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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS

M. Anderson Griffith, Master in Equity

Case No. 2020-CP-02-1173
Appellate Case No. 2022-000236

Mark B. Mitchell and Celine C. Mitchell, Plaintiffs,

v.

Ronald Joseph Albertelli and Mary Frances Snelling, Trustees of the Mary Frances Snelling Living Trust, Donnita C. Harmon and Jimmie Phillip Harmon, Defendants,

Of whom Mark B. Mitchell, Celine C. Mitchell, Ronald Joseph Albertelli, and Mary Frances Snelling are the Respondents,

And

Donnita Harmon and Jimmy Harmon are the Appellants.

FINAL BRIEF OF RESPONDENTS MITCHELL

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err by finding the purported first right of refusal does not contain the necessary information to be a valid first right of refusal?

2. Did Appellants failure to raise a necessary issue on appeal rendering moot the issue appealed?

STATEMENT OF THE CASE

By Complaint filed June 18, 2020, the Respondents Mitchell prosecuted this action against the Appellants and Respondents Albertelli and Snelling. The causes of action were: 1) Specific Performance under a contract of sale for real estate against Albertelli and Snelling 2) Quiet Title as to real property as to Appellants and Albertelli and Snelling 3) Breach of Contract as to Albertelli and Snelling 4) and Tortious Interference with Contract as to Appellants. Appellants filed a counterclaim including an Injunction to Prevent Interference with Contract and Abuse of Process.

At the hearing before the Master-in-Equity, the parties agreed that the Respondents Mitchell were claiming no damages as to the Albertelli and Snelling. In addition, the Appellants and Respondents Mitchell were claiming no damages as to each other. Appellants also withdrew, without prejudice, their claim of abuse of process against Respondents Mitchell for the filing of the Lis Pending on the basis it was premature and would require that they prevail in this action prior to proceeding on that claim (R. p. 6, line 2 – p. 47, line 13). Before the Master was the quiet title action as well as the action for specific performance under the contract between the Respondents Mitchell and Albertelli and Snelling.

The basis for Respondents Mitchell bringing this action was to enforce a contract for the purchase of "Tract 3B" entered into between Respondents Mitchell and Albertelli and Snelling

(Mitchell Contract) and to quiet the title as to any first right of refusal claimed by Appellants.

After execution of the Mitchell Contract, but prior to the closing, Defendant Donnita C. Harmon, on behalf of herself and Defendant Jimmy Phillip Harmon, made a claim of a First Right of Refusal to purchase "Tract 3B" from the Snelling Trust. This claim was made based on language in a prior contract of sale for "Tract 3A" (Harmon Contract) from which Appellants purchase of "Tract 3A" derived. After learning of this claim of an alleged First Right of Refusal, Respondents filed this action, *inter alia*, to quiet title to the subject property so that their purchase of "Tract 3B," the subject property, could be consummated.

After some initial discovery consisting of the deposition of Donnita Harmon and the exchange of documents, Respondents Mitchell filed a motion for Summary Judgement. Appellants also filed a motion for Summary Judgement. From a hearing on the motions for Summary Judgement, the Circuit Court issued an order dated April 12, 2021, denying Respondents Mitchell's motion and granting Appellants' motion. Upon Reconsideration, the Circuit Court issued an order dated June 15, 2021, denying all motions for Summary Judgement. The parties subsequently consented to referring this case to the Master-In-Equity, by Order issued June 30, 2021.

A Hearing was held on November 8, 2021, before the Master-in-Equity, The Honorable M. Anderson Griffith. On February 9, 2022, the Master filed an Order that found: 1) the proposed right of refusal does not contain the necessary information to be a valid first right of refusal, 2) Respondents Mitchell's contract affords them standing in the quiet title claim, and 3) Respondents Mitchell are entitled to specific performance of their contract with Ronald Albertelli and Mary Snelling. A Notice of Appeal was served on the Respondents on February 25, 2022.

STANDARD OF REVIEW

A Quiet Title Action is an action in equity. In an action in equity, tried with reference to a master, the Appellate Court reviews the evidence and determines the facts according to its own view of the preponderance of the evidence, though it is not required to disregard the findings of the master. Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008). An action for specific performance is an action in equity. Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 708 S.E. 2d 787 (Ct. App. 2011).

