

THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY CIRCUIT COURT

M. Anderson Griffith, Master in Equity

CASE NO. 2020-CP-02-1173

RECEIVED

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SC Court of Appeals

Mark B. Mitchell and Celine C. Mitchell, Plaintiff,
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 Jimmie Harmon are the Appellants.

RECORD ON APPEAL

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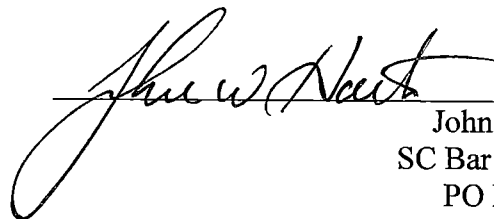
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And Donnita Harmon and Jimmie Harmon are the Appellants.

CERTIFICATION OF COUNSEL

I certify that the Record on Appeal contains no matter that is irrelevant to the Appeal.



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M. Anderson Griffith, Master in Equity

CASE NO. 2020-CP-02-1173

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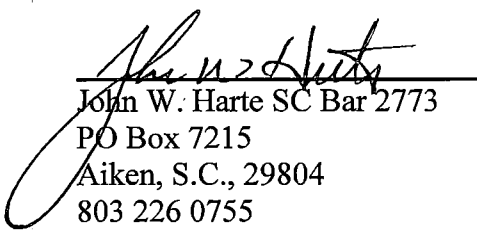
Of Whom Mark B. Mitchell, Celine C. Mitchell, Ronald Joseph Albertelli, and
Mary Frances Snelling are the Respondents,

And Donnita Harmon and Jimmie Harmon are the Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on W. Grady Jordan and Brad
A. Brodie by U.S. Mail to the below listed addresses.

June 16 2022


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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Mark B. Mitchell and Celine C. Mitchell
Plaintiff,

vs

Ronald Joseph Albertelli and Mary Frances
Snelling, Trustees of the Mary Frances Snelling
Living Trust, Donnita C. Harmon and Jimmie
Phillip Harmon,
Defendant(s).

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2020-CP-02-01173

ORDER

PROCEDURE

1. The summons and complaint were filed on June 18, 2020. The complaint alleged causes of action for specific performance, quiet title claim, and breach of contract.
2. The Harmon defendants filed an answer and counterclaim on July 2, 2020. In addition to a general denial, these defendants filed counterclaims for an injunction and abuse of process.
3. The Albertelli and Snelling defendants filed an answer on July 20, 2020. In addition to the general denial, these defendants asserted the affirmative defenses of the statute of frauds, unclean hands, and the failure to mitigate damages.
4. The order of reference was filed on June 30, 2021.
5. The hearing was held on November 8, 2021. The plaintiff was represented by W. Grady Johnson. The Harmon defendants were represented by John Harte. The Albertelli and Snelling defendants were represented by Brad Brodie.

PRE-TRIAL MATTERS

Exhibits

The parties stipulated to the following exhibits:

1. The contract between the plaintiffs and defendants Albertelli and Snelling, with a stipulated date of May 6, 2020 is Exhibit 1.
2. The agreement to buy and sell real estate between Jimmie Philip Harmon and defendants Albertelli and Snelling is Exhibit 2.
3. The addendum to the contract marked as Exhibit 2 is Exhibit 3.
4. The general warranty deed from defendants Albertelli and Snelling to the Harmon defendants for Tract 3-A is Exhibit 4
5. The plat is Exhibit 5.
6. Defendants Exhibit 1 is an email from Ron Albertelli to Mark Mitchell

Pleadings

The parties stipulated to the following:

1. The plaintiff is not seeking any damages as to defendants Albertelli and Snelling. Defendants, Albertelli and Snelling are not claiming any damages against the Mitchells.
2. Plaintiffs are not pursuing any causes of action for damages against the Harmon defendants.
3. The plaintiff's claims for quiet title and specific performance remain for the trial. The tortious interference with contract was withdrawn without prejudice.

4. The Harmon defendants withdrew the cause of action for abuse of process without prejudice.
5. The Harmon defendants continue to raise the issue of standing as it relates to the plaintiffs.

