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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.

APPENDIX

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 # _____

LB PARK, LLC,. . . . . Respondent,

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,

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

NOTICE OF APPEAL

Appellant Ryan Powell appeals the following order of Judge Teasa K.Weaver entered on September 20, 2021 that affects Appellant's right to a mode of trial to which he is entitled by finding and concluding that Appellant does not have a right to a jury trial. Appellant received written notice of entry of that order on September 23, 2021. Appellant is also appealing two other interlocutory orders at this time. The first interlocutory order being appealed is the order of Judge Daniel D. Hall wherein he denied Appellant's Several Pre-Answer Motions to Dismiss. The second interlocutory order

being appealed is the order of Judge William A. McKinnon wherein he denied Appellant's Motion for Judgment on the Pleadings, and two Discovery Motions.

Respectfully Submitted,

October 9, 2021

Ryan Powell

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

A. Parker Barnes, III
P.O. Box 11889,
Columbia, SC 29211-1889
Attorney for Respondent LB PARK, LLC

Brett Osborne
190 Aviation Lane,
Gold Hill NC 28071
Pro Se for Respondent San Juan Holdings, Brett Osborne, trustee and
Respondent Brett Osborne as trustee of San Juan Holdings

Clerk of Court, Court of Common Pleas
P.O. Box 649
York, SC 29745

Master In Equity Court
P.O. Box 627
York, SC 29745

FORM 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

RECEIVED
OCT 19 2021
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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

FORM 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)

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☑ **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

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☐ **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:

After careful consideration, Plaintiff's Motion for Order of Reference to the Master in Equity is GRANTED.

Defendant's Motions to Dismiss are 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 08/20/2020 .

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

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/Daniel D. Hall 2753

FORM 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.

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☐ **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:

Defendant Powell's Motion for Judgment on the Pleadings, Motion to Determine Sufficiency of Objections, and Motion to Compel are 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 03/31/2021 .

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

RECEIVED
OCT 19 2021
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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 William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

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,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill
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pbarnes@hsblawfirm.com

Attorneys for Respondent
LB PARK, LLC

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.

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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 order is 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.

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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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.

Sarah P. Spruill (SC Bar No. 68337)
ONE North Main Street, 2nd Floor
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A. Parker Barnes III (SC Bar No. 68359)
P.O. Box 11889
Columbia, South Carolina 29211-1889
(803) 779-3080
pbarnes@hsblawfirm.com

Attorneys for Respondent
LB PARK, LLC

September 4, 2020

The South Carolina Court of Appeals

Ex Parte, Ryan Powell, Appellant,

In re LB PARK, LLC, Respondent,

v.

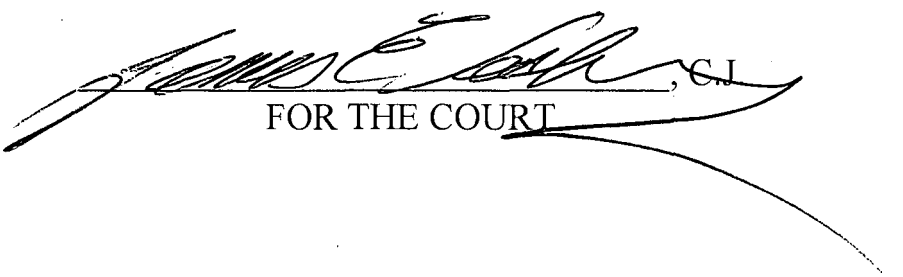
San Juan Holdings, Bret Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right , title, or interest in or to , or lien upon, he real estate described as 250056 Timberlake Drive, York County,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

Haynsworth Sinkler Boyd, P.A.
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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
OCT 25 2021
SC 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 # 2021-001192

LB PARK, LLC,. . . . . Respondent,

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,

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

RETURN TO RESPONDENT LB PARK, LLC'S MOTION TO DISMISS APPEAL

Pursuant to Rule 240 (e) SCACR, Appellant Ryan Powell ("Ryan" hereinafter) makes this Return in opposition to Respondent LB PARK, LLC's ("LB PARK" hereinafter) Motion to Dismiss Appeal ("MTDA" hereinafter).

The Orders On Appeal Are Immediately Appealable

LB PARK's MTDA is based on the stated ground that "*the underlying orders are not immediately appealable*" [MTDA, para 1, pg 1]. However, the main order being appealed denies

Ryan his right to a jury trial, which affects a substantial right and is immediately appealable. A copy of the Master's order being appealed is attached as Exhibit 1. Both this Court and the Supreme Court have repeatedly held that orders that deny a party the particular mode of trial to which they have a right is immediately appealable.

> "In a well-established exception to the general rule, we repeatedly have held that the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14-3-330(2).", Hagood v. Sommerville, 607 SE 2d 707 (SC Supreme Court 2005).

> "It is settled beyond controversy in this state that it is error, from which an appeal will lie, to deny a party a mode of trial to which he is entitled by law.", Pelfrey v. Bank of Greer, 244 SE 2d 315 (SC Supreme Court 1978).

The other two orders that Ryan has appealed are interlocutory but they must be considered since there is an appealable issue before this Court and a ruling by this Court on those two interlocutory orders will avoid unnecessary litigation. Ryan's motions that were denied in those two interlocutory orders address lack of subject matter jurisdiction, failure to make a *prima facia* case showing personal jurisdiction, and that the "case" is not justicible. A reversal of any one of Ryan's many motions denied in those two orders will finally dispense with this "case".

> "an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation.", Watson v. Underwood, 756 SE 2d 155 (SC Court of Appeals 2014).

This Is A Law Case So Ryan Has A Right To A Jury Trial

This Court, and the Supreme Court, have both repeatedly held that the character of any action (i.e., law or equity) cannot be decided without analyzing both the complaint and the answer. Since Ryan's answer raised the issue of having a paramount title, this is a law case. A copy of Ryan's answer ("Answer") is attached as Exhibit 2 and incorporated herein by reference.

> "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);

"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); and

"[W]hen the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff's action, it is the duty of the court to submit to a jury the issue of title as raised by the pleadings.", HILTON HEAD PROP. OWNERS'ASS'N v. Donald, 651 SE 2d 614 (SC Court of Appeals 2007) citing Bryan v. Freeman, 253 S.C. 50, 52, 168 S.E.2d 793, 793-94 (SC Supreme Ct 1969).

Also, since Ryan has possession of this private property then he has a right to a jury trial -

"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.

According to the above binding cases, and legal principles, both the Complaint and the Answer must be analyzed in order to determine the character of this action. It was an error of law for the Master to deny Ryan's Motion to Return Case to Circuit Court[1] and rule that Ryan does not have a right to a jury trial when both parties are claiming to own the property at issue under distinct and separate titles.

Further, LB PARK agrees that Ryan is in possession of his private property [MTDA, page 2, last para., last sentence]. That admission proves that LB PARK's claims are not ripe as they are based on the hypothetical possibility that LB PARK will be able to take possession of Ryan's private property, which MUST happen **before** it brings any kind of quiet title action -

"This case was a suit brought for the purpose of setting aside a tax deed as a "cloud on the title of the plaintiffs." From a judgment in favor of the plaintiffs an appeal was prosecuted to this Court. In reversing the lower Court and finding for the defendant, this Court held

[1] See copy of Ryan's Motion to Return Case to Circuit Court attached to LB PARK's MTDA as its Exhibit 2 which is incorporated herein by reference.

that a suit to remove a cloud from the title was premature for the reason that the plaintiffs were not in possession of the property in question", Taylor v. Jennings, 106 SE 2d 391 (SC Supreme Court 1958).

Notwithstanding, since LB PARK has refused to attach a copy of its Complaint to its MTDA, this Court will not be able to analyze both the Complaint and Ryan's Answer [Exhibit 2] to properly determine whether he has a right to a jury trial. Therefore, this Court should consider the MTDA abandoned pursuant to Rule 240(g) SCACR.

Rosenbaum v. S-M-S 32 Does Not Control This Case

LB PARK did not argue the actual merits of whether or not Ryan has a right to a jury trial other than one small paragraph, out of its six (6) page motion, which contains one case citation. That one case cited is ROSENBAUM v. S-M-S 32, 427 S.E.2d 897 (1993) [MTDA, page 5, para 1]. Rosenbaum is suppose to prove that Ryan cannot raise any legal counterclaims. However, the facts in Rosenbaum are drastically different from the facts in this case, which makes Rosenbaum inapplicable, uncontrolling, and differentiated from this case. The following seven (7) reasons show why Rosenbaum does not control this case:

1) In Rosenbalm, the plaintiff was in possession of the land at issue, as is required of all quiet title actions in this State. In this case, Ryan is in possession of his private property;

2) In Rosenbalm, both the trial court and the Supreme Court found that S-M-S 32 could not raise a counterclaim of *trespass to try title* because that would violate the intention of the legislature when it passed SC Code of Laws §§ 12-61-10 to 60. However, in this case LB PARK does not have any right (standing) to use that remedy provided to tax title purchasers because LB PARK admits, in its suspiciously absent Complaint, that it did NOT purchase any tax title by or through[2] any tax sale and admits, in its suspiciously absent Complaint, that the land at issue was

[2] 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 LB PARK was not. This is the only method that can be used: *"If*

not forfeited unto it. Therefore, in this case it is LB PARK, and not Ryan, that is evading the intent of the legislature;

3) In Rosenbaum, the Supreme Court stated that -

> "Appellant's counterclaim was based on its contention that the failure of the Beaufort County taxing authorities to follow proper procedures for the levy and sale renders respondent's tax deed invalid".

In other words, S-M-S 32's law counterclaim of trespass was based entirely on an equity issue, i.e., the validity of plaintiff Rosenbaum's tax title. Of course, S-M-S 32's law counterclaim was "insufficient" and should have been stricken by the lower court, and it was. In this action however, Ryan's claim for a jury trial is based only on law issues, those being Ryan having a paramount title to LB PARK and possession of the land at issue [Exhibit 2, Third defense], and also on Ryan's three (3) law counterclaims [Exhibit 2, pages 20-22; pages 23-24; pages 24-25];

4) In Rosenbalm the defendant S-M-S 32 was the *delinquent taxpayer* whereas Ryan is **not** the *delinquent taxpayer* in this case [Exhibit 2, #4, #19, #143-#146]. In this case, the defendant "San Juan Holdings, Brett Osborne, the trustee" ("SJH") is the alleged *delinquent taxpayer* as is proven by LB PARK's suspiciously absent Complaint. Not being the *delinquent taxpayer*, Ryan neither lost his property, nor his title from the tax sale that York County conducted against SJH;

5) Not only is Ryan not the *delinquent taxpayer* in this case, but Ryan has never been assessed with owing any *ad valorem* taxes [Exhibit 2, #46, #130] so Ryan is a nontaxpayer. Any remedies provided by the legislature, including those found in SC Code of Laws §§ 12-61-10 to 60, pertain only to taxpayers and are completely and utterly inapplicable to non-taxpayers as the legislature is without any authority to legislate, diminish, or annul the rights or remedies of

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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.".

nontaxpayers. Therefore, any case that interprets SC Code of Laws §§ 12-61-10 to 60, as Rosenbalm does, is inapplicable to nontaxpayers like Ryan. See the following case which dealt with federal income taxes but the concepts espoused in that case are equally applicable to *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. * * *", Economy Plumbing & Heating Co., Inc. v. United States 470 F. 2d 585 (Court of Claims 1972), (bracketed text in original).