FACTS

The facts in this case are essentially not in dispute. The issue is whether these facts give rise to a first right of refusal.

The parties stipulated to five (5) joint exhibits:

Exhibit #1: Contract of sale between Respondents Mitchell and Respondents Albertelli and Snelling for the purchase of Tract 3B. (2 pages) ("Mitchell Contract").

Exhibit #2: Contract of sale between Appellants and Respondents Albertelli and Snelling for the purchase of Tract 3A. (8 pages) ("Harmon Contract").

Exhibit #3: Addendum to Agreement. (Addendum to Exhibit #1).

Exhibit #4: Deed dated October 10, 2018, from Respondents Albertelli and Snelling to Appellants conveying Tract 3A.

Exhibit #5: Plat dated September 5, 2018, showing Tracts 3A and 3B, located on Kimball Pond Road, prepared for Mary Frances Snelling and Ronald Joseph Albertelli and recorded on October 11, 2018, in Plat Book 60 at Page 98, in the office of the RMC, Aiken County, South Carolina.

The Court also admitted, without objection, the deposition testimony of Donnita Harmon (R. pp.

96-115).

Appellants purchased "Tract 3A" of the Estate of Eula B. Lamar from Albertelli and Snelling on October 10, 2018. The Harmon Contract (R. pp. 81-88) set out the agreement of the parties and the sale was consummated by conveyance of a General Warranty Deed dated October 10, 2018, recorded October 11, 2018, at Book RB 4745, Pages 408 – 410 in the Office of the RMC in the County of Aiken, State of South Carolina (R. pp. 91-93). The deed conveying "Tract 3A" to Appellants makes no mention of a first right of refusal as to "Tract 3B."

Respondents Mitchell and Albertelli and Snelling as Trustees of the Snelling Trust entered into the Mitchell Contract dated May 6, 2020 (Stipulated) *See* (R. p.38, lines 8 – 20) (R. pp. 79-80) for the purchase of "Tract 3B" of the Estate of Eula B. Lamar[1] for a sales price of One Hundred Thirty Five Thousand ($135,000.00) Dollars, with the closing to take place on or before June 1, 2020. After execution of the Mitchell Contract, but prior to closing, Appellant Donnita C. Harmon, on behalf of herself and Appellant Jimmy Phillip Harmon, made a claim of a first right of refusal to purchase "Tract 3B" from the Snelling Trust. Appellants Harmon claimed a first right of refusal to "Tract 3B" based on language in the Harmon Contract related to their purchase of "Tract 3A."

The purported first right of refusal language in the Harmon Contract is found in Paragraph 28, and states, "[A]nd first right of refusal of property adjoining outside of immediate family (R. pp. 81-88)." This incomplete sentence is found in a Paragraph entitled, "ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS." The complete sentence that contains the purported first right of refusal reads:

If any documents are attached as addenda, amendments, attachments, or exhibits

[1] Tract containing 12.9097 acres as shown and designated as Tract 3B on survey dated September 12, 2018, and recorded in Plat Book 60 at Page 908 in the office of the RMC for Aiken County, South Carolina.

considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 311, 503, 504, 315, 320, 393, 370, 375, 513, 610): 311-Due Diligence / 509-VA Addendum / Pre-approved letter / Old Republic Home Protection Application – Map of Property Line to be agreed on, and first right of refusal of property adjoining outside of immediate family.

(R. p. 87)

There is no evidence of any attachment of a first right of refusal to the Harmon Contract.

ARGUMENTS

I. THE TRIAL COURT PROPERLY FOUND THAT THE APPELLANTS DID NOT HAVE A VALID FIRST RIGHT OF REFUSAL AS TO "TRACT 3B".

A first right of refusal is a pre-emptive right. Webb v. Reams, 326 S.C. 444, 485 S.E. 2d 385 (Ct. App. 1997). "This pre-emptive right is a contingent, nonvested interest in that the grantee or the grantee's heirs might never choose to sell the property. It is an interest not conditioned on an event certain to occur." Id, at 446, 385.

