

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

RECEIVED

MAR 11 2020

Daniel Hall, Circuit Court Judge

SC Court of Appeals

Case No. 2019-CP-46-00310

Ex Parte, Ryan Powell Appellant,

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

v.

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

RETURN TO EMERGENCY VERIFIED PETITION FOR CONTEMPT

LB PARK, LLC (“LB PARK”) submits this return in response to the Emergency Verified Petition for Contempt (“Petition”) submitted by Ryan Powell in this matter dated March 2, 2020. As will be shown below, LB PARK has proceeded on remand in accordance with this Court’s Order of October 15, 2019 (“Order”).¹

The Petition fails to address that the Order granted the motion to remand. The motion sought a remand “to the lower court in order for LB PARK to dismiss the underlying action without prejudice pursuant to Rule 41(a), SCRCP.” (Motion at 1.) LB PARK further stated, “[i]f the

¹ Out of an abundance of caution, LB PARK refrained from filing anything with the Circuit Court until this Court ruled on Mr. Powell’s petition for rehearing of the Order. The Court declined to consider the petition for rehearing by order dated February 10, 2020.

motion for remand is granted, LB PARK will dismiss the underlying action and refile a new action to include Ryan Powell as a named defendant.” (*Id.*) That is precisely what LB PARK has done.

As part of that motion, LB PARK attached the two documents it was planning to file in connection with the remand: (1) a Stipulation of Dismissal/Notice of Dismissal without Prejudice (Exhibit A, “Dismissal”) and (2) a Complaint (Exhibit B). LB PARK filed those documents on February 12 with the York County Court of Common Pleas. (Public Indexes attached as Exhibit 1).

The Dismissal was served by mail on all parties that were not electronically served on March 6, 2020. (Certificate of Service Attached as Exhibit 2, see also Exhibit 1). The Complaint has been served on Brett Osborne and San Juan Holdings. (Affidavits of Service attached as Exhibit 3). Efforts to serve Mr. Powell are ongoing.

With respect to the Dismissal, Rule 41(a)(1), SCRCP, provides,

Subject to the provisions of Rule 23(c), of Rule 66(a), and of any statute, an action may be dismissed by the plaintiff without order of court (A) by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever first occurs, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

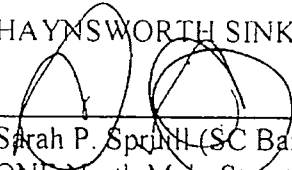
As of March 6, the Dismissal has been filed and served in accordance with the rule. LB PARK would further note that Mr. Powell is not a party to the underlying action at this time (this appeal arose from what he contends was a denial of his motion to intervene).

LB PARK believes it has acted in a manner consistent with its motion and the Court’s Order granting the motion. There has certainly not been any “knowing and intentional

disobedience” with respect to the Order. For these reasons, LB PARK asks that the Petition be denied.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill (SC Bar No. 68337)
ONE North Main Street, 2nd Floor
P.O. Box 2048 (29602)
Greenville, SC 29601
(864) 240-3200
sspruill@hsblawfirm.com

A. Parker Barnes III (SC Bar No. 68359)
P.O. Box 11889
Columbia, South Carolina 29211-1889
(803) 779-3080
pbarnes@hsblawfirm.com

Attorneys for Respondent
LB PARK, LLC

March 11, 2020



York County Sixteenth Judicial Circuit Public Index

EXHIBIT 1



[York County Home Page](#)
[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