6) 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 -

> "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

7) In Rosenbaum, defendant S-M-S 32 recorded its deed thereby subjecting its property to the jurisdiction of the State, which gave the trial court the authority to decide the issue of title to the property. Since Ryan has never subjected his property to the jurisdiction of the State [Exhibit 2, Fourth Defense, #36 - #44], no court has jurisdiction over the subject-matter of this action, i.e., Ryan's private property.

According to the above seven reasons, Rosenbaum clearly cannot be used to deny Ryan his inviolate right to a jury trial.

The Record Proves This Is A Law Case

According to Rule 53(b) SCRCP, "**upon**" Ryan filing his Answer demanding a jury trial [Exhibit 2, Caption pg] the case "**shall**" be returned to the Circuit Court.

> Rule 53(b) SCRCP "Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, **upon** the filing of a jury demand, the matter **shall** be returned to the circuit court.".

The Master was required, by the word "**shall**" in Rule 53(b) SCRCP, to return the case to the Circuit Court. However, the Master could refuse to return the case to the Circuit Court if she struck, on her own initiative under Rule 12(f)[3] SCRCP, Ryan's defense of paramount title and his three (3) law counterclaims as being "insufficient", "redundant", "immaterial", "impertinent" or "scandalous". The Master was constrained to striking allegations in Ryan's answer for only those five (5) specific reasons because LB PARK failed to move to strike, dismiss, or disallow any of Ryan's defenses or counterclaims. **But the Master did not strike, deny, or disallow anything in Ryan's Answer**[4] [Exhibit 1]. That means the pleadings still contain an intact demand for a jury trial, an intact paramount title defense and three (3) intact law counterclaims with damages.

As the pleadings presently exist, this is a law case and Ryan will be able to enter evidence proving his defense of paramount title and proving his three (3) law counterclaims with damages.

> "When the Circuit Court granted the motion to strike the defense that the Tennessee Court lacked jurisdiction, **the Court effectively precluded Wintenna from presenting any evidence proving the defense**.", Alladin Plastics, Inc. v. Wintenna, Inc., 390 SE 2d 370 (SC Court of Appeals 1990) [emphasis mine].

It is impossible for Ryan to not have a right to a jury trial, while at the same time he retains the right to present and prove his law claims, damages, and law defenses.

In Rosenbaum, the trial court struck defendant S-M-S 32's allegations of trespass and struck its prayer for damages. Striking those portions of the S-M-S 32's answer was required in order to make the pleadings sustain the trial court's finding that S-M-S 32 did not have the right to demand a jury trial -

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[3] Rule 12(f) SCRCP - "upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter".

[4] Ryan speculates that the Master intentionally did this because she agreed with Ryan that she did not have subject matter jurisdiction to hear his motion, but she also had a ministerial duty to rule on his motion. See Ryan's motion attached to MTDA as its Exhibit 2 which proves the Master did not have jurisdiction to rule on the motion.

> "Accordingly, we affirm the order of the circuit court denying appellant's motion to transfer this case to the jury roster and striking from the counterclaim appellant's allegations of trespass and the prayer for damages.", ROSENBAUM v. S-M-S 32, 427 S.E.2d 897 (SC Supreme Ct 1993).

The trial court is required to strike, deny, or dismiss the basis for a party's demand for a jury trial at the time the Court denies the party's demand for a jury trial. This must be done so that the party is precluded from raising, arguing, or evidencing those invalid defenses and/or counterclaims. The trial court taking such actions can be found in every applicable case in the South Carolina Reporters. The above cited example from Rosenbaum is just one of hundreds.

The Master's failure to strike the basis upon which Ryan's demand for a jury trial rests, makes her finding and conclusion that Ryan "*does not have a right to a jury trial*" entirely unsupported by the evidence (i.e., pleadings) and leaves Ryan with an intact right to a jury trial.

LB PARK'S THEORY FOR ITS MTDA IS FRIVOLOUS AND FRAUDULENT

In their own words, LB PARK's theory for its MTDA is the following - "*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.*", (underlining mine) [MTDA, page 3, first para., last two sentences]. That false statement is meant to mislead this Court into believing that the issue of Ryan's right to a jury trial was finally and conclusively decided a year ago when Ryan's erroneous appeal of the Order of Reference was dismissed. However, LB PARK's appeal attorney, Sarah P. Spruill ("Spruill" hereinafter) knows the above statement is false or she would not have concealed the fact that at the time that Ryan's erroneous appeal was dismissed, Ryan had not yet even answered LB PARK's Complaint. It would have been impossible for this Court to have finally and conclusively decided the issue of Ryan's right to a jury trial in its September 15, 2020 dismissal order [see MTDA's Exhibit 1] when Ryan did not even file and serve his Answer, containing

multiple law issues and his demand for a jury trial, until two weeks later on October 1, 2020 [Exhibit 2, pg 1]. The only way Spruill can feign that her frivolous theory in her MTDA has any merit is if she claims that she does not understand Rule 53(b) SCRCP and how it affected this case[5]. Being an experienced attorney of 21 years, Spruill can hardly make such a claim. Therefore, the MTDA should be seen for what it is - a frivolous attempted fraud on this Court.

Under Rule 53(b) SCRCP, after an order of reference is made, the case can be returned to the circuit court when a defendant raises law issues in his answer and demands a jury trial pursuant to Rule 38(b) SCRCP. Therefore, because of Rule 53(b) SCRCP, the Order of Reference that Ryan erroneously appealed was truly an interlocutory order because it did **not** finally decide the issue of Ryan's right to a jury trial since he had not yet answered the Complaint. See Rule 53(b) SCRCP which reads:

> "Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, **upon the filing of a jury demand**, the matter shall be returned to the circuit court.".

Since Ryan had not yet even made his demand for a jury trial, when his erroneous appeal of the Order of Reference was dismissed, there was absolutely no way that this Court could have finally and conclusively decided an issue that had **not yet even been raised**. Accordingly the entire theory of Spruill's MTDA is frivolous and fraudulent.

CONCLUSION

Spruill refused to attach a copy of LB PARK's Complaint to her MTDA which is a violation of Rule 240(c)(3) SCACR. Her refusal cannot be excused as an unintentional oversight because she intentionally removed all the "*attachments*" that were attached to LB PARK's "*memorandum in opposition*" filed in the Equity Court to oppose Ryan's Motion to Return Case to Circuit Court.

[5] Ryan did not understand the implications of Rule 53(b) SCRCP when he erroneously took an appeal of the Order of Reference. He relied on older case law that was decided prior to the 2002 amendment to Rule 53(b). Ryan's ignorance probably cannot even be excused, but Spruill cannot even claim such ignorance.

See MTDA, pg 3, para. 2, sentence 2 - "*Memo, without attachments, attached as Exhibit 3*" (underling mine). Those "*attachments*" that Spruill removed included both the Complaint and the Answer. Obviously, Spruill does not want this Court analyzing the Complaint, which this Court **must** do in order to make **any** decision on whether Ryan has a right to a jury trial. Accordingly, this Court must find that LB PARK's MTDA has been abandoned pursuant to Rule 240(g) SCACR.

Spruill has requested this Court hurry, expedite this motion, and rush to judgment. That request is based on her frivolous allegation that clearing tax titles are given special, swift justice. Even if that were true, and it is not, LB PARK would actually have to hold a tax title and would actually have to possess Ryan's private property, to be able to claim such special, swift justice. LB PARK's Complaint is an absolute mess, it violates many legal doctrines, and was intentionally plead the way it has been plead because of the crimes and fraud that its managers have been perpetrating. Therefore, their mess can neither be excused, nor can Ryan's rights be violated to allow their crimes to come to fruition.

Not only must the MTDA be denied, but Spruill and her client must both be sanctioned, on this Court's own initiative pursuant to Rule 269 SCACR, for filing a absolutely frivolous motion totally devoid of any merit and for also violating the Rules of this Court.

Respectfully Submitted,

October 23, 2021

Ryan Powell

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

Exhibit 1

FORM 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

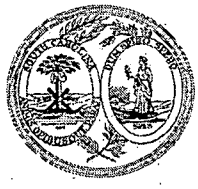
This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

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



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

Exhibit 2

STATE OF SOUTH CAROLINA COUNTY OF YORK LB PARK, LLC 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.	IN THE COURT OF COMMON PLEAS Case # 2020-CP-46-00549 Answer, Defenses, and Counterclaims of Ryan Powell **JURY TRIAL DEMANDED**

Defendant Ryan Powell, the absolute owner ("Owner" hereinafter) of the private property that is the subject matter of this case ("Owner's Land" hereinafter) is making this answer out of necessity with no intention of waiving his defense of lack of personal jurisdiction. Attached as **Exhibit A** is a copy of the notice ("SJH Notice" hereinafter) that defendant San Juan Holdings, Brett Osborne, the trustee ("SJH" hereinafter) recorded in the public records and is incorporated herein by reference. The SJH Notice is the same document that is referred to in plaintiff's complaint as the "Osborne Notice".

ANSWER

FOR A FIRST DEFENSE

Owner answers plaintiff LB PARK LLC's ("LB PARK" hereinafter) complaint ("Complaint" hereinafter) as follows:

As is more fully set forth in his responses below, Owner denies each and every allegation of the Complaint not hereinafter specifically admitted.

