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Jul 05 2022

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS**

**HON. MARVIN H. DUKES
MASTER IN EQUITY**

Appellate Case # 2022-00027

**GEORGIA HARRISON, BARBARA HARRISON,
JOYCE ELLEN HARRISON, WILLIAM S.
HARRISON, III, STANLEY ROBERTS AND
DIANA MENDHEIM INDIVIDUALLY AND AS
AGENT AND ATTORNEY IN FACT,**

Plaintiffs,

RESPONDENTS

vs.

**STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE WHITE,
AND CHERYL KIRKLAND,**

Defendants.

APPELLANTS

PETITION FOR REHEARING

The Appellants, through their undersigned counsel, respectfully moves and petitions the court, pursuant to Rules 219 and 221(a) SCACR, as well as all other applicable law, for an Order granting rehearing in this case as to certain issues and submits the below memorandum in support of the same. In an opinion filed June 23, 2022, this Court may have overlooked or misapprehended certain points of law. This opinion was signed by a single judge but states “For the Court,” therefore, this petition is requested to be presented *En Banc* pursuant to Rule 219, SCARCP

The Defendants further, with leave of court, move the Court for an Order extending the time for the Appellant to file its’ Initial Brief until thirty (30) days after a ruling would be rendered upon this within Petition.

ISSUES PRESENTED

This Petition addresses two provisions of Rule 241, SCACR.

The first issue is why this court should retain jurisdiction under Rule 241 (d)(1), SCACR . to rule upon the Appellant’s motion for supersedes and stay rather than the lower court.

The second issue addressed is that though Rule 241 (b)(3) SCRAP states that “*Judgments directing the execution of conveyances*” is an exception to the general rule stated in Rule 241 (a) SCACR; the Appellant will show that specific conditions precedent as set forth in Rule 241 (b) SCACR have not been met.

FACTS

1

The plaintiffs instituting this action seeking the following relief

- A To determine the heirs with interest in the property
- B To determine each heir’s proportional interest
- C To quiet title to the property *Paragraph 40 &41* of Complaint
- D For sale *Paragraph 46* of Complaint

2

Unknown minors , persons under disability and those serving in the armed services were not cited as defendants on the Summons & Complaint.

3

Defendants had to at conference hearing insist and argue for an Order to compel the Plaintiffs to issue Publication of Process on unknown heirs persons under disability, minors and those serving in the Armed Services.

4

Nothing in the complaint gave notice to the defendants that they had a right of first refusal to purchase the property from the plaintiff heirs who had contracted with Rotunda to sell the property.

5

Prior to the time counsel appeared in this action as attorney for the defendants the plaintiffs had obtained a Court Order limiting the defendants to sixty days to exercise their “Right of First Refusal.”

6

The defendants filed a *Motion for Instructions*, that among other things requested the Court to hold an evidentiary hearing as required by to determine the heirs to the property in light of there being four (4) non-probated estates of recently deceased heirs in various states, that was not granted; but denied.

The defendants though they produced competent evidence of *financial capacity* see Exhibit # 1 to pay the appraised price of 9.1million they were, nevertheless, required to pay the entire amount of \$ 8.9 million into the Clerk of Court by December 23, 2021 without any provisions in the Order as to

- A) who would convey the property,
- B) When would the property be conveyed
- C) no warrant deed or marketable title would be given.

There is no court order specifying a time limit for the sale of the property by Plaintiffs to Rotunda, though Plaintiff's counsels represented to the court at the January 6, 2022 status hearing that they would be ready to close within 90 days or during the month of March 2022.

The plaintiff's have not produced any documentation of record that Rotunda still has a valid contract with the Plaintiff heirs to buy the property.

That Defendant's counsel did advise the lower court that prior to filing the lawsuit the defendants had devised a scheme to defraud the defendant heirs out of the benefit of their "Right of First Refusal". The scheme was

- A) not to publish the Summons and Complaint to avoid given notice to any unknown heirs
- B) to circumvent the requirements of conducting an evidentiary hearing as required by § 15-61-330.(A) SC Code but in lieu thereof
- C) Enter a Consent Order stating the heirs and their respective percentage ownership interest.
- D) Set the date and for the minimum amount of time allowable (*60 days*) *by statute* for the defendants to exercise their Right of First Refusal and before
 - 1) obtaining an Order Quieting Title, knowing that
 - 2) It is commercially infeasible for anyone to procure a loan for six million dollars within less than sixty days on property that cannot be collateralized because it carries Heirs Title and not Marketable Title (i.e. warranty deed) knowing that no title insurance company will insure "heirs title" property.

