was dismissed by the Court of Appeals on August 8, 2023[2].

Undaunted by considerations of *res judicata* or collateral estoppel, Appellants continue to attempt to litigate the same issues in this case that were resolved in the Judgment, couching them in various frivolous claims based on the same nucleus of operative facts as have previously been rejected by every court that has considered them and resolved against the Appellants. It is instructive to this appeal to review Appellants' history of frivolous litigation.

I. Litigation History Predating the Tax Sale

Appellants' current claims all originate from December 20, 2012, when Ryan claims he received a deed to the Property from an entity known as San Juan Holdings (the "SJH Deed"). (Complaint at 2, R. at __). However, Ryan intentionally did not record that purported deed, under the theory that if he did not record it, the Property was not subject to ad valorem taxes. (Motion to Dismiss, Ex. B at 1-2, R. at __; Motion to Dismiss, Ex. C at 1-2, R. at __). Accordingly, despite the alleged conveyance in December of 2012, record title to the Property remained in San Juan Holdings.

Rather than cure his self-inflicted problem by recording his deed and paying his taxes, Ryan instead petitioned the South Carolina Supreme Court in its original jurisdiction seeking, among other things, a writ of mandamus ordering the York County Auditor, Treasurer, and Delinquent Tax Collector to reflect Ryan as the owner of the Property and void the tax sale of the Property. The petition was denied by order dated February 20, 2014, and Ryan's petition for rehearing was denied on March 19, 2014. See, Supreme Court Appellate Case 2014-000005.

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2 Appellants have filed a Petition for Writ of Certiorari to the Supreme Court, Appellate Case No. 2023-001620, which is currently under consideration.

On May 1, 2014, Ryan filed an action in the York County Court of Common Pleas again seeking a writ of mandamus and asserting numerous causes of action against York County officials. The Honorable S. Jackson Kimball dismissed that action with prejudice "to the extent Plaintiff's complaint challenges the taxing authority of York County," finding "that [Ryan's] claims are entirely frivolous". (Motion to Dismiss, Ex. B at 1, R. at). Judge Kimball summarized Ryan's arguments as follows:

> [Ryan's] complaint and legal memoranda read like a doctrinal manifesto. It is a rambling presentation of twisted, disconnected and inapplicable legal theories that contradicts all statutory and case law governing the issues presented. It challenges the right and authority of the County to assess and collect *ad valorem* property taxes on realty, as well as the owner's obligation to pay those taxes.
>
> According to [Ryan], no land owner is required to pay property taxes, unless the owner's deed has been recorded. Instead, property owners elect to pay property taxes when they choose to record their deeds. [Ryan] asserts that a property owner can avoid any liability for property taxes by simply choosing not to record his deed. Because [Ryan] chose not to record his deed, [Ryan] contends that York County cannot assess taxes against his real property, which is a conclusion unrelated to any personal liability for taxes. Applying such "logic", [Ryan] asserts that he is not liable for property taxes on a parcel that he owns in York County, and that the County lacks the authority to collect such taxes through the delinquent tax collection process . . .. Nevertheless, [San Juan Holdings] remains the record owner of the property. (Motion to Dismiss, Ex. B at 1-2, R. at ____).

In 2017, Ryan filed a similar action against the York County Assessor in the South Carolina Administrative Law Court. That action was dismissed as moot on November 28, 2017, because Ryan redeemed the Property after the tax sale: "[Ryan's] latest redemption of the Property is thus consistent with his pattern of delaying the payment of his property taxes, yet ultimately claiming his ownership and assuming the obligation to pay the property taxes." (Motion to Dismiss, Ex. C at 4, Judgment at 6, R. at __). Judge Ralph King Anderson, III noted in a footnote:

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

II. The 2017 Tax Sale

Following Ryan's failure to obtain a writ of mandamus from both the Supreme Court and the Court of Common Pleas, and his failure in the action before the ALC, the taxes assessed on the Property again went unpaid, and the York County Tax Collector sold the Property on November 6, 2017, at a properly noticed and conducted tax sale (the "Tax Sale"). (Judgment at 7, R. at ___). SB MUNI CUST % LBSC-11 LLC ("SB MUNI"), a single purpose entity created by LB Park, LLC, purchased the Property at the Tax Sale with a bid of $171,000.00. *Id.* After the expiration of the one-year redemption period, title was conveyed to SB MUNI by tax deed recorded on December 26, 2018. *Id.*

The grantee designation in the tax deed of "SB MUNI CUST % LBSC-11 LLC" is an abbreviation for SB Municipal, LLC as custodian for LBSC-11, LLC. *Id.* The abbreviation was necessary because the York County software system has a character limitation for the name of the bidder, so bidder names are frequently required to be abbreviated. *Id.* The use of abbreviated names and the designation of "custodian" is common when the Tax Collector's office issues tax deeds, which are prepared and reviewed by the York County Attorney's Office prior to recording. *Id.*

SB MUNI subsequently conveyed the Property to LB Park by quitclaim deed dated January 7, 2019, and recorded on January 10, 2019. *Id.* LB Park then brought an action to quiet title to the Property.

III. The 2020 Case: LB Park's Quiet Title Action.

LB Park filed a complaint to quiet its tax title on January 25, 2019. (Judgment at 8, R. at __). Ryan was not initially named as a party because he had no record interest in the Property. Karen sought to intervene in that case based upon an alleged unrecorded lien on the Property, which motion was denied by the Circuit Court. Ryan then moved to intervene based on his alleged unrecorded deed, and his motion was likewise denied. *Id.* Ryan appealed, and during that appeal, the case was remanded on motion of LB Park and dismissed without prejudice to add Ryan as a party solely "to provide him with notice of this proceeding and the opportunity to protect any interest he claims to have in the Property." LB Park refiled the case in 2020 and served Ryan on April 14, 2020. (Judgment at 8-9, R. at __).

The 2020 Case was referred to the MIE by order dated August 20, 2020. On October 6, 2020 Ryan filed his Answer, Defenses, and Counterclaims and demanded a jury trial. (Judgment at 11-12, R. at __). Ryan generally denied Plaintiff's allegations, asserted 23 defenses, and alleged counterclaims for (1) Sanctions for Frivolous Complaint, (2) Intentional Infliction of Emotional Distress, (3) Declare Void and Set Aside Tax Deed, (4) Intentional Interference with Contract, and (5) Slander of Title (collectively, the "counterclaims"). LB Park filed and served its reply on October 29, 2020, generally denying Ryan's allegations and asserting seventeen defenses. *Id.*

On July 13, 2021, Ryan moved to remand the 2020 Case to Circuit Court, which motion was denied. (Judgment at 12, R. at __). A merits hearing was then scheduled for October

21, 2021. On October 12, 2021, Ryan appealed the denial of the motion to remand in Appellate Case Nos. 2021-001192, 2022-000275. (Judgment at 13, R. at __). Once again, the appeal was dismissed, and the remittitur was issued on May 23, 2022.

Following the remittitur of his second interlocutory appeal, Ryan filed a series of dilatory motions designed to further delay a merits hearing on the 2020 Case. After proper notice, on September 27, 2022, the MIE called the 2020 Case for trial, but Ryan did not attend. The MIE first considered Ryan's motion for continuance. (Judgment at 2, R. at __). As set forth in the written order,

> The Court denies Ryan's Motion for Continuance. This case has been pending since February 12, 2020, and the Court notified the parties of the hearing date of September 27, 2022, by e-mail sent on August 24, 2022, which was over a month before hearing date. Ryan did not seek a continuance until September 16, 2022. The Court finds that the Motion for Continuance does not demonstrate good cause and that Ryan had ample time to make preparations to attend.
>
> As to Ryan's request for his mother to present his case stated in the Motion for Continuance, the Court finds that any participation by Ryan's mother would constitute the unauthorized practice of law, which is prohibited by S.C. Code Ann. § 40-5-310 and South Carolina case law.

