THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2023-CP-46-000607

Appellate Case # 2023- 000775

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 Schrager; and Lambros Xethalis, ...Respondents.

APPELLANTS' REPLY BRIEF

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

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

Daniel Ballou
P.O. Box 707
Rock Hill, SC 29731
Attorney for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Codes

Rules

Legal Dictionaries and Encyclopedias

GLOBAL ISSUES WITH RESPONDENTS' BRIEF

1. Every Single One Of Respondents' Arguments Violates The Law of Voids

Throughout Respondents' brief their attorney pretends to not know or understand that a void order is a nullity that carries absolutely no legal force or effect [Resp Brief Statement of Facts and Case, pgs 2-8; Resp Brief, argument I.c., pgs 12-14; Resp Brief, argument II, pgs 14-15; Resp Brief, argument IV, pgs 15-16; Resp Brief, argument V, pg 16-17; Resp Brief, argument VI, pgs 17-19]. A void order that does not carry any legal force or effect cannot be used as res judicata or equitable estopped, cannot be enforced, cannot be judicially noticed, cannot be used to form the factual or legal bases of any findings or conclusions in any other case, and cannot be used as evidence in any other case. As an order void for having been made without subject matter jurisdiction is a complete nullity -

> "A void judgment is one that, from its inception, is a **complete nullity** and is without legal effect" ... "Generally, a judgment is void only **if a court acts without jurisdiction**.", Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995) [emphasis added].

Since Judge Teasa K. Weaver ("Weaver") acted without subject matter jurisdiction, her quiet title order is a "complete nullity" ("Void Order") according to numerous cases including Thomas & Howard Co. v. T.W. Graham and Co. supra. A "complete nullity" is something that in the eyes of the law does not even exist even though there is a piece of paper saying it is an order. See Black's Law Dictionary, 6th ed., pg 1067 for definition of nullity -

> "Nullity. Nothing; no proceeding; an act or proceeding in a cause **which the opposite party may treat as though it had not taken place**, or which has absolutely no legal force or effect (emphasis added).

Appellants' claims cannot have been "*subsumed*" by Weaver's Void Order and their claims are not being "*re-litigated*" in this case on appeal as those claims were never litigated in the first

place. Respondents' nonsensical legal theories are repeated hundreds of times in the order on appeal ("Dismissal Order") and in Respondents' frivolous brief [Resp Brief Statement of Facts and Case, pgs 2-8; Resp Brief, argument I.c., pgs 12-14; Resp Brief, argument II, pgs 14-15; Resp Brief, argument IV, pgs 15-16; Resp Brief, argument V, pg 16-17; Resp Brief, argument VI, pgs 17-19].

Respondents' attorney has over thirty (30) years of experience and clearly knows and understands the law of voids but **pretends** to not understand it because it harms his clients' frivolous positions. In fact this one issue destroys Respondents' entire defense and the entire Dismissal Order. Worse still, as discussed below in section #14, Respondents did not even attempt to rebut or oppose this most important exception of this appeal. In fact Appellants' entire case hinges on this one issue. Respondents could have easily and completely disposed of Appellants entire case by proving Appellants were incorrect on this one key issue. But they failed to even address it much less prove Appellants are in error. This should be clear and convincing evidence that Appellants are correct. Weaver did not have subject matter jurisdiction to make her Void Order and Respondents are acting in bad faith and frivolously by continuing their fraudulent pretense that she did. They should be sanctioned.

A. An Order Based Or Dependent On A Void Order Is Void

Another law of voids that was totally ignored by both the Respondents and the lower court is that any order that is dependent on a void order is also void. In this case the entire Dismissal Order is basically a copy and re-ordering of Weaver's Void Order. Not only did the lower court not have the authority to copy and re-order Weaver's Void Order, The Dismissal Order on appeal is void for being entirely based on and dependent on Weaver's Void Order according to the following authorities -

> *"See Luthi v. Luthi,* 297 S.C. 306, 376 S.E.2d 782 (Ct.App.1989) (during husband's appeal of an equitable division award to former wife, the lower court's order that the monetary equitable division award to former wife was a properly enrolled money judgment **was void for lack of jurisdiction**; **as a result, the subsequent order awarding interest on the judgment was also invalid**).", Arnal v. Fraser, 641 SE 2d 419 (SC Supreme Court 2007).
>
> "We conclude the District Court erred in denying Clarence's motion to vacate the judgment for $7,000, **because it was and is void**. The **second judgment ordering his realty sold was and is void because it depended for validity upon a void prior judgment**." Austin v. Smith, 312 F.2d 337, 343 (D.C. Cir. 1962).