11

Upon the defendants not being able to exercise their "Right of First Refusal then the plaintiffs would complete their sale to Rotunda with the proviso that the closing would not transpire until the Plaintiffs were vested with Quiet Title.

12

The lower court has ruled that its order of September 21, 2021 is the Final Order. This order does not state that the parties as heirs are vested with the fee simple title to the property. The order solely states who the heirs are and their respective interest percentages of ownership.

13

There are no allegations in the complaint alleging who was the first grantee in the chain of title upon which the family tree or heirships were derived.

14

There are no allegations in the complaint concerning exclusive, open, hostile ownership and possession of the property for the required statutory period of time for either under claim of title or adverse possession.

15

No posters were placed on or about the property as required by the Pinckney Act. This notice requirement in part is to place adjoining landowners that an action to

quiet title has commenced particularly as disagreements as to boundary lines may exist.

ARGUMENT 1

The interest of justice would be better served if this court would retain jurisdiction under Rule 241 (d)(1), SCACR to rule upon the Appellant's motion for supersedes and stay rather than the lower court.

The record of this proceeding contains improper procedural and substantiative errors as set forth in the factual narrative above such that it appears that the lower court would have to reverse its understanding an application of the Clemanta C Pinckney Act with its Right of First Refusal provision coupled with the further understanding and that an action to quiet title means a proceeding consisting of an evidentiary hearing with findings of fact and conclusions of law substantiating the issuance of an order removing all clouds and impediments upon the title to real property to then enable the court to issue its order proclaiming the designated owner(s) possess a fee simple absolute (i.e. "marketable title" title to the property.

In the action herein, at best all that has been accomplished is the entry of a consent order alone, without any corroborating testimony or evidence, establishing who are the descendant heirs and their percentage interest in the property, that is

subject to expanding due to the recent deaths among the heirs. There remain four non-probated intestate estates presently to be administered. The complaint states that the action is commenced to quiet title to the property yet it doesn't state whether it is upon claim of title or adverse possession for the appropriate period of time. At the present time the only deed that may be properly issued upon the property is a quit - claim deed. No statutory notice was posted on the property to render notice to the adjoining landowners of the commencement of the action in the event there existed a property bondage dispute. Please direct your attention to the caption of the case. Were any unknown heirs, minors, persons under disability or serving in the armed forces joined as defendants? Yet, under this prevalent condition of the title the defendant non -selling heirs were only afforded the statutory minimum of sixty days to tender with the clerk of court the sum of 6.9 million dollars without benefit of being able to collateralize the property for a loan. (Title insurance companies will not underwrite "heirs title" property only marketable title) Additionally, no provision was made for an authorize person to tender any type deed upon the tender of the money. Further, no time period was

specified as to when the deed conveyance would be made. This is a unconscionable condition without the provisional dictates of the Pinckney Act. According to plaintiff's counsels no deed was required as this was designed for only the

defendants to acquire the plaintiffs' interest in the property. When in the history of our jurisprudence is an interest in real estate transferred by a Bill of Sale?

The gavelmon point is that under the premises considered, it is easier and fairer for another tribunal or full panel to correctly review a proceeding rather than to convince a prior fact finder that their perspective upon the facts may not be properly aligned and that error perinates this proceeding.

ARGUMENT 2

Though **Rule 241 (b)(3) SCRAP** states that “*Judgments directing the execution of conveyances*” is an exception to the general rule stated in **Rule 241 (a) SCACR**; the Appellant will show that specific conditions precedent as set forth in **Rule 241 (b) SCACR** have not been met.

First, the order granting the plaintiffs authority to sell the property to Rotunda cannot be fulfilled or executed giving the status of the property as “heirs title” unless deceit is utilized such as tendering the defendants their share of the appraisal value for a quit-claim deed and then dismissing the action and commence a new action to quiet title. Upon completion of this subsequent action the plaintiff heirs would be paid for their remainder interest.

Second, since the lower court has ruled that its Order of September 21, 2021 is the Final Order of the case no modifications to it may be properly supplemented.

Third, there exist no evidence that Rotunda has a present enforceable contract with the plaintiff heirs to purchase the property.

Fourth, plaintiffs' counsels represented to the court at the January 6, 2022 status hearing that they would be ready to close on the purchase of the property within ninety days which is now over 180 days.

Fifth, the September 21, 2021 Order may be voidable for indefiniteness as it sets no time limits for it to be executed; save in perpetuity.

Sixth, the property is unimproved property not subject to waste and without any maintenance requirements.

