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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA COURT OF APPEALS
AND FROM THE YORK COUNTY COURT OF COMMON PLEAS
Teasa K. Weaver, Master In Equity

Appeals Court Case # 2021-001192

LB PARK, LLC,. . . . . Appellee-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, ... Defendants,

Of Whom Ryan Powell is the.. .. . . . . Appellant-Petitioner.

PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS

Now comes Ryan Powell, hereinafter Petitioner, who pursuant to Rule 242 SCACR moves this Court to grant this petition for certiorari to the Court of Appeals. The Court of Appeals denied Petitioner's Petition for Rehearing on February 10, 2022.

Petitioner is the owner of the land at issue in this case and his appeal was dismissed by the Court of Appeals after they determined that Petitioner does not have a right to a trial by jury. To deny an owner of land a trial by jury in a title dispute action or to deny an owner in possession of his land a trial by jury in an eviction/dispossession action does not only violate all the case law of this State but also violates Petitioner's Constitutionally protected right to a trial by jury which is guaranteed in all such actions.

This Court must grant this Petition and hear this appeal for multiple reasons including those specified in Rule 242 (b)(1), (3) & (4) SCACR and also because there is evidence that the Court of Appeals made an *ex-parte* agreement with Appellee-Respondent LB PARK, LLC, hereinafter LB PARK, which agreement predetermined the outcome of this case before this case was even filed.

QUESTION PRESENTED FOR REVIEW

> Was it error to deny Petitioner, the owner of the land at issue, his Constitutionally protected right to a trial by jury in this title dispute and dispossession case where LB PARK holds a quitclaim deed and Petitioner holds a paramount title and has possession of the land at issue?

STATMENT OF THE CASE

In violation of the clear language and legislative intent, LB PARK initiated this action under SC Code of Laws 12-61-10 to 60 to dispossess Petitioner of his land and clear a tax title held by the previous title holder in LB PARK's chain of title. Pursuant to SC Code of Laws 12-61-10 to 60, only tax title holders have the right (standing) to clear their tax titles but LB PARK does not hold a tax title, it holds a quitclaim deed. LB PARK also does not have possession of the land at issue as is required in all quiet title actions [App. Return to LB PARK's MTDA, Exhibit #2, pg 5; Petition to Rehear, Exhibit 2]. The tax title that LB PARK wants to clear was issued to a non-party named "SB MUNI CUST % LBSC-11, LLC" [App. Petition to Rehear, Exhibit 2] and was executed against the defendant "San Juan Holdings, Brett Osborne, the trustee" ("SJH" hereinafter) [App. Petition to Rehear, Exhibit 2, see also the Caption of this case][1].

Before Petitioner answered LB PARK's Complaint, LB PARK moved to have the case referred to the York County Master in Equity "for the purpose of receiving evidence" [App. LB PARK's MTDA, Exhibit 2, pgs 6-7]; that motion was GRANTED [App, Order #2 on appeal]. Petitioner simultaneously moved for dismissal of the case based on ten (10) meritorious grounds including that LB PARK does not

[1] Petitioner is unable to evidence these above facts directly from a pleading because LB PARK intentionally withheld its Complaint from the record that it submitted to the Court of Appeals with its Motion to Dismiss Appeal.

have standing to bring its case under SC Code of Laws 12-61-10 to 60; Petitioner's motions were all denied [App, Order #2 on appeal]. Petitioner then mistakenly appealed the Order of Reference based on case law decided before 2002 when Rule 53(b) SCRCP was added and he was unaware of Rule 53(b) SCRCP at that time [App. Return to LB PARK's MTDA, pgs 8-9].

After that appeal was appropriately dismissed, Petitioner answered LB PARK's complaint ("Answer" hereinafter) and raised, *inter alia*, a defense of having a paramount title and possession of the land at issue [App. Return to LB PARK's MTDA, Exhibit 2, Third Defense, pg 5]. Petitioner also asserted three (3) law counterclaims [App. Return to LB PARK's MTDA, Exhibit 2, pgs 20-22, 23-25] and demanded a trial by jury pursuant to Rule 38(b) SCRCP [App. Return to LB PARK's MTDA, Exhibit 2, caption, pg 1].