The Dismissal Order on appeal is void as it is entirely based on and derived from Weaver's Void Order. In fact the Dismissal Order is almost an exact copy of Weaver's Void Order so it indisputably depends on the validity of Weaver's Void Order.

2. Respondents Focus On Background Facts And History That Are Both Irrelevant To This Appeal And Can Not Be Found In The Record

Respondents spent most of their time, effort, and focus in their Brief reciting and discussing background facts and history that have absolutely nothing to do with this case [Resp Brief pgs 2-8 as well as numerous other places in its brief]. Not only are most of those recited facts and history discussed in their Brief entirely irrelevant to this case on appeal but worse, most of those facts and history can not even be found in the record made below [ROA, pgs all].

Respondents mentioned these irrelevant background facts and history for the following five (5) reasons: 1) they cannot, and have not, rebutted or argued the actual facts of this case so they are frivolously focusing on irrelevant facts not found in the record in order to distract this Court from the real issues; 2) they are attempting to prejudice this court against Appellants by attempting to make Appellants look like tin foil hat wearing tax protestors, tax cheats and/or tax evaders; 3) they are attempting to make this case look like a tax case even though it has nothing at all to do with the payment, non-payment, assessment or non-assessment of any taxes; 4) Respondents are attempting to convince this Court that Appellants have a long history of being

sanctioned for their numerous frivolous filings in order to attempt to support the lower court's erroneous sanctioning Appellants in this case on appeal. There is no evidence in the record made below that could show either Appellant has ever been sanctioned by any court, at anytime; and 5) Respondents are pretending that they have somehow been "*damaged*" by Appellants' "*history of vexatious and frivolous litigation*" from alleged and irrelevant unrelated cases that had nothing at all to do with any Respondent or any claim made in this case on appeal. See for example Respondents' fraudulent statement found in their brief on page 19 in its CONCLUSION section which reads - "*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*" (emphasis added). That statement is unsupported by the record and was included in their CONCLUSION specifically to prejudice this Court against Appellants and make it look like Appellants have a long history of being sanctioned for all their numerous frivolous filings. However, the record is totally devoid of any evidence whatsoever that could show that either Appellant has ever been sanctioned at any time, for any filing, in any case [ROA, pgs all] until this case on appeal [Order of Dismissal, pgs 17-18].

3. Respondents Often Copy And Paste Paragraphs Or Pages From The Order On Appeal Without Adding Any Argument Or Any Citations To Authority

Many parts of Respondents' Brief is just a cut and paste of verbiage from the Dismissal Order that is on appeal. See for example Respondents' Brief, pg 14. Almost that entire page is just a cut and past from the Dismissal Order. Respondents added nothing to the copied text, no argument, no authority, no discussion just a copy of text from the order on appeal.

SPECIFIC ISSUES WITH RESPONDENTS' BRIEF

4. Respondents Erroneously Raise And Argue An Allegation That Appellants' Alleged Appeal Of Weaver's Void Order Was Dismissed So Her Void Order Becomes The Law Of This Case And Can Be Used As Res Judicata

Respondents' attorney is attempting to argue facts that are not found in the record and arguments that were never raised to or ruled upon by the lower court. So they cannot be argued for the first time on appeal -

> "**an affirming ground must be presented to and ruled on by the trial judge**. *See Brashier v. South Carolina Dep't of Transp.,* 327 S.C. 179, 186 n. 7, 490 S.E.2d 8, 12 n. 7 (1997) (an issue is not preserved, even if it is to be an additional sustaining ground, where the trial judge did not rule on it)", Shealy v. SC DEPT. OF SOCIAL SERVICES, 511 SE 2d 713 (1999) [emphasis added].
>
> "However, **this court is bound by the record and exceptions**. Issues not raised at the trial and not timely preserved by a proper exception cannot be considered for the first time on appeal.", Liberty Loan Corp. of Darlington v. Mumford, 322 SE 2d 17 (1984) SHAW, Judge (dissenting).

For this Court to affirm the order on appeal in this case, based on unproven allegations that Weaver's Void Order became the law of this case, both the facts and a ruling by the lower court must be found in the record but neither can be found in the record [ROA, pgs all].

Respondents' attorney wrote the following unsupported gibberish in his brief -

> "Even if Appellants could challenge the Judgment under Rule 60(b)(4) while simultaneously pursuing an appeal, judgments are only void when a court failed to provide proper due process of 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**.", [Respondents' Brief, pg 12, para. 1].