When assessing a first right of refusal the courts should look at several factors, including: '(1) the purpose or purposes for which the restraint is imposed; (2) the duration of the restraint; and (3) the method of determining the price to be paid." 61 Am. Jur. 2d Perpetuities, Etc. § 109 (2002). "Whether a right of first refusal is valid depends on the legitimacy of the purpose, the price at which the holder may purchase the land, and the procedures for exercising the right." Clarke v. Fine Housing, Inc., 2020 WL 4673124 (Ct. App. 2020), *citing* Restatement (Third) of Property (Servitudes) §3.4 cmt. f (2000).

The Statute of Frauds, codified in S.C. Code of Laws §32-3-10, requires a contract to convey real estate to be in writing.[2] The applicable portion of the statute states, "No action shall be brought whereby: . . . (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; . . . Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized." In order to satisfy the Statute of Frauds, there must be a writing signed by the party against whom enforcement is sought, and the writings must establish the essential terms of the contract without resort to parole evidence. Under the Statute of Frauds, the signed writings in the sale of land must contain a sufficient description of the land to show with reasonable certainty what is to be conveyed; a description that does not include the location of the land or its boundaries is inadequate. Fici v. Koon, 372 S.C. 341, 642 S.E.2d 602, (S.C. 2007), *rehearing denied*. *See also* Cousar v. Shepherd-Will, Incorporated, 300 S.C. 366, 387 S.E.2d 73 (1990), "One of the essential terms of a contract of sale of land is the identification of the land. . . Hence, the land must be described so as to indicate with reasonable certainty what is to be conveyed. Parole evidence cannot be relied upon to supplement a vague and uncertain description." Id, at 367, 723, 724; *quoting* Cash v. Maddox, 265 S.C. 480, 484, 220 S.E. 2d 121, 122 (1975).

Appellants claim a right of first refusal as to "Tract 3B" based on a phrase in Paragraph #28 of the Harmon Contract that states, "[A]nd first right of refusal of property adjoining outside of immediate family (R. p. 87; R. p. 101, line 9 – p. 102, line 1)." This phrase does not comply with the Statute of Frauds as to a writing for the sale of land and it does not comply with the case law that sets out the requirements of a first right of refusal. The purported language is

[2] Appellants' brief is silent on the Statute of Frauds, even though Appellants must prove compliance therewith to succeed on their claim.

deficient in many ways, any one of which causes it to fail to meet the necessary requirements of a first right of refusal. For example, it does not contain:

1. A description of the property; or,
2. Consideration for the right; or,
3. A mechanism to determine the purchase price; or,
4. A timeframe for exercising the right; or,
5. An expiration date of the right; or
6. The name of the person or persons who have the right.

The only reference to real property in the purported first right of refusal is, "property adjoining." These two words do not describe the purported property such that one can ascertain to which property it is referring. Appellant Donnita Harmon, who authored the purported first right of refusal, admitted that it does not state that it is referencing the property that adjoins "Tract 3A" (R. p. 108, lines 8 – 10). In addition, "Tract 3A" adjoins seven (7) properties as seen on Joint Exhibit #5 and as was testified to by Mr. Harmon (R. pp. 76-78). This lack of a description of the property alone causes the purported first right of refusal to fail and parole evidence cannot be used to rectify the error. "[A] description that does not include the location of the land or its boundaries is inadequate. Fici v. Koon, 372 S.C. 341, 642 S.E.2d 602, (S.C. 2007), *rehearing denied*. *See also* Cousar v. Shepherd-Will, Incorporated, 300 S.C. 366, 387 S.E.2d 73 (1990), "One of the essential terms of a contract of sale of land is the identification of the land. . . Hence, the land must be described so as to indicate with reasonable certainty what is to be conveyed. Parole evidence cannot be relied upon to supplement a vague and uncertain description." Id, at 367, 723, 724; *quoting* Cash v. Maddox, 265 S.C. 480, 484, 220 S.E. 2d 121, 122 (1975).