Petitioner then moved under Rule 53(b) SCRCP, to have the case returned to the Circuit Court ("Motion to Return" hereinafter) so that he can get his trial by jury that the law guarantees to him [App. MTDA, Exhibit 2]. LB PARK filed a 60 page memorandum in opposition to Petitioner's Motion to Return which contained nothing but frivolous theories, irrelevant exhibits, and false allegations including its main theory that Petitioner's mistaken appeal of the Order of Reference finally decided the issue of Petitioner's right to a trial by jury. That theory is clearly frivolous because the Order of Reference was made before Petitioner had even answered LB PARK's Complaint so the case was referred, and appealed, before Petitioner had even raised any law issues or demanded his right to a trial by jury. The Master did not concur with LB PARK's frivolous theory [App. Order #1 on appeal].

After sitting on Petitioner's Motion to Return for two months, the Master finally entered a Form 4 order denying that motion by finding he did not have a right to a trial by jury. The Master did not state any grounds for her denial and also did not strike anything from Petitioner's Answer [App. Order #1 on appeal]. Petitioner appealed the Master's order which is appealable because it deprives Petitioner of his

Constitutionally protected right to a trial by jury that the law guarantees to him [App. Notice of Appeal and Order #1 on appeal]. Petitioner also appealed two interlocutory orders, which is permitted since there is an appealable issue before the Court [App. Notice of Appeal and Order #2 & #3 on appeal].

LB PARK immediately made a Motion To Dismiss Appeal ("MTDA") on the ground that the Master's order is not appealable [App. LB PARK's MTDA]. LB PARK's MTDA merely repeated its frivolous arguments that it made in its memorandum in opposition to Petitioner's Motion to Return with the only change being that it intentionally withheld its Complaint from the record it submitted with its motion to the Court of Appeals [App. MTDA, pg 2, first para.]. Petitioner filed a Return to LB PARK's MTDA demonstrating that Petitioner's mistaken appeal of the Order of Reference did not decide the issue of Petitioner's right to a trial by jury because Petitioner had not yet even filed or served his Answer raising multiple law issues and making his demand for a trial by jury [App. Return to LB PARK's MTDA, pgs 8-9]. Petitioner also demonstrated that the Court of Appeals could not decide LB PARK's MTDA without analyzing LB PARK's Complaint which LB PARK intentionally withheld from the record it submitted with its motion [App. Return to LB PARK's MTDA, pg 4, para. 1]. Petitioner also demonstrated that Rosenbaum v. S-M-S 32, 427 S.E.2d 897 (1993) is distinguishable so it cannot control this case [App. Return to LB PARK's MTDA, pgs 4-6]. LB PARK neither made any reply to Petitioner's return nor did it add its Complaint to the incomplete record it submitted with its MTDA [App. all].

The Court of Appeals granted LB PARK's MTDA in their Order dated December 9, 2021 [App. Order Dismissing Appeal] ("Dismissal Order" hereinafter) thereby depriving Petitioner of his right to a trial by jury. The Court of Appeals based its ruling entirely on dicta from Rosenbaum v. S-M-S 32, 427 S.E.2d 897 (1993) [App. Order Dismissing Appeal, pg 2, last case citation]. Petitioner Petitioned the

Court of Appeals to rehear their Dismissal Order [App. Petition to Rehear]; that Petition was denied on February 10, 2022 [App. Order denying rehearing].

SUB-QUESTIONS

Was it error to deny Petitioner, the owner of the land at issue, his Constitutionally protected right to a trial by jury in this title dispute and dispossession case where LB PARK holds a quitclaim deed and Petitioner holds a paramount title and has possession of the land at issue?

The question presented to this Court, which is reproduced immediately above, will be argued in the following nine (9) sub-questions:

A. When a court construes SC Code of Laws 12-61-10 to 60, are all pleadings analyzed to determine if any party is evading the plain words, legislative intent, and practical implications of that code chapter or must only a defendant's answer be analyzed?

B. Can Rosenbaum control this case when the facts in Rosenbaum and in this case are entirely different?

C. Does the Court of Appeals have the authority to assume facts not in evidence when deciding a motion to dismiss an appeal where the lower court made no findings of facts and the record is missing the required evidence?

D. Could the Master deny Petitioner his right to a trial by jury without also striking all of Petitioner's law allegations from his Answer?

E. When determining the character of a quiet title action initiated under SC Code of Laws 12-61-10 to 60, is the case automatically an equity case or must the court consider the pleadings, like it must do in all other quiet title actions?

F. When a plaintiff requests to take possession of a piece of land in its complaint, does that eviction/dispossession action not entitle the party in possession of the land to a trial by jury?

