THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master In Equity

Case No. 2020-CP-46-00549
Appellate Case No.

LB PARK, LLC, ...Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Bret Osborne as Trustee of San Juan Holdings; Ryan Powell; 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 643-10-0001-023, 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,

OF WHOM Ryan Powell is the .....Appellant.

MOTION TO DISMISS APPEAL

Pursuant to Rule 240, SCACR, LB PARK, LLC ("LB PARK") hereby moves for the dismissal of this appeal on the grounds that the underlying orders are not immediately appealable. LB PARK further asks that this motion be decided on an expedited basis such that title to the property involved can be quickly determined consistent with the procedures in place for clearing tax title. The case is currently scheduled for a final hearing on October 21, 2021 before the York County Master In Equity.

BACKGROUND

This is not the first time Appellant Ryan Powell ("Appellant" or "Powell") has sought an interlocutory appeal in this matter. The Court has already dismissed an earlier appeal by Powell of the original order of reference and denial of Powell's motions to dismiss by order dated September 15, 2020. (Motion to Dismiss, without attachments, and Order attached as Exhibit 1). As set forth in LB PARK's Motion to Dismiss filed on September 9, 2020:

> On February 12, 2020, LB PARK filed this action to quiet tax title to real property located in York County (the "Property"), pursuant to S.C. Code Ann. §§ 12-61-10 to -60. (Complaint attached as Ex. 1). As set forth in the Complaint:
>
> > 11. SB MUNI CUST % LBSC-11 LLC ("SB MUNI") purchased the Property at the York County tax sale held on November 6, 2017, with a bid of $171,000.00. York County conveyed tax title to SB MUNI by tax deed dated and recorded on December 26, 2018, in the ROD in Book 17337, page 73 (the "Tax Deed").
> >
> > 12. SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded in the ROD on January 10, 2019, in Book 17361, page 145.
>
> On May 14, 2020, Appellant Ryan Powell filed a motion to dismiss. (Attached as Ex. 2). On June 23, 2020, LB PARK filed a motion for an order of reference. (Attached as Ex. 3). Both motions were heard on July 22, 2020. The Circuit Court denied Powell's motion to dismiss and granted LB PARK's motion for an order of reference by order dated August 20, 2020. (Order attached as Ex. 4). The order reads: "[a]fter careful consideration, Plaintiff's Motion for Order of Reference to the Master in Equity is GRANTED. Defendant's Motions to Dismiss are DENIED." Powell now seeks to appeal that order.
>
> This is not Powell's first appeal as it relates to LB PARK's attempts to confirm its ownership of the Property. Powell previously filed an appeal (Appellate Case No. 2019-000979) that is currently being held in abeyance pending the disposition of this action. LB PARK simply seeks a determination on the merits of this action consistent with the mandate of Rule 1, SCRCP ("These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action."). Powell, on the other hand, does not want possession of the Property to be transferred to LB PARK and has every incentive to delay a ruling for as long as possible.

The Court granted the motion by Order filed on September 15, 2020, finding as follows:

> Because the underlying orders are not immediately appealable, we dismiss this appeal. *See Williford v. Downs,* 265 S.C. 319, 321, 218 S.E.2d. 242, 243 (1975) ("Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference deprives a party of a mode of trial to which he is entitled by law, or the trial judge in refusing a reference did so upon the erroneous belief that the cause of action was a legal one."); *id.* ("In equity the parties are not entitled, as a matter of right, to a trial by jury."); *Millvale Plantation, LLC v. Carrison Family Ltd. P'ship,* 401 S.C. 166, 173, 736 S.E. 286, 289 (Ct. App. 2012) ("An action to quiet title to property is an action in equity."); *McLendon v. SC Dep't of Highways & Pub. Transp.,* 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) ("The denial of . . . a motion [to dismiss] is not immediately appealable under section 14-3-330 of the South Carolina Code (2017).").

In other words, in dismissing the appeal, the Court determined that there was no right to a jury trial in this matter. If there were an issue triable by a jury, the appeal of the Order of Reference would have been allowed to proceed.

Powell filed a motion to return case to Circuit Court dated July 9, 2021. (Motion attached as Exhibit 2). LB PARK submitted a memorandum in opposition to the motion, arguing that this matter had already been determined by the order dismissing Powell's earlier appeal and because Powell has no right to a jury trial on any claims because this is an action to quiet tax title brought pursuant to S.C. Code Ann. §§ 12-61-10 to -60. (Memo, without attachments, attached as Exhibit 3). The Master denied Powell's motion on the grounds that he is not entitled to a jury trial. (Order attached as Exhibit 4).

ARGUMENT

"The right of appeal arises from and is controlled by statutory law." *N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986). Appealability is generally governed by S.C. Code Ann. § 14-3-330, and interlocutory orders are otherwise not immediately appealable. *See, e.g., Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d

331 (2000); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000); *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000). Here, the orders are not appealable under any of the categories provided in S.C. Code Ann. § 14-3-330 as previously found by this Court in dismissing Powell's earlier appeal.

Generally, the denial of a motion to dismiss under Rule 12(b) is not immediately appealable. *Burkey v. Noce*, 398 S.C. 35, 726 S.E.2d 229 (Ct. App. 2012) (noting that generally the denial of motions to dismiss based on failure to state a claim, statute of limitations, lack of subject matter jurisdiction, and to change venue are not immediately appealable); *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995); *McLendon v. South Carolina Dept. of Highways and Public Transportation*, 313 S.C. 525, 443 S.E.2d 539 (1994); *Moyd v. Johnson*, 289 S.C. 482, 347 S.E.2d 97 (1986). The same should apply here. The order merely denies the motion to dismiss. The Court has previously denied Powell's efforts to appeal these same orders. (Ex. 1).