(Judgment at 2, R. at _). The MIE further noted, "[i]n fact, Ryan asked if he could remotely view the hearing without appearing by e-mail on September 26, 2022." (*Id.*).

On October 24, 2022, the MIE quieted title to the Property and found that the Tax Sale was valid, that LB Park was the owner of the Property and that LB Park's title "is incontestable on procedural or other grounds and all claims against or challenges to the Tax Sale of the Property are barred by the two-year statute of limitations set forth in S.C. Code Ann. §§ 12-51-90(c) and 160, because more than two [years] have passed since the date of the Tax Sale." (Judgment at 26-28, R. at __).

In addition, the MIE dismissed all of Ryan's counterclaims for the following independent reasons: (1) "Ryan bases the Counterclaims on the allegations that the Property is not subject to taxes because he, as the alleged owner, has not recorded his alleged deed. The Court finds that these are the same arguments that Ryan has previously litigated and that have previously been dismissed;" (2) "Ryan did not appear at the final hearing and thus abandoned and failed to prosecute the Counterclaims, which is sufficient alone to dismiss the Counterclaims with prejudice;" (3) "Ryan lacks standing to assert any counterclaim concerning the Property because he has never produced a deed for the Property, he admittedly has no interest of record in the Property, and the South Carolina Administrative Law Court has previously found that Ryan failed to establish he was the owner of the Property. Additionally, the doctrines of r*es judicata* and collateral estoppel bar Ryan from re-litigating whether he has any interest in the Property;" and (4) the Recording Act, S.C. Code Ann. § 30-7-10, bars all of Ryan's claims because "in order for a deed to be valid as to subsequent purchasers without notice, the deed must be recorded and that priority between a subsequent purchaser of real estate without notice 'is determined by the time of filing for record.'" The MIE then found that each of the counterclaims failed on its merits. (Judgment, at 19-23, R. at _____). Ryan appealed the 2020 Case, which appeal was dismissed on August 8, 2023. A petition for certiorari to the Supreme Court is currently pending.

IV. The Present Action

Despite the fact that Ryan has appealed the Judgment in the 2020 Case, he and his mother, Karen, filed this action on February 24, 2023, as a purported "collateral attack" on the judgment in that case. (Order at 7, R. at __). Appellants also filed a *lis pendens* on the Property. (Order at 11, R. at __). In their Complaint, Appellants disclosed that Ryan purportedly recorded the SJH

Deed on February 22, 2023, two days before the Complaint was filed, and six years after the Tax Sale. (Complaint at 2, R. ___). Specifically, Appellants alleged the following causes of action:

1. Quiet Title. Appellants allege the same history of the Property being purportedly conveyed to Ryan by San Juan Holdings by means of an unrecorded deed, which was ultimately sold at a tax sale and is now owned by LB Park;
2. Adverse possession. Appellants contend that Ryan occupied the Property adverse to LB Park for eleven years, even though Ryan lost the Property in the 2017 Tax Sale, and has been litigating his claims ever since;
3. Declaratory judgment as to Judge Weaver's subject matter jurisdiction to issue the Order in the Prior Case, which was specifically rejected in the 2020 Case, and in the appeal which was recently dismissed;
4. Declaratory judgment challenging the status of LB Park as the owner of the Property based on the abbreviation used by York County during the Tax Sale, again an issue specifically raised, litigated, briefed and rejected in the 2020 Case;
5. Slander of title based upon LB Park's proper recordation of its properly issued tax deed, affirmed by the Court in the 2020 Case quieting title;
6. Intentional infliction of emotional distress resulting from the alleged "thoughts and mental images" from fear of default judgment in the 2020 Case;
7. Intentional interference with contract, arguing that LB Park's taking title through the Tax Sale process interfered in Ryan's "deed contract" with San Juan Holdings;
8. Veil piercing as to LB Park, again seeking to relitigate the existence of SB MUNI, the limited liability company that was the successful bidder at the Tax Sale;

9. Alleged violation of S.C. Code 15-67-410, et seq., for forcible entry and detainer "should the occupants of The Property be illegally disseized by Sheriff."
10. Collection of an alleged and unrecorded "consensual lien" between Ryan and his mother, Karen, that was previously rejected in the first iteration of the 2020 Case; and
11. Alleged "sham legal process" against Judge Weaver.