G. Does the Court of Appeals have the legal authority to predetermine and monitor a case outside its jurisdiction?

H. Since the outcome of this case was predetermined by the Court of Appeals, is it even possible for Petitioner to get any of his due process rights to a fair, impartial, and meaningful hearing?

I. Is it even possible for any court of this State to enter any order in this case that is not absolutely void *ab initio*?

ARGUMENT

A. When a court construes SC Code of Laws 12-61-10 to 60, are all pleadings analyzed to determine if any party is evading the plain words, legislative intent, and practical implications of that code chapter or must only a defendant's answer be analyzed?

This is a novel question since there are no cases decided in this State that show that a court, while construing some statute to determine if the intent of the legislature has been evaded, only considers one party's pleading for evidence of an evasion.

The Court of Appeals dismissed Petitioner's appeal based entirely on *Rosenbaum v. S-M-S 32*, 427 S.E.2d 897 (SC Supreme Court 1993). However, the Dismissal Order misquotes *Rosenbaum* and relies entirety on dicta from *Rosenbaum*. The edited dicta cited by the Court of Appeals in their Dismissal Order that they used to deprive Petitioner of his right to a trial by jury, and to dismiss his appeal, is the following:

> "(affirming where the lower court "struck appellant's counterclaim and denied its motion for a trial by jury holding that, in an action to set aside a tax deed under Section 12-61-10, *et seq.,* a defendant cannot "earn" the right to a trial by jury by asserting a counterclaim for trespass to try title.").", [App. Order Dismissing Appeal, page 2, last part of last case citation].

It appears that the above text did not come from *Rosenbaum* but is a citation to *Rosenbaum* from another case, both because the words "affirming where the lower court" is not found in the *Rosenbaum* opinion but also because all the words in the above text are enclosed within parenthesis "( )". Parenthesis are used when stare decisis from a case opinion is being cited within a different case opinion. However, the above text did not come from *Rosenbaum* or from any other case citing *Rosenbaum*.

The six (6) cases that actually do cite *Rosenbaum,* never cite the dicta found above in the text copied from the Dismissal Order but use the following, or very similar, words for their citations:

> "*Rosenbaum v. S-M-S 32,* 311 S.C. 140, 143, 427 S.E.2d 897, 898 (1993) (a court should give a statute a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of lawmakers.);", *Auto Now Acceptance Corp. v. CATAWBA*, 570 SE 2d 168 (SC Supreme Court 2002).

What *Rosenbaum* teaches, as demonstrated by the six (6) cases that actually do cite it, is that it is the **intent of the legislature** which must be considered when a court is construing a statute in addition to the meaning of the plain words of the statute. In alignment with the six precedent cases that actually cite *Rosenbaum*, this is what the *Rosenbaum* Court concluded:

> "we conclude that the appellant **may not evade the intent of the legislature** and obtain the right to a trial by jury by interposing a counterclaim designed to thwart the reasonable and practical implication of Chapter 61.", *Rosenbaum v. S-M-S 32*, 427 S.E.2d 897 (1993) [emphasis mine].

And this is what the *Rosenbaum* Court found constitutes the **intent of the legislature** when they enacted SC Code of Laws 12-61-10 to 60:

> "In our view, the **legislative intent supporting** S.C.Code Ann. Chapter 61 (1976) is that **purchasers of property at tax sales** in South Carolina be provided an efficient, unencumbered method of clearing those titles.", *Rosenbaum v. S-M-S 32*, 427 S.E.2d 897 (SC Supreme Ct 1993) [emphasis mine].

Had the Court of Appeals relied upon the stare decisis of *Rosenbaum,* as it was required to do when it decided LB PARK's MTDA, it would have had to determine if the intent of the legislature for SC Code of Laws 12-61-10 to 60 was being thwarted while they were construing that code chapter. But how could Petitioner assert any defense, any counterclaim, or do anything that thwarts the intent of Chapter 61 when the plain words, intent, and practical implications of Chapter 61 is to provide a efficient remedy **to plaintiffs who hold tax titles and LB PARK does not hold a tax title?**

The Court of Appeals took mandatory judicial notice of LB PARK's quitclaim deed in Petitioner's Petition to Rehear Dismissal of Appeal [App. Petition to Rehear, exhibit 2]. That quitclaim deed **proves** that LB PARK does not hold a tax title which is required of all plaintiff's who bring an action under SC Code of Laws 12-61-10 to 60[2]. If LB PARK was a purchaser of property at, or through, a tax sale then LB PARK would hold a tax title; there is no other possible conclusion. So it is **impossible** for Petitioner

