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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**  
OCT 28 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.

**Petition to Rehear**

Appellant, Ryan Powell, is the absolute owner of the private property at issue in this case ("Owner" hereinafter). Owner moves this Court under Rule 221 (c) SCACR to rehear, vacate, or amend its October 15, 2019 order ("Remand Order" hereinafter). A copy of the Remand Order is attached as **Exhibit A** and fully incorporated herein by reference. The Remand Order grants LB PARK's motion to remand this case to allow it to move the lower court for a voluntary dismissal of its action without prejudice. If that

motion to dismiss is granted this appeal will be dismissed therefore, Owner has a RIGHT to request a rehearing.

The following are issues that have been overlooked and/or misapprehended by this Court when it made the Remand Order:

Firstly, the Remand Order allows the lower court to share the exclusive jurisdiction that this Court has over this appeal. That is an impossibility as shared and exclusive are mutually exclusive actions, i.e., they cannot exist at the same time. Rule 205 SCACR declares that exclusive jurisdiction over an appeal is transferred to this Court upon the timely service of a notice of appeal. Obviously, Owner fulfilled that requirement. This Court has no authority to delegate its exclusive jurisdiction to another court to determine whether or not this appeal will be dismissed. Rule 221(c) SCACR proves this to be true as it only allows a rehearing of a determination of a motion if the order finally decides or dismisses an appeal. However the decision of whether or not this appeal will be dismissed is now "**conditional**" on a decision of another court which violates Owner's right to seek rehearing as Owner will NOT have the ability to seek rehearing if this Court ends up dismissing this appeal because of the lower court's decision.

Under the Rules of this Court there are only four methods to dismiss an appeal, they are: 1) by order of this Court when an order appealed is not appealable. e.g., the order is interlocutory and not affecting a substantial right; 2) Rule 260(a) ACACR allows for the dismissal of an appeal by order of the Clerk of the Appellate Court if the Appellant fails to follow the Rules of the Court; 3) Rule 260(b) ACACR allows for the dismissal of an appeal when all parties sign an agreement to dismiss; and 4) Rule 260(c) ACACR allows an appellant to move this Court to withdraw its appeal. Absent an agreement of all

parties, the other three options can only be exercised by this Court because it has exclusive jurisdiction to decide whether or not an appeal should be dismissed and cannot delegate that decision to another court, although the Remand Order does so.

Secondly, as conclusively proven in Owner's unopposed Initial Brief filed into the record on September 18, 2019 (Owner's Initial Brief is fully incorporated herein by reference), all Courts of this State are wanting subject matter jurisdiction and territorial jurisdiction over Owner's private property. This Court has no discretion<sup>1</sup> to ignore the lack of subject matter jurisdiction<sup>2</sup> in this case. On remand, what jurisdiction will the lower court be exercising in order to hear and determine a motion for a voluntary dismissal? None! If such an order is entered by the lower court it will be void *ab initio* for want of subject matter jurisdiction. Therefore, this Court is required to vacate its Remand Order.

Thirdly, the relief granted in the Remand Order was not the relief that LB PARK requested. This Court has no authority to order relief not requested since such an order deprives the party opposing the motion of notice and an opportunity (i.e., due process) to show why the relief that has been granted should not have been granted. LB PARK requested a stipulated dismissal that was to be sign only by its attorney and not by any of the other parties who have appeared in the action. Instead of denying that motion, as this Court should have done since the proposed stipulation was defective, this Court ordered that LB PARK can now seek a court ordered dismissal (which court order will be

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<sup>1</sup> "Where there is no jurisdiction over the subject matter, there is, as well, no discretion to ignore that lack of jurisdiction. See F.R.Civ.P. 12(h) (3)", *Joyce v. United States*, 474 F.2d 215 (3d Cir. 1973).

<sup>2</sup> "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.", *Limehouse v. Hulsey*, 744 SE 2d 566 (SC Supreme Court 2013)

immediately appealable). Not only was the relief granted not requested but it fails to cure the "harm" that supported LB PARK's motion to remand, which was to avoid having to litigate an appeal because it will be "*too time consuming*". Now, if the lower court **grants** LB PARK a voluntary dismissal without prejudice, that order WILL be appealed by Owner. If the lower court **denies** a voluntary dismissal, then this appeal must go forward. So under either alternative made possible by the Remand Order, LB PARK will be required to litigate an appeal which was the sole reason it relied upon to support its frivolous motion to remand. The relief granted in the Remand Order achieves absolutely nothing beneficial for either party and will only cause unnecessary delay in the hearing of this appeal, will increase the costs and inconvenience to both parties, will violate Owner's rights, and will waste Owner's time which he can never be compensated for.