(Complaint at 3-15, R. at __).

On March 9, 2023, Respondents filed a Motion to Dismiss and For Sanctions pursuant to Rule 12(b)(6) ("Motion"), which the Circuit Court heard on March 27, 2023. At the hearing, the Appellants admitted to the Court that the only new fact alleged that was not alleged in the 2020 Case was the recording of the alleged deed from San Juan Holdings. (Order, at 7, R. at ___). The Circuit Court dismissed Appellants' case, dissolved and cancelled the *lis pendens,* declared the February 22, 2023 late-recorded deed to be void and instructed the Clerk of Court to strike it from the York County Deed Records, and issued a gatekeeper order restricting the Appellants from filing further actions relating to the Property without Court permission or licensed counsel.[3] This appeal followed on May 18, 2023. On December 19, 2023, in defiance of the Circuit Court's Order, Appellants recorded a new lis pendens against the Property.

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

ARGUMENT

Appellants have every right to refuse to pay *ad valorem* property taxes. However, in South Carolina, doing so has consequences. Appellants have concocted frivolous and specious theories of grievance to justify continued litigation after the Property was sold in strict compliance with the Tax Sale Act, S.C. Code Ann. § 12-51-40, et seq. Thereafter, title was quieted in LB Park, again after years of delay tactics and frivolous motions and appeals by the Appellants, and their appeal has now been dismissed. Each and every one of the Appellants' arguments raised in this "collateral attack" are either meritless or wholly subsumed within and precluded by the 2020 Case and Appeal.

I. The Circuit Court Properly Dismissed the Complaint.

a. The Court of Appeals Has Exclusive Jurisdiction Over Appellants' Claims.

Although Appellants contend this action is a collateral attack upon the Judgment in the 2020 Case and an "independent action" contemplated by Rule 60(b), Appellants never filed any Rule 60(b) motion, nor alleged grounds under Rule 60(b) in their Complaint. Instead, the crux of their case here is simply a rehash of the same objections to Judge Weaver's Order as they asserted in the 2020 Case, including that they were entitled to a jury trial and that the order of reference to the MIE did not authorize her to enter judgment against them. (Complaint at 13; R. at__). Once Appellants appealed the 2020 Case, this Court of Appeals had exclusive jurisdiction over those claims pursuant to SCACR 205, and Judge McKinnon correctly found that he could not exercise jurisdiction over those claims in a new case. Appellants propose an ouroboros of logic in contending that they can contest jurisdiction in an "independent action" under Rule 60(b)(4) while simultaneously appealing the order they contend lacked jurisdiction.

Even if Appellants could challenge the Judgment under Rule 60(b)(4) while simultaneously pursing an appeal, judgments are only void when a court failed to provide proper due process or lacked jurisdiction. *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). Appellants contested jurisdiction in the 2020 Case and lost and cannot take a second bite at the apple under the guise of an "independent action." Appellants have already appealed the question of jurisdiction and lost, and they cannot circumvent the law of the case and res judicata by bringing a new lawsuit.

b. Appellants Failed to Seek Leave.

Even if Appellants had stated proper grounds for seeking relief from Judge Weaver's Judgment, Rule 60(b) specifically provides that "[d]uring the pendency of an appeal, leave to make the motion must be obtained from the appellate court." In other words, even if the Appellants' claims had any basis in law or fact, since they have appealed the Judgment, they must first obtain leave from the appellate court to even bring this case. They did not and are not entitled to any further relief.

c. Appellants Other Causes of Action Derive from the 2020 Case.