First Appellants never challenged Weaver's Void Order "under Rule 60(b)(4)" and there is no evidence in the record that could show that they did [ROA, pgs all] (see also section #5 below). Second, Respondents did not raise this issue as an "*affirming ground*" or an "*additional sustaining ground*" they only insinuated it in a backhanded sort of way [see quote immediately above]. Third, Respondents state, without providing any evidence from the record, that "*Appellants have already appealed the question of jurisdiction* ***and lost****" ..."they cannot*

circumvent the ***law of the case and res judicata by bringing a new lawsuit***.". The record is missing any evidence that could show that Appellants appealed Weaver's Void Order, that the question of jurisdiction was heard or decided in that alleged appeal, or that Appellants "*lost*" their arguments in their alleged appeal [ROA, pgs all].

Elsewhere in their brief Respondents make a different claim stating that Appellants' alleged appeal of Weaver's Void Order was "*dismissed*". Presuming for the sake of argument that the record supports that allegation, Respondents are conflating a "*dismissal*" of an appeal of a void order with actually having the appeal heard and the issue of jurisdiction decided. Respondents' attorney wrote the following unfounded gibberish in his brief -

> "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 unscuccessfully**." [Resp Brief, pg 14, para 1].

And more of his unfounded gibberish -

> "Thereafter, title was quieted in LB Park, again after years of delay tactics and frivolous motions and appeals by the Appellants, **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 with and precluded by the 2020 Case and Appeal" [Resp Brief, pg 11, para 1].

Presuming for the sake of argument that Appellants did appeal Weaver's Void Order and that their appeal of Weaver's Void Order "*has now been dismissed*" that fact still would not make any of Appellants' claims made in this case on appeal "*meritless*" or "*wholly subsumed with and precluded by the 2020 Case and Appeal*". An appeal being dismissed is equivalent to an appeal not being taken. However, failing to appeal a **void order** does not make it a valid order and, most importantly, does not make it the "law of the case" because a void order carries "no effect whatever" so it does not even need to be appealed -

> "The order of April 22nd, not appealed from, was clearly void, and of **no effect whatever** and **no appeal therefrom was necessary** to protect the rights of the father.", Webster v. Clanton, 192 SE 2d 214 (SC Supreme Court 1972).

A void order is a "complete nullity" -

> "A void judgment is one that, from its inception, is a **complete nullity** and is without legal effect" ... "Generally, a judgment is void only **if a court acts without jurisdiction**.", Thomas & Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995) [emphasis added].

A void order can only be ruled to be a valid order if an appeal of it is actually heard and decided by a higher court. Respondents have failed to evidence any order from a higher court ruling that Weaver did in fact have subject matter jurisdiction to make her quiet title order.

5. Respondents Failed To Disprove Appellants' Exception To The Lower Court's Dismissal Of The Case For Want Of Subject Matter Jurisdiction

The lower court ruled that Rule 205 SCACR deprived it of subject matter jurisdiction to hear Appellants independent case brought to collaterally attack Weaver's Void Order. There are no precedent cases that rule on whether or not Rule 205 SCACR deprives the lower court of subject matter jurisdiction to hear an independent action that is brought to collaterally attack a void order when that void order is allegedly on appeal. This is probably because all attorneys know that Rule 205 SCACR only affects jurisdiction over the case upon which an appeal has been taken and does not and cannot affect an entirely different independent case, even if the two cases are related[1]. As evidence of this, Respondents did not cite or argue any authority in the lower court or in its Brief to prove their frivolous position.

A collateral attack is defined as -

> "stated affirmatively, a collateral attack on a judgment is an attack made by or in an action or proceeding that has an independent purpose other than impeaching or overturning the judgment.", Black's Law Dictionary, 6th ed., pg 261.

[1] related in the sense that the void order being collaterally attacked was entered in the earlier case.

Appellants' collateral attack case was brought mainly to quiet Appellant Ryan Powell's title that had been clouded by Weaver's Void Order.

Most importantly, if the lower court was deprived of subject matter jurisdiction to hear Appellants' claims, then all the relief granted to Respondents in the Dismissal Order on appeal is void for having been made without subject matter jurisdiction because when a court lacks subject matter jurisdiction it cannot proceed to hear or decide any other issue -

> "Jurisdiction is generally defined as "the authority to decide a given case one way or the other. **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) (footnotes omitted)", Limehouse v. Hulsey, 744 SE 2d 566 (SC Supreme Court 2013).

The relief granted to Respondents in the Dismissal Order includes, but not be limited to, the quieting of Respondent LB PARK, LLC's quitclaim deed accomplished by striking Ryan Powell's deed from the county land records and canceling Appellants' lis pendens, and ordering gatekeeper sanctions against Appellants to prevent them from having any access to any court, state or federal, in order to seek relief or remedy for the damages done by Weaver's Void Order and the theft of their property by Respondent LB PARK, LLC.

