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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

Supreme Court Case # 2022-000275

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. . . . . Petitioner.

RETURN TO MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI, AND MOTION FOR SANCTIONS

Ryan Powell ("Ryan"), pursuant to Rule 240 (e) SCACR, makes this Return to LB PARK, LLC's ("LB PARK") Motion to Dismiss Petition for a Writ of Certiorari ("MTD"). Ryan incorporates fully herein by reference his Petition for a Writ of Certiorari that he filed into this case on March 10, 2022 ("Petition"). This Court must deny LB PARK's MTD and sanction LB PARK and its attorney under Rule 269 SCACR for filing a frivolous motion that has no basis in law or in fact and has been filed in order to violate Ryan's rights to both due process of law and to a trial by jury, to cover-up the fact that LB PARK withheld its Complaint from the record given to Court of Appeals, and to facilitate LB PARK not having to actually answer to the meritorious claims made in Ryan's Petition. Ryan also moves this Court to deny LB PARK's request to stay the deadlines imposed by Rule 242 SCACR.

LB PARK brought this case under SC Code of Laws 12-61-10 to 60 admitting it holds only a quitclaim deed but wants to clear a tax title that was issued to a non-party named SB MUNI CUST % LBSC-11, LLC [MTD, Background I, pg 2, para #11 & #12] and also to evict all inhabitants off of the property at issue [MTD, Exhibit A, Complaint, pg 4 #16, & pg 6 #1].

LB PARK's MTD states that Ryan's Petition should be dismissed on the ground that "*the underlying orders are not immediately appealable*", [MTD, pg 1, para 1, sentence 1] i.e., that the Court of Appeals correctly found that Ryan does not have a right to a trial by jury so the Master's order on appeal that denies Ryan a trial by jury, is not immediately appealable. Stated differently, the ground for LB PARK's MTD is that the Court of Appeals made the correct decision when they dismissed Ryan's appeal. Using a motion to dismiss to challenge the merits of a petition for a writ of certiorari is not only unauthorized by the rules, but specifically violates the extensive procedures laid out in Rule 242 SCACR for the filing, challenging, and deciding of such petitions. The mere suggestion that a motion to dismiss can be used, instead of a return, to challenge the merits of a petition for writ of certiorari is frivolous.

Every motion to dismiss a petition for writ of certiorari that has been filed in this Court during the past year, has dealt with legal issues that would permit a dismissal of a case. A few examples of the motions to dismiss that have been filed in this Court during the past year include the following: a petition was made moot by intervening events that took place after the petition was filed [case# 2021-001022]; the case had been sitting in the lower court for 14 years without any progress and the Petitioner attempted to revive his case by petitioning the Supreme Court [case# 2021-000629]; and the Petitioner committed extensive procedural errors including errors that deprived the appellate courts of jurisdiction to hear the Petition [case# 2021-001189]. As this Court well knows the proper procedure to challenge the merits of a petition of writ of certiorari is to timely make a return NOT to make a motion to dismiss.

Even thought the MTD states its ground is that "*the underlying orders are not immediately appealable*", Sara P. Spruill, LB PARK's appeal attorney ("Ms. Spruill") spends most of her MTD discussing frivolous and irrelevant drivel about the supposed "*intentional delays*" that Ryan has cause by his "*legal maneuvering*". Those delays being that Ryan took an appeal in an earlier case that LB PARK voluntarily dismissed [MTD, Section A, pgs 4-5] and that Ryan took an appeal earlier in this case where the Court of Appeals decided only that Ryan had to first answer the complaint before challenging the reference of this case[1] [MTD. Section B, pgs 5-6]. Ms. Spruill also attached 154 pages of documents to her MTD that are entirely irrelevant. None of that drivel has anything to do with whether or not the Court of Appeals correctly found that Ryan does not have a right to a trial by jury in this case. All those background documents and arguments were made mainly to divert and distract this Court's attention and understanding away from the real issues in this case, that Ryan presented in his Petition, and also to give Ms. Spruill an opportunity to put LB PARK's Complaint into the record that it intentionally withheld from the record given to the Court of Appeals [Petition, pg 2, footnote #1].

Ms. Spruill appears to have made her MTD because she knows that she can not meritoriously rebut the laws, facts, questions, and sub-questions presented for review in Ryan's Petition. Ms. Spruill's true motive for making her MTD is evidenced by the following facts: she made her MTD before filing a return [Case Docket, copy attached as Exhibit 1]; she requested a stay of the requirements imposed by Rule 242 SCACR so that she does not have to file a return [MTD, pg 1, para 1, last sentence]; she requested as relief a dismissal "*or in the alternative, LB PARK asks that the Petition be summarily*

[1] Ryan took that appeal because he relied on case law that was decided before Rule 53(b) SCRCP was added. Before Rule 53(b) SCRCP, an order of reference had to be immediately appealed, even if it had been made before the defendant's answer was filed. After Rule 53(b) SCRCP was added, a defendant needed to make his answer first and then move to have the case returned to the circuit court before an appeal of the issue of a reference order became a final appealable order. In this case, since the Order of Reference was made, and mistakenly appealed, before Ryan had even made his answer, that appeal was premature, i.e., interlocutory. Contrary to Ms. Spruill's boldfaced lies, the Court of Appeals could not have decided, and did not decide, the issue of Ryan's right to a trial by jury in that appeal that was dismissed before Ryan had even made his answer establishing and demanding that right!

denied" [MTD, pg 1, para 1, sentence 2]; and she included LB PARK's Complaint in the record submitted with her MTD that she intentionally withheld from the record provided to the Court of Appeals. In other words, Ms. Spruill wants this Court to dismiss or deny Ryan's Petition on its merits without her having to actually answer the merits of the claims made in his Petition.