Appellants' First, Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action each seek to relitigate the issues resolved in the 2020 Case and were properly dismissed. (Order at 8-10, R. __). Even if such claims were not subsumed within the Judgment, the Court correctly determined that the Respondents properly pursued the quiet title claim in that case, that Appellants failed to state any facts sufficient to constitute a cause of action for intentional infliction of emotional distress or veil piercing and that they are time-barred from bringing this action[. In addition, Appellants also alleged adverse possession as First Alternative Cause of Action. The Circuit Court properly found that by virtue of the Tax Sale, any period of adversity could not have

started until 2017, and therefore, Appellants failed to establish the fundamental basis of an adverse possession claim – ten years of adverse continuous possession. (Order at 9, R. at __). The Court found that "while Ryan may have been hostile to York County's efforts to collect property taxes," no one contested his occupation of the Property until after the Tax Sale. *See Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986). So too, Appellants simply repeated the assertions of the 2020 Case in support of this cause of action, further establishing that it too fails as a matter of law as being subsumed within the scope of the Judgment. Fundamentally, Appellants fail to state any facts that would constitute a claim of adverse possession.

Finally, Appellants' Eighth, Ninth and Tenth Causes of Action allege acts by York County and Judge Weaver, neither of whom were joined as parties to the case. The Circuit Court found these claims to be "so specious and unfounded that they fail to state any cause of action under South Carolina law against anyone." Representative of these claims is Appellants' assertion that:

> While SC Code of Laws 15-67-410 to 470 contemplates a gang of thieves using force to do the desseizure, and not law enforcement officers, Judge Weaver, and LB PARK's knowing and intentional use of the Sheriffs to execute an illegal, unlawful, and unenforceable dispossession should be considered the same as using any other hired armed forces to accomplish the same goal, i.e., an unlawful dispossession of a rightful owner from his property, using force and guns.

(Complaint at 13, R. at __)

Not only did Appellants fail to join or serve Judge Weaver or York County as parties to the case, but the Complaint failed to state facts that would have constituted any cause of action against them. As noted by the Circuit Court, these causes of action again seek to relitigate the matters resolved in the Judgment and cannot be re-litigated under the guise of a collateral attack. (Order at 10-12, R. at __).

Appellants' claims all derive from the fact that Appellants refused to pay *ad valorem* property taxes. When the Property was sold at the Tax Sale and not redeemed within the statutory time period, any interest Appellants may have had in the Property were extinguished. No subsequent recording of the SJH Deed had any legal affect whatsoever and did not improve the Appellants' claim to title.[4] These issues were fully litigated and resolved by the MIE against Appellants, and this action is not a legitimate means of seeking redress, particularly when it is clear that Appellants have already appealed that Judgment and done so unsuccessfully. None of the issues asserted in this action overcomes Appellants' burden of showing any prejudicial error or harm. *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26 (S.C. App. 1987) (noting that "whatever doesn't make any difference, doesn't matter"). Consequently, Appellants' entire Complaint fails as a matter of law and is dismissed with prejudice.

II. The Circuit Court Properly Took Judicial Notice of Prior Court Proceedings.

The Circuit Court took judicial notice of the judgment in the 2020 Case as well as papers attached to the Appellants' Complaint and Motion for Injunction. (Order at 2, R. __). Consideration of the matters contained in the 2020 Case was specifically relevant to whether the "independent action" filed by the Appellants was in fact an independent action contemplated by Rule 60(b)(4), or simply more of the same baseless allegations and illogical legal theories that were offered up again in this action.

Inexplicably, Appellants contend that the Circuit Court should not have considered court filings in the 2020 Case, even though they attached them to the pleadings and referenced them in the Complaint. Moreover, Appellants did not object to the Court's consideration of these filings precisely because they relied upon them in their argument against Respondents' Motion to Dismiss.

[4] Rather, the recording of the SJH Deed constituted slander of title.

Under Rule 201(b)(2) and (c), SCRE, courts have discretion to take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." It is axiomatic that the Appellants cannot rely on filings in the 2020 Case and then object when the Court references those documents in rejecting their claim. See, *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (providing that when considering a Rule 12(b)(6) motion, a court may consider documents referenced in or attached to the complaint).