With respect to the denial of Powell's motion to return case to Circuit Court, the order does not deprive Powell of any mode of trial to which he might otherwise be entitled. "Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference deprives a party of a mode of trial to which he is entitled by law, or the trial judge in refusing a reference did so upon the erroneous belief that the cause of action was a legal one." *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975). "Hence, the issue before the Court is whether the appellant is entitled to a jury trial as a matter of right. If [h]e is not, the appeal should be dismissed." *Id.* Here, it has already been determined that Powell is not entitled to a jury trial, and therefore, the order is not immediately appealable.

With respect to actions to quiet tax title, the South Carolina Supreme Court has made it clear that there is no right to a jury trial, even if the defendant asserts a counterclaim stating a cause of action at law. *Rosenbaum v. S-M-S 32*, 311 S.C. 140, 427 S.E.2d 897 (1993). As stated there:

> Considering the unique circumstances existing in a tax forfeiture acquisition, and the prevailing statutory provisions governing suits to clear tax titles, we conclude that the appellant may not evade the intent of the legislature and obtain the right to a jury trial by interposing a counterclaim designed to thwart the reasonable and practical implication of Chapter 61.

Id. Therefore, the order denying the motion to return case to Circuit Court is not immediately appealable.

Additionally, an action concerning the validity of a tax sale is an action in equity. *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115 (2003) (citing *Bryan v. Freeman*, 253 S.C. 50, 51, 168 S.E.2d 793, 793-94 (1969) ("An action to remove a cloud on and quiet title to land is one in equity.")); *see also Godfrey v. Webb*, 277 S.C. 246, 247, 285 S.E.2d 883, 884 (1982) (holding that an action to set aside a tax deed and an action to confirm the same tax sale were both actions in equity); *Cathcart v. Jennings*, 137 S.C. 450, 135 S.E. 558, 562 (1926) ("A court of equity has jurisdiction to remove a cloud upon title.") (internal citations omitted). Accordingly, there is no right to a jury trial in this case and there is no immediate appeal.

CONCLUSION, REQUEST FOR EXPEDITED CONSIDERATION, AND REQUEST FOR SANCTIONS

For all of these reasons, this appeal must be dismissed. LB PARK asks that this motion be given expedited consideration so that this case can be resolved on the merits.

In addition, given the successive nature of Powell's improper appeals and the fact that this notice was filed in hopes of further delaying a trial on the merits, LB PARK asks the Court to impose a sanction pursuant to Rule 269, SCACR.

Respectfully submitted,

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Attorneys for Respondent
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October 15, 2021

EXHIBIT 1

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. 2020-CP-46-00549
Appellate Case No.

LB PARK, LLC, ...Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Bret Osborne as Trustee of San Juan Holdings; Ryan Powell; 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 643-10-0001-023, 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,

OF WHOM Ryan Powell is the .....Appellant.

MOTION TO DISMISS APPEAL

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BACKGROUND

On February 12, 2020, LB PARK filed this action to quiet tax title to real property located in York County (the "Property"), pursuant to S.C. Code Ann. §§ 12-61-10 to -60. (Complaint attached as Ex. 1). As set forth in the Complaint:

> 11. SB MUNI CUST % LBSC-11 LLC ("SB MUNI") purchased the Property at the York County tax sale held on November 6, 2017, with a bid of $171,000.00. York County conveyed tax title to SB MUNI by tax deed dated and recorded on December 26, 2018, in the ROD in Book 17337, page 73 (the "Tax Deed").
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> 12. SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded in the ROD on January 10, 2019, in Book 17361, page 145.

On May 14, 2020, Appellant Ryan Powell filed a motion to dismiss. (Attached as Ex. 2). On June 23, 2020, LB PARK filed a motion for an order of reference. (Attached as Ex. 3). Both motions were heard on July 22, 2020. The Circuit Court denied Powell's motion to dismiss and granted LB PARK's motion for an order of reference by order dated August 20, 2020. (Order attached as Ex. 4). The order reads: "[a]fter careful consideration, Plaintiff's Motion for Order of Reference to the Master in Equity is GRANTED. Defendant's Motions to Dismiss are DENIED." Powell now seeks to appeal that order.

This is not Powell's first appeal as it relates to LB PARK's attempts to confirm its ownership of the Property. Powell previously filed an appeal (Appellate Case No. 2019-000979) that is currently being held in abeyance pending the disposition of this action. LB PARK simply seeks a determination on the merits of this action consistent with the mandate of Rule 1, SCRCP

("These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action."). Powell, on the other hand, does not want possession of the Property to be transferred to LB PARK and has every incentive to delay a ruling for as long as possible.

ARGUMENT

"The right of appeal arises from and is controlled by statutory law." *N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986). Appealability is generally governed by S.C. Code Ann. § 14-3-330, and interlocutory orders are otherwise not immediately appealable. *See, e.g., Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000); *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000). In this case, the order is not appealable under any of the categories provided in S.C. Code Ann. § 14-3-330.

Generally, the denial of a motion to dismiss under Rule 12(b) is not immediately appealable. *Burkey v. Noce*, 398 S.C. 35, 726 S.E.2d 229 (Ct. App. 2012) (noting that generally the denial of motions to dismiss based on failure to state a claim, statute of limitations, lack of subject matter jurisdiction, and to change venue are not immediately appealable); *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995); *McLendon v. South Carolina Dept. of Highways and Public Transportation*, 313 S.C. 525, 443 S.E.2d 539 (1994); *Moyd v. Johnson*, 289 S.C. 482, 347 S.E.2d 97 (1986). The same should apply here. The order merely denies the motion to dismiss.