STATEMENT OF FACTS

The plaintiffs entered into a Contract of Sale to purchase property described as 555 Kimball Pond Road, Aiken, S.C. with Aiken County Tax Parcel Number 091-16-01-003. Ronald J. Albertelli and Mary F. Snelling signed as the sellers and Mark B. Mitchell and Celine C. Mitchell signed as the Buyers.

Jimmie Phillip Harmon had previously entered an Agreement to purchase property located at 555 Kimball Pond Rd./Tract 3-A, Eula Lamar Estates. On page 7, at the end of paragraph 28, the following language appears: "311-Due Diligence/509-VA Addendum/Pre-approval 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. Paragraph 28 is titled as, "ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND OR STIPULATIONS:"

Mr. Harmon's wife, Donnita Harmon is listed as the buyer's agent and is not listed as a buyer on the contract. She inserted the language for the first right of refusal. Her deposition was entered as an exhibit. She admits the language for the first right of refusal does not contain any purchase price for the benefit. The only consideration is the purchase price of \$435,000.00. The only description of the property is the term "adjoining property". She believes this is sufficient since the Snelling Trust only had ownership interest in the adjoining Tract 3-B.

She admits the language does not say the adjoining Tract-3A. She also testified the first right of refusal would last until one of the parties dies but admits that language is not stated in the first right of refusal. She agrees the language does not describe a mechanism to determine the price if the first right of refusal is exercised.

The parties introduced the undated contract signed between the plaintiffs, as the purchaser, and the defendants Albertelli and Snelling, as the sellers. Mark Mitchell testified the plaintiffs were ready, willing, and able to perform under the terms of the agreement.

Mr. Albertelli advised the plaintiffs he would speak with the Harmons to see if they were interested in purchasing the property. Jimmie Philip Harmon had signed an Agreement to Sell Real Estate for Mr. Harmon to purchase property located at 555 Kimball Pond Rd./Tract 3-A Eula Lamar Estates. The plaintiff's contract to purchase the property had already been executed before the Harmons advised Mr. Albertelli they wished to purchase the property.

On cross-examination, Mr. Mitchell admitted Plaintiff Exhibit 1 was not dated. The contract (Exhibit 1) contained an address of 555 Kendall Pond Road, Aiken, South Carolina and tax parcel number 091-16-01-003. He did not verify if that was the address of the property he wished to purchase but it was identified a Tract 3-B. Albertelli and Snelling were shown as owners on Exhibit 5 for Tracts 3-A and 3-B. He also agreed that when the document (Exhibit 1) was executed on May 6, 2020, Mr. Albertelli told him he believed he had given the Harmons a right of first refusal. The Harmon defendants also published Defendants Exhibit 1, an email from Mr. Albertelli that provided certain conditions that were needed to sell the property to the

Mitchells. On the list was, "a separate release must be written up for the neighbors to sign to release the right of first refusal that they have." Mr. Albertelli later advised Mr. Mitchell he had decided it was better for him to sell the property to the Harmons.

Celine C. Mitchell is married to Mark Mitchell. She testified Mr. Albertelli told them he wanted to check with the Harmons to verify if they wanted to purchase the property. He gave them seven days to decide. After seven days, he advised the Mitchells that Mr. and Mrs. Harmon said they did not want the property.

The Mitchells proceeded to have perk tests done. She understood that Mr. Harmon was going to sign a document at the closing attorney's office to document their waiver of the first right of refusal. That information was provided by Mr. Harmon. On May 24 or 25, Mr. Albertelli called the Mitchells and told them Donnita Harmon had decided to purchase the property. The Mitchells received a document identified as addendum to their agreement. The purpose was to void their contract with Mr. Albertelli & Ms. Snelling. The Mitchells refused to sign the addendum. Mrs. Mitchell never saw a document signed by the Harmons that would waive the right of first refusal. Her conversations were with Mr. Albertelli.

Ronald Albertelli testified the plaintiffs originally contacted him by telephone to inquire about Tract 3-B which was posted for sale by Mr. Albertelli and Ms. Snelling. When meeting with Mr. Mitchell on the property, Mr. Albertelli informed Mr. Mitchell the Harmons had a first right of refusal and he would need to speak with them before any other negotiations. He received an offer from the plaintiffs and spoke with Donnita Harmon to let her know about the offer.