[2] See ALTERNA TAX ASSET GROUP, LLC, v. YORK COUNTY, 434 S.C. 328 (2021) where the York County Master *sua sponte* dismissed that case for the plaintiff's lack of standing to bring its action under SC Code of Laws 12-61-10 to 60 after the Master found that the plaintiff was not a tax title purchaser.

to claim anything, or do anything, that could ever thwart or interfere in any way in LB PARK's clearing of its tax title when LB PARK does not hold a tax title!

It should be clear that the Court of Appeals only analyzed Petitioner's Answer, because they did not have LB PARK's Complaint before them when they were determining LB PARK's MTDA [App. all]. Had BOTH pleadings been analyzed, as is required, then the Court of Appeals would have had to come to the conclusion that it is not Petitioner, but LB PARK that is evading the intent of the legislature in this case. Analyzing only one party's pleadings would create a double standard in the application of the law to the facts of any case. Such a double standard, if one actually existed, would violate the South Carolina Constitution Article 1, Section 3 equal protection of the laws requirement. Therefore, it was clearly error for the Court of Appeals to rely upon only Petitioner's Answer, and not LB PARK's Complaint, to determine that Petitioner alone was attempting to thwart the intent of the legislature and grant LB PARK's MTDA that denies Petitioner his Constitutionally protected right to a trial by jury.

B. Can Rosenbaum control this case when the facts in Rosenbaum and in this case are entirely different??

This is a novel question since there are no cases decided in this State that show that a case can control another case when the facts between the two cases are entirely different.

The edited dicta that the Court of Appeals relied upon is clearly dicta. The facts recited by the trial judge in his order, that were reproduced in the *Rosenbaum* opinion, were facts which that judge found that demonstrated how one particular party, under the particular facts of that particular case, was found to be evading the intent of the legislature under one particular statute. As shown above in sub-question A, the party that is evading the intent of the legislature is LB PARK not Petitioner.

Nonetheless, if this Court determines that the *Rosenbaum* citation in the Dismissal Order, is stare decisis, then *Rosenbaum* still cannot control this case because *Rosenbaum* is distinguishable being that

the facts of both cases are **entirely different**. For stare decisis to be relied upon as precedent in any case, the facts of the two cases must be **substantially the same**.

> stare decisis - "Policy of courts to stand by precedent and not to disturb settled point. Doctrine that, when court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, **where facts are substantially the same**; regardless of the parties or the properties are the same.", Blacks Law Dictionary, 6th ed.

As can be clearly seen in the table below, the only fact that is even slightly similar between *Rosenbaum* and this case is that both cases were initiated under Chapter 61 of Title 12.

Fact From *Rosenbaum*	**Equivalent Fact From This Case**	**Are The Facts Similar?**
Case was initiated under SC Code of Laws 12-61-10 to 60.	Case was initiated under SC Code of Laws 12-61-10 to 60 even though the plaintiff does not have standing to use that code chapter[3].	✓
Plaintiff held a tax title.	Plaintiff holds a quitclaim deed.	**X**
Plaintiff was in possession of the land at issue.	Plaintiff is not in possession of the land at issue.	**X**
The defendant was the delinquent taxpayer.	The defendant claiming ownership of the land at issue is not a delinquent taxpayer and is not even a taxpayer.	**X**
Defendant lost its property from a tax sale.	No defendant in this case lost his/their property from any tax sale.	**X**
Defendant lost its title from a tax sale.	No defendant in this case lost his/their title from any tax sale.	**X**
The defendant was an artificial commercial entity which possessed only those rights that its creator, STATE OF GEORGIA, had given it.	The defendant claiming ownership of the property at issue is a man who possesses all those rights given to him by his creator, the Sovereign and Almighty God, which includes his right to own, possess, and dwell on his land and his right to defend his land.	**X**
The defendant raised a trespass to try title counterclaim in an attempt to "earn" possession of its property back that it had lost or abandoned.	The defendant claiming ownership of the property raised a defense of having a paramount title and possession of the land at issue and he does not need to "earn" any rights as he never lost any of his rights, possession, or title.	**X**

[3] See ALTERNA TAX ASSET GROUP, LLC, v. YORK COUNTY, 434 S.C. 328 (2021) where the York County Master *sua sponte* dismissed that case for the plaintiff's lack of standing to bring its action under SC Code of Laws 12-61-10 to 60 after the Master determined that the plaintiff was not a tax title purchaser.