1. Denies that plaintiff can bring an action to clear a tax title under SC Code of Laws 12-61-10 to 60 when plaintiff admits it does not have a tax title. Denies all remaining allegations in paragraph #1.
2. Denies that the property description and derivation paragraph shown in paragraph #2 describes Owner's Land as found on Owner's deed.
3. Denies that "*San Juan Holdings, Brett Osborne the trustee*" can be named as a defendant when the Complaint admits that SJH ceased to exist and ceased owning the property at issue over seven years prior to the time this case was initiated (Complaint #5, #6, & **Exhibit A**). Admits the allegations in paragraph #3.
4. Denies that SJH "*owned 100% of fee simple title to the Property prior to the tax sale*". Qualifies that denial by stating that while SJH did own Owner's Land prior to the tax sale, SJH ownership ended five (5) years prior to the tax sale and Owner was the owner of Owner's Land prior to and at the time of the tax sale. Denies that SJH has, or can claim to have, any interest in Owner's Land.
5. Denies that "*Brett Osborne as trustee of San Juan Holdings*" is a separate and distinct person from "*San Juan Holdings, Brett Osborne, the trustee*". No one can create a new person simply by changing the order of the words in the name of another person which is all that plaintiff had done. Nonetheless, "*Brett Osborne as trustee of San Juan Holdings*" cannot be named as a defendant when the Complaint admits Brett Osborne ceased being the trustee of SJH over seven years prior to the time this case was initiated (Complaint #5, #6, & **Exhibit A**). Admits that SJH did execute and record the SJH Notice.
6. Admits that the SJH Notice (**Exhibit A**) did not convey title to, or any other interest in, Owner's Land. Denies that title to Owner's Land remained vested in SJH after the SJH Notice was recorded. Admits that the SJH Notice creates a *cloud* on plaintiff's quitclaim deed because the SJH Notice proves plaintiff's deed is void on its face.
7. Admits that Owner has claimed to possess an unrecorded ownership interest in Owner's Land. Denies that plaintiff has any information upon which it can form a credible belief that Owner is not the owner of Owner's Land. Denies that plaintiff can name Owner as a defendant just to give Owner notice of this case.
8. Paragraph #8 is not an allegation of fact that can be admitted or denied.

9. Denies this Court has personal jurisdiction over any of the defendants named or unnamed. Denies this Court has jurisdiction over Owner's Land which is the subject-matter of this case.
10. Paragraph #10 is not an allegation of fact that can be admitted or denied.
11. Denies that SB MUNI CUST % LBSC-11 LLC ("SB MUNI" hereinafter) purchased Owner's Land at any tax sale. Qualifies that denial by stating that SB MUNI only purchased SJH's interest in Owner's Land, said interest being nil.
12. Denies that SB MUNI could convey to plaintiff an interest in Owner's Land when it held no interest in Owner's Land.
13. Denies that plaintiff holds any rights, title, or interest in Owner's Land.
14. Denies that plaintiff holds any rights, title, or interests in Owner's Land. Denies that plaintiff's quitclaim deed issued to it in January of 2019 is superior to Owner's warranty deed granted to him by the owner of the land in December of 2012.

14.a Denies that Owner's Land was sold to SB MUNI and qualifies that denial by stating that SB MUNI purchased only SJH's interest in Owner's Land at the tax sale, said interest being nil. Denies that SJH owed York County any *ad valorem* taxes at the time of the tax sale.

14.b Denies all allegations in paragraph #14.b.

14.c Denies all allegations in paragraph 14.c for lack of knowledge.

14.d Denies that Owner ever received any notice from York County informing Owner that he had a right or duty to redeem his property. Denies, on information and belief that York County ever gave SJH any notice of the tax sale or its right to redeem. Admits that Owner did not redeem his property after the tax sale as Owner had no obligation to do so. Denies any remaining allegations.

14.e Denies that SB MUNI had any interest in Owner's Land that it could convey to plaintiff.

15. Denies all allegations in paragraph #15.
16. Denies all allegations in paragraph #16.
17. There are no allegations of fact that can be admitted or denied.

18. Denies that plaintiff is entitled to recover any monies from any defendant especially those monies it admits in its Complaint that SB MUNI paid to York County. Denies that S.C. Code Ann. §§ 12-51-90 to 100 has any application whatsoever to this case.
19. Admits allegations in paragraph #19 but qualifies that admission by stating that an "ultimate redemption" under S.C. Code Ann. §§ 12-51-100 can only happen when the property is returned to the *delinquent taxpayer*. In this case that cannot happen since the property does not belong to the *delinquent taxpayer*, SJH, it belongs to Owner who had no obligation to redeem his property.
20. Denies all allegations in paragraph #20.
21. Denies that any taxes, costs, or interest has been "*justly chargeable*" to Owner's Land at any time after December 20, 2012. Denies all remaining allegations.
22. Denies all allegations in paragraph #22.
23. Denies all allegations in paragraph #23. Plaintiff can not make a claim for a refund to be paid by any defendant named in this case. Only a tax title purchaser (i.e., SB MUNI) can bring an action against York County to seek a refund of monies it paid to York County. Denies all remaining allegations.
24. Paragraph #24 is not an allegation of fact that can be admitted or denied.
25. Denies all allegations in paragraph #25 for lack of knowledge.
26. Denies all allegations in paragraph #26 for lack of knowledge.
27. Denies all allegations in paragraph #27 for lack of knowledge.
28. Denies that anyone but SB MUNI has the right to seek reformation of SB MUNI's written instrument that it made with York County. Denies that any plaintiff can seek a reformation of the entire chain of title for a minor and meaningless Scribner's error. Denies all remaining allegations in #28.
29. With respect to plaintiff's WHEREFORE clauses and subclauses, denies that plaintiff is entitled to any relief it seeks or to any relief whatsoever.

FOR A SECOND DEFENSE
(Rights To Be Respected and Upheld)

30. Owner demands that all his natural, unalienable, god given rights, and rights protected to him by the State and federal Constitutions, which Owner has not contracted away, be respected and upheld by this Court.

FOR A THIRD DEFENSE
(Owner has Paramount Title to and Possession of the Land at Issue)

31. Brett Osborne, acting in the capacity of SJH trustee authorized by SJH to convey SJH property, signed and executed a general warranty deed on December 20, 2012 granting to Owner SJH property in fee simple. Owner has had possession of his executed deed since December 20, 2012.
32. Owner has been seized and possessed of Owner's Land since December 20, 2012. Possession of land carries with it the presumption of ownership and title.
33. Owner's title was issued to him by the legal and lawful owner of the land seven years prior to plaintiff's quitclaim deed that derives from an uncleared tax title issued by York County that had no ownership interest in, or trusteeship over, Owner's title or Owner's Land.
34. Under the settled laws of this State when a defendant raises the issue of having a paramount title to the same land as the plaintiff is claiming, an equity case transforms into a law case as equity cannot try competing titles to the same land.
35. On information Owner believes that since he is in possession of the land at issue, this case now transforms into a *trespass to try title* law case with plaintiff carrying the burden to prove it has complete/perfect title to the property.

FOR A FOURTH DEFENSE
(Want of Subject Matter Jurisdiction)

36. Owner re-alleges and incorporates herein by reference allegations #31 - #32 above.
37. Owner has never recorded his deed to Owner's Land so Owner holds all rights, title, and interests in Owner's Land. Absolute ownership carries with it the absolute right to determine when, how, to whom, or if Owner's Land will be transferred.
38. Recording of a deed is what gives this Court jurisdiction over real property.
39. In 2014 Owner brought an action in the Circuit Court against three employees of York County (case #2014-CP-46-1425) in an attempt to prevent those employees from illegally selling Owner's Land. Owner's case was dismissed for want of subject matter jurisdiction. An appeal was taken by Owner of that decision all the way to the Supreme Court of South Carolina. The lower court's decision was upheld by the appellate courts. The subject-matter of that case was Owner's Land.

40. In 2017 Owner brought an action in the Administrative Law Court against three employees of York County (Docket # 17-ALJ-30-0358-IJ) in an attempt to prevent those three employees from illegal taking and selling Owner's Land. That case was dismissed for lack of subject matter jurisdiction. The subject-matter of that case was Owner's Land.
41. At least seven (7) judges in four different courts of this State have made the judicial determination that this Court does not have subject matter jurisdiction over Owner's Land.
42. Although the Appeals Court in Owner's appeal (Appellate Case No. 2014-002578) of Owner's lower court case (case #2014-CP-46-1425) issued an unpublished opinion (2016-UP-199) that opinion operates as a binding precedent case for this case because the subject-matter of that case is the same subject-matter as this case. i.e., Owner's Land.
43. This Court lacks subject-matter jurisdiction to make any order that pertains to the subject-matter of this case, i.e., Owner's Land.
44. This case must be dismissed with prejudice for lack of subject-matter jurisdiction.

FOR A FIFTH DEFENSE
(Want of Territorial Jurisdiction)

45. Owner re-alleges and incorporates herein by reference allegations #31 - #32 above.
46. Owner has never recorded his deed to Owner's Land. As such the situs of Owner's Land is not "*in this State*" which is why Owner has never been assessed with owing any *ad valorem* taxes on Owner's Land. Recording of a deed is what puts the situs of the recorded property into the territory over which this Court has authority to make any decisions pertaining to that land.
47. The Property conveyed to Owner on December 20, 2012 is more particularly described on Owner's title as follows:

> All that certain piece or lot of land situated, lying or being in or near South Carolina, Camden district, York county, Fort Mill township, being commonly known and designated as Lot 56 of Tega Cay Section 25, all being without the United States, and more particularly described on plat recorded in the Office of the Clerk of Court for York County in Plat Book 131 at page 306, which is incorporated herein as fully and as completely as if set forth here verbatim.

48. As shown by the property description above (#47) there exists no evidence that could ever show that the situs of Owner's Land is in the territory of County of York or State of South Carolina.
49. This Court lacks the territorial jurisdiction needed to declare anything pertaining to Owner's Land which is outside of this Court's territorial jurisdiction.
50. This case must be dismissed with prejudice for lack of territorial jurisdiction.

FOR A SIXTH DEFENSE
(Want of Personal Jurisdiction Over Two Defendants)

51. No one can create a new person/entity by simply changing the order of the words of the name of another person but that is what plaintiff did when it changed the words "*San Juan Holdings, Brett Osborne, the trustee*" into an allegedly new person "*Brett Osborne as Trustee of San Juan Holdings*".
52. Nonetheless, the record shows that a man named Brett Osborne was served with plaintiff's Summons and Complaint for the defendant named *San Juan Holdings, Brett Osborne, the Trustee* and for the created defendant named *Brett Osborne as Trustee of San Juan Holdings* at the address of 190 Aviation Rd. Gold Hill, NC. Gold Hill, NC is outside the boundaries of this State.
53. There are no allegations that *San Juan Holdings, Brett Osborne as the Trustee* or *Brett Osborne as Trustee of San Juan Holdings* had any interest in, used, or possessed any real property in this State at the time of the initiation of this case.
54. Neither of those two defendants has made any appearance in this case.
55. This Court does not have personal jurisdiction over those two defendants.
56. This case must be dismissed with prejudice for lack of personal jurisdiction over those two defendants named in this case.

FOR A SEVENTH DEFENSE
(Want of Personal Jurisdiction Over Owner)

57. The record shows that Owner was served with plaintiff's Summons and Complaint at the address of 3459 Mill Run, Raleigh, NC. Raleigh NC is outside the boundaries of this State.
58. Plaintiff has specifically denied that Owner has *any interest in, used, or possessed any real property in this State* (Complaint #7). Without such an allegation this Court cannot obtain personal jurisdiction over Owner, a non-resident.