If this Court finds the lower court was deprived of jurisdiction by Rule 205 SCACR, then everything ordered in the Dismissal Order, besides a dismissal of the case, is void and must be vacated.

6. Respondents Failed To Disprove Appellants' Exception To The Lower Court's Unsupported Finding That Appellants Case Was Brought Under Rule 60(b)

Appellants NEVER stated or implied that their independent action brought to collaterally attack Weaver's Void Order was "contemplated by Rule 60(b)", dependent on Rule 60(b) SCRCP, brought under Rule 60(b) SCRCP, or relied in anyway on Rule 60(b) SCRCP. This is

why Appellants never made a Rule 60(b) SCRCP motion as Respondents fraudulently claim they were required to do in Respondents' Brief.

Since a collateral attack does not impeach or seek to overturn a void order, Rule 60(b) SCRCP which is used to vacate a void order is entirely irrelevant to such a case according to Black's Law Dictionary -

> "stated affirmatively, a collateral attack on a judgment is an attack made by or in an action or proceeding that has an independent purpose **other than impeaching or overturning the judgment**.", Black's Law Dictionary, 6th ed., pg 261.

Notwithstanding, Appellants did mentioned Rule 60(b) SCRCP in their response to Respondents' frivolous Rule 12(b)(1) SCRCP motion to dismiss and also during the hearing of that motion in order to demonstrate that Rule 60(b) SCRCP proves that it "*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.*". Since Rule 60 SCRCP "*does not limit the power of a court to entertain an independent action*" then clearly a party can bring an independent action to collaterally attack a void judgment even if the void judgment is on appeal. Appellants were only mentioning Rule 60(b) SCRCP to show that the lower court's jurisdiction would not be affect by an appeal if one had been taken so the lower court could hear Appellants' independent action.

Further Respondents falsely state that since Appellants failed to seek leave from this Court before they filed their action they now "*are not entitled to any further relief*" [Resp Brief argument I.b, pg 12]. This is an intentional misstatement of the facts and law. Assuming for the sake of argument that Appellants' appealed Weaver's Void Order, they would have only needed to seek leave from this Court to make a Rule 60(b) motion if they were planning to directly attack Weaver's Void Order and have it vacated. But why would they have needed to directly

attack her void order if it was on appeal? And how would Weaver have had the jurisdiction to hear such a motion if she did not have any subject matter jurisdiction to hear any motion in LB PARK, LLC's "2020 Case"? Respondents' legal theories are twisted, confused, and frivolous.

7. Respondents Failed To Disprove Any Of Appellants' Numerous Exceptions To The Lower Court's Rule 12(b)(6) Dismissals

Respondents basically just state, without any argument or citing any authority, that all the lower court's dismissals of Appellants' causes of action under Rule 12(b)(6) SCRCP were correctly done.

Then Respondents state that Appellants eighth, ninth, and tenth causes of action were correctly dismissed by the lower court because Appellants failed to name and join York County and Judge Weaver as party defendants. Appellants' demonstrated in their Brief that a cause of action or a case cannot be dismissed, especially at the pre-answer stage of proceedings, for failing to join an indispensable party.

But then Respondents state that those two persons, York County and Judge Weaver, could not be made parties because Appellants' failed to state any claims against those two persons. In other words, Respondents disproved their own opposition and they did that in the same sentence as their opposition! Respondents' attorney wrote the following gibberish in his brief -

> "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.", [Respondents' Brief, pg 13, para. 2]

If a plaintiff has no claims against a person then they **cannot** name and make that person a party to their case. The fact that Appellants' had no claims against York County and Judge Weaver is the exact reason why they were not named and joined as parties. Accordingly, neither York County nor Judge Weaver were indispensable parties that were required to be named and joined. Therefore it was clearly error for the lower court to have dismissed these three causes of action

because Appellants failed to name and join those two persons/entities that Respondents admit could not be named and joined. Respondents have shamelessly demonstrated how utterly frivolous, confused, and twisted their logic is.

8. Respondents Failed To Disprove Appellants' Exceptions To The Lower Court's Taking Judicial Notice Of Findings And Conclusions Of Law From Two Unrelated Cases And At The Pre-Answer Stage Of Proceedings

Respondents wrote - "*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).*" [Resp Brief, argument II, pg 14, para 2] and "*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.*" [Resp Brief, argument II, pg 14, para 3].

However, Respondents failed to cite a single paragraph from Appellants' Complaint or Motion for Injunction that would show Appellants ever mentioned any of those papers from two unrelated cases as found in the Dismissal Order on appeal. Respondents also failed to cite any exhibit that proves Appellants' attached those alleged papers to their Complaint or Motion for Injunction. Instead Respondents just cite an unsupported finding in the Dismissal Order as the source of this evidence for their false and fraudulent accusations.