Ms. Spruill starts off her frivolous arguments by alleging that her client is being "*damaged each and every day that Powell retains physical possession of the property*" [MTD, bottom pg 6, last sentence]. LB PARK is allegedly being damaged because it cannot take possession of Ryan's private property until a final merits hearing and Ryan is allegedly "*legal maneuvering*" in order to intentionally delay that merits hearing. Any damage that LB PARK imagines it is suffering has come entirely from its own actions and inactions. LB PARK was required to have possession of the land at issue BEFORE it even initiated its frivolous clear tax title action. Not only can LB PARK not make a meritorious claim of suffering any damage, because of some imagined delay, but because of its own inaction to first take possession of Ryan's private property, its case is not ripe:

> "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 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) speaking of Pollitzer v. Beinkempen, 76 S.C. 517, 57 S.E. 475, 476; see also Priester v. Brabham, 95 SE 2d 167 (SC Supreme Court 1956); see also Mullis v. Winchester, 118 SE 2d 61 (SC Supreme Court 1961).

Premature as used in Pollitzer v. Beinkempen means the case was not ripe since the issue of possession had not yet been decided and it must be decided before any kind of quiet title action can be initiated. This case is also **premature** for that exact same reason. The main reason that possession must be determined before a title is quieted is because an eviction/dispossession action is a law action that requires a trial by jury, if so demanded [Petition, sub-question F, pgs 12-13].

Since LB PARK admits it does not hold a tax title [MTD, Background I, pg 2, para #12] it does not have standing to bring its clear tax title case under SC Code of Laws 12-61-10 to 60. And since LB PARK admits it does not have possession of the property at issue [MTD, bottom pg 6, last sentence, MTD, Exhibit A, Complaint, pg 4 #16, & pg 6 #1], its case is not ripe. However, in order to reach **any merits** in this case, this case must be justicible:

> "The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing", EAGLE CONTAINER v. County of Newberry, 622 SE 2d 733.
>
> "South Carolina courts, like the federal courts, require a justiciable case or controversy before **any decision on the merits** can be reached.", Lennon v. South Carolina Coastal Council, 498 SE 2d 906 [emphasis mine].

According to Lennon v. South Carolina Coastal Council supra, there is no legal basis upon which any court of this State can ever reach any decision on the merits of this case. So even **IF** Ryan was causing some delay in his quest to get his due process and trial by jury rights upheld, no court has the legal authority to even reach **any merits** of such allegations unless and until justicibility is proven to exist.

Ms. Spruill also requests an expedited determination of her MTD on trumped up allegations[2] that LB PARK has some special right to get a expedited determination consistent with her imagined special

[2] Ms. Spruill's real reason for seeking an expedited decision of her MTD is because the managers of LB PARK are committing a long running, racketeering, money laundering, federal income tax evasion, and fraud scheme. To execute their scheme they create a name for an LLC that does not exist (e.g., SB MUNI CUST % LBSC-11, LLC, SB MUNI CUST % LB ASLEY, LLC). Then they sign up to be bidders in at least 10 counties in South Carolina. Then they provide the counties with the made up name of their non-existent LLC, the address of a temporary P.O. Box, and a federal tax id that is "unassigned", i.e., not a valid federal tax id. Then they retrieve their interest checks, and occasionally a void tax title (void because a non-existent entity can never take "delivery" of any title), close their temporary P.O. Boxes, and cash those interest income checks. They do not file any federal income tax returns because all the interest income was paid in the names of non-existent LLCs using fraudulent federal tax ids. The reason for Ms. Spruill's desperate attempts to **hurry** this case up is because the Internal Revenue Service ("IRS") will eventually contact those counties that paid the interest income and inform those counties that they must "backup withhold" for the federal income taxes that should have been paid, but was not. This contact between the IRS and the counties typically takes between 2-3 years after the interest income is reported. LB PARK's managers are trying to "beat the clock" where the IRS will soon, if not already, contact York County to backup withhold the taxes they evaded (a felony). Ms. Spruill, along with the other two attorneys representing LB PARK on this case, are all well aware of these crimes being perpetrated and are actively participating in its cover-up and are also assisting in the perpetration of the crime of "taking property on false pretenses" (a felony). All three of LB PARK's attorneys **know** that **every** tax title that LB PARK **has ever cleared** in the courts of this state, was void *ab initio* because it was issued to a non-existent entity. No court anywhere has the authority to assist any party in the commission of crimes. Ryan has evidence of all of these allegations and will enter that evidence when the opportunity arises.

expedited "*procedures in place for clearing tax titles*" [MTD, pg 2, par 1]. Presuming her client actually held a tax title, there is no such special right to expedited justice afforded even to an actual tax title holder.