Appellant Donnita Harmon, who authored the purported first right of refusal, is a licensed real estate agent who works in a real estate office (R. p. 99, line 4 – p. 100, line 22; p. 104, lines 9 – 12). She testified that she had never been involved in a first right of refusal before as a real estate agent (R. p. 113, Lines 16 – 19). She drafted the subject phrase because she could not find a real estate form containing a first right of refusal (R. p. 114, lines 11 – 18). She had never drafted a first right of refusal in the past and did not talk with any real estate agents in her office for assistance in the drafting (R. p. 115, lines 1 – 7). Looking back on it, she wished she had drafted the phrase differently (R. p. 115, lines 8 – 12).

Donnita Harmon admitted that the incomplete sentence that she purports to be a first right of refusal does not contain the specific language of a first right of refusal. Mrs. Harmon testified:

1. There was no consideration paid for a first right of refusal (R. p. 105 line 11 – p. 106, line 16).
2. It does not specify any specific real property and Mrs. Harmon admitted that it does not state that it is referencing the property that adjoins "Tract 3A" (R. p. 107, line 19 – p. 108, line 10).
3. The language does not contain a duration of the purported right (R. p. 109, lines 7-12). Although she testified that it would last until either her husband or Mr. Albertelli or Mrs. Snelling died, she admitted that it does not state such (R. p. 110, lines 2-21).
4. The phrase does not state the price to be paid for the property if the alleged first right of refusal is exercised (R. p. 110, line 22 – p. 111, line 1).
5. It contains no mechanism to determine the purchase price if and when the purported first right of refusal is exercised (R. p. 111, line 7 – p. 113, line 4).

Mr. Harmon testified that the purported first right of refusal did not contain: (1) A purchase price; (2) a timeframe; (3) a mechanism to determine a price; (4) an expiration date; (5) the name of the person or persons who have any rights; (6) a time to execute a waiver of the first right of refusal; and (7) the only description of the real estate is the word, "adjoining (R. p. 68, line 21 – p. 69, line 18; p. 73, lines 16-19)."

When asked specifics about the language in Paragraph #28, Mr. Harmon struggled to provide any clarity, and instead revealed his own confusion. Again, the phrase, "[A]nd first right of refusal of property adjoining outside of immediate family (R. p. 87)." With this in mind, Mr. Harmon was asked, "Whose immediate family is it talking about?" He responded, "Mr. Snelling's children." When asked, "Where does it say that?" he responded, "That was understood between myself and the Albertellis."(R. p. 66, line 3 – 17) It is of extreme import what he said after stating that it was referring to "Mr. Snelling's children." He said, "I'm sorry, the Albertelli's children (R. p. 66, line 11 - 14)." Even Mr. Harmon was confused as to whose children were being referenced. Mr. Harmon was also asked, "Can you answer my question yes or no and then explain it? My question to you is does Exhibit 2 say on page 7 of 8 immediate family of the Albertellis?" His response was "It does not say that specifically (R. p. 67, lines 4-19)."

Mr. Albertelli concurred with the lack of specificity in the purported first right of refusal. He testified that it does not state a price to be paid if exercised or how long the purported first right of refusal is to be in existence. He also stated that it does not make reference to "Tract 3B," does not define "immediate family," and had no separate consideration paid for the purported first right of refusal. (R. pp. 58-60).

Furthermore, Paragraph #28 of the Harmon Contract, is entitled, "ATTACHMENTS,

OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS," and states:

> If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 311, 503, 504, 315, 320, 393, 370, 375, 513, 610): 311-Due Diligence / 509-VA Addendum / Pre-approved letter / Old Republic Home Protection Application – Map of Property Line to be agreed on, and first right of refusal of property adjoining outside of immediate family.
>
> (R. p. 87)

Therefore, the paragraph sets out what attachments were to be part of the sales contract; one being a "first right of refusal of property adjoining outside of immediate family." With no such attachment Appellants are left arguing that the reference to a first right of refusal that is never consummated is in and of itself the first right of refusal.