Switch View

LB Park LLC VS San Juan Holdings , defendant, et al					
Case Number:	2019CP4600310	Court Agency:	York County Common Pleas	Filed Date:	01/25/2019
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Weaver, Teasa Kay		
Disposition:	Dismissed per Rule 41(a)	Disposition Date:	02/12/2020	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
LB Park LLC	NEF(03-06-2020 03:00:48 PM) Service/Certificate Of Servi...	Filing		03/06/2020-16:03		
LB Park LLC	Certificate Of Service	Filing		03/06/2020-15:00		
LB Park LLC	NEF(02-12-2020 03:13:25 PM) Notice/Other	Filing		02/12/2020-15:18	02/12/2020-15:18	
LB Park LLC	Notice/Other	Filing		02/12/2020-15:13	02/12/2020-15:13	
LB Park LLC	Stipulation Of Dismissal	Filing		02/12/2020-15:13	02/12/2020-15:13	
LB Park LLC	ADR/Deferred (Until Appeal is Resolved)	Action		01/21/2020-11:58	02/12/2020-11:58	
LB Park LLC	ADR/Alternative Dispute Resolution (Workflow)	Action		08/23/2019-16:45	01/21/2020-16:45	
Powell, Ryan	Appeal/Notice of Appeal to Court of Appeals & Cert Serv	Filing		06/11/2019-11:11	02/12/2020-14:46	
Doe, John	NEF(05-31-2019 02:28:14 PM) Order/Electronic Form 4	Filing		05/31/2019-14:28	02/12/2020-14:28	
Doe, John	Order/Electronic Form 4 Denying Motion to Dismiss	Order		05/31/2019-14:28	02/12/2020-14:28	
LB Park LLC	NEF(05-31-2019 02:26:01 PM) Order/Electronic Form 4	Filing		05/31/2019-14:26	02/12/2020-14:26	
LB Park LLC	Order/Electronic Form 4 to Refer to MIE	Order		05/31/2019-14:26	02/12/2020-14:26	
LB Park LLC	Order/Referred to Master or Special Referee	Order		05/31/2019-14:26	02/12/2020-16:29	
Powell, Ryan	Opp to Mot for Order of Ref/Memo In Support of Mot to Dis/CS	Filing		05/13/2019-11:30	02/12/2020-11:31	
Powell, Karen Marie	Opposition to Motion for Order of Reference/Service	Filing		05/13/2019-11:30	02/12/2020-11:33	

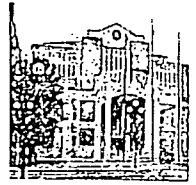
LB Park LLC	NEF(05-07-2019 01:37:14 PM) Notice/Notice of Hearing and...	Filing		05/07/2019-13:51	02/12/2020-13:51	
LB Park LLC	Notice/Notice of Hearing and Service	Filing		05/07/2019-13:37	02/12/2020-13:37	
LB Park LLC	Service/Certificate Of Service	Filing		05/07/2019-13:37	02/12/2020-13:37	
Barnes, A. Parker III	5/30/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		05/06/2019-11:32	02/12/2020-11:32	
Rawl, Andrew Marshall	5/30/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		05/06/2019-11:32	02/12/2020-11:32	
Osborne, Brett	5/30/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		05/06/2019-11:32	02/12/2020-11:32	
LB Park LLC	NEF(05-01-2019 10:39:52 AM) Motion/Refer to Master or Sp...	Filing		05/01/2019-10:50	02/12/2020-10:50	
LB Park LLC	Motion/Refer to Master or Special Referee	Motion		05/01/2019-10:39	05/31/2019-10:39	
LB Park LLC	Service/Certificate Of Service	Filing		05/01/2019-10:39	02/12/2020-10:39	
Powell, Ryan	NEF(04-30-2019 12:13:34 PM) Notice/Notice of Hearing	Filing		04/30/2019-12:13	02/12/2020-12:13	
Powell, Ryan	Notice/Notice of Hearing	Filing		04/30/2019-12:13	02/12/2020-12:13	
Osborne, Brett	NEF(04-30-2019 12:13:17 PM) Notice/Notice of Hearing	Filing		04/30/2019-12:13	02/12/2020-12:13	
Osborne, Brett	Notice/Notice of Hearing	Filing		04/30/2019-12:13	02/12/2020-12:13	
Powell, Karen Marie	NEF(04-30-2019 12:12:06 PM) Notice/Notice of Hearing	Filing		04/30/2019-12:12	02/12/2020-12:12	
Powell, Karen Marie	Notice/Notice of Hearing	Filing		04/30/2019-12:12	02/12/2020-12:12	
Rawl, Andrew Marshall	5/30/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		04/30/2019-11:24	02/12/2020-11:24	
Osborne, Brett	5/30/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		04/30/2019-11:24	02/12/2020-11:24	
Barnes, A. Parker III	5/30/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		04/30/2019-11:24	02/12/2020-11:24	
Doe, John	Special Appearance Motion To Dismiss Or Intervene	Motion		04/08/2019-11:36	05/30/2019-13:43	
Doe, John	Notice Of Hearing Of Mot To Dism Or Intervene	Filing		04/08/2019-11:36	02/12/2020-13:45	
Doe, John	Proof Of Service	Filing		04/08/2019-11:36	02/12/2020-13:46	
Powell, Karen Marie	NEF(04-03-2019 01:53:33 PM) Order/Electronic Form 4	Filing		04/03/2019-13:53	02/12/2020-13:53	
Powell, Karen Marie	Order/Electronic Form 4 Denying Motion to Dismiss	Order		04/03/2019-13:53	02/12/2020-13:53	
Powell, Karen Marie	Memo in Support of Special Appearance Motion to Dismiss/Serv	Filing		03/19/2019-11:26	02/12/2020-11:40	
LB Park LLC	NEF(03-12-2019 10:50:51 AM) Service/Certificate Of Servi...	Filing		03/12/2019-10:53	02/12/2020-10:53	
LB Park LLC	Service/Certificate Of Service	Filing		03/12/2019-10:50	02/12/2020-10:50	
Powell, Karen Marie	NEF(03-11-2019 12:36:39 PM) Notice/Notice of Hearing	Filing		03/11/2019-12:36	02/12/2020-12:36	