The only part of Weaver's Void Order that was attached to Appellants' Complaint was eight (8) specific "decretal" pages. Those eight (8) pages were attached to support Appellants' request for an injunction to stop their illegal and unlawful dispossession from Ryan's property. Those eight (8) pages did not give the lower court the authority to take judicial notice of Weaver's entire Void Order and then copy it and re-order it. This is all fully briefed in Appellants' Brief.

Then Respondents state that "*consideration of the*" [irrelevant] "*matters contained in*" [Weaver's Void Order] "*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" [Respondents' Brief, pg 14, section II, para. 1].

First, as shown above in section 6, Rule 60(b) has nothing to do with this collateral attack case. Second, as shown above in section 1, Respondents' attorney is pretending to not know or understand the law of voids. According to the law of voids, determination of whether or not Weaver's quiet title order was made without subject matter jurisdiction is the one and **ONLY** issue that can be considered from that case (i.e. LB PARK, LLC's "2020 Case"). Not surprisingly, that is an exception that Respondents failed and refused to even address in their Brief.

The lower court and Respondents' attorney did this unlawful deed of allegedly taking judicial notice of numerous irrelevant papers so that the lower court could pretend to use that noticed material to basically copy and re-order Weaver's Void Order. They accomplished their devious plan because they both **know** that Weaver did not have subject matter jurisdiction to make her Void Order. Why would there have been any need whatsoever to act in such an unlawful manner to copy and re-order a "valid" order, especially in response to a pre-answer motion to dismiss, if Weaver's Void Order was a valid order? There would not have been any such need and it would not have been done! The fact that they did this is conclusive proof that not only is Weaver's quiet title order void but that the lower court and Respondents' attorney both know that to be true. Nonetheless, copying the contents of a void order and re-ordering it does not make it a valid order (see section 15 below for a full argument).

Then Respondents' attorney continues to commit fraud on this Court by falsely stating that "*Appellants' did not object to the Court's consideration of these filings*" [Respondents' Brief, pg

14, section II, para. 3]. Of course he failed to cite where in the record Appellants were ever given notice that the court was going to do such an unlawful act until after the court entered its Dismissal Order. At that time Appellants timely objected as proven in Appellants' Brief.

Finally, Respondents failed to provide any argument or citation to any authority to demonstrate that the lower court had the authority to judicially notice court papers from irrelevant cases or from Weaver's Void Order. Or that the lower court had the authority to take judicial notice of findings of fact as those are disputable and are always in dispute. Or that the lower court had the authority to take judicial notice of conclusions of law as those are not "adjudicative facts". The lower court's taking judicial notice of all the irrelevant and unnoticable matter was especially problematic at the pre-answer stage of proceedings. Respondents also failed to provide any argument or citation to any authority to prove that a judge has the authority to take judicial notice of a void order so that he could copy it and re-order it in his order.

Appellants' proved in their Brief that it was error for the lower court to take judicial notice of ANY of the numerous "papers" that were judicially noticed all based on an unsupported finding that Appellants' mentioned and attached those alleged papers to their Complaint. But Appellants did no such thing and Respondents failed to prove that they did.

9. Respondents Failed To Disprove Appellants' Exception To The Lower Court's Canceling Their Lis Pendens

Two of the Respondents' eleven case citations can be found in their Brief Section III which allegedly proves that the lower court acted correctly when it canceled Appellants' lis pendens. However, Respondents' two citations just agree with Appellants' position that a lis pendens is used to give notice to potential purchasers and encumbrancers that title to real property is subject to litigation. Appellants' quiet title action is certainly a proper action in which a lis pendens can be filed -

> "Therefore, an action "affecting the title to real property" clearly allows the filing of a lis pendens by an interested party in order to protect their ownership interest in the property subject to the litigation." ... "**They also include actions to quiet title**", Pond Place Partners, Inc. v. Poole, 567 SE 2d 881 (2002) [emphasis added].

There is no way that anyone could argue with any integrity that there is no "action affecting the title to real property" in this case especially after the lower court struck Ryan Powell's deed from the public land records and canceled Appellants' lis pendens which resulted in the quieting of LB PARK LLC's quitclaim deed. Further, no one could argue with any integrity that "litigation" does not include an appeal -

> Litigation means - "Legal action, including all proceedings therein. Contest in a court of law for the purpose of enforcing a right or seeking a remedy. A judicial contest, a judicial controversy, a suit at law.", Black's Law Dictionary, 6th ed, pg 934.