The lower court judge struck from the defendant's answer all law allegations and claims that supported its demand for a trial by jury.	The Master did not strike anything from the answer of the defendant claiming ownership of the land at issue.	**X**
The lower court judge issued a detailed order making findings of facts and conclusions of law showing his well reasoned decision was supported.	The Master entered a Form 4 order that did not reveal any of the facts or law that she relied upon to illegally deprive Petitioner of his right to a trial by jury.	**X**

It was clearly error for the Court of Appeals to determine that *Rosenbaum* controls this case when the facts in *Rosenbaum* are **entirely different** from the facts in this case except for one slightly similar fact, which should not have been considered since LB PARK obviously does not have standing to bring its action under SC Code of Laws 12-61-10 to 60.

C. Does the Court of Appeals have the authority to assume facts not in evidence when deciding a motion to dismiss an appeal where the lower court made no findings of facts and the record is missing the required evidence?

This is a novel question since there are no cases decided in this State that show any court can find facts that are not supported by the record before them.

Assuming the edited citation that the Court of Appeals relied on to dismiss Petitioner's appeal is stare decisis, in order for the Court of Appeals to have properly determined that *Rosenbaum* controls this case they would have had to determine if the facts in this case are **substantially the same** as the facts in *Rosenbaum*. But how could the Court of Appeals even consider any facts in this case when the Master did not make any findings of fact in her order on appeal, and the only evidence that the Court of Appeals had before it was Petitioner's Answer? The only way that the Court of Appeals could determine if the facts in this case and *Rosenbaum* were "**substantially the same**" would be by assuming facts not found by the Master and facts without any evidentiary support from the record before them. Accordingly, the Court of Appeal's decision to dismiss Petitioner's appeal based on *Rosenbaum* is also in error for being

entirely unsupported by any evidence or findings of facts. Fact finding not supported by the record is both a violation of the Judicial Code of Conduct and also demonstrates judicial prejudice[4].

D. Could the Master deny Petitioner his right to a trial by jury without also striking all of Petitioner's law allegations from his Answer?

This is a novel question since there are no cases decided in this State that show a party's demand for a trial by jury was denied after they raised multiple law defenses and counterclaims and the court denying that party's demand for a trial by jury did not simultaneously strike from that party's pleadings all of the law allegations supporting its demand for a trial by jury trial.

According to **all** case law in this State, the only way Petitioner could not have a right to a trial by jury, is if Petitioner's claims of having a paramount title, possession, and his three (3) law counterclaims were **all** found to have been made in error. In such a case the Master was **required** to make those findings and then strike all of the erroneous law allegations and claims from Petitioner's Answer so that his demand for a trial by jury was no longer supported by his Answer and also to ensure that he could not enter any evidence to support his law allegations. However, the Master did not strike anything from Petitioner's Answer. This issue was purposely ignored by both the Master and the Court of Appeals because the pleadings, as they stand after Petitioner's Motion to Return was denied, are wholly in conflict with both orders finding he does not have a right to a trial by jury.

E. When determining the character of a quiet title action initiated under SC Code of Laws 12-61-10 to 60, is the case automatically an equity case or must the court consider the pleadings, like it must do in all other quiet title actions?

This is a novel question since there are no cases decided in this State that show that a case initiated under SC Code of Laws 12-61-10 to 60 is automatically an equity case.

In this case it appears that both the Master and the Court of Appeals consider SC Code of Laws 12-61-10 to 60 to be so special and so unique that for any case brought under that code chapter, the case is

[4] "Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR. "A judge's impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record.", Simpson v. Simpson, 660 SE 2d 274 (2008).

automatically an equity case. But that presumption is erroneous pursuant to SC Code of Laws 12-61-30 which states: "The proceeding authorized in this chapter shall be subject to the rules and laws governing the procedure and conduct **of similar proceedings.**..". Accordingly, any case initiated under SC Code of Laws 12-61-10 to 60, including this case, is governed by the same laws and same conduct as any other quiet title action. That means that all courts must analyze both the plaintiff's complaint and the defendant's answer in order to determine the character of any action initiated under SC Code of Laws 12-61-10 to 60 when required:

> "The right to a trial by jury is **guaranteed in every case** in which the right to a jury was secured at the time of the adoption of the Constitution in 1868.", *Verenes v. Alvanos*, 690 SE 2d 771 (SC Supreme Court 2010) [emphasis mine];
>
> "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.", *Van Every v. Chinquapin Hollow, Inc*., 219 SE 2d 909 (SC Supreme Ct 1975) [italics in original]; and
>
> "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); see also *Mountain Lake Colony v. McJunkin*, 417 SE 2d 578 (SC Supreme Court 1992).