Donnita Harmon told him they would not be able to purchase the property and Mr. Albertelli was free to move forward with the Mitchells. He then contacted the plaintiffs and advised them of the Harmon's verbal response. He testified that "as long as that ends up in writing, I had no problem with proceeding with the sale of the property." The contract, marked as Exhibit 1, between himself, Ms. Snelling and the plaintiffs was then prepared and signed.

A perk test was scheduled on the property. As part of that process, the location of the home was staked out. After that, Mr. Albertelli was contacted by Jim and Donnita Harmon about purchasing the property. He told them about the contract with the plaintiffs. Mr. Albertelli then advised Mr. Mitchell that there was a problem that needed to be resolved.

Donnita Harmon provided him with a document to activate their first right of refusal and to purchase the property. He signed the document by digital signature. He did not know why his initials or signature appeared to be whited out.

The contract when Mr. Harmon purchased Tract 3-A stated, "And first right of refusal of property adjoining outside of immediate family." Mr. Albertelli did not prepare the document. There is no other document providing a first right of refusal. That language does not list the sales price for Tract 3-B. He admitted the document does not state how long the first right of refusal was going to last or identify the property by a tax map number or as Tract 3-B.

The Harmon contract to purchase Tract 3-A listed the purchase price as \$435,000.00. The contract does not provide any specific amount being paid for the first right of refusal. The deed transferring Tract 3-A (Joint Exhibit 4) lists

\$435,000.00 as the consideration. Donnita Harmon is not a party to the Tract 3-A contract. The agreement was between Albertelli, Snelling and Jimmie Philip Harmon (Exhibit 2).

On cross-examination, Mr. Albertelli testified the \$435,000.00 was consideration for the entire contract, including the first right of refusal. In regards to the language, "adjoining property", Mr. Albertelli and Ms. Snelling only owned Tracts A and B. He believes it is clear that the adjoining property could only be Tract 3-B.

Mr. Albertelli never received a written waiver of the right of first refusal. The conversations about the offer made by the plaintiff and the first right of refusal was with Donnita Harmon. He relied on the statements from Donnita to advise the Mitchells that the Harmons were not interested in purchasing Tract 3-B. He believes he still needed the waiver of the first right of refusal to be in writing.

Jimmie Philip Harmon is a defendant in this matter. He believes the deed conveying Tract 3-A should have contained language for a first right of refusal. It is in the sales contract. In reviewing the sales contract, Mr. Harmon believes the language "outside of immediate family", was in reference to the Albertelli children but agrees that specific reference is not in the sales contract. There is no time frame or mechanism to determine the sales price, expiration date, or description of real estate (other than the word adjoining).

Mr. Harmon, individually, is listed as the buyer in the sales contract. The deed of conveyance for Tract 3-A listed both Jimmie Philip Harmon and Donnita Harmon. Mr. Harmon testified that when his wife initially advised Mr. Albertelli that they need

to check on financing before they could decide to purchase Tract 3-B, she was speaking on his behalf. They were not aware that, based on that conversation, Mr. Albertelli would enter a contract with the Mitchells. He does not believe he waived his right under the contract for the right of first refusal. He did not authorize his wife to waive the right of first refusal. The only adjoining property owned by Mr. Albertelli and Ms. Snelling was Tract 3-B. He believes the purchase price was for the entire benefit of the contract, including the first right of refusal.

On cross-examination, Mr. Harmon admitted the contract of sale does not require a written waiver of the first right of refusal and does not have a time limit. Mr. Albertelli and Donnita Harmon had the original discussion about the first right of refusal in March or April. The contract with the Mitchells was not signed until May 6.

Mary Snelling and her father purchased the property now referred to as Tract 3-A and Tract 3-B. She built a home on Tract 3-B and her father farmed Tract 3-A. She obtained title to the property through her parents' estate. Due to her personal feelings about the property, she gave her husband authority to negotiate the sale of the property. She was aware of the language referred to as the first right of refusal in the sales contract. She did not draft the language but did believe it provided the Harmons the right to have an opportunity to purchase the property. In this matter, Mr. Albertelli told her the Harmons were not going to purchase Tract 3-B due to financial matters. She signed the contract with the Mitchells on May 6, 2020. Any conversation about the first right of refusal was through her husband.