Appellants further claim that the closing attorney on the purchase of "Tract 3A" was to put first right of refusal language in the deed of conveyance of "Tract 3A," giving them first rights to purchase "Tract 3B."[3] Appellants testified that the deed for "Tract 3A" was to contain a first right of refusal for "Tract 3B." Mrs. Harmon testified that the closing attorney was supposed to put the first right of refusal in the deed and she first realized he had not done so when she and her husband decided not to give up the right (R. p. 102, line 22 – p. 103, line 19). Mr. Harmon agreed with his wife, "The closing attorney should have inserted that, yes (R. p. 63, lines 2 – 21)." "He should have, yes, the closing attorney should have put that in there (R. p. 64, lines 2 – 6)." He was asked, "And he didn't?" His response, "No" (R. p. 64, lines 7 – 8). He also testified, "It was in the sales contract, and it should have transitioned to the deed when

[3] No written evidence exists in the record that any attorney was asked to put any type of first right of refusal language in the referenced deed.

it was filed (R. p. 64, lines 13-14)." He admitted that he did not look to see if the deed conveying "Tract 3A" contained a first right of refusal (R. p. 65, line 25 – p. 66, line 2). On cross-examination by Respondent Albertelli and Snelling's counsel, Mr. Harmon again testified that it was the responsibility of the closing attorney to include the purported first right of refusal language as to "Tract 3B" in the deed conveying "Tract 3A" (R. p. 73, line 20 – p. 74, line 17).

Appellants' testimony tells us that even they thought that a first right of refusal was going to be in the deed of conveyance for "Tract 3A" and they found out later that it was not. This argument that they thought the purported language was going to be in the deed, and blaming the closing attorney for not doing so, works against Appellants in their assertions that their first right of refusal is in the Harmon sales contract. If the claimed phrase provided the necessary language to give them a first right of refusal to "Tract 3B" they would not have blamed the closing attorney in their testimony for failing to put the first right of refusal in the deed. Obviously, the truth began to reveal itself in Appellants' testimony as even they asserted that a first right of refusal should have been in the deed of conveyance.

Waiver is a voluntary and intentional abandonment or relinquishment of a known right. Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007). It may be expressed or implied by a party's conduct. Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994).

Although it is not dispositive as to the proof of a first right of refusal, the Master did set out in the Order of February 9, 2021, that the Appellants did give Albertelli and Snelling permission to continue with a sale to Respondents Mitchell (R. pp. 5-6). Appellants admitted in their testimony that when Mr. Albertelli approached Mrs. Harmon and explained that the Respondents Mitchell wanted to purchase the property, she told Mr. Abertelli that Mr. and Mrs. Harmon needed financing and did not want to hold him up if he had a sale (R. p. 70, line 12 –

p. 71, line 18). Mr. Albertelli also confirmed this in his testimony that after the Mitchells expressed interest in the property he told them that he had to speak with the Harmons, and he then spoke with Donnita Harmon (R. p. 54, line 9 - p. 55, line 9). He then testified that the Mrs. Harmon told him that the Harmons were not able to purchase the property. "At this point she [Mrs. Harmon] advised me that they would not be able to move on the property and that they did not have any reason at that point in time to identify that they wanted it, so they said that I was free to move forward with the Mitchells (R. p. 55, lines 10 -15) Mr. Harmon agreed that his wife was speaking on his behalf as well (R. p. 70, line 8 – p. 71, line 1). Relying on this waiver, Albertelli and Snelling entered into the Mitchell Contract. Although Appellants had a change of heart and thereafter expressed their desire to purchase the property, claiming a first right of refusal, they had already waived any rights, if any, to the property.

Lastly, Respondents would like to address some of the specific citations in the Brief of Appellants. Appellants cite legal authority that actually argues against their position. Appellants argue that the Master finding "[T]hat the failure to include a state[d] price or a formal mechanism for determining the price rendered the right of first refusal ineffective" ignores basic contractual principles. Appellants then cite Maccaro v. Andrick Dev. Corp., 280 S.C. 96, 100, 311 S.E. 2d 91, 94 (Ct. App. 1984) for the proposition that "Neither law nor equity requires every term or condition to be set forth in a contract." Maccaro was a case was brought to enforce an *oral* contract, not a written one. The case also did *not* involve a contract for the purchase or sale of land. The Plaintiff in Maccaro alleged an *oral* contract between it and a real estate closing attorney. Interestingly, the case cites law that is contrary to Appellants' position: "As a general rule, implied terms are not favored in the law." Maccaro, 100, 94; citing Commercial Credit Corp. v. Nelson Motors, Inc., 247 S.C. 360, 147 S.E. 2d 4891 (1966). In the case at hand, this Court would have to

imply *all* of the terms of the alleged first right of refusal. Moreover, this Court would have to do so without even having the benefit of all of the essential terms provided by parole evidence as those terms were not provided in testimony before the master.