59. This case must be dismissed with prejudice for lack of personal jurisdiction over Owner since it is his property that is the subject matter of this case.

FOR A EIGHTH DEFENSE
(Two Defendants Do Not Exist)

60. Owner re-alleges and incorporates herein by reference allegation #51 above.
61. Upon SJH transferring its property to Owner, SJH terminated as a legal entity as shown in the SJH Notice (**Exhibit A**). Plaintiff admitted having received notice of this fact in its Complaint (Complaint, #5 & #6).
62. As alleged in #51 above, plaintiff cannot create a new defendant simply but reordering the words of another person/entity but that is exactly what plaintiff is attempting to do.
63. The only allegations made in the Complaint pertaining to the existence of the defendants named *San Juan Holdings, Brett Osborne the trustee* and *Brett Osborne as trustee of San Juan Holdings* allege they existed twenty years ago when the property at issue was conveyed to SJH and its deed was recorded. Those are insufficient allegations to show the existence of those two legal entities at the time this case was initiated as legal entities are born and die every day.
64. Unless and until Plaintiff alleges and can ultimately produce evidence showing the existence of these two defendants it has named, they must be dismissed as defendants.

FOR A NINETH DEFENSE
(Ineffective Service on Two Defendants)

65. Owner re-alleges and incorporates herein by reference allegation #51 above.
66. A man named Brett Osborne was served for the two defendants named *San Juan Holdings, Brett Osborne the trustee* and *Brett Osborne as trustee of San Juan Holdings*. The Complaint alleges that Brett Osborne is no longer the trustee for San Juan Holdings (Complaint #5 & #6, **Exhibit A**) which allegation was confirmed by the response filed by Brett Osborne on April 1, 2020. Notwithstanding, LB PARK fraudulently pretended to serve those two defendants it named while alleging those two defendants do not exist and that Brett Osborne is not its trustee.
67. Plaintiff has failed to name and serve the trustee of SJH.
68. This case must be dismissed for ineffective service.

FOR A TENTH DEFENSE

(Two Defendants Do Not Have Standing)

69. Owner re-alleges and incorporates herein by reference allegations #31 - #32 above.

70. Owner re-alleges and incorporates herein by reference allegation #51 above.

71. As **Exhibit A** demonstrates, San Juan Holdings has no title, rights, interest, possession, nor is SJH using the property that is the subject matter of this case.

72. Neither *San Juan Holdings, Brett Osborne, the trustee*, nor *Brett Osborne as trustee of San Juan Holdings* has any material, real, or actual interest in Owner's Land.

73. Both *San Juan Holdings, Brett Osborne, the trustee*, and *Brett Osborne as trustee of San Juan Holdings* must be dismissed as those defendants lack standing.

FOR A ELEVENTH DEFENSE
(Failure to State a Claim Against Owner)

74. Owner re-alleges and incorporates herein by reference allegations #31 - #32 above.

75. The main function of any court is to settle actual existing disputes between the parties.

76. Plaintiff has denied that Owner owns the property that is the subject matter of this case (Complaint #7, second sentence) and further alleged that it named Owner as a defendant simply to give Owner notice of its action (Complaint #7, second sentence) which means that the plaintiff has admitted that it has no dispute with Owner.

77. A plaintiff must allege at least one cognizable cause of action against any person it names as a defendant in order to force that person to expend their time, energy, and financial resources in defending that case.

78. Plaintiff has failed to show the existence of an actual, justiciable case or controversy between it and Owner.

79. This case must be dismissed for failure to make a claim against Owner who owns the property at issue so the case cannot continue without him.

FOR A TWELFTH DEFENSE
(Plaintiff Does Not Have Standing)

80. Plaintiff has failed to show that any legally cognizable injury it believes it has suffered are the results of any of Owner's actions or inactions (see For a Eleventh Defense - Failure to State a Claim Against Owner).

81. It is impossible for the two alleged entities named *San Juan Holdings, Brett Osborne, the trustee* and *Brett Osborne as trustee for San Juan Holdings* to have caused

plaintiff any injury when the plaintiff's own allegations state those two persons ceased to exist many years prior to the time of any of the allegations in the Complaint are alleged to have taken place.

82. A plaintiff seeking to establish standing must show not only that he has suffered a legally cognizable injury, but also that those injuries were caused by the defendant's actions or inactions.

83. It is impossible for any defendant named in this case to have caused plaintiff any injury so plaintiff does not have any standing to bring its case.

84. This case must be dismissed with prejudice as the plaintiff lacks standing.

FOR A THIRTEENTH DEFENSE
(Statutory Compliance)

85. Owner re-alleges and incorporates herein by reference allegations #31 - #32 above.

86. SC Code of Laws 12-24-10(A) shows, *inter alia*, that the recording of a deed is a privilege. A privilege is typically defined as being a benefit granted to or enjoyed by some person or persons. Any benefit provider (e.g., County of York, State of South Carolina) has the authority to demand payment from those to whom it provides benefits. That is why only those property owners who request the benefit of recording their deeds are ever made liable for any *ad valorem* taxes.

87. Owner was and is exercising his natural, god given rights to own property privately and alone by not recording his deed which right is recognized by this State in their statutes and codes.

88. Plaintiffs claims do not constitute a basis for the relief sought as Owner can not be held liable for Plaintiff's loss, damages, or claims for simply complying with the codes and statutes of this State.

FOR A FOURTEENTH DEFENSE
(Illegality)

89. Owner re-alleges and incorporates herein by reference allegations #31 - #32 above.

90. The gravamen of plaintiff's Complaint involves illegality.

91. President Lincoln declare martial law in 1863 in General Order 100 (a.k.a. the Lieber Codes). That order declared martial law which has been in continuous effect since 1863.

92. When the United States is under martial law, the international laws of war are applicable. The international laws of war can be found in the document named "Laws of War" which has been published by the Department of Defense and can be found at the URL: http://ogc.osd.mil/images/law_war_manual_december_16.pdf. Under the laws of war it is prohibited for the State to confiscate, seize, or take private property from its owner even temporarily. Plaintiff's claims are prohibited and illegal under the Laws of War.
93. No court of this State has the subject matter jurisdiction needed to make any determination pertaining to Owner's Land so any decision any Court of this State makes that clears the tax title that plaintiff's quitclaim deed derives from or allows plaintiff to take possession of Owner's Land will be void *ab initio*. Should plaintiff enter onto Owner's Land, especially with the assistance of a sheriff who will have to use force and arms to remove the people living on Owner's Land, such entry based on a void order will constitute criminal trespass under SC Code of Laws 16-11-520(A) [and will also be actionable under SC Code of Laws 15-67-410 to 470].
94. In Plaintiff's First Alternative Cause of Action (Action to Recover Amounts Due) plaintiff has requested that Owner be ordered to pay plaintiff monies that it is not legally entitled to receive and that Owner can never be legally required to pay. Plaintiff's written requests amount to extortion and blackmail both of which are illegal.
95. On information Owner believes that SB MUNI passed off its uncleared tax title to plaintiff in order to lauder money, evade taxes, and/or to shelter SB MUNI's assets.
96. Plaintiff's claims do not constitute a basis for the relief sought as no Court has any authority to assist a plaintiff who is involved in, and attempting to further its actions, that are illegal, unlawful, and prohibited.

FOR A FIFTEENTH DEFENSE
(Plaintiff has no interest in Owner's Land)

97. Owner re-alleges and incorporates herein by reference allegations #31 - #32 above.
98. Plaintiff alleges that SB MUNI was the winning bidder at the tax sale of SJH property and was given a tax title to SJH property by York County on or about December 26, 2018 (Complaint #11).

99. According to the well settled laws of this State the only interest that passes in a tax title is the interest that the *delinquent taxpayer* (SJH) held at the time of the tax sale.

100. SJH had no interest in Owner's Land at the time of the tax sale.

101. The tax title issue to SB MUNI passed no interest in Owner's Land. Having no interest in Owner's Land, SB MUNI could not quitclaim its non-existent interest to the plaintiff.

102. Plaintiff has no entitlement to invoke the aid of this Court to preserve and further its attempts to take ownership and possession of land to which it has no interest.

FOR A SIXTEENTH DEFENSE
(Failure to State a Claim - Plaintiff Not Entitled to Use 12-61-10 to 60)

103. Plaintiff alleges it is the grantee on a quitclaim deed granted by SB MUNI (Complaint #11 & #12). Plaintiff has requested this court quiet someone else's deed (i.e., SB MUNI's tax title). A person cannot make a request to quiet a deed to which it was not a party and no person can quiet the previous owner's title without barring its own title.

104. SC Code of Laws 12-61-10 to 60 was created by the legislature of this State as a statute of creation which cannot be extended beyond the clear intent of the legislature. This remedy was clearly created for only the use of purchasers of tax titles. To use SC Code of Laws 12-61-10 to 60 a plaintiff must be a grantee on a tax title.

105. Plaintiff has failed to allege the facts required in order to use the special remedy found in SC Code of Laws 12-61-10 to 60.

106. This action must be dismissed for failure to state a claim upon which relief can be granted.

FOR A SEVENTEENTH DEFENSE
(Failure to State a Claim - Plaintiff Only Entitled to Request Half Costs)

107. Plaintiff paid SB MUNI $5.00 for its quitclaim deed.

108. According to SC Code of Laws 12-61-50 - "*Whenever an action shall be brought **under the provisions of this chapter** relating to property for which the **plaintiff paid less than the sum of one thousand dollars**, all costs due shall be only one half of those ordinarily allowed.*"

109. The $5.00 plaintiff paid for its quitclaim deed is less than $1,000.00 so according to SC Code of Laws 12-61-50 plaintiff is only permitted to make a claim for one half the costs ordinarily allowed.

110. Plaintiff has made a claim for the full costs allowed in an action brought under SC Code of Laws 12-61-10 to 60.

111. This action must be dismissed for failure to state a claim upon which relief can be granted.

FOR A EIGHTEENTH DEFENSE
(Failure to State a Claim - Refund of Bid Monies)

112. Unlike the erroneous theory put forward by plaintiff in its First Alternative Cause of Action (Action to Recover Amounts Due), an "*ultimate redemption*" happens when a court finds a tax deed void, sets it aside, and returns the property to the *delinquent taxpayer*. That court order can then be used by the tax title purchaser to bring a court action against the County to seek a return of the bid monies that the tax title purchaser paid to that County. The property in this case can never be returned to the *delinquent taxpayer* (SJH) because the property did not belong to the *delinquent taxpayer* (SJH) when it was taken and sold. Owner was never made liable to pay any *ad valorem* taxes nor was Owner ever made liable to redeem his property so no action this Court takes in this case could ever be considered a redemption of any kind.