At the conclusion of the testimony, the plaintiffs renewed their motion for a directed verdict. The Harmon defendants also renewed their motion for a directed verdict. The court denied the motions.

CONCLUSIONS OF LAW

This Court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

The plaintiffs maintain a cause of action to quiet the title to the property. The purpose of the quiet title action is to remove any cloud on title to the property. S.C. Code Ann. 15-67-10 et. seq., In re *Sand Castle South Timeshare Owners Association, Inc.* (Bkrty. D.S.C. 2020).

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). Courts examine several factors to determine if the contract provides a first right of refusal. These factors include: “(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.” 6 Am. Jur.2d Perpetuities, etc. § 109(2002). “A right of first refusal...is not a restraint on alienation, as long as both the price that the designated person must pay, and the time allowed for the exercise of the right of first refusal are reasonable. *Id.*”

The language in the contract between Mr. Harmon and the sellers does not contain a price or a mechanism to determine the price. Harmon believes it is simply a

higher offer than any offer received by Mr. Albertelli and Ms. Snelling. It may not be unusual for no specific price to be listed since the competing offer is unknown, but this clause does not provide any mechanism to determine the price. The mechanism would not require a specific figure. The language uses the phrase “adjoining property” but does not list the property by an address, tax parcel number or list it as Tract 3-B. Mr. Harmon argues that the language is not needed since Albertelli/Snelling only owned Tract 3-B, shown on the admitted plat. Without referencing the property in some manner, or reference the plat, the proposed language does not describe the property.

Defendant Harmon believes the duration of the right of refusal would end at the death of one of the parties to the agreement. He is correct that there are no words of inheritance. Further, the language does not create a contingent future interest which may not vest, if at all, not later than twenty-one years after some life in being when the interest was created. *Turner v. Turner*, 260 S.C. 439, 196 S.E.2d 498 (1973).

In examining the first right of refusal, the court examine the language contained in the contract. The court is not looking outside of the agreement since the language is unambiguous and capable of only one reasonable interpretation when assessing the first right of refusal. The clause, as written, does not meet the factors described in, *Webb v. Reams*, 326 S.C. 444, 485 S.E.2d 385 (Ct. App. 1997). While the language in the clause does not violate the rule against perpetuities, is does not have a method of determining the price to be paid or a statement to describe the mechanism within the language of the contract and no description of the property.

STANDING

The Harmon defendants argue the plaintiffs lack standing to raise issues concerning the contract between the Harmon defendants and the Snelling Trust defendants. They believe the parties to that agreement understood the terms and there is no ambiguity as to the terms of the contract or the right of first refusal. The plaintiffs are not third-party beneficiaries and do not have standing to raise the issue of enforceability “Generally, third person not in privity of contract with contracting parties has no right to enforce contract.” *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 494 S.E.2d 827 (Ct. App. 1997).

The plaintiff’s cause of action is a quiet title claim. In this cause, the plaintiffs seek to determine if Mr. Albertelli and Ms. Snelling can sell to the plaintiffs the property located at 555 Kimball Pond Road, Aiken, S.C. with tax parcel number 091-16-01-003. The statute is “designated to afford an easy and expeditious mode of quieting title to real estate. The statutory remedy is broader and more comprehensive than that formerly afforded by a court of equity. “44 Am. Jur., Quieting Title, Section 5, page 6; 51 C.J., Quieting Title, Sections 8 and 9, page 138 et seq., *Tolbert v. Greenwood Cotton Mill*, 213 S.C. 43, 48 S.E.2d 599 (1948).

This is not claim for breach of contract, it is an action to determine the status of the title and part of that is any interest the Harmons have in Tract 3-A. The court finds that the plaintiffs contract affords them standing in a quiet title claim.

SPECIFIC PERFORMANCE

The plaintiffs have requested an order for specific performance in reference to the contract for them to purchase the real estate located at 555 Kimball Pond Road,

Aiken, S.C. with tax parcel number 091-16-01-003. "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Campbell v. Carr*, 361 S.C. 258, 603 S.E.2d 625 (Ct. App. 2004).