III. The Circuit Court Properly Cancelled the Lis Pendens.

The purpose of a *lis pendens* is to provide notice that a particular piece of real property is subject to litigation. *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct.App. 1985); *Wooten v. Seanch*, 187 S.C. 219, 196 S.E. 877 (1938). A *lis pendens* may only be filed in an action affecting title to real property, and in light of the Circuit Court's holding, the frivolous nature of the Appellants' claims and particularly as to the Court's findings as to jurisdiction, good cause existed to justify the cancellation of the *lis pendens* in this case. S.C. Code Ann. § 15-11-40.

IV. The Circuit Court Properly Declared the San Juan Holdings Deed to be Void.

Appellants testified at the hearing on Respondents' Motion to Dismiss that the only new evidence that distinguished this case from the 2020 Case was that Ryan recorded the SJH Deed the day before filing the Complaint. (Order at 7, Complaint at 2, R. at __). As the Court noted,

> [i]t 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. (Order at 7, R. __).

Appellants' reliance upon *Von Elbrecht v. Jacobs,* 286 S.C. 240, 332 S.E.2d 568 (Ct. App. 1985), is misplaced. In *Elbrecht*, Cox, a delinquent taxpayer, allowed his real property to be sold at a tax sale, but then gave a deed to it to Elbrecht before the 12-month redemption period had expired. Elbrecht immediately recorded the deed but did not redeem by paying the unpaid taxes. After the redemption period expired, Elbrecht sought to set aside the tax deed to Jacobs, who was the high bidder. Elbrecht's claim that the Recording Act, S.C. Code Ann. § 30-7-10, gave him superior claim to the property was rejected by the Court of Appeals. The Court found that the deed to Elbrecht at most conveyed a right to redemption, and Elbrecht's "failure to redeem the property prior to the issuance of the tax deed to Jacobs cut off any rights Elbrecht had in the property." 286 S.C. at 244.

As in *Elbrecht,* Ryan failed to record the SJH Deed until February 22, 2023, long after the redemption period had expired, and the tax deed was issued. (Order at 11, R, __). Therefore, once title to the Property had passed to SB Muni, Ryan's attempted recordation of his deed did not improve his claim to title. Since Appellants never redeemed the Property, they lost any claim to the Property upon the issuance of the Tax Deed. S.C. Code Ann. § 12-51-90; 286 S.C. at 244 (noting, "[a]s in the case of the defaulting taxpayer, the grantee loses any claim to the property if redemption is not made within the period established by law"). Accordingly, Appellants had no interest in the Property in February of 2023, and the Circuit Court correctly concluded that the SJH Deed recorded at that time was a nullity.

V. The Circuit Court Properly Denied Appellants' Motion for Injunction.

Appellants also sought an injunction against eviction from the Property by LB Park. To prevail on a claim for injunction, a party must demonstrate (1) irreparable harm, (2) likelihood of

success on the merits, and (3) no adequate remedy at law. *Scratch Golf Co. v. Dunes West Residential Golf Prop., Inc.*, 603 S.E.2d 905 (S.C. 2004). The Court appropriately concluded that Appellants could not establish any basis for relief, as any harm they could claim is "of the Appellants' own making, the result of the years-long scheme to avoid paying property taxes rightfully owed to York County." (Order at 12, R., _). So too, the Appellants' claims not only have no likelihood of success but were already rejected in the Judgment. Moreover, Appellants have appealed both the Judgment in the 2020 Case, as well as this case, and thus have ample remedy at law. *Strategic Resources v. BCS Life Ins. Co.*, 367 S.C. 540, 627 S.E.2d 687 (2006). Their Motion for injunction was properly denied.

VI. The Circuit Court Properly Granted Respondents' Motion for Sanctions, and Properly Denied Appellants' Motion for Sanctions and to Strike.

The review of an award of sanctions is treated as one in equity. *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct.App.2004) (applying an equitable standard of review of factual findings in action for sanctions under Rule 11 and the Frivolous Civil Proceedings Sanctions Act). *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). Where the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions under an abuse of discretion standard. *Id.* An abuse of discretion occurs where the decision is controlled by an error of law or is based on unsupported factual conclusions. *Id.* The findings of fact supporting the sanctions award recite the long and protracted history of litigation in this case, and are not in dispute. In light of these facts, the Circuit Court properly granted in part LB Park's Motion for Sanctions.