113. There is no statute, code, rule, regulation, public policy, legal principle, or case holding that allows a Plaintiff to seek a refund of monies it never paid or to seek a refund to be paid by any person other than the person who received and is in possession of those monies being requested to be refunded which would be York County.

114. Plaintiff alleges that SC Code of Laws 12-51-90 to 100 allows this claim to be brought against "*any person challenging the tax title*". But SC Code of Laws 12-51-90 to 100 has no application whatsoever to the facts and parties named in this case.

115. Plaintiff's First Alternative Cause of Action (Action to Recover Amounts Due) must be dismissed for failure to state a claim upon which relief can be granted.

FOR A NINETEENTH DEFENSE
(Claim Not Ripe for Adjudication - Recovery of Amounts Owed)

116. Plaintiff's First Alternative Cause of Action (Action to Recover Amounts Due) can only be brought in a new action after a court enters an order declaring void and setting aside a tax deed, and then returns the property to the delinquent taxpayer.

117. After a final judgment is issued, and any appeals are taken, a judgment that makes those finding and conclusions discussed above in #116, can then be used by SB MUNI to bring a new action and request a refund of monies it paid to York County.

118. Plaintiff's First Alternative Cause of Action (Action to Recover Amounts Due) must be dismissed as it is not yet ripe for adjudication.

FOR A TWENTIETH DEFENSE
(Failure to State a Claim - Reformation of Deeds)

119. Plaintiff alleges it is the grantee on a quitclaim deed granted by SB MUNI (Complaint #11 & #12). Plaintiff wants to reform, not its own deed but someone else's deed (i.e., SB MUNI's tax deed). A person cannot make a request to reform a written instrument to which it was not a party.

120. A reformation of a written instrument action must include all persons that were parties to the written instrument. On a written deed instrument both the grantor and the grantee have to be parties to the reformation action so that their intentions, agreement and understanding can be adjudicated.

121. Plaintiff has failed to name and serve both of the parties to the written instrument that it wants reformed, i.e., the tax deed issued by York County to SB MUNI.

122. The error in the property description of SB MUNI's tax deed has existed in the recorded chain of titles for decades and has survived many different owners.

123. Plaintiff has failed to allege that it has or will suffer any harm from the minor and meaningless Scribner's error.

124. Equity does not have jurisdiction to reform a written instrument to correct an error that is without any legal or equitable effect, i.e., the error doesn't matter.

125. Plaintiff's Second Cause of Action (Reformation of Tax Deed) must be dismissed for failure to state a claim upon which relief can be granted.

FOR A TWENTY- FIRST DEFENSE
(Tax Title is Void and Unenforceable)

126. Owner re-alleges and incorporates herein by reference allegations #31 - #32 above.

127. The tax title that was issued to SB MUNI is void for having been made in violation of the strict requirements that all tax sales/tax titles must comply.

128. It is well settled law in this State that any tax sale and tax title must have both been executed and made in the name of the true owner of the property. The tax deed issued to SB MUNI was made in the name of SJH who was not the true owner of the property at issue at the time of the tax sale or at the time the tax deed was issued.

129. According to SC Code of Laws 12-49-10, York County can only take and sell land that actually belongs to a delinquent taxpayer (i.e., SJH) and then only if the assessment was legally made. The assessment that York County made against SJH on or about January 1, 2017 was illegally made because SJH was not the owner of that land on the date they were assessed with a debt. The tax sale and the tax deed were conducted and made in violation of SC Code of Laws 12-49-10.

130. According to SC Code 27-1-10 land becomes chargeable only for the debts of the land's owner. Owner has never been assessed with owing any debts of any kind to any governmental entity so Owner's Land has never been made chargeable with any debts, duties or demands, of whatever nature or kind. The tax sale and the tax deed were conducted and issued against land that was never made chargeable with any debts, duties or demands, of whatever nature or kind and was made in violation of SC Code 27-1-10.

131. Owner has a right protected by the CONSTITUTION OF THE STATE OF SOUTH CAROLINA, Article 1, Section 13(a) to never have his private property taken without his consent. Owner has never given his consent to have his private property taken. Any Taking of property in violation of a right protected by the Constitution voids the Taking.

132. York County never sent any notice of the tax sale of Owner's Land to Owner. York County never sent any notice of Owner's right or duty to redeem Owner's Land. According to the CONSTITUTION OF THE STATE OF SOUTH CAROLINA, Article 1, Section 3 and the Bill of Rights, Article 5 (part of the Constitution of the United States) a person can never be deprived of property without due process of law FIRST being provided to that person. The tax sale and the tax deed were conducted and issued in violation of Owner's right to receive due process of law before his

property was taken. That due process violation can never be cured by any court AFTER the Taking.

133. The tax sale and tax deed were conducted and issued in violation of the taxing codes and Owner's rights protected by the Constitutions and are therefore void *ab initio* and unenforceable by any court.

134. Plaintiff's quitclaim deed derives from a void and unenforceable tax title so its deed is also void and unenforceable.

135. Plaintiff has no entitlement to invoke the aid of this Court to enforce an absolutely void and unenforceable deed.

FOR A TWENTY- SECOND DEFENSE
(Failure to Join Necessary and Indispensable Parties)

136. Plaintiff has requested this Court clear SB MUNI's tax title, order a refund of monies that plaintiff alleges SB MUNI paid to York County, and reform SB MUNI's tax title issued by York County.

137. Plaintiff has failed to name and serve SB MUNI as a co-plaintiff and York County as a defendant. These two parties are necessary and indispensable to all of plaintiff's causes of action.

138. These two parties must be added or this case must be dismissed.

FOR A TWENTY- THIRD DEFENSE
(Misjoinder)

139. Plaintiff has requested this Court clear SB MUNI's tax title, order a refund of monies that plaintiff alleges SB MUNI paid to York County, and reform SB MUNI's tax title issued by York County.

140. Plaintiff has failed to name and serve SB MUNI as a co-plaintiff and York County as a defendant. However, SB MUNI cannot be made a co-plaintiff since it quit its claims to the property at issue when it granted its property to plaintiff on a quitclaim deed so it no longer has any real, material interest in the subject matter of this case so SB MUNI does not have standing to be named a co-plaintiff in this case.

141. This case must be dismissed with prejudice for misjoinder.

FOR A TWENTY- FOURTH DEFENSE
(Right to Additional Defenses Reserved)

142. Owner hereby gives notice that he may rely on other defenses if and when such defenses become known during the course of discovery and litigation, and hereby reserves the right to amend his answer to assert any other defenses or counterclaims as they become known or available.

COUNTERCLAIMS

143. Brett Osborne, acting in the capacity as the trustee authorized by SJH to convey SJH property signed and executed a general warranty deed on December 20, 2012 granting to Owner SJH property in fee simple. Owner has had possession of his executed deed since December 20, 2012.

144. Owner has been seized and possessed of Owner's Land since December 20, 2012. Possession of land carries with it the presumption of ownership and title.

145. Owner choose to claim his rights to own his property privately and alone so Owner did not record his deed as that is the only method a man can use to claim those rights.

146. The world was given actual notice on December 26, 2012 (**Exhibit A**) seven (7) years prior to plaintiff purchasing its quitclaim deed that SJH was not the owner of the property at issue at the time of the tax sale. Plaintiff admitted that it was aware of the SJH Notice (Complaint #5 & #6) before it brought this case so plaintiff has admitted it is aware of this fact.

First Cause of Action
(Sanctions for Frivolous Complaint)

147. Owner re-alleges and incorporates herein by reference all of the above allegations.

148. The jurisdiction for this cause of action is the South Carolina Frivolous Civil Proceedings Sanctions Act in SC Code of Laws 15-36-10 to 100.

149. All bidders at tax sales in York County are given notice that the tax titles they are bidding on may have any number of defects and come with no warranty whatsoever. Plaintiff was not a bidder on Owner's Land, however, on information Owner believes that plaintiff's manager, Joshua W. Schrager, is the same person as SB MUNI's manager so Mr. Schrager must have received a copy of the bidder's notice.

150. Plaintiff admitted during a hearing held in plaintiff's first case (case# 2019-CP-46-00310) that it was aware of the extended litigation Owner pursued for over five (5)

years during Owner's failed attempts to prevent York County from taking and selling Owner's Land. Owner's court actions all failed because at least seven (7) judges of this State determined that this State does not have jurisdiction over Owner's Land.

151. Owner attempted to intervene into plaintiffs first case because of his claim of ownership of the property that was the subject matter of that case.

152. No person would expend over six (6) years of their life, time, effort, and financial resources defending property that they did not own.

153. Despite plaintiff's awareness of Owner's extended litigation, Owner's attempt to intervene into plaintiff's first case, and plaintiff taking a voluntary dismissal of its first case for the alleged purpose of naming Owner as a defendant, plaintiff denied that Owner is the owner of the property at issue in this case (Complaint #7).

154. It is well settled law in this State that in order for any tax sale to be upheld, the tax sale and tax deed must have both been conducted and made in the name of the true owner of the land. The tax sale and the resultant tax title issued to SB MUNI was made in the name of SJH and not in Owner's name.

155. York County violated almost every taxing code that they are required to strictly follow when selling a property for delinquent taxes. The following four allegations are included as examples of York County's many violations of their authority when they sold the property at issue in this case and issued a tax title to SB MUNI:

a) York County violated SC Code of Laws 12-37-610 by creating an assessment against SJH five years after SJH disposed of their property upon which they were assess a tax debt.

b) York County violated SC Code of Laws 12-49-10 by selling Owner's Land to satisfy an assessed debt against SJH.

c) York County violated SC Code of Laws 27-1-10 by making Owner's Land liable for debts assessed against a person not the land's owner.

d) York County violated SC Code of Laws 27-1-10 (b) by using Owner's Land as an asset for the satisfaction of debts that Owner has never been charged with.

156. It is well settled law in this State that due process of law requires some sort of notice to a landowner before he can be deprived of his property. When notice is not given that failure is a fundamental defect rendering the proceedings absolutely void

and unenforceable. The tax title issued to SB MUNI shows that York County addressed all of its notices to SJH and no notice was ever addressed to Owner.

157. It is well settled law of this State that if the notice of sale and right to redeem are not correctly given to the actual and true owner of the land, the tax deed issued is absolutely void and unenforceable.

158. According to the CONSTITUTION OF THE STATE OF SOUTH CAROLINA, Article I, Section 3 and Amendment V of the United States Bill of Rights, no person can ever be deprived of their property without due process of law being first provided to that person. The tax sale and the tax deed were conducted and issued in violation of Owner's right to receive due process of law before his property was taken, i.e., before a tax title was issued.

159. According to the CONSTITUTION OF THE STATE OF SOUTH CAROLINA, Article I, Section 13(a) "*private property shall not be taken for private use without the consent of the owner*". There is neither allegations nor evidence that could ever show that Owner has given his consent to have his private property taken from him.