Appellants cite, on Page 8 of their Brief to this Court, Edlin v. Soderstrom, 83 Wis.2d 58, 264 N.W. 2d 275 (1978) for the definition of a first right of refusal. Edlin provides that "A right to buy before or ahead of others, this a pre-emptive right contract is an agreement containing all the essential elements of a contract, the provision of which give the prospective purchaser the right to buy upon specified terms, but, and this is the important point, only if the seller decides to sell. It does not give the pre-emptioner the power to compel an unwilling owner to sell, and therefore is distinguishable from an ordinary option." Id at 68.

But, what Appellants miss is that their citation states that, "a right to buy before or ahead of others, thus, a pre-emptive right contract is an agreement *containing all the essential elements of a contract* (emphasis added), the provisions of which give to the prospective purchaser the right to buy upon specified terms. . ." Therefore, even the case law Appellants cite for the proposition that they did not have to have a specific price in the purported first right of refusal requires that a first right of refusal or a "pre-emptive right" contain "all the essential elements of a contract, the provisions of which give to the prospective purchaser the right to buy upon specified terms. . ." The purported first right of refusal in our case has no specific terms. It has none. It does not contain "all the essential elements of a contract." It does not contact a single essential element of a contract and would not qualify as a first right of refusal under the cases Appellants cite in support of their appeal.

The Master-in-Equity correctly found that the "proposed first right of refusal does not contain the necessary information to be a valid first right of refusal" and its Order should be

affirmed.

II. APPELLANTS FAILED TO APPEAL THE FINDING OF THE LOWER COURT THAT RESPONDENTS MITCHELL WERE ENTITLED TO SPECIFIC PERFORMANCE OF THE MITCHELL CONTRACT, THUS RENDERING MOOT APPELLANTS' APPEAL

This matter contains two (2) integral findings: (1) Appellants have no enforceable first right of refusal and (2) Respondents Mitchell are entitled to specific performance of the Mitchell Contract. Appellants appealed only one item of the Order, that as to the enforceability of the first right of refusal, leaving the Respondent Mitchells with an enforceable order of specific performance of the Mitchell Contract.

The Appellants have thus waived any rights to interfere with or have nullified the contract of sale between Respondents Mitchell and Albertelli and Snelling. Butler v. Sea Pines Plantation Co., 282 S.C. 113, 317 S.E. 2d 464 (1984). Because Appellants have failed to appeal a necessary finding of the Master-in-Equity, their appeal should be dismissed.

CONCLUSION

The evidence in this case more than supports the affirmation of the ruling of the trial court. This Court should not disturb the ruling of the trial court. It is not often that a claim lacks evidence to the extent it does in this case. Appellants lack any of the necessary evidence of a first right of refusal in regards to real property. The undisputed truth is that Appellants (1) did not attach a first right of refusal to the contract of sale for "Tract 3A" and (2) they did not ensure that some type of first right of refusal language was scribed in the deed of conveyance of "Tract 3A."

The Statute of Frauds serves a valuable role in ensuring that agreements related to real

property are in writing. As Appellants' claim fails to meet the standards set for the statutory and case law for a first right of refusal as to real property, their appeal should be dismissed.

By informing Albertelli and Snelling that they did not want to hold up the sale to Respondents Mitchell, Appellants waived any rights to the subject real property. They cannot now assert rights in and to the property after all of the Respondents relied on the waiver and entered into the Mitchell Contract.

Further, the failure to appeal that portion of the Master's Order requiring specific performance of the Mitchell Contract renders Appellants arguments of a right to the subject property moot.

Respondents Mitchell ask this Court to uphold, in its entirety, the Order of the Master-in-Equity.

Respectfully submitted,

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And

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondents Mitchell complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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