With respect to the grant of LB PARK's motion for an order of reference, the order does not deprive Powell of any mode of trial to which he might otherwise be entitled. "Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference

deprives a party of a mode of trial to which he is entitled by law, or the trial judge in refusing a reference did so upon the erroneous belief that the cause of action was a legal one." *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975). "Hence, the issue before the Court is whether the appellant is entitled to a jury trial as a matter of right. If [h]e is not, the appeal should be dismissed." *Id.*

With respect to actions to quiet tax title, the South Carolina Supreme Court has made it clear that there is no right to a jury trial, even if the defendant asserts a counterclaim stating a cause of action at law. *Rosenbaum v. S-M-S 32*, 311 S.C. 140, 427 S.E.2d 897 (1993). As stated there:

> Considering the unique circumstances existing in a tax forfeiture acquisition, and the prevailing statutory provisions governing suits to clear tax titles, we conclude that the appellant may not evade the intent of the legislature and obtain the right to a jury trial by interposing a counterclaim designed to thwart the reasonable and practical implication of Chapter 61.

Id. Therefore, the portion of the order granting the motion for reference is not immediately appealable.

Additionally, an action concerning the validity of a tax sale is an action in equity. *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115 (2003) (citing *Bryan v. Freeman*, 253 S.C. 50, 51, 168 S.E.2d 793, 793-94 (1969) ("An action to remove a cloud on and quiet title to land is one in equity.")); *see also Godfrey v. Webb*, 277 S.C. 246, 247, 285 S.E.2d 883, 884 (1982) (holding that an action to set aside a tax deed and an action to confirm the same tax sale were both actions in equity); *Cathcart v. Jennings*, 137 S.C. 450, 135 S.E. 558, 562 (1926) ("A court of equity has jurisdiction to remove a cloud upon title.") (internal citations omitted). Accordingly, there is no right to a jury trial in this case and there is no immediate appeal from the portion of the order referring this matter to the Master in Equity.

CONCLUSION

For these reasons, this appeal should be dismissed at this time for a prompt determination on the merits.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Attorneys for Respondent
LB PARK, LLC

September 4, 2020

The South Carolina Court of Appeals

Ex Parte, Ryan Powell, Appellant,

In re LB PARK, LLC, Respondent,

v.

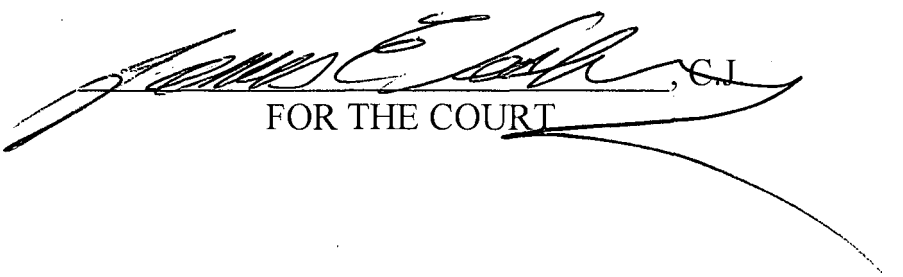
San Juan Holdings, Bret Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right , title, or interest in or to , or lien upon, he real estate described as 250056 Timberlake Drive, York County, 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, Defendants.

Appellate Case No. 2020-001228

ORDER

This appeal arises out of an order of the circuit court granting Respondent's motion for an order of reference to the master-in-equity and denying Appellant's motion to dismiss. Because the underlying orders are not immediately appealable, we dismiss this appeal. *See Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975) ("Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference deprives a party of a mode of trial to which he is entitled by law, or the trial judge in refusing a reference did so upon the erroneous belief that the cause of action was a legal one."); *id.* ("In equity the parties are not entitled, as a matter of right, to a trial by jury."); *Millvale Plantation, LLC v. Carrison Family Ltd. P'ship*, 401 S.C. 166, 173, 736 S.E.2d

286, 289 (Ct. App. 2012) ("An action to quiet title to property is an action in equity."); *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) ("The denial of . . . a motion [to dismiss] is not immediately appealable under section 14-3-330 of the South Carolina Code (2017)."). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.



, C.J.
FOR THE COURT

Columbia, South Carolina

cc:
Ryan Powell
A. Parker Barnes, III, Esquire

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Case # 2020-CP-46-00549

LB PARK, LLC, Plaintiff

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; 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, Defendants.

Motion to Return Case to Circuit Court

Defendant Ryan Powell, the sole owner of the land at issue ("Owner" hereinafter) moves this Court under Rule 53(b) SCRCP to return this case back to the Circuit Court. According to well settled case law, in order to determine whether any case is law or equity, both the complaint and the answer must be considered. Plaintiff's complaint presents a very defective *clear tax title* case[1] that was transformed into a law *try title* case when Owner made his answer wherein he raised an affirmative defense of having a paramount title to that claimed by the Plaintiff.

FACTS

1) Plaintiff initiated this action under SC Code of Laws §§ 12-61-10 to 60 (Complaint, #1) to clear a tax title issued to an entity that is not a party to this action (Complaint, #11). Plaintiff does not have standing to bring such an action according to SC Code of Laws §§ 12-61-10 because Plaintiff did not obtain a tax title by or through any tax sale (Complaint, #12).

[1] Plaintiff's complaint presents a defective *clear tax title* case because the Plaintiff does not have standing to bring a clear tax title case under SC Code of Laws §§ 12-61-10 to 60 since the Plaintiff did not purchase a tax title at or through any tax sale as required by SC Code of Laws §§ 12-61-10 and also because the Plaintiff does not have possession of the land at issue.

2) Plaintiff is not in possession of the land at issue (Complaint, #16, & wherefore clause, paragraph #1, pg 9).

3) Owner is not the *delinquent taxpayer* whose property was taken in any tax sale. Defendant San Juan Holdings, Brett Osborne, the trustee, is the alleged *delinquent taxpayer* in this case (Complaint, #3 & #4).

4) Owner has no duty to prove his claims of ownership, or put his deed into evidence, prior to a trial on the merits. This became especially true after Judge Hall threatened to record Owner's deed if it was put into evidence. Notwithstanding, Owner put into the record an affidavit evidencing his ownership which was attached as an exhibit to his "Several Motions to Dismiss Under Special Appearance" filed on 5/14/2020. That affidavit remains unrebutted.