160. Any Taking in violation of rights protected by the Constitution is void and unenforceable.

161. On information Owner believes that Plaintiff is managed by Joshua W. Schrager who buys tax deeds, clears those tax deeds through litigation, sells the properties taken under those tax deeds, and manages multiple limited liability companies whose assets are measured in the millions of federal reserve notes.

162. On information Owner believes that there is no possibility that any person with Joshua W. Schrager's experience could ever form a credible belief that a trustee of a trust, who was contractually obligated to protect the trust's property, used a notice to transfer ownership of its property as alleged in plaintiff's Complaint #6.

163. On information Owner believes that Joshua W. Schrager and plaintiff's attorneys intentionally made the allegation in plaintiff's Complain #6 knowing it to be false but did so because they could not determine any other way for plaintiff to both acknowledge the existence of the SJH Notice, to get it quieted, and at the same time ignore the contents of the SJH Notice so that they could pretend that SJH was still the owner of the property at issue and still existed as a legal entity.

164. Plaintiff failed to conduct any discovery during the litigation of its first case and again during the litigation of this case to determine the truth and veracity of SJH's claims made in the SJH Notice and the claims of ownership made by Owner. On information Owner believes that plaintiff failed to do any discovery because plaintiff would have been unable to continue its pretence that Owner does not have a deed to his property once plaintiff actually saw Owner's deed and discovery would certainly prove that plaintiff has no meritorious claims.

165. Plaintiff has filed this same case twice with the only change being naming Owner as a defendant to allegedly give Owner notice of this action. A person cannot be named as a defendant just to give that person notice of the case. There was no need to bring a new action just to give Owner notice of something he obviously already knew about because he was attempting to intervene in plaintiff's first case. Plaintiff then failed to make any allegations of any cause of action against Owner.

166. All of Owner's Affirmative Defenses listed and alleged above are incorporated herein by reference as if they were copied verbatim. Owner's Affirmative Defenses show that plaintiff's complaint is entirely defective and could never survive any honest analysis for having any merit.

167. Owner seeks sanctions under 15-36-10(B)(2) against plaintiff and its two attorneys for filing plaintiff's frivolous Complaint and *lis pendens.* The sanctions which Owner seeks includes both monetary reimbursement for owner's costs and time having to defend in this frivolous action as well as having the Complaint and *lis pendens* stricken.

Second Cause of Action
(Intentional Infliction of Emotional Distress)

168. Owner re-alleges and incorporates herein by reference all of the above allegations.

169. On information Owner believes that Joshua W. Schrager spoke with Brett Osborne shortly after the tax sale was held inquiring about SJH ownership of the property at issue. Brett Osborne told Joshua W. Schrager that he had not had anything to do with the property since he had sold that property many years earlier.

170. On information Owner believes Plaintiff failed to make any attempt to determine who the owner of the property was before filing its first case even though plaintiff

had been given actual notice that SJH was not the owner of the property at issue and that Joshua W. Schrager had spoken with SJH former trustee.

171. Plaintiff failed to publish its summons for its first case (case# 2019-CP-46-00310). Service by publication is required in all cases where there might be unknown and unnamed defendants.

172. After plaintiff served SJH in its first case up until the time that Owner served his notice of appeal in that case, Owner feared that plaintiff would seek a default judgment since SJH had not answered and would not answer for property they did not own. Any default judgment entered would have resulted in Owner, his family, and their personal property being thrown out onto the street by Sheriffs using force and arms. Those thoughts and mental images caused Owner many months of extreme and severe fear, anxiety, stress, and loss of sleep.

173. Plaintiff blocked Owner from intervening into its first case. Owner took an immediate appeal of the order denying him intervention. Plaintiff then attempted to get Owner's appeal dismissed which had such succeeded would have left Owner completely unable to defend his property from being illegally stolen. During the months that plaintiff's motion to dismiss Owner's appeal waited for a ruling, Owner suffered extreme and severe fear, mental anguish, and loss of sleep.

174. Plaintiff then got Owner's appeal remanded which made it moot and put into abeyance. Had plaintiff allowed Owner's appeal to be perfected and heard, plaintiff's first case would have been dismissed with prejudice for want of subject matter jurisdiction which would have ended plaintiff's attempts to steal Owner's Land or steal Owner's personal property (i.e., his currency).

175. Plaintiff is attempting to extort and blackmail Owner, under color of right, to pay plaintiff bid monies and other monies that Owner can never be legally held liable to pay. On information Owner believes that plaintiff alleged its First Alternative Cause of Action (Action to Recover Amounts Due) because SB MUNI lost its ability to get its money back from York County through its foolish decision to quit its claims to the property at issue before clearing its deed so plaintiff is unlawfully attempting to get SB MUNI's money back from Owner. No man should have to endure years of

anguish, fear, and emotional distress that the crimes of extortion and blackmail cause to their victims.

176. If plaintiff's main cause of action were to succeed, Owner will lose the entire market value of his property since Owner can never make a claim for the bid monies that SB MUNI paid York County for its tax title. Owner will lose many hundreds of thousands of federal reserve notes that he has invested in his property and many hundreds of hours of his labor that he has invested in the maintenance, upkeep, and updates Owner has made to his property. The thoughts of taking such a devastating financial loss has caused Owner severe and continuing distress, fear, and anxiety.

177. If plaintiff's First Alternative Cause of Action were to succeed, Owner will be held liable to pay plaintiff a couple hundred thousand federal reserve notes that Owner can never be legally held liable to pay. The thoughts of taking such a devastating financial loss has caused Owner severe and continuing distress, fear, and anxiety.

178. No man should ever have to suffer two years of severe fear, anxiety, distress, and loss of sleep knowing that he, his family, and their personal belongings may likely be throw out on the street by Sheriffs using force and arms when Owner's private property is illegally stolen from him or when he is unlawfully ordered to pay plaintiff a refund that Owner can never be legally held liable to pay.

179. As clearly shown above in Owner's First Cause of Action (Sanctions for Frivolous Complaint) plaintiff's case is entirely frivolous so plaintiff does not have any valid defense for its actions in this case.

180. Owner seeks a determination of the all damages allowed by law that should be awarded to Owner and against plaintiff for its intentional, continuing, and knowing infliction of emotional distress.

Third Cause of Action
(Declare Void and Set Aside Tax Deed)

181. Owner re-alleges and incorporates herein by reference all of the above allegations.

182. The jurisdiction for this cause of action is the South Carolina Declaratory Judgment Act in SC Code of Laws 15-53-10 to 140.

183. Owner will be pursuing this cause of action only if his defense of paramount title is, with finality, stricken or denied to Owner.

184. Owner's deed, having not been recorded, affects his status, rights, and legal relations with York County, State of South Carolina, and with plaintiff so Owner has a right to a declaratory judgment as described in SC Code of Laws 15-53-30.

185. As alleged above in Owner's First Cause of Action (Sanctions for Frivolous Complaint), SB MUNI's tax title was made in violation of many of the taxing codes with which York County must strictly comply when creating and issuing a tax title.

186. The taking of Owner's private property violated multiple of Owner's rights protect to him by both the State and federal Constitutions.

187. SB MUNI obtained the same interest in Owner's Land that SJH had in Owner's Land at the time of the tax sale. SJH had no interest in Owner's Land at time of the tax sale. SB MUNI received no interest in Owner's Land. It is well settled law in this State that no grantee can ever grant more interest in a property than it has in the property therefore LB PARK received no interest in Owner's Land.

188. Owner seeks a declaratory judgment declaring void and setting aside SB MUNI's tax title and plaintiff's quitclaim deed and declaring that these actions do not constitute a redemption since the property is not being returned to the *delinquent taxpayer* which will terminate the litigation between plaintiff and Owner. Owner also seeks a declaration that Owner is a non-taxpayer so his property must be removed from the York County tax rolls.

Fourth Cause of Action
(Intentional Interference with Contract)

189. Owner re-alleges and incorporates herein by reference all of the above allegations.

190. Owner accepted his deed making his deed a bilateral contract.

191. Plaintiff moved to remand Owner's appeal in plaintiffs first case so that plaintiff could take a voluntary dismissal of that case. Plaintiff stated its reason for taking a voluntary dismissal was to bring a new case with the only change being the naming of Owner as a defendant. Plaintiff then denied that Owner owns the property at issue and denies that Owner has a deed to the property (complaint #6 & #7). On information Owner believes that plaintiff's actions speak louder than its words. Logic

and reason dictate that no plaintiff would have gone through the trouble and expense of dismissing its action so that it could file a new action and serve all the parties again just to give Owner notice of its action. Plaintiff's actions are especially illogical since Owner already knew about and was attempting to intervene into plaintiff's first case.

192. Plaintiff has breached Owner's deed contract by executing its quitclaim deed and is attempting to further breach Owner's contract by attempting to illegally and unlawfully take ownership and possession of Owner Land that Owner's deed contract granted to Owner.

193. Plaintiff's entire action is wholly frivolous as shown above in Owner's First Cause of Action so plaintiff is not justified in its breach of Owner's deed contract with SJH.

194. Owner seeks a determination of the damages that should be awarded to Owner and against plaintiff for its knowing and intentional breach of Owner's deed contract.

Fifth Cause of Action
(Slander of Title)

195. Owner re-alleges and incorporates herein by reference all of the above allegations.

196. Plaintiff's quitclaim deed is clearly void and unenforceable as shown above in Owner's First Cause of Action (Sanctions for Frivolous Complaint).

197. Neither *lis pendens* that plaintiff filed in its two cases are authorized by law as they are based on frivolous claims and outright lies and deception. The *lis pendens* both falsely state that they were filed "*to quiet tax title to the following described real property*". It is a violation of the laws of this State to request the clearing of a tax title by a person who does not have a tax title.

198. As demonstrated above, plaintiff knew or should have known that its quitclaim deed was not legally made nor is it enforceable by any court of this State.

199. Plaintiff filed its quitclaim deed and two *lis pendens* into the records of this Court intending to harm the interests of Owner and to call into question, disparage and slander the title of Owner.

200. As a direct and proximate consequence of the plaintiff's actions, Owner's title to his property was disparaged or diminished, his property was rendered unmarketable, and three clouds were unlawfully placed on Owner's title.

201. Accordingly, Owner is entitled to recover all of his actual damages to be proven at trial, for his special damages, including the costs and attorneys' fees that Owner will have to pay during the litigation of this case, along with punitive damages.