Powell, Karen Marie	Notice of Hearing From Clerk's Office to Pro-Se Litigant	Filing		03/11/2019-12:36	02/12/2020-12:36	
Osborne, Brett	NEF(03-11-2019 12:36:13 PM) Notice/Notice of Hearing	Filing		03/11/2019-12:36	02/12/2020-12:36	
Osborne, Brett	Notice of Hearing From Clerk's Office to Pro-Se Litigant	Filing		03/11/2019-12:36	02/12/2020-12:36	
LB Park LLC	NEF(03-11-2019 12:23:53 PM) Notice/Notice of Appearance	Filing		03/11/2019-12:24	02/12/2020-12:24	
LB Park LLC	Notice/Notice of Appearance	Filing		03/11/2019-12:23	02/12/2020-12:23	
Barnes, A. Parker III	4/1/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		03/11/2019-12:23	02/12/2020-12:23	
Osborne, Brett	4/1/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		03/11/2019-12:23	02/12/2020-12:23	
Rawl, Andrew Marshall	4/1/2019_NOJURY_Roster/Notice of Motions Roster Publication	Action		03/11/2019-12:23	02/12/2020-12:23	
Powell, Karen Marie	Notice Of Hearing For Motion To Dismiss	Filing		03/11/2019-12:12	02/12/2020-12:11	
Powell, Karen Marie	Proof Of Service	Filing		03/11/2019-12:12	02/12/2020-12:11	
Powell, Karen Marie	Special Appearance Motion To Dismiss	Motion		03/11/2019-12:11	04/01/2019-12:10	
Osborne, Brett	Answer/Letter/Response	Filing		03/01/2019-11:50	02/12/2020-11:50	
LB Park LLC	NEF(02-25-2019 01:58:36 PM) Service/Affidavit Of Service	Filing		02/25/2019-14:02	02/12/2020-14:02	
LB Park LLC	Service/Affidavit Of Service on San Juan Holdings	Filing		02/25/2019-13:58	02/12/2020-13:58	
LB Park LLC	Service/Affidavit Of Service on Brett Osborne	Filing		02/25/2019-13:58	02/12/2020-13:58	
LB Park LLC	Summons & Complaint	Filing		01/25/2019-16:45	02/12/2020-16:45	
LB Park LLC	Lis Pendens Filed	Filing		01/25/2019-16:45	02/12/2020-16:45	