Since the pleadings in this case clearly raise an issue of title to the property at issue, and this case indisputably falls under the category of "**every case**", then Petitioner's right to a trial by jury is "**guaranteed**" to him as any other party would have in any similar case. Therefore, it was clearly error to deny Petitioner his right to a trial by jury for this title dispute case.

F. When a plaintiff requests to take possession of a piece of land in its complaint, does that eviction/dispossession action not entitle the party in possession of the land to a trial by jury?

This is a novel question since there are no cases decided in this State that request the court determine the right to a trial by jury in a case initiated under SC Code of Laws 12-61-10 to 60 where the plaintiff did not already have possession of the land at issue, as is required in all quiet title actions.

LB PARK requested as partial relief under its main cause of action that the court enter an order evicting anyone in possession of the property at issue. Unlike in sub-question E above where both pleadings need to be analyzed to find Petitioner has a right to a trial by jury, here only LB PARK's Complaint needs to be analyzed to see that Petitioner has that right[5]. All dispossession/eviction actions are law actions that require a trial by jury if demanded, as proved by the following:

> "Parties in possession of real property have the right to stand on their possessions until compelled to yield to the rule title **determined by trial by jury**.", 47 Am. Jur. 2d 45 [emphasis mine];
>
> "this is a case to remove a cloud on and quiet title to the land in question. Such an action could not be maintained by the respondent if he were not in possession of the land at the time of the institution of the action. **If the respondent were not in possession, his remedy would be to bring an action on the law side of the Court to recover possession and thus test the title to the land**.", *Mullis v. Winchester*, 118 SE 2d 61 (SC Supreme Court 1961) [emphasis mine]; and
>
> "We reiterate that we are simply adhering to **settled law** that one must establish legal title before he is allowed to dispossess another in possession of land. ", *Cummings v. Varn*, 413 SE 2d 829 (SC Supreme Court 1992) [emphasis mine].

SC Code of Laws 12-61-10 to 60 **requires** that all plaintiffs have possession of the land at issue before they can even bring an equity action to clear their tax title. Possession is required because dispossessing an owner from his property is **always** a law issue and always **requires** a jury's determination if one is demanded! This issue has been purposely ignored so that Petitioner can be illegally deprived of his right to a trial by jury. Since a trial by jury is available in **all** eviction actions it was clearly error to deny Petitioner his right to a trial by jury.

G. Does the Court of Appeals have the legal authority to predetermine and monitor a case outside its jurisdiction?

This is a novel question since there are no cases decided in this State that show that a case in the lower court was predetermine by the Court of Appeals before the case was even filed and then monitored and controlled throughout the case's existence.

[5] EVERY attorney that Petitioner has ever sought advice from for this case has said ... "How can the plaintiff even bring a quiet title action when it does not have possession of the property?". Petitioner would also like to know ... HOW?

In an earlier case that LB PARK brought ("First Case" hereinafter) which Petitioner appealed because the Circuit Court judge had denied him intervention, the Court of Appeals **denied** LB PARK's motion to dismiss that appeal. This was the FIRST, and the LAST, motion or petition upon which Petitioner has ever prevailed during the past almost **ten years** he has been litigating issues involving the theft of his private property. Petitioner knows he has a right to defend his private property upon which York County knowingly and illegally issued a tax title. However, Petitioner also knows that only commercial legal fictions that have involved themselves in some kind of commercial contract, agreement, or trust relationship can be made parties to any commercial court case[6]. So why would the Court of Appeals deny dismissal of an appeal that they should have rightly dismissed knowing that Petitioner had never entered into any commercial agreement with any other commercial corporate entity (i.e., York County) pertaining to his private property? What happened next answers that question.