Demand for Relief

WHEREFORE, for the reasons set forth above, Ryan Powell demands that this Court enter judgment:

1. Ordering that the Complaint and the *lis pendens* be dismissed with prejudice and dismissing the *lis pendens* plaintiff filed against Owner's Land in plaintiff's first action but failed to dismiss when it dismissed its first case;
2. Finding Ryan Powell's title to be paramount to LB PARK's title. In the event that Ryan Powell's defense of paramount title is denied to him then declaring SB MUNI's tax deed and LB PARK's quitclaim deed void and unenforceable, declaring that this action is not a redemption since the property is not being returned to SJH, and also declaring that Owner is a non-taxpayer so his property should not be listed on York County's tax rolls;
3. Ordering the York County Clerk of Court to expunge both LB PARK's quitclaim deed and SB MUNI's tax deed from the public land records or to mark those deeds "cancelled of record";
4. Ordering the York County Assessor to remove Ryan Powell's land from the York County tax rolls;
5. Ordering costs be awarded to Ryan Powell for having to defend this suit;
6. In favor of Ryan Powell on all counterclaims he has asserted herein;
7. Awarding Ryan Powell actual, consequential, special, direct, and punitive damages as allowed by law;
8. Awarding Ryan Powell such other and further relief as the Court may deem just, proper, and equitable.

Respectively presented, with all rights reserved, without prejudice,

Dated: 10/1/2020

Ryan Powell

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

Exhibit A

201200198786
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
12-26-2012 At 02:40 pm.
NOTICE 10.00
OR Vol 13103 Page 241 - 242

STATE OF SOUTH CAROLINA)
) Notice of Sale, Transfer or Exchange
COUNTY OF YORK)

WHEREAS, SAN JUAN HOLDINGS is a private contractual trust (hereinafter Trust); and

WHEREAS, Trust is the owner of record of the property recorded on June 28, 2000 in vol: 3173 page: 343 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, Brett Osborne is trustee of Trust with power to convey title to the aforesaid property; said power recorded on June 28, 2000 in Vol 3173, page 344 in the Office of the Clerk of the Court for York County, South Carolina; and

WHEREAS, aforesaid recorded property of Trust has been assigned the tax map number of 643-10-01-023 by the York County Tax Assessor; and

WHEREAS, On December 20, 2012 Trust, by and through Brett Osborne trustee, in a private transaction did grant, bargain, sell, release, and convey the aforesaid private property to an unenfranchised living man; and

WHEREAS, the proceeds of the aforesaid transaction have been distributed as required by the law of the Trusts' indenture terminating the Trust; and

WHEREAS, giving this notice is the final duty of Brett Osborne trustee for Trust;

THEREFORE, YOU ARE TO TAKE NOTICE THAT: SAN JUAN HOLDINGS no longer owns the property in the records of the Office of the Clerk of the Court for York County, South Carolina and those records should be updated accordingly; that SAN JUAN HOLDINGS has been terminated and no longer exists by the aforesaid actions according to the law of the trusts' indenture; and that Brett Osborn has completed his duties as trustee for SAN JUAN HOLDINGS.

After Recording return this Notice to:
Brett Osborne
c/o 9127 Dalmeny House Lane
Charlotte, North Carolina

WITNESS our Hand and Seal this 20th day of December, 2012.

SAN JUAN HOLDINGS

By: _____ Trustee
Brett Osborne trustee

Signed and Sealed in the presence of:

_____

The South Carolina Court of Appeals

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,

Of Whom Ryan Powell is the Appellant.

Appellate Case No. 2021-001192

ORDER

Appellant appeals the circuit court's orders: (1) denying Appellant's motion for judgment on the pleadings, motion to determine sufficiency of objections, and motion to compel discovery; (2) granting Respondent's motion for order of reference to the Master in Equity; and (3) finding Appellant was not entitled to a jury trial. After careful consideration, Respondent's motion is granted and this appeal is dismissed because the orders on appeal are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (providing "generally the denial of a Rule 12(b)(6) motion is not directly appealable");

Patterson v. Spector Broad. Corp., 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985) ("This appeal is from an order compelling discovery which is interlocutory and not directly appealable."); *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."); *Rosenbaum v. S-M-S 32*, 311 S.C. 140, 142, 427 S.E.2d 897, 898 (1993) ("An action to clear title to real property is an action in equity."); *id.* at 141-42, 427 S.E.2d at 897 (affirming where the lower court "struck appellant's counterclaim and denied its motion for a jury trial 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 jury trial by asserting a counterclaim for trespass to try title"). The remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

cc:
Ryan Powell
A. Parker Barnes, III, Esquire
Sarah P. Spruill, Esquire

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 # 2021-001192

LB PARK, LLC,. . . . . Respondent,

v.

San Juan Holdings, Brett Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-001-023, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon the real estate described as 25056 Timberlake Drive, York County, South Carolina, TMS 643-10-01-023, ... Defendants,

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

Petition to Rehear LB PARK, LLC's Motion to Dismiss Appeal With Suggestion To Rehear En Banc

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Pursuant to Rule 221(a) SCACR, Appellant Ryan Powell ("Ryan") makes this Petition to Rehear Respondent LB PARK, LLC's ("LB PARK") Motion to Dismiss Appeal that was erroneously granted by this Court in its order dated December 9, 2021 ("Dismissal Order"). A copy of the Dismissal Order is attached as Exhibit 1 and incorporated herein by reference. Pursuant to Rule 219 SCACR, Ryan makes a suggestion that this Court hear this Petition en banc.

Mandatory Judicial Notice Of The Following Adjudicative Facts

Pursuant to Rule 201(d) SCRE, this Court must take mandatory Judicial Notice of the following adjudicative facts -

> Respondent/Plaintiff LB PARK, LLC holds a quitclaim deed to the land at issue in this case. A copy of LB PARK, LLC's quitclaim deed is attached as Exhibit 2 and is fully incorporated herein by reference. The attached copy of LB PARK, LLC's quitclaim deed is not subject to reasonable dispute because LB PARK, LLC admitted in its complaint that it holds a quitclaim deed to the land at issue, and also because it is capable of accurate and ready determination by resort to the website operated by the YORK COUNTY Clerk of Courts which is a trustworthy source used extensively for doing real property title searches for real estate sales and for underwriting title insurance policies.
>
> Every judge of this Court has sworn an oath to "*preserve, protect and defend the Constitution of this State and of the United States. So help me God.*". Article 1, Section 23 of this State's Constitution makes all the provision of that Constitution mandatory. Constitution Article 1, Section 23 - "*The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or promissory by its own terms.*".

Points That This Court Has Overlooked And/Or Misapprehended

This Court appears to have overlooked and/or misapprehended the following points when making its Dismissal Order.

I. Ryan's Article 1, Section 14 Constitutionally Protected Right To A Trial By Jury Has Been Violated By The Dismissal Order

The Supreme Court has held, in too many cases to not be considered settled law, that when title to property is at issue, as it is in this case, the parties are **guaranteed** a trial by 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", Van Every v. Chinquapin Hollow, Inc., 219 SE 2d 909 (SC Supreme Ct 1975).

In the main order on appeal, i.e., the Master's order denying Ryan his right to a trial by jury, the Master chose to neither strike Ryan's law paramount title defense nor strike Ryan's three law counterclaims from his answer[1]. LB PARK failed to appeal the Master's refusal to strike those

[1] See Master's order on appeal which is attached as Exhibit 3 and fully incorporated herein by reference.

law issues from Ryan's answer. Accordingly, the **pleadings in the record of this case indisputably present an issue of title to the land at issue**, which makes this a **law** case that **guarantees** to Ryan his right to a trial by jury.

II. The Dismissal Order Misquotes Dicta From *Rosenbaum v. S-M-S 32* To Support The Dismissal Of This Appeal

The only case cited in the Dismissal Order that pertains to the Master's order denying Ryan his right to a trial by jury, is *Rosenbaum v. S-M-S 32*, 427 S.E.2d 897 (1993) [Exhibit 1]. Accordingly, this Court dismissed this appeal based **entirely** on *Rosenbaum*.

However, the Dismissal Order misquotes *Rosenbaum* and relies entirety on **dicta** from that case to support its deprivation of Ryan's right to a trial by jury. Dicta, as this Court well knows, are the opinions of a judge that do not embody the resolution or determination of the specific case before the court and **are not binding in subsequent cases as legal precedent**. Conversely, *stare decisis* is the policy of courts to stand by precedents and not to disturb the points that were settled in the precedent case. The misquoted and edited dicta relied upon by this Court to deprive Ryan of his right to a trial by jury and to dismiss this 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.").", [Exhibit 1, page 2, last case citation].

It appears that the above text, copied from the Dismissal Order [Exhibit 1], 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 *Rosenbaum* 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*, which means the writer of

the Dismissal Order is attempting to create, or appear to create, **new** *stare decisis* from a case that was decided by the Supreme Court almost two decades ago. Obviously, this Court knows that the only way to change *stare decisis* from a previous opinion is to make a new **published opinion** overruling the *stare decisis* of that earlier opinion. The Dismissal Order is clearly not a new **published opinion** that could overrule the *stare decisis* of *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 cite it, is that it is the **intent** of the legislature which must be considered when construing a statute in addition to the meaning of the plain words of the statute. In accordance with the above six cases, this is what the Supreme Court actually concluded in *Rosenbaum*:

> " 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).

And this is what the Supreme Court found to constitute 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).

Had this Court relied upon the actual *stare decisis* of *Rosenbaum*, as it was required to do when it decided LB PARK's Motion to Dismiss Appeal, this Court would have had to determine if Ryan's law paramount title defense violates the intent of SC Code of Laws 12-61-10 to 60 or

"the reasonable and practical implication of Chapter 61". But how could Ryan claim any defense, any counterclaim, or do anything that violates or "thwarts" 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**? As Exhibit 2 **proves** LB PARK holds a quitclaim deed granted to it by "SB MUNI CUST % LBSC-11, LLC". If LB PARK was a purchaser of property at, or through, a tax sale or even if LB PARK had property forfeited unto it from a tax sale, then LB PARK would hold a tax title. There is no possible other conclusion. So it is **impossible** for Ryan to claim anything, or do anything, that could ever violate, "thwart", or interfere in any way in LB PARK's clearing of its tax title when LB PARK does not hold a tax title!

Therefore, it was clearly error for this Court to rely upon **edited dicta** from *Rosenbaum* to grant LB PARK's Motion to Dismiss Appeal and thereby illegally deny Ryan his Constitutionally protected right to a trial by jury.

III. This Court's Dismissal Order Violates Article 5, Section 9 Of The Constitution

This Court chose to rely solely on **edited dicta** from *Rosenbaum* to deprive Ryan of his right to a trial by jury even though doing so violates the following well settled, long standing precedent case holdings of the Supreme Court, which under Article 5, Section 9 of the Constitution is binding on this Court:

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

The following Supreme Court precedent cases, cited in Ryan's Return to LB PARK's Motion to Dismiss Appeal, had they been relied upon as legal precedent, Constitutionally binding on this Court, would have lead to LB PARK's Motion to Dismiss Appeal being properly denied:

> "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 Ct 1975);
>
> "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);
>
> "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, 253 S.C. 50, 52, 168 S.E.2d 793, (SC Supreme Ct 1969).
>
> "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 (SC Supreme Ct 1991).
>
> "It is settled beyond controversy in this state that it is error, from which an appeal will lie, to deny a party a mode of trial to which he is entitled by law.", Pelfrey v. Bank of Greer, 244 SE 2d 315 (SC Supreme Ct 1978).