CMSWeb 6.1 © 2019 South Carolina Judicial Branch • All rights reserved



York County Sixteenth Judicial Circuit Public Index



[York County Home Page](#)
[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

Switch View

Lb Park Llc VS San Juan Holdings , defendant, et al

Case Number:	2020CP4600549	Court Agency:	York County Common Pleas	Filed Date:	02/12/2020
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	File Type:	Mediator - Non Jury
Status:	Pending/ADR	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

[Case Parties](#)
[Judgments](#)
[Tax Map Information](#)
[Associated Cases](#)
[Actions](#)
[Financials](#)

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Lb Park Llc	ADR/Alternative Dispute Resolution (Workflow)	Action		09/09/2020-16:04		
Lb Park Llc	NEF(03-09-2020 09:48:54 AM) Service/Affidavit Of Service	Filing		03/09/2020-10:20		
Lb Park Llc	Service/Affidavit Of Service on Brett Osborne	Filing		03/09/2020-09:48		
Lb Park Llc	Service/Affidavit Of Service on San Juan Holdings	Filing		03/09/2020-09:48		
Lb Park Llc	NEF(02-12-2020 04:26:39 PM) Notice/Notice of Appearance	Filing		02/12/2020-16:27		
Lb Park Llc	Notice/Notice of Appearance	Filing		02/12/2020-16:26		
Lb Park Llc	Summons & Complaint	Filing		02/12/2020-16:04		
Lb Park Llc	Lis Pendens Filed	Filing		02/12/2020-16:04		

EXHIBIT 2

ELECTRONICALLY FILED - 2020 Mar 06 3:00 PM - YORK - COMMON PLEAS - CASE#2019CP4600310

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Case No. 2019-CP-46-00310

LB PARK, LLC,

Plaintiff,

vs.

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 643-10-01-023, 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,

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on March 6, 2020, I caused the below named parties to be served with a copy of the following document(s):

1. Notice of Dismissal Pursuant to Rule 41(a)(1), SCRCF

by causing said document(s) to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below:

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

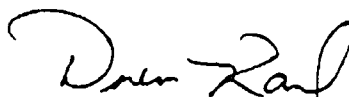
Brett Osborne as Trustee of San Juan
Holdings
190 Aviation Lane
Gold Hill, NC 28071

Brett Osborne
190 Aviation Lane
Gold Hill, NC 28071

Ryan Powell
3459 Mill Run
Raleigh, NC 27612-5217

Karen Marie Powell
25056 Timberlake Drive
Fort Mill, SC 29708

Ryan Powell
2056 Timberlake Drive
Fort Mill, SC 29708



Andrew M. Rawl

EXHIBIT 3

AFFIDAVIT OF SERVICE

State of South Carolina

County of York

Common Pleas Court

Case Number: 2020-CP-46-00549

Plaintiff:
LB Park, LLC

vs.

Defendant:
San Juan Holdings, Brett Osborne, the trustee; et al

For:
Andrew Rawl
Haynsworth Sinkler Boyd, P.A.
One North Main
2nd Floor
Greenville, SC 28601

Received by Haynsworth Sinkler Boyd, PA to be served on Brett Osborne as Trustee of San Juan Holdings, 190 Aviation Lane, Gold Hill, NC 28071.

I, Kim Church, being duly sworn, depose and say that on the 1st day of March, 2020 at 7:15 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **Notice of Lis Pendens, Summons, Complaint and Exhibit A** to: **Brett Osborne as Trustee of San Juan Holdings** at the address of: **190 Aviation Lane, Gold Hill, NC 28071**, in compliance with state statutes.

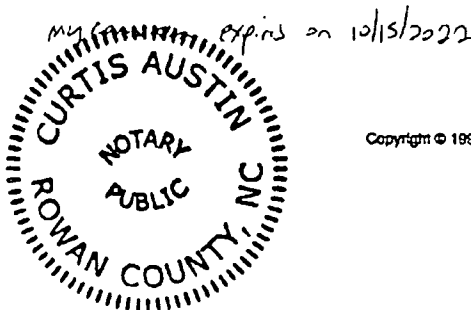
Military Status: Based upon inquiry of party served, Defendant is not in the military service of the United States of America.