5) The order referring this case to the Master is dated 8/20/2020 ("Reference Order" hereinafter) and was issued **before** Owner answered Plaintiff's Complaint.

6) Owner timely answered Plaintiff's Complaint in his Answer, Defenses, and Counterclaims ("Answer" hereinafter) that was filed and served on 10/6/2020 **after** the Reference Order was issued.

7) Owner raised in his Answer, *inter alia*, the affirmative defense of having a paramount title to that of Plaintiff and possession of the land at issue (Answer, Third Defense, pg 5).

8) Owner claimed in his Answer that he holds an unrecorded title to the land at issue, that he is in possession of the land at issue, and that he acquired his property five (5) years prior to the tax sale and seven (7) years prior to Plaintiff's quitclaim deed (Answer, #31-33).

9) Raising the defense of paramount title irrefutably put into dispute the title to the land at issue (Answer, Third Defense, pg 5) which transformed this [defective] equity case into a law case as equity cannot try distinct titles to the same land.

10) Owner endorsed a demand for a jury trial on his Answer pursuant to Rule 38 SCRCP (Answer, pg 1).

11) Owner raised, as an alternative remedy only, the declaring void and setting aside of the tax title and of Plaintiff's quitclaim deed. That alternative remedy is stated as being pursued only if Owner's affirmative defense of paramount title was stricken or otherwise denied to him (Answer, para #183 & Demand for Relief, para #2, pg 25). Owner's defense of paramount title has not been stricken or denied to him so Owner's alternative remedy will not be pursued.

12) On April 30, 2021, Plaintiff's attorney filed "*Plaintiff's Motion to Strike Defendant Ryan Powell's Demand for A Jury Trial and to Maintain the Existing Order of Reference*" ("Motion to Strike" hereinafter). A few days later on May 4, 2021, Plaintiff's attorney filed a three (3) page "letter" withdrawing Plaintiff's Motion to Strike and attached to his "letter" was sixty (60) pages of exhibits ("Withdrawal Brief" hereinafter).

ARGUMENT

This Action is Not an Equity Action, it is a Law Action

Plaintiff's attorney argues in both his Withdrawal Brief and in his withdrawn Motion to Strike that Owner does not have a right to a jury trial because this action is an equity action. However, those statements are false because they ignore Owner's Answer. According to well settled case law, in order to determine whether any case is law or equity, both the complaint and the answer must be considered. Plaintiff's attorney failed to mention even once in the eight (8) pages of facts and law that he recites and argues in both his withdrawn Motion to Strike and his Withdrawal Brief that Owner raised in his Answer an affirmative defense of having a paramount title to that claimed by the Plaintiff. When Owner raised that defense of paramount title, this [defective] equity action transformed into a law action as equity cannot try distinct and competing titles to the same land.

> "court of equity has no authority, in general, to try questions of title to lands, where the parties claim by distinct titles", Bramlett et al. v. Young et al., 93 SE 2d 873 (SC Supreme Court 1956).

> "The issue of paramount title having been raised by the answers of the respondents, they were entitled to have this question determined by a jury. The trial judge was correct in so holding.", Bryan v. Freeman, 168 SE 2d 793 (SC Supreme Court 1969).

> "Typically, an action to remove a cloud on and quiet title to land is one in equity. However, when the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat the Plaintiff's action, the issue of title is legal." Estate of Tenney v. South Carolina Dept. of Health, 712 SE 2d 395 (SC Supreme Court 2011).

> "He asserts that respondent's pleadings have no bearing or relevance in determining whether an order of reference should be made, theorizing that the complaint alone determines the character of the action if that character appears there with sufficient clearness. The issue of title to real estate can be raised by complaint *or by answer* and if it is so raised it must go to the jury" ... "The pleadings present an issue of title to land, such purely legal issue being guaranteed by the Constitution as a matter of right to trial by jury unless waived.", [italics in original], Van Every v. Chinquapin Hollow, Inc., 219 SE 2d 909 (SC Supreme Court 1975).

Plaintiff's attorney also fails to mention that Owner's defense and remedy of declaring void the tax title issued to a non-existent, non-party, that was made against another non-existent entity that was not the owner of the land at the time made was raised as an alternative defense and alternative remedy that was stated as being pursued **only if** Owner's right to his paramount title defense was denied to him. Plaintiff has failed and refused to move to strike Owner's affirmative defense of paramount title because Plaintiff knows that it cannot ultimately prevail on such a motion which is why it withdrew its Motion to Strike and has attempted twice to set a final hearing date for this case by ignoring and hiding the fact that this case is designated on the calendar and clerk's filebook as being a jury action.

Owner's Premature Appeal of the Reference Order
Did Not Finally Decide the Issue of Owner's Right to a Jury Trial

Plaintiff's attorney argues in his Withdrawal Brief that the reason he withdrew his Motion to Strike was because he just realized, four days after filing that motion, that Owner's right to a jury trial had been finally decided eight months earlier by the Court of Appeals when Owner's premature appeal of the Reference Order was dismissed. But, Owner's right to a jury trial could not have been finally decided by the Court of Appeals because at that time Owner's demand for a jury trial[2] and Owner's affirmative defense of paramount title had not yet even been made. Accordingly, it was impossible for the Circuit Court or the Court of Appeals to have finally decided issues that did not even exist until Owner filed and served his Answer which happened **after** Owner's premature appeal was dismissed!

When Owner did file and serve his Answer the character of the action changed from equity to law because Owner raised an affirmative defense of having a paramount title to that of the Plaintiff. Owner's Answer clearly put into dispute the title to the land at issue.

Despite the false allegations of Plaintiff's attorney to the contrary in his Withdrawal Brief, no court has yet made a decision on whether or not Owner has a right to a jury trial AFTER Owner made his Answer. Therefore, according to Rule 53(b) SCRCP, the Master has the duty to determine if Owner has a right to a jury trial and if found to be so then the case must be returned to the Circuit Court. Until this motion is heard and decided, the issue of Owner's right to a jury trial has **never** been addressed, much less decided.

