

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel Hall, Circuit Court Judge

Case No. 2019-CP-46-00310
Appellate Case No: 2019-000979

RECEIVED
AUG 26 2019
SC Court of Appeals

Ex Parte, Ryan Powell, Appellant.

In re LB PARK, LLC Respondent,

v.

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

Return to LB PARK's Motion to Remand

LB PARK's Motion to Remand ("The Motion" hereinafter) is frivolous, fraudulent, violates the rules, and must be denied for at least the following seven (7) reasons:

1) The Motion can be summed up thusly-> there is no need to hear and determine this unnecessary and time consuming appeal because LB PARK is now going to offer to give Appellant what he wants, i.e., to be named a defendant [The Motion, pg 4, conclusion].

A motion to remand was never intended to be used by a party to avoid having to litigate

an appeal or to give a plaintiff a *do over* to get another opportunity to create a case where none actually exists. The two persons that LB PARK named as defendants ceased to exist as legal entities over six (6) years BEFORE it initiated its "action"¹. Since there is no defendant in the "action" below, there is no "action"². The Motion is a ruse, a fraud, a scheme with no basis in fact or law and is therefore frivolous and was obviously made in bad faith in a desperate attempt to "win" an un-winnable "action".

2) Intervening into a case as a third party intervener, which is the remedy Appellant sought in the trial court, is an entirely different role than being a defendant. As law 101 teaches, in order for a plaintiff to bring an action it must have suffered some kind of loss or damage that can be directly attributable to action(s) or in action(s) of the defendant(s). In other words, the plaintiff must allege in its complaint some acts or failures to act by every defendant it names whose actions or negligence directly lead to some damage it is suffering, or has suffered. Failure to do so will lead to a dismissal of a case, or of a defendant, under Rule 12(b)(6) -> failure to state a claim upon which relief can be granted. But LB PARK has no claim against Appellant which is evidenced by its *proposed complaint* attached as Exhibit B to The Motion. In the *proposed complaint* LB PARK lists Appellant as a defendant in paragraph #7 but then denies its own allegation that it relies upon to name Appellant as a defendant in the case! LB PARK then fails to

¹ See Exhibit A which is a copy of a notice of sale that was issued and recorded by the previous owner of the land in dispute after it sold its land to Appellant. The notice testifies, *inter alia*, that after the sale of its land the seller trust terminated since it had fulfilled its purpose. The notice was acknowledged to exist in LB PARK's complaint. That knowledge was again acknowledged LB PARK's "proposed complaint" attached to The Motion as Exhibit B. Therefore LB PARK acknowledges that it has received actual notice that the defendants it has named did not exist as legal entities for over 6 years PRIOR it bringing its "action". Exhibit A is attached to this Return and fully incorporated herein by reference

² "The general rule, cited by this Court ..., is: [I]f there is a lack of legal entity, the whole action fails... an action brought against a nonexistent defendant is a nullity... the defect is fatal to Respondents' suit... We hesitate to say "dismissed" as there was "no action before the Court ..." to be dismissed", McCullar v. Estate of Campbell, 672 SE 2d 784 (SC Supreme Court, 2009).

allege ANY claim against Appellant in the entirety of its *proposed complaint* proving that Appellant can NOT be brought into the "action" as a defendant.

3) The **only** ground raised to support The Motion is the allegation that the code chapter under which LB PARK brought its action [12-61-10 to 60] provides a "*complete remedy*" for clearing tax titles [The Motion, pg 3, last para, sentence 1]. From those two words, "*complete remedy*", LB PARK's attorney then draws the outrageous conclusion that the promised "*complete remedy*" does not include an appeal because an appeal is too time consuming and, after all, "*time is money*" [The Motion, pg 4, conclusion]. Notwithstanding such utter lies and deception, LB PARK admits it does not even have a tax title [The Motion, Exhibit B, #12, #13, & #14] so the cited *complete remedy* that allegedly does not allow for an appeal is not even available for LB PARK's use!

4) Footnote #1 in The Motion states that granting The Motion will make this appeal moot, which is another outright lie. Naming Appellant as a **defendant** will not correct either of the two main assignments of error in this appeal which are: 1) the trial court erred by denying Appellant **intervention** into the case; and most fatal to its "action" 2) the trial court erred by finding it has the subject matter jurisdiction needed to hear and decide the "action".

5) The Motion requests an equitable remedy so LB PARK must first demonstrate it has no legal remedy available to it. Since LB PARK has not alleged that it is suffering any damage or harm, other than having to litigate an appeal, then there is no need for **any remedy** much less an equitable one. Further, Rule 222 SCACR is its legal remedy.

6) There is no enforcement method to ensure that ANY of the actions that LB PARK proposes it will take will ever actually be executed.