According to EAGLE CONTAINER v. County of Newberry, 622 SE 2d 733 (2005), this Court is required to determine if LB PARK's case is ripe and if LB PARK has standing to bring a clear tax title case under SC Code of Laws 12-61-10 to 60, before this Court can even determine LB PARK's MTD. If this Court determines that this case is not justicible, then this Court has the duty and obligation to dismiss all of LB PARK's claims, not just dismiss LB PARK's MTD.

> "Nevertheless, we find ripeness[3] considerations may be **and should be raised *sua sponte***. Both South Carolina and Federal case law support this ruling. In *Baber v. Greenville County,* the rule is articulated that courts generally decline to pronounce a declaration wherein the rights of a party are **contingent upon the happening of some event which cannot be forecast and which may never take place**. The Supreme Court of the United States found "because issues of ripeness involve, at least in part, the existence of a live `Case or Controversy,' we cannot rely upon concessions of the parties and must determine whether the issues are ripe for decision in the `Case or Controversy' sense" and "to the extent that questions of ripeness involve the exercise of judicial restraint from unnecessary decision of constitutional issues, the Court **must** determine whether to exercise that restraint and cannot be bound by the wishes of the parties.". Likewise, "**before addressing merits of any appeal, [the court] must be convinced that the claim in question is ripe for review, even if neither party has raised the issue.**".", EAGLE CONTAINER v. County of Newberry, 622 SE 2d 733 (2005) [internal citations omitted, emphasis mine].

MOTION FOR SANCTIONS

The above return to LB PARK's MTD is fully incorporated herein by reference. For all the reasons shown herein, LB PARK's MTD is frivolous, is not an authorized method to challenge the merits of a Petition, and was made for reasons other than those authorized for filing a motion to dismiss a petition. Ryan moves this Court pursuant to Rule 269 SCACR to sanction LB PARK and its appeal attorney, Sara P. Spruill for filing a motion that has no basis in law or in fact and the motion was filed for reasons other than those that are proper for a motion to dismiss.

[3] This case was specifically addressing only the legal concept of ripeness but the requirements for ripeness must also apply equally to the doctrines of standing and mootness as all three legal doctrines must be satisfied in order for any case to be justiciable, i.e., that is presents an actual "case or controversy".

CONCLUSION

1. Determine a briefing schedule for the parties to brief the issue of justicibility of the case and then determine if LB PARK has standing to clear someone else's tax title under SC Code of Laws 12-61-10 to 60 and if LB PARK's case is ripe for adjudication when it does not have possession of the property at issue. If this Court finds that LB PARK lacks standing or that this case is not ripe, then dismiss LB PARK's claims in the case bearing the case #2020-CP-46-00549 and allow Ryan's law counterclaims to proceed to a trial by jury.

2. If this Court determines that LB PARK has standing and the case is ripe, then grant all the following relief:
   a. Deny LB PARK's Motion to Dismiss Petition. Or in the alternative, deny LB PARK's request to stay the requirements imposed by Rule 242 SCACR. If LB PARK fails to make a timely return to Ryan's Petition, then this Court must consider that failure as its agreement for this Court to issue a writ of certiorari to the Court of Appeals;
   b. Award sanctions payable to Ryan against LB PARK and Sara P. Spruill for filing their frivolous Motion to Dismiss Petition for Writ of Certiorari;
   c. Award costs to Ryan for having to make this return and this motion; and
   d. Any other or further relief that this Court deems just and proper.

March 24, 2022

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

Case Information: 2022-000275

Court:	Supreme Court	**Classification:**	Certiorari - COA - Common Pleas - Other
Short Title:	LB Park, LLC v. San Juan Holdings	**Case Status:**	Held in Abeyance
	View Full Title		
Consolidated:			
Filed Date:	03/10/2022	**Oral Argument Date:**	
Disposition Date:		**Disposition Type:**	
Remittitur Date:			
Lower Court or Tribunal:	York (2020CP4600549)		

- Party Information

Appellate Role	Party Name	Former	Attorney(s)
Petitioner	Ryan Powell	N	Self Represented
Respondent	LB Park, LLC	N	A. Parker Barnes, III Sarah P. Spruill

Views

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Event Information

Filed Date	Event Information	Doc
03/17/2022	Correspondence - Incoming (Filing Fee Letter)	
03/15/2022	Motion - Dismiss	
03/14/2022	Correspondence - Outgoing (Filing Fee Letter)	
03/10/2022	Correspondence - Outgoing (Initial Letter)	
03/10/2022	Petition for Writ of Certiorari and Responses - Petition and Appendix	