Having resolved the title issue raised in this matter, the plaintiffs have established a written agreement signed by the seller to purchase tax parcel number 091-16-01-003. The parties moved forward to conduct the perk test and the payment of earnest money. The plaintiffs testified they have been and remain ready to perform under the terms of the agreement. The plaintiffs are entitled to an order from the court for specific performance of their contract with Ronald Albertelli and Mary Snelling.

CONCLUSION

1. In regard to the quiet title action, the court finds the proposed first right of refusal does not contain the necessary information to be a valid first right of refusal.
2. The plaintiff's contract affords them standing in the quiet title claim.
3. The plaintiffs are entitled to specific performance of their contract with Ronald Albertelli and Mary Snelling.

IT IS SO ORDERED.

Aiken, South Carolina.

February __, 2022

M. Anderson Griffith
Master in Equity for Aiken County



Aiken Common Pleas

Case Caption: Mark B Mitchell , plaintiff, et al VS Ronald Joseph Albertelli ,
defendant, et al
Case Number: 2020CP0201173
Type: Master/Order/Other

AND IT IS SO ORDERED

s/M Anderson Griffith-3076

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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN
C.A. NO. 2020-CP-02-01173

Mark B. Mitchell and Celine C. Mitchell,

Plaintiffs,

vs.

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

Defendants.

**CONSENT ORDER
FOR
REFERENCE TO
MASTER-IN-EQUITY**

WHEREAS, this matter involves a Quiet Title Action and other issues related to title to real estate; and,

WHEREAS, the parties have agreed through their undersigned counsel, whose signatures are affixed hereto, that it is appropriate pursuant to Rule 53 of the S.C.R.C.P., that this action be referred to the Master in Equity for Aiken County with authority to enter a final judgment in this case, the authority to hear any post-trial motions, with any appeal to the South Carolina Court of Appeals; and,

WHEREAS, the Court finds it appropriate that this matter be referred,

IT IS HEREBY ORDERED, that this action is referred to the Honorable M. Anderson Griffith, Master in Equity, under Rule 53 SCRPC for the purpose of taking testimony and evidence and issuing a final decree as to all issues raised in this action, for hearing any post-trial motions, with any appeal therefrom to the South Carolina Court of Appeals.

IT IS SO ORDERED.

Date: _____

Circuit Court Judge

Page 2:

Consent Order – Reference to Master

C.A. No. 2020-CP-02-01173

WE CONSENT:

s/W. Grady Jordan

W. Grady Jordan
Attorney for Plaintiffs

s/Brad A. Brodie

Brad A. Brodie
Attorney for Defendants Albertelli
and Snelling as Trustees

s/John W. Harte

John W. Harte
Attorney for Defendants Harmon



Aiken Common Pleas

Case Caption: Mark B Mitchell , plaintiff, et al VS Ronald Joseph Albertelli ,
defendant, et al

Case Number: 2020CP0201173

Type: Order/Referred to Master or Special Referee

So Ordered

s/Robert J Harte by Shadell Parks, Deputy Clerk

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STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

C.A. NO. _____

Mark B. Mitchell and Celine C. Mitchell,

Plaintiffs,

vs.

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

Defendants.

**SUMMONS
TO
COMPLAINT**

TO: THE DEFENDANTS HEREIN:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their office, Post Office Box 1207, 1810 East Main Street, Easley, South Carolina, 29641-1207, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for relief demanded in the Complaint.

SMITH JORDAN, P.A.

s/W. Grady Jordan
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June 18, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

C.A. NO. _____

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

vs.

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

COMPLAINT

The Plaintiffs, complaining of the Defendants herein, would show unto this Honorable Court, that:

1. Plaintiffs Mark B. Mitchell and Celine C. Mitchell are citizens and residents of the County of Aiken, State of South Carolina.
2. Defendant Ronald Joseph Albertelli ("Albertelli") is, upon information and belief, a citizen and resident of the county of Aiken, State of South Carolina.
3. Defendant Mary Frances Snelling ("Snelling") is, upon information and belief, a citizen and resident of the county of Aiken, State of South Carolina.
4. Defendant Donnita C. Harmon is, upon information and belief, a citizen and resident of Aiken County, State of South Carolina.
5. Defendant Jimmie Phillip Harmon is, upon information and belief, a citizen and resident of the county of Aiken, State of South Carolina.
6. Defendants Albertelli and Snelling, upon information and belief, are the trustees of the Mary Frances Snelling Living Trust U/A dated July 29, 2012, as amended ("Snelling Trust").