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[2] Owner erroneously filed into the record a document titled "Demand For a Jury Trial" almost three months **before** Owner filed and served his Answer. That document was of no effect since it was not made pursuant to Rule 38 SCRCP, which requires a jury demand be made **on** an answer or within 10 days **after** an answer.

Rosenbalm v. S-M-S 32 Cannot be Used to Deny Owner his Right to a Jury Trial

Plaintiff argues in its Withdrawal Brief and also in its withdrawn Motion to Strike that Rosenbalm v. S-M-S 32, 427 SE 2d 897 (SC Supreme Court, 1993) controls this case and that it demonstrates Owner does not have a right to a jury trial. However, the facts in *Rosenbalm* are significantly different from the facts in this case so *Rosenbalm* can not be used to deny Owner his inviolate right to a jury trial, as clearly proven by the following:

1) In *Rosenbalm*, the plaintiff was in possession of the land at issue. In this action, Owner is in possession of the land at issue. In *Rosenbalm*, the plaintiff was in possession of the land because it had previously prevailed in an eviction action against the defendant, S-M-S 32. That was the reason why the Supreme Court held that S-M-S 32 could not "*earn*" the right to raise a *try title* counterclaim because S-M-S 32 had already been evicted from its property after having lost its title via a tax sale that had already been adjudicated as having been correctly executed;

2) The *Rosenbalm* Court held that the legislative intent of SC Code of Laws §§ 12-61-10 to 60 is

> "that **purchasers of property at tax sales** in South Carolina be provided an efficient, unencumbered method of clearing those titles. Moreover, the issue of construction is addressed thusly: 'This chapter shall be liberally construed to the end that it shall afford a complete remedy **to any Plaintiff claiming property by forfeiture ...**'" **[unto him**[3]**]**.

In *Rosenbalm*, both the trial court and the Supreme Court found that the *delinquent taxpayer*, S-M-S 32, could not evade the intent of the legislature. However, in this action it is NOT Owner, but Plaintiff, who is evading the intent of the legislature by bringing a clear tax title action under chapter 61 when it did not purchase property at or through[4] a tax sale and the property at issue was **not** forfeited unto the Plaintiff;

3) In *Rosenbalm* the defendant S-M-S 32 was the *delinquent taxpayer* whereas Owner is **not** the *delinquent taxpayer* in this action. Not being the *delinquent taxpayer*, Owner neither lost his

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[3] The two words "unto him" completes the specification of the requirements of SC Code of Laws 12-61-60 that the Supreme Court was citing.

[4] See SC Code of Laws § 12-51-90 which clearly describes exactly how a person purchases property "through" a tax sale, if they were not the tax title purchaser as Plaintiff clearly was not. This is the only method that can be used: "*If prior to the expiration of the redemption period, the purchaser assigns his interest in any real property purchased at a delinquent tax sale, the grantee from the successful bidder shall furnish the person officially charged with the collection of delinquent taxes a conveyance, witnessed and notarized. The person officially charged with the collection of delinquent taxes shall replace the successful bidder's name and address with the grantee's name and address in the delinquent tax sale book.*".

property nor his title from the unlawful tax sale that York County executed against a non-existent entity that was not the owner of the property at issue at that time;

4) Not only is Owner not the *delinquent taxpayer* in this action but Owner has never been assessed with owing any *ad valorem* taxes (Answer, #46, #130) so Owner is a nontaxpayer. The legislature is without authority to legislate, diminish, or annul the rights or remedies of nontaxpayers so any case that interprets SC Code of Laws §§ 12-61-10 to 60, as *Rosenbalm* does, is inapplicable to nontaxpayers like Owner. See Economy Plumbing & Heating Co., Inc. v. United States 470 F. 2d 585 (Court of Claims 1972) which dealt with federal income taxes but the concepts espoused in that case are equally applicable to all taxes including *ad valorem* taxes:

> "* * * They [the revenue laws] relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. * * *".

5) No Court has the authority to interpret any statute, including SC Code of Laws §§ 12-61-10 to 60 as *Rosenbalm* does, to violate a nontaxpayer's Constitutionally protected and inviolate right to a jury trial, see -

> "All statutes are presumed constitutional and will, if possible, be construed so as to render them valid.", *Last v. MSI Construction Co.*, 305 S.C. 349 (1991); and

6) Defendant S-M-S 32 recorded its deed thereby subjecting its property to the jurisdiction of the State which gave the trial court authority to decide the ownership of the land at issue in *Rosenbalm*. Since Owner has never subjected his property to the jurisdiction of the State, no court has jurisdiction over the subject-matter of this action, i.e., Owner's private, unrecorded property. In the end, an equity hearing or a jury trial is entirely irrelevant because this action can never legally be heard or decided under either mode of trial.

The Determination of Owner's Right to a Jury Trial is a Question of Law

The Master cannot use equity to determine the issue of whether or not Owner has a right to a jury trial. "Whether a party is entitled to a jury trial is a question of law", Verenes v. Alvanos, 690 SE 2d 771 (SC Supreme Court 2010). Owner clearly has a right to a jury trial in this law action to *try titles* so this motion to return the case to the Circuit Court must be granted.

The Master Does Not Have Jurisdiction To Decide This Case

Presuming for the sake of argument that any court of this State has jurisdiction over the subject-matter of this case, the Master has never been given jurisdiction to decide this case. The Reference Order states "*After careful consideration, Plaintiff's Motion for Order of*

Reference to the Master in Equity is GRANTED". Since that Form 4 Order does not state what specific relief was granted when that motion was granted, one must look to the relief requested in the motion being granted to determine exactly what relief was granted. Plaintiff's Motion for Order of Reference requests the Court "*issue an Order of Reference, referring this equitable proceeding to the Honorable Teasa Kay Weaver, Master in Equity for York County, for the purpose of receiving evidence and with all appeals to be made directly to the South Carolina Court of Appeals.*" [underlining mine]. Since, pursuant to Rule 53(b)[5] SCRCP, it is not possible for a master to receive evidence in order to make a report back to the circuit court, and the reference order only gives the Master the authority to receive evidence, the Master does not have jurisdiction to enter a final order in this case or to even decide this motion.