7) The Motion states LB PARK will dismiss its action upon remand under Rule 41(a) SCRCF. However, Rule 41(a) SCRCF only allows a plaintiff to voluntarily dismiss its action under one of the following two conditions: A) "*at any time before service by the adverse party of an answer*" or B) "*by filing a stipulation of dismissal signed by all parties who have appeared in the action*". Under option A) that option closed when Brett Osborne, the man who was served for the named, but non-existent, defendants filed a general denial answer on March 1, 2019. Mr. Osborne's general denial answer IS AN APPEARANCE. Under option B) LB PARK's *proposed stipulation* fails to include a signature line for Brett Osborne for the two named defendants, Karen Marie Powell (the unnamed holder of a lien against the land at issue), or Ryan Powell (the unnamed owner of the land at issue). But LB PARK knows that it could NEVER get an agreement to perpetrate its fraudulent scheme from any of those three parties who have all made an appearance in the "action" below which is why LB PARK is pretending that only the signature of its attorney is needed for a stipulated dismissal under Rule 41(a) SCRCF as evidenced by its *proposed stipulation* [The Motion, Exhibit A].

CONCLUSION

This Court must deny LB PARK's frivolous Motion to Remand and this Court should seriously consider making a motion for sanctions against LB PARK and the attorney who made The Motion under Rule 269 SCACR and/or Rule 11 SCRCF to discourage LB PARK and its three attorneys from making any more outrageously frivolous motions.

Respectfully submitted 8/22/2019



Ryan Powell
c/o 25056 Timberlake Drive
Fort Mill, South Carolina

Exhibit A

201200198786
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
12-26-2012 At 02:40 pm.
NOTICE 10.00
OR Vol. 13103 Page 241 - 242

STATE OF SOUTH CAROLINA)
) Notice of Sale, Transfer or Exchange
COUNTY OF YORK)

WHEREAS, SAN JUAN HOLDINGS is a private contractual trust (hereinafter Trust); and

WHEREAS, Trust is the owner of record of the property recorded on June 28, 2000 in vol: 3173 page: 343 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, Brett Osborne is trustee of Trust with power to convey title to the aforesaid property; said power recorded on June 28, 2000 in Vol 3173, page 344 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, aforesaid recorded property of Trust has been assigned the tax map number of 643-10-01-023 by the York County Tax Assessor; and

WHEREAS, On December 20, 2012 Trust, by and through Brett Osborne trustee, in a private transaction did grant, bargain, sell, release, and convey the aforesaid private property to an unenfranchised living man; and

WHEREAS, the proceeds of the aforesaid transaction have been distributed as required by the law of the Trusts' indenture terminating the Trust; and

WHEREAS, giving this notice is the final duty of Brett Osborne trustee for Trust;

THEREFORE, YOU ARE TO TAKE NOTICE THAT: SAN JUAN HOLDINGS no longer owns the property in the records of the Office of the Clerk of the Court for York County, South Carolina and those records should be updated accordingly; that SAN JUAN HOLDINGS has been terminated and no longer exists by the aforesaid actions according to the law of the trusts' indenture; and that Brett Osborn has completed his duties as trustee for SAN JUAN HOLDINGS.

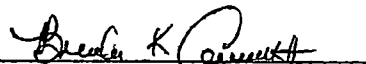
After Recording return this Notice to:
Brett Osborne
c/o 9127 Dalmeny House Lane
Charlotte, North Carolina

WITNESS our Hand and Seal this 20th day of December, 2012.

SAN JUAN HOLDINGS

By:  Trustee
Brett Osborne trustee

Signed and Sealed in the presence of:



THE STATE OF SOUTH CAROLINA
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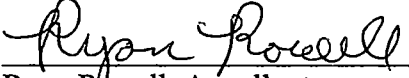
Certificate of Service For Return to Motion to Remand

I certify that I have served on all Respondents, Appellant's Return to Motion to Remand by and through their attorney of record by First Class Mail with proper postage affixed on the date below shown and addressed as follows:

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

Brett Osborne
190 Aviation Lane,
Gold Hill NC 28071

August 22, 2019


Ryan Powell, Appellant
c/o 25056 Timberlake Drive
Fort Mill, South Carolina

August 22, 2019

Clerk of Court
Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Appellate Case No. 2019-000979

Dear Clerk,

Enclosed for filing please find the following original two documents (on top) and six copies of each:

- 1) Return to LB PARK, LLC'S Motion to Remand;
- 2) Certificate of Service for the above document.

Sincerely,





Ryan Powell
c/o 25056 Timberlake Drive
Fort Mill, South Carolina
919-400-6339

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SC Court of Appeals

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*25056 Timberlake Drive
Fort Mill, South Carolina*

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