7. Any reference herein to Defendants Albertelli and Snelling is as Trustees under the Snelling Trust.
8. The Snelling Trust is, upon information and belief, the owner in fee simple of the following real property ("Property"):

ALL that certain piece, parcel or tract of land with improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, East of South Carolina Highway 302 (Silver Bluff Road), approximately four miles Southwest of the City of Aiken, in the County and State aforesaid, and containing 12.9097 acres as shown and designated as Tract 3B, upon a plat entitled, "Boundary and Resubdivision of a division of the lands of the estate of Eula B. Lamar, with improvements on Tracts 3A & 3B the Estate of Eula B. Lamar" and having been prepared for Mary Frances Snelling and Ronald Joseph Albertelli by Hass and Hilderbrand, Inc, dated September 12, 2018, and recorded in Plat Book 60 at Page 908 in the office of the RMC for Aiken County, South Carolina.

Tax Parcel Number 091-16-01-003

9. This Court has jurisdiction as the real property, which is the subject matter of this action, as it is situated and lying in the County of Aiken, State of South Carolina.
10. Plaintiffs entered into a Contract of Sale ("Contract of Sale") with the Defendants Albertelli and Snelling as Trustees of the Snelling Trust for the purchase of the Property 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 ("Closing Date").
11. After execution of the Contract of Sale, but prior to the closing, Defendant Donnita C. Harmon, on behalf of herself and Defendant Jimmy Phillip Harmon, made a claim of having a First Right of Refusal to purchase the Property from the Snelling Trust.
12. Defendants Harmon made claim to a First Right of Refusal based on language in a separate contract of sale related to their prior purchase of an adjoining parcel to the Property from the Snelling Trust, with said conveyance being made by General Warranty Deed on October 10, 2018, recorded October 11, 2018, at Book RB 4745 at pages 408 – 410 in the Office of the RMC in the County of Aiken, State of South Carolina.
13. Plaintiffs would allege that the language referencing a purported First Right of Refusal in said contract did not specify the real property to which it would apply.
14. Plaintiffs would further allege that the language referencing a purported First Right of Refusal in said contract did not set out any terms of same.
15. Plaintiffs would allege that at the time of conveyance of the adjoining parcel to the Property to Defendants Harmon, the General Warranty Deed conveying same made no mention of

a First Right of Refusal.

16. Plaintiffs allege that the terms of the Contract between Defendants Albertelli and Snelling and Defendants Harmon related to the prior conveyance of the adjoining property to Defendants Harmon merged into the Deed referenced herein above dated October 10, 2018.
17. After execution of the contract, Defendants Donnita C. Harmon and Jimmie Phillip Harmon and Kathleen Harwood prepared an Addendum/Amendment ("Addendum") to the Contract of Sale attempting to assign the rights of the Plaintiffs under the Contract of Sale to themselves as the Buyers of the Property.
18. Upon information and belief, Defendants Harmon executed the Addendum on May 21, 2020, and then offered the Addendum to Defendants Albertelli and Snelling for signature.
19. Defendant Albertelli provided the Addendum to Plaintiff Celine C. Mitchell.
20. Because of the claim of Defendants Harmon, Defendants Albertelli and Snelling, upon information and belief, would not consummate the sale to Plaintiffs as agreed to for fear of a claim from Defendants Harmon.
21. Plaintiffs were willing and able to consummate the transaction on the Closing Date, but were informed by Defendant Albertelli prior to that date that until the issue of the claim of Defendants Harmon was resolved he would not go forward with the closing.
22. The purchase under the Contract of Sale did not occur on the Closing Date.

**FOR A FIRST CAUSE OF ACTION
(Specific Performance)
(As to Defendants Albertelli and Snelling)**

23. Plaintiffs reallege and reaffirm the prior allegations of this Complaint as if contained herein verbatim.
24. At all times mentioned herein Plaintiffs have been and are ready, willing and able to purchase the Property from the Snelling Trust by conveyance from Defendants Albertelli and Snelling as trustees of same.
25. Defendants Albertelli and Snelling refused and still refuse to convey same unto the Plaintiff.
26. Plaintiffs are informed and believe that they are entitled to an order of this Court ordering Defendants Albertelli and Snelling to accept the purchase price under the contract of the sale and deliver, on behalf of the Trust, a general warranty deed to Plaintiffs for the

Property.