> "When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, **unless the order of reference specifies or limits his powers**.", Smith Companies of Greenville, Inc. v. Hayes, 428 SE 2d 900 (SC Court of Appeals 1993).
>
> "Rule 53(e) states that the master shall direct entry of judgment in the action without further order of court **if the order of reference so provides**.", Bonney v. Granger, 356 SE 2d 138 (SC Court of Appeals 1987).

Relief Requested

Enter an order returning this law case back to the Circuit Court, or if the Master finds she has not been given jurisdiction to hear and decide this motion then enter an order stating such a finding.

Respectively presented,

Dated: 7/9/2021

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

[5] Rule 53(b) SCRCP "A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court."

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Case No. 2020-CP-46-00549

LB PARK, LLC,

Plaintiff,

vs.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; Ryan Powell; 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.

Plaintiff's Memorandum in Opposition to Defendant Ryan Powell's Motion to Return Case to Circuit Court

Plaintiff LB PARK, LLC ("Plaintiff") hereby submits this Memorandum in Opposition to Defendant Powell's Motion to Return Case to Circuit Court.

RELEVANT PROCEDURAL HISTORY

This is an action to quiet tax title to real property known as 25056 Timberlake Drive in York County (the "Property"). On May 14, 2020, Defendant Powell filed a document titled "Several Motions to Dismiss Under Special Appearance." As this is an equitable action to quiet tax title, Plaintiff filed a Motion for an Order of Reference on June 23, 2020. On July 14, 2020, Defendant

Powell filed a document titled "Demand for Jury Trial Under Rule 38(b)," as well as a document titled "Opposition to Plaintiff's Motion for Order of Reference Under Special Appearance."

On July 22, 2020, Judge Hall heard the above motions. Pursuant to a Form 4 Order filed on August 20, 2020 (the "Order"), Judge Hall dismissed Defendant Powell's motions to dismiss but granted Plaintiff's Motion for an Order of Reference. (Order attached as Exhibit A).

Defendant Powell appealed the Order (Notice of Appeal attached as exhibit B.). Plaintiff moved to dismiss Defendant Powell's appeal on September 9, 2020 on the grounds that the Order was not immediately appealable because it did not deprive Defendant Powell of any mode of trial to which he was entitled. (Motion attached as Exhibit C). The Court of Appeals granted Plaintiff's motion by Order filed on September 15, 2020. Specifically, the Court of Appeals found as follows:

> Because the underlying orders are not immediately appealable, we dismiss this appeal. *See Williford v. Downs,* 265 S.C. 319, 321, 218 S.E.2d. 242, 243 (1975) ("Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference deprives a party of a mode of trial to which he is entitled by law, or the trial judge in refusing a reference did so upon the erroneous belief that the cause of action was a legal one."); *id.* ("In equity the parties are not entitled, as a matter of right, to a trial by jury."); *Millvale Plantation, LLC v. Carrison Family Ltd. P'ship,* 401 S.C. 166, 173, 736 S.E. 286, 289 (Ct. App. 2012) ("An action to quiet title to property is an action in equity."); *McLendon v. SC Dep't of Highways & Pub. Transp.,* 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994) ("The denial of . . . a motion [to dismiss] is not immediately appealable under section 14-3-330 of the South Carolina Code (2017).").

(Order attached as Exhibit D). In other words, in dismissing the appeal, the Court of Appeals determined that there was no right to a jury trial in this matter. If there were an issue triable by a jury, the appeal of the Order of Reference would have been allowed to proceed. The order of the South Carolina Court of Appeals dismissing Defendant Powell's appeal was filed in the York County Court of Common Pleas with the Remittitur on October 14, 2020.

In response to Powell's renewed attempts to have this matter placed on the jury roster in April 2021, the York County Master in Equity Court Manager asked if Plaintiff would like to be heard on the issue of whether this case should remain with the Master-in-Equity or be transferred back to the Circuit Court on April 29, 2021. On April 30, 2021, Plaintiff filed a Motion to Strike Defendant Ryan Powell's Demand for a Jury Trial and to Maintain the Existing Order of Reference. However, and as explained in greater detail in Plaintiff's letter to the Master-in-Equity's Office dated May 2, 2021, Plaintiff withdrew its motion because the issue of whether Defendant Powell can have a jury trial has been determined by the Circuit Court and the Court of Appeals. Furthermore, Defendant Powell had yet to formally renew his demand for a jury a trial following the Court of Appeals' Remittur on October 14, 2020, so the Motion to Strike was not necessary at that time.

Accordingly, this case has been referred to the York County Master-in-Equity, and the South Carolina Court of Appeals has dismissed Defendant Powell's appeal of the Order. Moreover, Defendant Powell has no right to a jury trial on any claims because this is an action to quiet tax title brought pursuant to S.C. Code Ann. §§ 12-61-10 to -60.

FACTS

SB MUNI CUST % LBSC-11 ("SB MUNI") purchased the property at the York County tax sale held on November 6, 2017, with a bid of $171,000.00. York County conveyed tax title to SB MUNI by tax deed dated and recorded on December 26, 2018. (Compl. ¶ 11.) SB MUNI subsequently conveyed the Property to Plaintiff by quitclaim deed dated January 7, 2019, and recorded on January 10, 2019. (*Id.* at ¶ 12.)