I certify that I am over the age of 18, have no interest in the above action, and am a Process Server in good standing in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 4th day of March, 2020 by the affiant who is personally known to me.



NOTARY PUBLIC





Kim Church
Process Server

Haynsworth Sinkler Boyd, PA
Post Office Box 11889
Columbia, SC 29211
(803) 540-7848

Our Job Serial Number: UPL-2020000523
Ref: 39028.0024

AFFIDAVIT OF SERVICE

State of South Carolina

County of York

Common Pleas Court

Case Number: 2020-CP-46-00549

Plaintiff:
LB Park, LLC

vs.

Defendant:
San Juan Holdings, Brett Osborne, the trustee; et al

For:
Andrew Rawl
Haynsworth Sinkler Boyd, P.A.
One North Main
2nd Floor
Greenville, SC 29601

Received by Haynsworth Sinkler Boyd, PA to be served on **San Juan Holdings Brett Osborne, the trustee, 190 Aviation Lane, Gold Hill, NC 28071.**

I, Kim Church, being duly sworn, depose and say that on the 1st day of March, 2020 at 7:15 pm, I:

served a CORPORATION by delivering a true copy of the Notice of Lis Pendens, Summons, Complaint and Exhibit A to: **Brett Osborne as As Trustee for San Juan Holdings**, at the address of: **190 Aviation Lane, Gold Hill, NC 28071**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server in good standing in the judicial circuit in which the process was served.

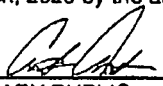


Kim Church
Process Server

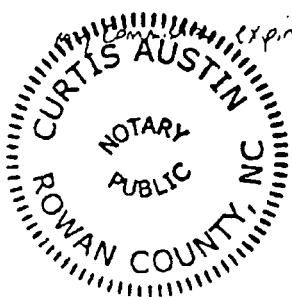
Haynsworth Sinkler Boyd, PA
Post Office Box 11889
Columbia, SC 29211
(803) 540-7848

Our Job Serial Number: UPL-2020000525
Ref: 39028.0024

Subscribed and Sworn to before me on the 4th day of March, 2020 by the affiant who is personally known to me.



NOTARY PUBLIC



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 11 2020

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel Hall, Circuit Court Judge

Case No. 2019-CP-46-00310

Ex Parte, Ryan Powell Appellant,

In re LB PARK, LLC Respondent,

v.

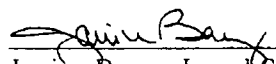
San Juan Holdings, Brett Osborne trustee, et al. Respondents.

PROOF OF SERVICE

I certify that I have served *Respondent's Return to Emergency Verified Petition for Contempt* on all attorneys of record by depositing a copy of the same in the United States Mail, postage prepaid, on March 11, 2020, 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
SINKLER BOYD**

HAYNSWORTH SINKLER BOYD, P.A.
ONE NORTH MAIN STREET, 2ND FLOOR
P.O. BOX 2048 (29662)
GREENVILLE, SOUTH CAROLINA 29601
MAIN 864.240.3200
FAX 864.240.3300
www.hsblawfirm.com

SARAH P. SPRUILL
DIRECT 864.240.3220
sspruill@hsblawfirm.com

March 11, 2020

RECEIVED

MAR 11 2020

SC Court of Appeals

VIA HAND DELIVERY

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

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:

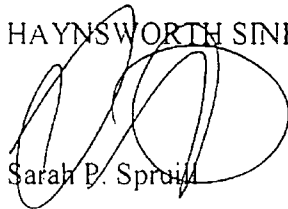
Enclosed for filing, please find an original and seven (7) copies of *Respondent's Return to Emergency Verified Petition for Contempt* in the above-referenced matter, together with our Proof of Service of same. Please return clocked copies to me via my courier.

If you have any questions, please give me a call.

Thank you for your assistance in this matter.

Sincerely,

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)