Immediately after Petitioner's "win", LB PARK moved to remand that appeal so that it could take a voluntary dismissal of its First Case and file the same case again naming Petitioner as a defendant ("Second Case" hereinafter); the Court of Appeals granted that motion. Since Sarah P. Spruill, LB PARK's appeal attorney, must have known that Petitioner would lose that appeal and she must have also known that LB PARK could then quickly take Petitioner's private property on a default judgment, why would she **voluntarily** dismiss LB PARK's First Case and bring this Second case naming Petitioner as a defendant? And since the Court of Appeals must have known that they would have to affirm the Circuit Court judge's denial of Petitioner's intervention into the First Case, why would they deny dismissal of that appeal only to then "permit" LB PARK to add Petitioner as a party to this Second Case? The evidence reveals that the Court of Appeals "permitted" that to happen because they caused it to happen.

[6] All court cases brought in any court of this state are commercial cases that are brought to settle some commercial business or contractual issue that arose between those commercial corporate fictions.

The evidence reveals that the Court of Appeals and Sarah P. Spruill had *ex parte* communications[7] which resulted in an agreement. That agreement included a requirement that LB PARK would make a report back to the Court of Appeals every 30 days on the status of this Second Case; that requirement was disclosed in the remand order [App. Example Status Rpt #1, #2, #3]. The undisclosed parts of that agreement include: 1) that this case would never be allowed to be determined by a jury; 2) that all lower court judges would deny any issue Petitioner ever raised which should have resulted in this "case" being dismissed e.g., LB PARK's lack of standing, lack of any court having jurisdiction over the subject matter of this case, and LB PARK not having possession of the property; 3) that LB PARK would not be held liable for any of the damages it has caused to Petitioner; and 4) that LB PARK would be given a guaranteed outcome for this case. The evidence suggests that Petitioner was "permitted" to be added to this Second Case for the sole purpose of eliminating York County's liability for their knowing and intentional issuance of a void tax title against private property and then selling that void tax title to a purchaser that had failed to do any of its required due diligence[8].

H. Since the outcome of this case was predetermined by the Court of Appeals, is it even possible for Petitioner to get any of his due process rights to a fair, impartial, and meaningful hearing?

This is a novel question since there are no cases decided in this State that show that a case in the lower court had its outcome predetermined by the Court of Appeals before the case was even filed and then monitored throughout the existence of the case so that it could be controlled.

As shown in sub-question G immediately above, the outcome of this case was clearly predetermined by the Court of Appeals before it was even filed. Accordingly, Petitioner has been deprived, *inter alia*, of the following: his due process right to be heard in a meaningful way; his due process right to be heard by an impartial tribunal; and his due process right to judicial review. Petitioner has been deprived of all

[7] See prohibition against *ex parte* communication stated in Burgess v. Stern, 428 SE 2d 880 (SC Supreme Court 1993).

[8] Had the tax title purchaser done its required due diligence it would have found a notice recorded in the York County land records showing that SJH did not own the land sold in their name at the time of the tax sale.

his procedural due process rights in a case that is attempting to illegally steal, and dispossess him of his private property without the required trial by an **impartial jury** that is **available in all similar cases**.

> "The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review.", *Universal Benefits, Inc. v. McKinney*, 561 SE 2d 659 (2002);
>
> "It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution", Mallett v. Mallett, 473 SE 2d 804 (1996); and
>
> "It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity", Brown v. Malloy, 546 SE 2d 195 (2001).

I. Is it even possible for any court of this State to enter any order in this case that is not absolutely void *ab initio*?

The answer to the above sub-question is indisputably **NO** according to the following:

> "The definition of "void" under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.", McDaniel v. US Fidelity & Guar. Co., 478 SE 2d 868 (1996).

According to McDaniel, **any order** that has been, or will ever be entered in this case, is and will be void for all of the following reasons: no court has jurisdiction over the subject matter of this case (i.e., Petitioner's private property); no court could ever assert personal jurisdiction over a man; the Master was only given jurisdiction "for the purpose of receiving evidence" which means she was never given the authority to enter any order including her order on appeal; and Petitioner has been deprived of all his due process rights. This means that any order ever entered in this case will be absolutely void, a nullity, as if it never even existed. It appears that the Court of Appeals is so intent on helping LB PARK that it is willing to sacrifice all law, all ethics, and all morality in order to allow the entry of an order that they **know** will be an absolute nullity.