Respondents then state, without providing any supporting authority, that because the lower court took the [erroneous] actions that it took, it was proper to have canceled Appellants' lis pendens. Of course Respondents failed to even attempt to show that any of the lower courts actions taken were proper.

There is neither any case law in this State which addresses the issue of whether a lis pendens can be immediately canceled upon entering of the order that cancels it nor whether it can be immediately canceled when it is known to all parties and to the court that an appeal is going to be pursued. However, an examination of other states case law shows an abundance of cases holding that a lis pendens cannot or should not be canceled until a case is completely litigated, to include any appeals. When they do allow immediate cancellation it is almost always premised on a posting of a financial undertaking to protect the rights of the party that filed the lis pendens. The following is an example of one such case:

> "One of the important factors in this regard is that the likelihood of success on the merits is irrelevant to determining the validity of the notice of pendency" ... "If the notice of pendency is valid, the court may, in its discretion, cancel the notice, but the

> moving party will generally have to post an undertaking (CPLR 6515)." ... "In entertaining a motion to cancel, the court essentially is limited to reviewing the pleading to ascertain whether the action falls within the scope of CPLR 6501" ... " Thus, a court is not to investigate the underlying transaction in determining whether a complaint comes within the scope of CPLR 6501. Instead, in accordance with historical practice, the court's analysis is to be limited to the pleading's face.", 5303 REALTY v. O & Y EQUITY, 64 NY 2d 313 (NY Ct Appeals 1984) [emphasis added].

Appellants fully briefed this issue and they demonstrated that the lower court did not even wait for the ten (10) days that is required by Rule 62(a) SCRCP before an order can be executed, assuming that an order dismissing a case for want of subject matter jurisdiction can even be executed. Accordingly, a lis pendens cannot be, and should have been, canceled for this quiet title case while litigation is still on-going.

10. Respondents Failed To Disprove Appellants' Exceptions To The Lower Court's Striking From The County Land Record Ryan Powell's Deed

Respondents' entire argument for its section IV, pgs 15-16 goes to the **merits** of its non-existent claim to quiet LB PARK, LLC's quitclaim deed. There was no claim plead by either party requesting the striking of Ryan Powell's deed so the lower court had no authority (subject matter jurisdiction) to grant relief that was never plead. And there was never any merits hearing on the merits of a non-existent quiet title claim. The merits of any claim can only legally be granted after the claim is plead and then in a summary judgment action or after a final merits hearing. The latter requires mandatory mediation, discovery, and an evidentiary hearing. This action by the lower court is especially disturbing given that the lower court dismissed Appellants' quiet title claim under Rule 12(b)(6) so there was NO quiet title claim before the court. The lower court dismissed Appellants entire case for want of subject matter jurisdiction, so the court had no authority to act in any way much less hear and determine a claim that was never made.

What the lower court was attempting to achieve, and did achieve, was to copy Weaver's Void Order to presumably make it a valid order, cancel Appellants' lis pendens, and strike Ryan

Powell's deed from the land records so that the sucker who purchases Ryan Powell's property while this appeal is still pending can then claim *innocent purchaser for value without notice* thereby stealing Ryan Powell's property on false pretenses, fraud, and other felony crimes!

11. Respondents Failed To Disprove Appellants' Exceptions To The Lower Court's Denial Of Their Motion For Injunction

The lower court denied Appellants' Motion for Injunction on the merits after dismissing all their claims and their case for want of subject matter jurisdiction. If the court didn't have jurisdiction and there was no claim that could support an injunction, Appellants motion should have been denied on procedural grounds only. Nonetheless, Appellants fully argued this issue in their Brief.

12. Respondents Failed To Disprove Appellants' Exceptions To The Lower Court's Gate Keeper Sanctions

As proven in Appellants' Brief, a gatekeeper order is a drastic remedy that should only be ordered after other sanctions have failed and that ordering such sanctions against pro se litigants should only be done with extreme caution because it violates their rights secured by the Constitution. In this case, the record is devoid of any findings and/or evidence that could support such a finding that could show any of the following: 1) that either Appellant has ever been sanctioned for filing any frivolous document; 2) that Appellant Karen Powell has ever even filed any document in any court case before this case on appeal or that she ever admitted the parties had previously filed frivolous documents as Respondents frivolously alleged in their Brief; 3) that either Appellant did not believe there were good grounds to support both the law and facts of their pleadings and papers; 4) that either Appellant initiated any case or any appeal, including this case on appeal, for any purpose other than the proper adjudication of the claim(s) upon

which the proceedings were based; or 5) that a reasonable attorney would believe that Appellants' case was initiated to harass or injure Respondents.