Fourthly, assuming for the sake of argument that LB PARK even has a right to a voluntary dismissal during an active appeal, this Court must balance that right with the rights of Owner since this case is an equity case and a motion to remand is an equitable remedy. This Court cannot violate Owner's rights in order to satisfy LB PARK's rights, but that is exactly what this Court did. The Remand Order violates Owner's protected right to a speedy remedy<sup>3</sup> (appeal) and his right to judicial review<sup>4</sup> (appeal) which is a fundamental aspect of Owner's protected due process rights<sup>5</sup>. These rights are specifically protected to Owner by the oath that all judges of this Court take before they

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<sup>3</sup> "All courts shall be public, and **every** person shall have speedy remedy therein for wrongs sustained.", South Carolina Constitution Article 1, Section 9.

<sup>4</sup> "The requirements of due process include notice, an opportunity to be heard in a meaningful way, **and judicial review**.", Brown v. Malloy, 546 SE 2d 195(2001).

<sup>5</sup> "nor shall **any person** be deprived of life, liberty, or property without due process of law," South Carolina Constitution Article 1, Section 3.

assume their duties as a judge. Owner would like to believe that the violation of his rights by the Remand Order was an oversight by this Court and not a deliberate act, which is why Owner is giving this Court the opportunity to correct these violations of his rights and of the proper administration of justice.

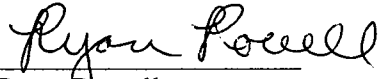
Fifthly, if the Remand Order is found to be properly issued, then it must be amended to place a thirty (30) day limitation upon LB PARK to file its motion to take a voluntary dismissal. If that is not done this appeal could stay in abeyance forever. Also make an amendment to declare this appeal will go forward and that LB PARK's initial brief will be due three (3) days after the lower court enters an order denying a dismissal, should the lower court unexpectedly uphold the law and not violate Owner's rights. LB PARK's initial brief was due three days after the Remand Order was entered so that is the proper amount of time it should be given to serve its initial brief.

### **Conclusion**

WHEREFORE Owner requests this Court provide the following relief:

1. Vacate the Remand Order and allow this appeal to go forward;
2. Rehear and deny LB PARK's motion to remand and allow this appeal to go forward;
3. Amend the Remand Order to provide a time limitation for LB PARK to file its motion to dismiss and to submit its initial brief if the lower court denies its motion; and
4. Any other relief this Court deems just and proper.

Respectfully submitted 10/25/2019

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

# The South Carolina Court of Appeals

Ex Parte, Ryan Powell, Appellant,

In re LB PARK, LLC, Respondent,

v,

San Juan Holdings, Bret 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 250056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, 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.

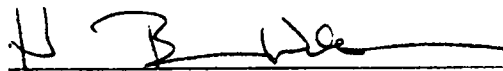
Appellate Case No. 2019-000979

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## ORDER

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LB PARK, LLC's motion to remand this case for the limited purpose of allowing LB PARK to file a motion to dismiss the underlying action without prejudice pursuant to Rule 41(a), SCRCP, is granted. This appeal shall be held in abeyance pending the lower court's consideration of the motion. LB PARK shall provide this court with status updates every thirty days.



FOR THE COURT

**FILED**

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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Certificate of Service

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

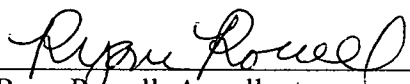
Sarah Spruill  
P.O. Box 2048(29602)  
Greenville, SC 29601  
Appeal Attorney for Respondent LB PARK, LLC

**RECEIVED**

OCT 28 2019

SC Court of Appeals

October 25, 2019

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

October 25, 2019

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

Re: Appellate Case No. 2019-000979

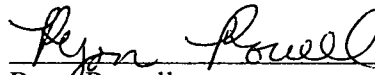
Dear Clerk,

Enclosed for filing please find the following original documents and six copies of each:

- 1) Motion to Rehear.
- 2) Certificate of Service for the above document.

Please also find enclosed a money order for \$50.00 to cover the filing fee for the motions.

Sincerely,



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

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