Prior to the 2017 tax sale, Defendant San Juan Holdings, Brett Osborne, the trustee, was the last record owner of the Property, having obtained titled by deed dated June 1, 2000, and recorded on June 27, 2000. (*Id.* at ¶ 3.) Defendant Brett Osborne as Trustee of San Juan Holdings filed a Notice

of Sale, Transfer or Exchange dated December 20, 2012, and recorded on December 26, 2012. (*Id.* at ¶ 5.) However, Plaintiff believes that this notice did not convey title or any other interest in the Property. (*Id.* at ¶ 6.) Defendant Powell asserts that he is the true owner of the Property, but he has never provided any proof of ownership and admits not to have recorded his alleged deed to the Property.

ARGUMENT

A. Defendant Ryan Powell has No Right to a Jury Trial.

The request for a jury trial in an action to quiet tax title is governed by *Rosenbaum v. S-M-S 32*, 311 S.C. 140, 427 S.E.2d 897 (1993). In *Rosenbaum*, the South Carolina Supreme Court held that an action to quiet a tax title is an action in equity and that a defendant in such an action is not entitled to a jury trial, *even if the defendant asserts a counterclaim stating a cause of action at law*. *See id.* at 143, 427 S.E.2d at 898 (emphasis added). Specifically, the court ruled,

> Considering the unique circumstances existing in a tax forfeiture acquisition, and the prevailing statutory provisions governing suits to clear tax titles, we conclude that the appellant may not evade the intent of the legislature and obtain the right to a jury trial by interposing a counterclaim designed to thwart the reasonable and practical implication of Chapter 61.

Id. The South Carolina Supreme Court's opinion in *Rosenbaum* controls this issue, and Defendant Powell has no right to a jury trial.

Defendant Powell cites four cases in support of his Motion to argue his assertion of paramount title requires this action to be tried before a jury in Circuit Court.[1] Furthermore,

[1] It should be noted that Defendant Powell has never produced a copy of his purported deed (despite discovery requests asking for its production) to the Property. In a 2017 South Carolina Administrative Law Court Order, Chief Administrative Law Judge Ralph King Anderson, III described Defendant Powell's naked assertions of ownership as thus:

> I use the term "ownership" above only for the sake of argument because I find that Petitioner failed to established (sic) standing as the owner of property to contest the

Defendant Powell misapplies the law set forth in *Rosenbaum*, and distorts the facts of this case in order to avoid the clear precedent that permits this matter to be heard before the Master-in-Equity. None of the cases cited by Defendant Powell arise out of an action to quiet tax title pursuant to S.C. Code Ann. §§ 12-61-10 to -60. Defendant Powell's authority fails to consider the statutorily created preference of providing an expeditious process to clear tax titles. Because the tax sale purchaser conveyed its interest in the Property to Plaintiff by quitclaim deed, Plaintiff has the same interest as the tax sale purchaser.[2] *See Floyd v. Floyd*, 112 S.C. 106, 98 S.E. 850, 850 (1919) (noting that a grantee stands in the shoes of the grantor). S.C. Code Ann. § 12-61-10 permits "any person or the executors, administrators, successors, assigns or grantees thereof, which has purchased at *or acquired through a tax sale and obtained title to any real or personal property*," to bring an action under this statutory frame work. (emphasis added.) Indisputably, Plaintiff's title originates through a tax sale, and Plaintiff is following the statutorily created processes to confirm its tax title. This chapter of laws explicitly provides that it "shall be liberally construed to the end that it shall afford a complete remedy to any plaintiff claiming property by forfeiture . . . ." Plaintiff

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> payment of taxes. Though he argues through his averments that he established ownership of the property, he has not presented a deed or court order establishing that fact. In fact, the deed he submitted does not identify him as the owner but an "unenfranchised living man" which is inconsistent with Petitioner's claim to be a "free man." Further, simply stating you own property without a legal document to support ownership does not establish a legal right to the property. It appears under the facts of this case that the only way for Petitioner to establish ownership would be a quiet title action.

Ryan Powell v. York County Assessor, No. 17-ALJ-30-0358-IJ, 3 n.6 (ALC Nov. 28, 2017). A copy of the 2017 ALC Order is being provided herewith as **Exhibit E.** Similarly, it would appear Defendant Powell has failed to properly assert a claim of ownership in this matter.

[2] Defendant Powell also argues that Plaintiff is not possession of the Property. While not in physical possession, Plaintiff is in legal possession of the Property. *See* S.C. Code Ann. § 12-51-130 ("Delivery of the tax title to the . . . register of deeds is considered 'putting the purchaser, or assignee in possession.'").

clearly fits within the construction of. S.C. Code Ann. § 12-61-60. Consequently, *Rosenbaum's* precedent controls, and Defendant Powell is not entitled to a jury trial.

Additionally, an action concerning the validity of a tax sale is an "action in equity." *Johnson v. Arbabi*, 355 S.C. 64, 69, 584 S.E.2d 113, 115 (2003) (citing *Bryan v. Freeman*, 253 S.C. 50, 51, 168 S.E.2d 793, 793-94 (1969) ("An action to remove a cloud on and quiet title to land is one in equity.")); *see also Godfrey v. Webb*, 277 S.C. 246, 247, 285 S.E.2d 883, 884 (1982) (holding that an action to set aside a tax deed and an action to confirm the same tax sale were both actions in equity); *Cathcart v. Jennings,* 137 S.C. 450, 135 S.E. 558, 562 (1926) ("A court of equity has jurisdiction to remove a cloud upon title.") (internal citations omitted). Therefore, no right to a jury trial exists in this case, and there are no grounds through which Defendant Powell is entitled to a jury trial.

B. This Action to Quiet Tax Title Should Stay before the Master-in-Equity.

Notwithstanding the clear ruling in *Rosenbaum* and the ruling by the South Carolina Court of Appeals, Defendant Powell is still not entitled to a jury trial. Plaintiff commenced this action in equity to quiet its tax title to the Property. South Carolina does not provide for the right to a jury trial in an equitable action. *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) ("Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions."); *Pelfrey v. Bank of Greer*, 270 S.C. 691, 695, 244 S.E.2d 315, 317 (1978) ("The constitutional provision (Art.I, Section 14) that the right of jury trial shall remain inviolate does not apply to cases within the equitable jurisdiction of the court."); *Loyola Fed. Sav. Bank v. Thomasson Props.*, 318 S.C. 92, 93, 456 S.E.2d 423, 424 (Ct. App. 1995). Therefore, if an action exists in equity, any request for a jury trial by a defendant should be stricken upon motion by the plaintiff.

