

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel Hall, Circuit Court Judge

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Case No. 2019-CP-46-00310

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**RECEIVED**

AUG 29 2019

**SC Court of Appeals**

Ex Parte, Ryan Powell ..... Appellant,

In re LB PARK, LLC ..... Respondent,

v.

San Juan Holdings, Brett Osborne trustee, et al. .... Respondents.

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**REPLY IN FURTHER SUPPORT OF LB PARK, LLC'S MOTION FOR REMAND**

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LB PARK, LLC ("LB PARK") submits this brief reply in further support of its Motion to Remand this matter such that the Appellant may be added as a party to assert his defenses and the trial court can issue an order on the merits, including on the merits of any defense raised by the Appellant. As shown from the face of the complaint, LB PARK seeks to quiet tax title using the method provided by the General Assembly. The underlying tax sale occurred on November 6, 2017, and LB PARK was the winning bidder with a bid of \$171,000.00. As of this time, LB PARK is in limbo as it cannot sell the property and is not receiving rent from the current occupants. Thus, LB PARK suffers very real prejudice for each day this matter is not resolved on its merits.

LB PARK's right to bring this action is described in S.C. Code Ann. § 12-61-10 ("any person . . . which has purchased at or acquired through a tax sale and obtained title to any real or

personal property, may bring an action in the court of common pleas of such county for the purpose of barring all other claims thereto”). The General Assembly has further provided:

Such action shall be commenced, conducted and concluded by decree as are similar actions in such court and there may be made defendants to the action the former owner of such property, his heirs, executors, administrators, successors or assigns and any other person or legal entity who has or claims any right, title, claim, interest or lien in or to such property, to the end that such rights, titles, interests, claims or liens may be adjudicated in such action and forever barred by the judgment and decree of the court if such are found to be junior or subsequent to the title of the county or any person purchasing at or acquiring title to property through a tax sale.

S.C. Code Ann. § 12-61-20. These statutory provisions establish both a cause of action and the criteria to determine who should be included as defendants. Based on these statutes and the Appellants’ previous arguments, LB Park now seeks remand from this Court to name the Appellant and proceed to a determination on the merits.

Given LB PARK’s proposal, it is clear that Appellant is not looking for a ruling on the merits of his intervention request, but is rather seeking to prevent a ruling on the merits for as long as possible. Such a strategy is patently inconsistent with the intent and purpose behind S.C. Code Ann. §§ 12-61-10 through -60, which is designed to provide a streamlined method for clearing title following a tax sale. *See Rosenbaum v. S-M-S* 32, 311 S.C. 140, 143, 427 S.E.2d 897, 898 (1993) (“In our view, the legislative intent supporting S.C. Code Ann. Chapter 61 (1976) is that purchasers of property at tax sales in South Carolina *be provided an efficient, unencumbered method of clearing those titles.*”) (emphasis added). Any further delay is to the detriment of the innocent tax sale purchaser in this matter, LB PARK.

With respect to enforcement in the event this Motion to Remand is granted, LB PARK agrees that this appeal should be held in abeyance until such time as LB Park submits to this Court

its filed “Notice of Dismissal without Prejudice”<sup>1</sup> and the proposed new Complaint. At that time, this Court should dismiss this appeal. Given this procedure, the Appellant can be assured that LB PARK will file the submitted documents.

For these reasons and those previously presented, this Court should grant the Motion to Remand so that this matter can be resolved on the merits with respect to the claims and defenses of all parties.

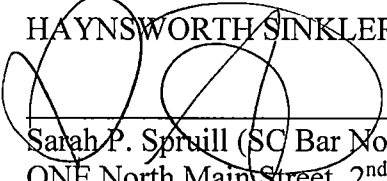
*(Signature Page Follows)*

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<sup>1</sup> Contrary to the Appellant’s response, Mr. Osborne has not “filed a general denial answer” in this matter. Instead he submitted a letter, attached as Exhibit A, telling the Clerk of Court he believes he was wrongly served and asking “[m]aybe the judge assigned to the case or the plaintiff in this case might need to get these papers back so they can name the right parties.” No answers have been filed. Thus, LB PARK has the ability to voluntarily dismiss this action if this Court will remand this action so it may do so. *See Matter of Morrison*, 321 S.C. 370, 373, 468 S.E.2d 651, 652–53 (1996) (“[U]nder the plain language of paragraph (a)(1), a plaintiff has an unconditional right to voluntarily dismiss an action anytime before an answer or motion for summary judgment has been served.”).

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



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Attorneys for Respondent  
LB PARK, LLC

August 29, 2019

David Hamilton, Clerk of Court  
P.O. Box 649  
York, SC 29745  
Phone: 803-628-3036

EXHIBIT A

Brett Osborne  
190 Aviation Lane  
Gold Hill, NC 28071.

February 27, 2019

Dear Mr. Hamilton,

I am returning the enclosed court papers to you that I believe were wrongly served on me on February 6, 2019. I don't intend to appear in court for this case as it pertains to property that I have not had any connection with nor have I had a duty to defend for over 6 years. Whoever currently owns (or claims to own) I think should be who these papers should be sent to. Maybe the judge assigned to the case or the plaintiff in this case might need to get these papers back so they can name the right parties. If you are the wrong person to whom these papers should be given back, would you be so kind as to forward them to the correct person.

Sincerely,

  
Brett Osborne

Enclosed:  
Notice of Lis Pendens  
Summons  
Complaint

DAVID HAMILTON  
Clerk of Court  
York County, SC

2019 MAR -1 AM 11:52

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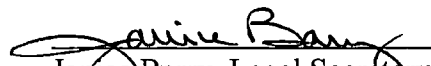
San Juan Holdings, Brett Osborne trustee, et al. .... Respondents.

**PROOF OF SERVICE**

I certify that I have served *Reply in Further Support of LB PARK, LLC's Motion to Remand* on all attorneys of record by depositing a copy of the same in the United States Mail, postage prepaid, on August 29, 2019, addressed to

Brett Osborne  
San Juan Holdings, Brett Osborne, the trustee  
Brett Osborne as Trustee of San Juan Holdings  
190 Aviation Lane  
Gold Hill, NC 28071

Ryan Powell  
c/o 25056 Timberlake Drive  
Fort Mill, SC 29708

  
Janice Barry, Legal Secretary  
HAYNSWORTH SINKLER BOYD, P.A.  
864.240.3223

**HAYNSWORTH  
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SARAH P. SPRUILL  
DIRECT 864.240.3220  
sspruill@hsblawfirm.com

August 29, 2019

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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**SC Court of Appeals**

Re: Ex Parte, Ryan Powell, In re LB PARK, LLC v. San Juan Holdings, Brett Osborne trustee,  
et al.; C.A. No.: 2019-CP-46-00310  
Appellate Case No.: 2019-000979

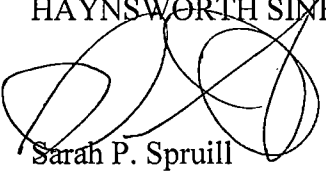
Dear Ms. Kitchings:

Enclosed herewith for filing is an original and seven (7) copies each of the Reply in Further Support of LB PARK, LLC's Motion to Remand regarding the above-referenced case together with a Proof of Service. Please file the originals and return a clocked copy to me via our courier.

Thank you for your assistance.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

  
Sarah P. Spruill

SPS/jmb  
Enclosures

cc: Ryan Powell  
Brett Osborne  
A. Parker Barnes, III (via email only)  
Andrew M. Rawl (via email only)