CONSIDERATIONS SUPPORTING A WRIT OF CERTIORARI

The following four (4) considerations requires this Court issue a Writ of Certiorari:

I. There are nine (9) novel questions of law in this case;

II. The decision of the Court of Appeals is in conflict with every prior decision of this Court;

III. Substantial Constitutional violations have taken place in this case; and

IV. The Court of Appeals decided this case before it was even filed.

I. There are nine (9) novel questions of law in this case

There are no precedent cases in any of the South Carolina Reporters which address any of the legal issues raised in any of the sub-questions argued in the Argument section above, making all of them novel. The reason that there are no precedent cases for any of these legal issues is because, as shown above, the lower court judges and the judges on the Court of Appeals have been working in tandem to achieve their scripted agenda that was predetermined by the Court of Appeals so they are clearly not working according to any laws required in any similar case.

II. The decision of the Court of Appeals is in conflict with every prior decision of this Court

The Master's order on appeal and the Dismissal Order are in conflict with **every** prior decision of the Supreme Court of South Carolina and they are also in conflict with **every** prior decision of the South Carolina Court of Appeals, including every case cited in this Petition and also every case cited in any document found in the Appendix.

III. Substantial Constitutional violations have taken place in this case

The following five (5) provisions of the South Carolina Constitution, made mandatory by Article 1 Section 23[9] of that Constitution, have been violated in this case:

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

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[9] "The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory".

As demonstrated in sub-question H above, this case is attempting to take (steal) Petitioner's private property while he has been denied **all** his due process rights by the Court of Appeal's predetermination of this case.

2. South Carolina Constitution Article 1 Section 3 - "nor shall **any person** be denied the equal protection of the laws.".

As demonstrated in all sub-questions above, Petitioner has been deprived of the equal protection of all laws recognized in this State. In **all** title dispute and eviction/dispossession actions, the owner in possession of his land is guaranteed the right to a trial by jury. But in this case, Petitioner has been unequally deprived of those, as well as all other protections of the law.

3. South Carolina Constitution Article 1 Section 13 - **"**private property **shall not be taken** for private use without the consent of the owner.".

The requested outcome for this case is to take (steal) Petitioner's private property, dispossess him and throw him, his family, and their personal belongings out onto the street using force and guns. In this State each owner of land must first submit their property to the jurisdiction of the State by recording their deed in order to give their consent to have their property taken and also to give their consent to act by and through a legal fiction (i.e., a legal person). But Petitioner never gave his consent to either of those requirements because it is undisputed that he never recorded a deed to his land. Accordingly, this case should have been dismissed at the first opportunity as it is violating, *inter alia*, Petitioner's Constitutionally protected right to not have his private property taken without his consent.

4. South Carolina Constitution Article 1 Section 14 - **"**The right of trial by jury shall be preserved inviolate.".

A trial by jury is an inviolate right of all owners of land in any title dispute and dispossession/ eviction case. Inviolate means under no circumstance can this right ever be violated. But yet it has!

5. South Carolina Constitution, Article 5, Section 9 - "The decisions of the Supreme Court shall bind the Court of Appeals as precedents.".

Every decision ever made by the Supreme Court has been violated by both the Master's order on appeal and the Court of Appeal's Dismissal Order which is a violation of this Constitutional protection.

IV. The Court of Appeals decided this case before it was even filed

As demonstrated by all of the above, the Master and the Court of Appeals clearly made their orders denying Petitioner his right to a trial by jury, not based on any laws of this State but based entirely on the agreement made between the Court of Appeals and LB PARK before this case was even filed. This fact alone **requires** this Court issue a writ or certiorari.

CONCLUSION

The Court of Appeals forced Petitioner into commerce, i.e., into being a party in a commercial court case to defend his private property, but then denied him all of his rights and all of his meritorious claims that would ordinarily be available to any other party in any other commercial court case. And in the place of having any of his rights or claims upheld, Petitioner has been forced to take on all the liabilities of having to spend his time and resources litigating this case in a three year long futile stage show that has damaged Petitioner without him having any recourse!

Refusing to grant this Petition is equivalent to assenting to the unethical, immoral, unlawful, torturous, and in fact illegal and criminal actions taken by the Court of Appeals, LB PARK and all the lower court judges that have ever come in contact with this "case". Therefore and for all the foregoing reasons, this Court must issue a writ of certiorari, reverse the Court of Appeals order dismissing Petitioner's appeal and hear Petitioner's appeal so that this "case" can be properly dismissed or if not dismissed so that Petitioner can get his right to a trial by jury upheld.

March 10, 2022

/s Ryan Powell_____
Ryan Powell, Petitioner
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