In his Answer, Defenses, and Counterclaims filed on October 6, 2020 (the "Counterclaim"), Defendant Powell seeks to set aside the tax sale and to quiet his alleged title. (*See* Counterclaim at ¶¶ 181-188; Prayer for Relief.) South Carolina courts have previously ruled that cases including both an action to set aside a tax deed and a counterclaim to quiet title should be tried as equitable actions. *Godfrey v. Webb*, 277 S.C. 246, 247, 285 S.E.2d 883, 884 (1982) ("Two lawsuits in equity are involved in this appeal. The first is a suit to set aside a tax deed, and the other is a suit to conform the same tax sale and validate the tax deed.

The present case constitutes an example of a case including both an action to set aside a tax deed and an action to quiet title. Plaintiff requests that the court quiet its tax title, and Defendant Powell requests that the court set aside the tax sale and confirm his title, which constitutes an action in equity. *Folk v. Thomas*, 344 S.C. 77, 80, 543 S.E.2d 556, 557 (2001) ("An action to set aside a tax deed is in equity."); *Hawkins v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 359, 536 S.E.2d 698, 701 (Ct. App. 2000), *aff'd as modified by* 353 S.C. 31, 577 S.E.2d 202 (2003) ("An action to set aside a tax sale lies in equity."); S*ee S.C. Fed. Sav. Bank v. Atlantic Land Title Co.*, 314 S.C. 292, 294 442 S.E.2d 630, 631 (Ct. App. 1994). Therefore, even if *Rosenbaum* did not require that this case be tried in equity, which it does, Defendant Powell has no right to a jury trial.

C. The Circuit Court and the Court of Appeals Have Already Determined that Defendant Powell is Not Entitled to a Jury Trial.

The issue of whether Defendant Powell is entitled to a jury trial has already been decided in this case by the Circuit Court and the Court of Appeals. As such, there is no need for this Court to revisit this issue.

This is an equitable action to quiet tax title, and Plaintiff filed a Motion for an Order of Reference on June 23, 2020. On July 14, 2020, Defendant Powell filed a document titled "Demand

for Jury Trial Under Rule 38(b)," as well as a document titled "Opposition to Plaintiff's Motion for Order of Reference Under Special Appearance."

Judge Hall heard the above motions on July 22, 2020. Pursuant to a Form 4 Order filed on August 20, 2020, Judge Hall granted Plaintiff's Motion for an Order of Reference. Defendant Powell appealed. Plaintiff moved to dismiss the appeal on the grounds that the reference did not deprive Defendant Powell of any mode of trial to which he was entitled. The Court of Appeals dismissed the appeal, and included the above finding. In dismissing the appeal, the Court of Appeals implicitly found that the reference was proper because Defendant Powell is not entitled to a jury trial.

Rule 43(l), SCRCP, bars Defendant Powell from raising this issue for a second time. As provided in Rule 43(l), "[i]f any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." The issue has been decided by the Circuit Court, and Defendant Powell's attempted appeal of that issue has been dismissed. Thus, the demand for a jury trial contained in Defendant Powell's answer filed on October 6, 2020, does not in any way invalidate the reference in this matter.

Defendant Powell argues that the Circuit Court and Court of Appeals findings have no effect on his demand for a jury trial, because he filed an Answer and Counterclaim demanding a jury trial yet again after the Court of Appeals denied his appeal. However, Rule 38(b), SCRCP, does not provide that a demand for a jury trial is only recognized if made in a responsive pleading as Defendant Powell suggests. Instead, Rule 38(b) provides that any party may demand a trial by jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading direct

to such issue. The rule further provides, "[s]uch demand *may* be endorsed upon a pleading of the party. (emphasis added.) The rule does not provide that a jury demand is only valid or recognized if it occurs in a pleading. Defendant Powell made his demand for jury on July 14, 2020, when he filed a document titled "Demand for Jury Trial Under Rule 38(b)," which was clearly after the commencement of this action. Thus, Defendant Powell's demand for a jury trial was clearly before the Circuit Court when it ordered that this matter be referred to the Master-in-Equity on August 20, 2020, and the Court of Appeals when it dismissed Defendant Powell's appeal on September 15, 2020.

CONCLUSION

Accordingly, this action should remain referred to the York County Master-In-Equity for the purpose of making appropriate findings of facts and conclusions of law with the authority to enter a final judgment in this case and with any appeal from the final judgment in this case directly to the South Carolina Court of Appeals.

s/Andrew M. Rawl
A. Parker Barnes III, SC Bar No. 68359
Andrew M. Rawl, SC Bar No. 102807

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Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779-3080

Attorneys for Plaintiff

July 26, 2021

FORM 4

EXHIBIT 4

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4600549

Lb Park Llc
PLAINTIFF(S)

San Juan Holdings et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter comes before me upon motion filed by Defendant Ryan Powell requesting that this action be returned to Circuit Court pursuant to Rule 53(b), SCRCP. Upon request by Powell, this matter is decided without a hearing. After review of the pleadings and memoranda submitted by the parties, I find and conclude Powell is not entitled to a jury trial. Therefore, it is ordered that Powell's motion is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/17/2021 .

Brett Osborne Trustee
Brett Osborne
Ryan Powell for Ryan Powell
John Doe
Mary Roe
San Juan Holdings
Ryan Powell for Ryan Powell

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

York Common Pleas

Case Caption: Lb Park Llc VS San Juan Holdings , defendant, et al

Case Number: 2020CP4600549

Type: Order/Electronic Form 4

So Ordered

s/ Teasa K. Weaver 3084