Finally, in balancing the equities between the parties the plaintiffs will receive the same consideration for their interest in the property from the defendants without brokerage commissions being deducted. The defendants will receive in addition to their share of the purchase price a perpetual equity interest in the property with their partner purchaser. This was a social goal our legislators desired in enacting the *Pinckney Act*.

CONCLUSION

Under the premises considered there exist adequate and sufficient grounds pursuant to Rules 219 and 221(a) SCACR, as well as all other applicable law, for an Order granting a rehearing or review of the Appellants' Motion for Stay before the Full Panel of this honorable court.

Respectfully submitted,

The Houston Law Firm LLC
1000 Main Street, Suite 200 C
Hilton Head Island, SC 29926
Phone 8 43-715-9078
E-mail:*chouston@houstonlawfirm.net*

By: Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar# 2663
Attorney for Appellant

July 5, 2021
Hilton Head Island, SC



December 1, 2021

Charles Kellogg
Singerman Real Estate, LLC
980 N. Michigan Ave., Suite 1700
Chicago, IL 60611

Dear Charles,

We understand that you require a bank reference for Singerman Real Estate, LLC (the "Company").

The Company has maintained a banking relationship with us since 2015. It is well known to us and has maintained its relationship with us in a satisfactory manner.

In addition, Bank of America, N.A. is the administrative agent for a secured credit facility in the 9 figure range (the "Credit Facility") provided to Singerman Opportunity Fund IV, L.P. (the "Borrower"). The amount outstanding under the Credit Facility is currently in the 8 figure range. The availability of funds under the Credit Facility is subject to the conditions that (a) the Borrower not be in default under the terms of the Credit Facility and (b) the Borrower's representations and warranties contained in the agreement governing the Credit Facility be true and correct in all material respects as of the date of the borrowing.

Please note that the information set forth in this letter is subject to change without notice, and is provided in strict confidence, without any responsibility or liability on the part of Bank of America, N.A., its affiliates or any of its or its affiliates' directors, officers or employees. Bank of America, N.A. undertakes no responsibility to update the information set forth in this letter.

Very truly yours,

BANK OF AMERICA, N.A.

By: 

Name: Brendan Magrady

Title: Vice President

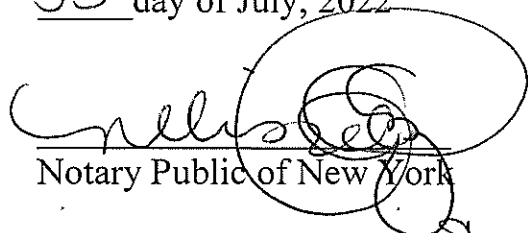
STATE OF NEW YORK
COUNTY OF KINGS

I, Keita White appearing first before the Notary Public, state that I am a defendant in this matter. I have read the attached Motion for Reconsideration and know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief.



Keita White, Plaintiff

Sworn to before me this
05 day of July, 2022



Notary Public of New York

My Commission expires: SEPT 07, 2024

MELISSA CRUZ
NOTARY PUBLIC-STATE OF NEW YORK
No 01CR6115265
Qualified in Kings County
My Commission Expires 09-07-2024

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APPELLANTS

AFFIDAVIT OF COUNSEL

State of South Carolina
County of Beaufort

APPELLATE CASE 2022-00027

Personally, before me Charles E Houston Jr., who upon being duly sworn deposes and states the following:

1

That I am the counsel of record for the appellants in this proceeding before the South Carolina Court of Appeals and in the proceedings of this case before The Circuit Court for Beaufort County.

2

That the facts set forth in the annexed Motion for Reconsideration are to counsel's knowledge truthfully and fairly sets forth the matters expressed therein and germane for the Court's consideration.

3

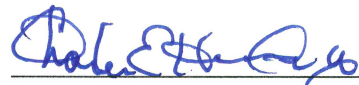
That the defendants in this action have a strong and abiding attachment to this their ancestral property which is the subject matter of this action.

4

That the defendants have advised me that they would be irreparably harmed and their attachment to the land will be permanently severed if the plaintiffs were to sell this property.

5

That the defendants and I are informed and believes that their desire to develop the property in partnership and maintaining an equity position in the ownership of the property as it is developed over the course of time best achieves and fulfills the social objectives of the Clementa C. Pinckney Act.



Charles E. Houston Jr.
SC Bar # 2663

Sworn to and subscribed before me
This ^{5th} day of July, 2022.



Notary Public for South Carolina

My Commission expires 10/10/2024