Appellants' documents filed in this case are not frivolous according to Rule 11 SCRCP which is the authority under which the gatekeeper sanctions were ordered or according to the Frivolous Civil Proceedings Sanctions Act ("FCPSA") found in SC Code of Laws §§ 15-36-10 - 100.

To be sanctioned under Rule 11 SCRCP, the court must make specific findings (with evidence in the record to support those findings) that the offending party signed some document that he or she had not read or that to the best of his or her knowledge, information or belief, there were no good grounds to support the document, or that it was interposed only for delay. See Rule 11(a) SCRCP which reads -

> "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."

To be sanctioned under the FCPSA the lower court would have had to make findings (with evidence in the record to support those findings) that -

> "a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended **merely** to harass or injure the other party;", SC Code of Laws § 15-36-10(A)(3)(c).

Not only does the Dismissal Order fail to make any of these findings but the record is devoid of any evidence that could support making any of those findings. In fact in Appellant Brief they proved just the opposite.

As shown elsewhere in this Reply Brief, sanctions were not even available to Respondents since they hadn't yet even made a pleading. As proven in Appellants' Brief the gatekeeper sanctions ordered were an abuse of discretion, and abuse of power, and an error of law so they must be reversed and/or vacated.

13. Respondents Failed To Even Address Appellants' Exceptions To The Lower Court's Denial Of Their Motion To Strike And Sanction Respondents

Since Respondents failed to even address, let alone oppose, the lower court denying Appellants' Motion to Dismiss and Strike, then this Court must consider that exception unopposed and correct. Respondents did not address this exception because Appellants' position is correct, Respondents' attorney committed fraud on the court when he pretended to have a retainer agreement signed by two of the named defendants that do not exist. Fraud vitiates everything it touches. This exception was fully briefed in Appellants' Brief.

This exception has gone unopposed so it must be considered correct and this error reversed.

14. Respondents Failed To Even Address Appellants' Exceptions To The Lower Court's Finding That Weaver Had Subject Matter Jurisdiction To Make Her Quiet Title Order

Respondents failed to argue or oppose Appellants' exception proven in their Brief that Weaver did have subject matter jurisdiction to enter her void quiet title order. Appellants' entire case on appeal is grounded on this one key issue. Respondents could have easily and completely invalidated every exception raised and thoroughly argued in Appellants' Brief by proving Appellants were incorrect on this one key issue. But they failed to even address it much less prove Appellants are wrong. Further, the lower court copying and re-ordering Weaver's Void Order is clear and convincing evidence that Respondents' attorney and the lower court both **know** that Weaver's quiet title order is void for want of subject matter jurisdiction or else there would not have been any conceivable reason for it to be copied and re-ordered especially as a result of a motion to dismiss. Respondents are acting in bad faith and frivolously by ignoring this most important exception. They should be sanctioned and the Dismissal Order vacated for their commission of fraud on the court.

NEW ISSUE RAISED FOR THE FIRST TIME

15. The Lower Court Acted Without Subject Matter Jurisdiction When It Copied and Re-ordered Weaver's Void Order Without Respondents Having Even Filed A Pleading Requesting That Or Any Relief

This issue is being raised and argued for the first time in this reply brief and that is permissible because it involves the subject matter jurisdiction of the lower court so it is an issue that can never be waived and can be raised for the first time on appeal -

> The lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court. *See, e.g., Lake v. Reeder Constr. Co.,* 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct.App.1998) (holding issues related to subject matter jurisdiction may be raised at any time). "The acts of a court with respect to a matter as to which it has no jurisdiction are void.", Town of Hilton Head Island v. Godwin, 634 SE 2d 59 (2006).

A. Each Party Must File Sufficient Pleadings Before The Court Is Empowered With The Subject Matter Jurisdiction To Act For That Party

Not only was relief granted to the Respondents without them first filing a pleading, but the Dismissal Order basically just copied and re-ordered Weaver's Void Order without that relief even being requested in Respondents' Motion To Dismiss and Sanction [ROA, MTDS, pgs ___]. It is a fundamental axiom of jurisprudence that a party must first file an action to have access to the court to be granted any relief -

> "It is a **fundamental axiom of jurisprudence** that a party must first file an action to have access to the court.", Lockett v. State, 329 P. 3d 755 (2014).

Clearly each party must first file a pleading to have access to the court because it is a party's pleadings which gives the court the authority to act in order to grant that party any relief.

Black's Law Dictionary makes it quite clear what "subject matter" jurisdiction is by its definition of "subject matter" which it defines as -

> "Subject matter. The subject, or matter presented for consideration; the thing in dispute; **the right which one party claims as against the other**", Black's Law Dictionary, 6th ed., pg 1425.