Specifically, the Circuit Court found and concluded that (1) Respondents' claims are not warranted under existing law, (2) that a good faith or reasonable argument did not exist for the

extension, modification, or reversal of existing law, and (3) that they are intended merely to harass or injure the Respondents, are not reasonably founded in fact, but are interposed merely for delay, or merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based. (Order at 15-16, R. __). Accordingly, the Court ordered that Appellants are:

> individually and collectively, prohibited from filing any pro se complaint, action, paper, pleading or any other court filing, in any state or federal court, of any type arising out of, related to, concerning, referencing, implicating or mentioning the taxes assessed or owed upon the Property, the Tax Sale, the Property, the Tax Sale of the Property, any action to quiet tax title to the Property including Case No. 2020-CP-46-00549, possession of the Property, the eviction of Plaintiffs or any other occupants from the Property, and any other matters concerning the Property (collectively, the "Filings") without prior leave of court. Any Filings on behalf of Plaintiffs must be (1) signed by a duly licensed South Carolina attorney subject to Rule 11 of the South Carolina Rules of Civil Procedure, or (2) certified by a South Carolina Circuit Court Judge as being compliant with Rule 11, which certification must be filed with any Filings. (Order at 16, R. __)

The Circuit Court has the inherent authority to enter gatekeeper orders designed to restrict individuals from filing new lawsuits or other papers without court approval, when necessary to prevent abuse of the judicial process and protect other parties. See *Rutland v. Holler, Dennis, Corbett, Ormond & Garner,* 371 S.C. 91, 98, 637 S.E.2d 316, 320 (Ct. App. 2006)(noting that "the primary purpose for which the proceedings were initiated 'was not that of securing the proper ... adjudication of the civil proceedings.'"). Moreover, South Carolina Frivolous Civil Proceedings Sanctions Act sets forth allowable sanctions, including (1) reasonable costs and attorneys' fees; (2) a reasonable fine to the court; or (3) *a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.* S.C. Code Ann. § 15-36-10(G).

Not only have Appellants' actions justified sanctions through their multiple and repeated lawsuits calculated to avoid and delay the consequences of their refusal to pay proper *ad valorem* property taxes, but they have admitted that they intend to continue this campaign for years to come. (Order at 14, R. at __). So too, Karen even admitted that her prior filings were frivolous at the hearing on the Motion to Dismiss. (Order at 15. R. at __). The Court made specific findings of fact and conclusions of law that support the gatekeeper order and it should be upheld on appeal. [5]

Finally, the Circuit Court properly denied the Appellants' Motion for Sanctions and to Strike. The basis for Appellants motion were unfounded claims that counsel perpetrated a fraud upon the Court on grounds that were raised and rejected in the 2020 Case, and that had no basis in law or in fact. In light of the history of this case the Court did not abuse its discretion in denying relief to the Appellants.

CONCLUSION

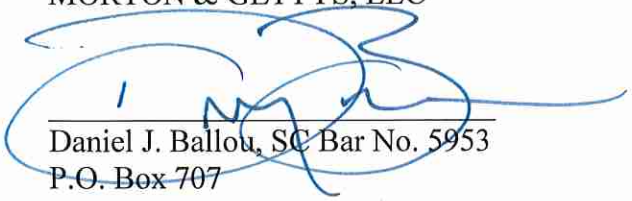
For the reasons set forth above, order on appeal should be affirmed. Appellants' history of vexatious and frivolous litigation had damaged LB Park and wrongfully prevented it from enjoying the rights it properly and legally obtained in the Property.

[SIGNATURE PAGE FOLLOWS]

[5]As noted previously, and despite the cancellation of the Lis Pendens by the Circuit Court, Appellants re-filed a *lis pendens* on December 19, 2023, in direct violation of the Order.

Respectfully submitted,

MORTON & GETTYS, LLC



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February 1, 2024