As clearly demonstrated above, the Dismissal Order also violates the one case that this Court used to dismiss this appeal, that case being *Rosenbaum v. S-M-S 32*, 427 S.E.2d 897 (1993). It was error for this Court to rely on **edited dicta** from *Rosenbaum* while ignoring the above cited, well settled, *stare decisis,* binding precedent cases of the Supreme Court.

Suggestion to Rehear En Banc

This case fulfills both conditions #1 & #2 of Rule 219(a) SCACR that favor a rehearing, en banc.

According to Rule 219(a)(1) an en banc rehearing should be had when needed to keep the decisions of this Court uniform. As clearly demonstrated above, the Dismissal Order violates **every** decision of both of the appellate courts of this State. So the Dismissal Order is not uniform with the other decisions of the appellate courts.

According to Rule 219(a)(2) an en banc rehearing should be had when the proceedings involve a question of exceptional importance. It appears the dismissal of this appeal involves a question of exceptional importance because it illegally deprives Ryan of his Constitutionally protected right to a trial by jury by using the *color of law* of **edited dicta** from *Rosenbaum*[2],[3].

Further, for the past two years Ryan has been wondering why his appeal of LB PARK's first case [Appeal Case# 2019-000979] was held in abeyance, after it became moot, so that LB PARK could make monthly, *ex parte* reports to this Court about the status of **this case**. Why wasn't that appeal case just dismissed after becoming moot like the way other appeals are handled? It now appears that such was done so that this Court could keep an eye on this case. But why would this Court desire to monitor this case? Is it because Ryan knows, and has chosen to stand on his legally recognized rights, and this Court wants to punish him for doing so? It appears from all available evidence that is exactly what this Court is doing, i.e., intentionally blocking Ryan from getting his right to a trial by jury and also blocking Ryan's access to a court of review as punishment for his stance in this matter. Even if that is not the correct intention of this Court, it is exactly what has transpired. This situation unquestionably proves the necessity for an impartial jury to decide this matter.

Any judge, knowingly and willingly depriving someone of their Constitutional protected rights, especially in such a case as this that carries such a huge potential loss to an innocent bystander[4], should be an exceptionally important concern to any honest judge who has any

[2] Title 18, U.S.C., Section 241 - Conspiracy Against Rights.

[3] Title 18, U.S.C., Section 242 - Deprivation of Rights Under Color of Law.

[4] Ryan could end up losing his private property worth in excess of $400,000 dollars, or even if he keeps his private property he could lose over $200,000 that he could never **legally** be charge with being liable for if he is denied access to a jury who needs to be deciding whether Ryan's private property belongs to Ryan or to some trespasser that spent $5.00 to supposedly purchase Ryan's valuable private property [Exhibit 2]!

integrity, any intention of abiding by his codes of judicial conduct, or any intention of upholding his oath of office that he swore "*so help me God*".

CONCLUSION

For all the reasons shown above this Petition requires an en banc rehearing. This Court must grant this Petition, rehear LB PARK's Motion to Dismiss Appeal, and amend its December 9, 2021 order to deny that motion and do so en banc so that Ryan's Constitutionally protected, inviolate right to a trial by jury is not illegally violated.

December 21, 2021

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

The South Carolina Court of Appeals

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,

Of Whom Ryan Powell is the Appellant.

Appellate Case No. 2021-001192

ORDER

Appellant appeals the circuit court's orders: (1) denying Appellant's motion for judgment on the pleadings, motion to determine sufficiency of objections, and motion to compel discovery; (2) granting Respondent's motion for order of reference to the Master in Equity; and (3) finding Appellant was not entitled to a jury trial. After careful consideration, Respondent's motion is granted and this appeal is dismissed because the orders on appeal are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (providing "generally the denial of a Rule 12(b)(6) motion is not directly appealable");

Patterson v. Spector Broad. Corp., 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985) ("This appeal is from an order compelling discovery which is interlocutory and not directly appealable."); *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."); *Rosenbaum v. S-M-S 32*, 311 S.C. 140, 142, 427 S.E.2d 897, 898 (1993) ("An action to clear title to real property is an action in equity."); *id.* at 141-42, 427 S.E.2d at 897 (affirming where the lower court "struck appellant's counterclaim and denied its motion for a jury trial 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 jury trial by asserting a counterclaim for trespass to try title"). The remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

cc:
Ryan Powell
A. Parker Barnes, III, Esquire
Sarah P. Spruill, Esquire

FILED
Dec 09 2021

188.10
444.60
10

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

QUITCLAIM
DEED OF REAL PROPERTY

THIS QUITCLAIM DEED, executed as of the 7th day of January, 2019, by SB MUNI CUST % LBSC-11 LLC (hereinafter referred to as "Grantor") to LB PARK, LLC (hereinafter referred to as "Grantee"), whose mailing address is 200 S. Park Road, Suite 425, Hollywood, Florida 33021.

WITNESSETH:

IN CONSIDERATION of the sum of Five Dollars ($5.00) the receipt and sufficiency of which is acknowledged by Grantor, Grantor has quitclaimed, granted, bargained, sold and released, and by this Deed quitclaims, grants, bargains, sells and releases, subject to the easements, restrictions, covenants, reservations and conditions referenced specifically or generally below, to Grantee, its successors and assigns, all right, title and interest, if any in the following real property:

All that certain piece or lot of land situated, lying or being in the County of York, State of South Carolina, being known and designated as Lot 56 of Tega Cay Section 25 as shown on plat recorded in the Office of the Clerk of Court for York County in Plat Book 85 at Page 129, and on plat recorded in Plat Book 73 at Pages 22-26, and being more recently shown and more particularly described in Plat Book 131 at Page 306, reference to which is hereby made for a more complete description.

Derivation: This being property conveyed to San Juan Holdings, Brett Osborne, the trustee, by Deed from Paramount Properties, Mark Mucel, the trustee, dated June 1, 2000 (probate says June 15, 2000), recorded June 27, 2000 in Book 3173, Page 343, Office of the Clerk of Court for York County, SC; and being the same property conveyed to SB MUNI CUST % LBSC-11 LLC by Tax Title dated and recorded on December 26, 2018, in the Office of the Register of Deeds for York County in Deed Book 17337 at Page 73.

TMS# 643-10-01-023.

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, its successors and assigns forever.

2019001145

DEED QUIT CLAIM
RECORDING FEES $10.00
STATE TAX $444.60
COUNTY TAX $188.10
PRESENTED & RECORDED:
01-10-2019 10:44:17 AM
BK: RB 17361
PG: 145 - 148
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
BY: REGINA PRUITT CLERK

YORK COUNTY ASSESSOR
Tax Map:
643-10-01-023
Date: 01/10/2019

E H

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Gilda Onate
Witness

William Lockteig
Witness

SB MUNI CUST % LBSC-11 LLC

Signature: _____
Name: Joshua W. Schrager
Title: Manager

[CORPORATE SEAL]

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

I, the undersigned Notary Public for the State of Florida, do hereby certify that Joshua W. Schrager the Manager of SB MUNI CUST % LBSC-11 LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 7th day of January, 2019.

Notary Public for the State of Florida
Notary Name Printed: Loretta J. Wise
My Commission Expires: 8/10/19

[NOTARY SEAL]

LORETTA J. WISE
Notary Public - State of Florida
Commission # FF 222111
My Comm. Expires Aug 10, 2019
Bonded through National Notary Assn.

FORM 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

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

The South Carolina Court of Appeals

LB PARK, LLC, Respondent,

v.

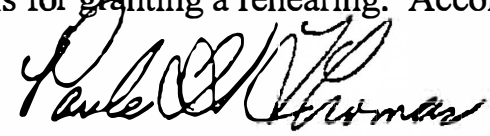
San Juan Holdings, Bret Osborne, the trustee; Brett Osborne as Trustee of San Juan Holdings; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right , title, or interest in or to , or lien upon, he real estate described as 250056 Timberlake Drive, York County,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

Of Whom Ryan Powell is the Appellant.

Appellate Case No. 2021-001192

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



_____ J.

Stephenie P. McDowell J.

J.

Columbia, South Carolina

cc:
Ryan Powell
A. Parker Barnes, III, Esquire
Sarah P. Spruill, Esquire

FILED
Feb 10 2022

HAYNSWORTH
SINKLER BOYD

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ssprulll@hsblawfirm.com

November 13, 2019

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

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

Dear Ms. Kitchings:

Pursuant to the Court's order in this matter dated October 15, 2019, the Respondent writes to apprise the Court on the status of the remand. At this time, the Respondent has not taken the requested action in the trial court (dismissal and filing of a new complaint naming the Appellant) because the Appellant filed a Petition for Rehearing of the October 15 Order on October 28, 2019. Out of an abundance of caution, Respondent is awaiting the Court's ruling on the Petition before it proceeds in the trial court.

Thank you for your continued time and attention to this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill

SPS/jmb

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

HAYNSWORTH
SINKLER BOYD

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August 3, 2021

VIA EMAIL ONLY (ctappfilings@sccourts.org)
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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

Dear Ms. Kitchings:

Pursuant to the Court's order in this matter dated October 15, 2019 granting LB Park, LLC's motion to remand, the Respondent writes to apprise the Court on the status of the remand.

Pursuant to the Order relieving Mr. Powell's previous counsel, Mr. Powell had until July 8, 2021, to retain new legal counsel or proceed *pro se*. Mr. Powell has elected to proceed *pro se*. On July 13, 2021, Mr. Powell filed a *Motion to Return Case to Circuit Court*. He requested that the Master-In-Equity decide this issue without a hearing. The Master-In-Equity's office requested that Plaintiff respond by July 26, 2021, and Plaintiff complied by filing *Plaintiff's Memorandum in Opposition to Defendant Ryan Powell's Motion to Return Case to Circuit Court*. As of today, Mr. Powell's motion is pending and no hearing date has been set.

Thank you for your continued time and attention to this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill

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

HAYNSWORTH
SINKLER BOYD

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March 1, 2022

VIA EMAIL ONLY (ctappfilings@sccourts.org)
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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

Dear Ms. Kitchings:

Pursuant to the Court's order in this matter dated October 15, 2019 granting LB Park, LLC's motion to remand, the Respondent writes to apprise the Court on the status of the remand.

Since last month's report. Mr. Powell's Petition for Rehearing filed on December 21, 2021 was denied on February 10, 2022.

Thank you for your continued time and attention to this matter.

Sincerely,

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill

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