How would a court know what right each party claims against the other unless or until both parties have filed a pleading making their claims? This is why no court of limited or general jurisdiction has the authority to order anything in a case but dismissal of the case BEFORE the party has plead[2].

The following case proves that the relief requested by a party is an issue of subject matter jurisdiction. There is no way to know what relief has been requested until the party actually files a pleading making their requests.

> "While our Code clearly authorizes the family court to settle property rights in marital litigation, it does not give a former spouse the right to institute a separate action in family court where the **relief requested is not incidental to the divorce decree**. An action for partition of undivided interests is not marital litigation, and thus is not within the jurisdiction of the family court. Moreover, the Court of Common Pleas has **jurisdiction over partition actions**. Lack of subject matter jurisdiction cannot be waived and should be taken notice of by this Court on its own motion.", Eichor v. Eichor, 351 SE 2d 353 (1986).

Dismissing a case is not considered relief so it can be ordered before a pleading is made. This is made obvious by Rule 12 SCRCP that allows pre-answer dismissals for procedural failings or issues with a plaintiff's complaint. None of the Rule 12 SCRCP dismissals allow the ordering of any relief to either party.

> "Subject matter jurisdiction is `the power to hear and determine cases of the general class to which **the proceedings** in question belong.'" Dove v. Gold Kist, Inc., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994).

So what are "the proceedings" mentioned in Dove v. Gold Kist, Inc.?

> Proceedings - "All the steps of measures adopted in the **prosecution or defense** of an action. The word may be used synonymously with "action" or "suit" to describe the **entire course of an action** at law or suit in equity from the issuance of the writ or filing of the complaint until the entry of a final judgment, or may be used to describe any act done by authority of a court of law and **every step required to be taken in any cause by either party**.", Black's Law Dictionary, 6th ed. pg 1204.

[2] The one exception being ordering a default if the defendant does not timely answer the complaint with a motion to dismiss or a pleading.

Clearly then "the proceedings" that the case must be in the "general class" of and which the Court has the power "to hear and determine" includes all the claims made by both parties. That means both parties claims must be analyzed to determine jurisdiction of the subject matter of the case.

Appellants' are unable to provide any case that shows a defendant has ever been granted any relief as a result of a pre-answer motion to dismiss including being granted sanctions. Likewise, the Respondents have also failed to provide any authority showing that a defendant can be awarded any relief, including sanctions, before they have filed a pleading requesting that relief.

Although Appellants are also unable to locate any case in this State that directly addresses this issue, other State's courts have ruled on this issue. Oklahoma has stated this legal principle very clearly. This jurisprudence applies to all courts of general jurisdiction in this country except maybe Louisiana since it is not a common law state -

> "We recognize the district court, in our unified court system, is a court of general jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters ... However, this "unlimited original jurisdiction of all justiciable matters" can only be exercised by the district court **through the filing of pleadings which are sufficient to invoke the power of the court to act**.", Buis v. State, 792 P.2d 427 (1990).

Take note of that last sentence that says "pleading**s**" plural not singular as in both parties must first file a sufficient pleading in order to invoke the power of the court (its jurisdiction) to act for that party.

B. There Is Neither Any Statutory Nor Common Law Authority In This State That Gives The Circuit Court Subject Matter Jurisdiction To Copy And Re-Order An Order Void For Want Of Subject Matter Jurisdiction

Assuming for the sake of argument that the failure of the Respondents to make their claims and request relief in a pleading, is not an issue of subject matter jurisdiction, even though Eichor

v. Eichor supra clearly shows that it is, the Circuit Court's subject matter jurisdiction (i.e., its authority to grant relief) is limited to granting relief only for claims recognized in the common law or claims provided for by the legislature through a statute. Of course to know which claims are allowed to be plead, a pleading must first be filed making the claim.

Nonetheless, had Respondents actually filed a pleading requesting the court copy Weaver's Void Order and re-order it, their claim and relief requested would have rightly been dismissed as not even a court of general jurisdiction has the authority to hear such a claim or provide such relief. Accordingly, the lower court acted without subject matter jurisdiction when it copied and re-ordered Weaver's Void Order.

CONCLUSION

Since Respondents failed to even address or rebut Appellants well briefed exception showing that Weaver's quiet title is void, that exception should be considered unopposed and therefore correct. Since the lower courts' Dismissal Order is entirely based on and dependent on Weaver's Void Order it too is void and must be vacated. This Court must find for Appellants and vacate or reverse all the errors raised and thoroughly argued in Appellants Brief and this Reply Brief.

February 12, 2024

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

/s Karen Powell_____
Karen Powell, Appellant
c/o 287 East Hawfields
Pittsboro, NC 27312