**FOR A SECOND CAUSE OF ACTION
(Quiet Title)
(As to all Defendants)**

27. Plaintiffs reallege and reaffirm the prior allegations of the Complaint as if contained herein verbatim.
28. Plaintiffs would ask this Court to Quiet Title to the Property by finding that in fact Defendants Harmon have no rights or interest in and to the Property.

**FOR A THIRD CAUSE OF ACTION
(Breach of Contract)
(As to Defendants Albertelli and Snelling)**

29. Plaintiffs reallege and reaffirm the prior allegations of the Complaint as if contained herein verbatim.
30. By not consummating the Contract of Sale, Defendants Albertelli and Snelling are in breach of same.
31. Plaintiffs have suffered actual, incidental and consequential damages in amounts to be proven at trial as a direct and proximate result of Defendants Albertelli and Snelling's breach of the Contract of Sale.

**FOR A FOURTH CAUSE OF ACTION
(Tortious Interference with a Contract)
(As to Defendants Harmon)**

32. Plaintiffs reallege and reaffirm the prior allegations of this Complaint as if contained herein verbatim.
33. The Contract of Sale was a valid and enforceable contract.
34. Defendants Harmon knew of the existence Contract of Sale.
35. Defendant C. Harmon intentionally procured breach of the Contract of Sale in the following and other particulars to be shown at trial:

- A. By alleging a First Right of Refusal, to which they knew did not exist; and,
 - B. By trying to induce or attempt Defendants Albertelli and Snelling to execute a document substituting them as Buyers of the Property under the Contract of Sale; and,
 - C. By trying to induce or attempt Defendants Albertelli and Snelling to ask Plaintiffs to execute a document substituting Defendants Harmon as Buyers of the Property under the Contract of Sale; and,
 - D. By attempting to induce or attempting to influence Defendants Albertelli and Snelling to terminate their contractual relationship with Plaintiffs in order that they could purchase the Property.
 - E. By interjecting themselves into an agreement of others, with the attempt to benefit themselves at the expense of Plaintiffs.
36. Defendants Harmon did not have justification for intentionally procuring the breach of the Contract of Sale.
37. Plaintiffs have suffered actual, incidental, consequential and punitive damages in amounts to be proven at trial as a direct and proximate result of Defendant Harmons' intentional interference in their contractual relationship with Defendants Albertelli and Snelling, resulting in said Defendants breaching the Contract of Sale.

WHEREFORE, having Complained of the Defendants herein, the Plaintiffs would pray for an Order of this Court:

- A. Requiring the Defendants Albertelli and Snelling to execute and deliver to the Plaintiffs a general warranty deed conveying to Plaintiffs the Property pursuant to the terms of their agreement set forth in the Contract of Sale.
- B. Quieting Title to the Property by finding Defendants Harmon to have no rights or interests in and to the Property.
- C. An award of actual, incidental and consequential against Defendants Albertelli and Snelling in an amount to be proven at trial.
- D. An award of actual, incidental, consequential and punitive damages against

Defendants Harmon in an amount to be proven at trial.

E. For such other and further relief as this Court deems just and proper.

s/W. Grady Jordan
W. Grady Jordan (S.C. Bar # 066104)
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Date: June 18, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	Case No.: 2020-CP-02-01137
Mark B. Mitchell and Celine C Mitchell	)	
	)	
VS	)	ANSWER
	)	AND
	)	COUNTERCLAIM
Ronald Joseph Albertelli and Mary	)	
Frances Snelling, Trustees of the Mary	)	
Frances Snelling Living Trust, Donita	)	
C Harmon and Jimmie Phillip Harmon	)	
_____	)	

Donita C Harmon and Jimmie Phillip Harmon (hereinafter identified as "The Harmon Defendants"), responding to the Complaint by way of Answer and Counterclaim, respectfully show:

1. Except as is hereinafter admitted, qualified, or explained the Harmon Defendants deny each and every allegation contained in the Complaint.
2. Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 are admitted.
3. As to paragraph 10, the Harmon Defendants lack information sufficient to enable them to admit or deny the allegations but based on the pleadings by the plaintiff's believe the same to be true.
4. Paragraphs 11 and 12 are admitted.
5. As to paragraph 13,14, 15, and 16, the Plaintiffs lack standing to raise issues concerning the contract between the Harmon Defendants and the Trustees of the Snelling Trust (hereinafter identified as "the Snelling Trust Defendants"). The Harmon Defendants and the Snelling Trust Defendants fully understood the terms of the agreement and fully intended for the right of first refusal to be enforceable. There is no

ambiguity between the parties to the contract nor as to the right of first refusal. The plaintiff's being nonparties to that contract have no standing to assert claims that neither of the parties to the contract have raised.

6. Paragraph 17 and 18 are admitted.

7. As to paragraphs 19, 20, 21, and 22, the Harmon Defendants lack information to form a belief sufficient to permit them to admit the allegations of those paragraphs and therefore deny the same.

AS TO THE FIRST CAUSE OF ACTION

8. The Harmon Defendants reallege, readmit and redeny each allegation as alleged, admitted or denied above in the paragraphs of this Answer and Counterclaim

9. The Harmon Defendants lack sufficient information to admit or deny the allegations of paragraphs 23, 24, and 25 and therefore deny the same.

10. Paragraph 26 is denied.

AS TO THE SECOND CAUSE OF ACTION

11. The Harmon Defendants reallege, readmit and redeny each allegation as alleged, admitted or denied above in the paragraphs of this Answer and Counterclaim.

12. The Harmon Defendants deny paragraphs 27 and 28.

AS TO THE THIRD CAUSE OF ACTION

13. The Harmon Defendants reallege, readmit and redeny each allegation as alleged, admitted or denied above in the paragraphs of this Answer and Counterclaim.

14. The Harmon Defendants deny paragraphs 29, 30, and 31.

AS TO THE FOURTH CAUSE OF ACTION

15. The Harmon Defendants reallege, readmit and redeny each allegation as alleged, admitted or denied above in the paragraphs of this Answer and Counterclaim

16. The Harmon Defendants deny paragraphs 32 and 33.

17. As to paragraph 34, the Harmon Defendants deny that the Plaintiffs had an enforceable contract and therefore deny paragraph 34.

18. Paragraph 35 is denied. The Harmon Defendants merely asserted their rights under their contract with the Snelling Trust Defendants which predated and is superior to any claim that the Plaintiffs might assert. Further as to the subparagraphs, they are:

a. Denied and it is affirmatively alleged by the Harmon Defendants that the first right of refusal was and is valid.

b. Denied and it is affirmatively alleged by the Harmon Defendants that the first right of refusal was and is valid. There was no "inducement".

c. Denied. There was no substitution. The Harmon Defendants asserted their right of First Refusal.

d. Denied and it is affirmatively alleged by the Harmon Defendants that the first right of refusal was and is valid.

e. Denied.

FIRST COUNTERCLAIM

INJUNCTION TO PREVENT INTERFERENCE WITH CONTRACT

19. The Harmon Defendants reallege, readmit and redeny each allegation as alleged, admitted or denied above in the paragraphs of this Answer and Counterclaim.

20. This Court has jurisdiction over the parties to this action and the subject matter of this litigation

21. The Plaintiffs having been informed of the rights of the Harmon Defendants to first refusal of the subject property filed a Lis Pendens for the purpose of wrongfully preventing a closing of the sale to the Harmon Defendants and the Plaintiff's willfully, intentionally and maliciously refused after demand to withdraw or cancel the Lis Pendens.

22. The Plaintiffs in furtherance of their unlawful attempt to prevent the lawful closing of the sale to the Harmon Defendant instituted this action which is an additional abuse of process.

23. The filing of the Lis Pendens is a willful abuse of process as is the instant action both of which are for the wrongful purpose of preventing the Harmon Defendants from purchasing the subject property.

24. The Harmon Defendants are entitled to injunctive relief enjoining the Plaintiffs from filing any documents or taking any other action that might interfere with the closing of the sale of the subject property to the Harmon Defendants and further affirmatively ordering that the Lis Pendens be cancelled and withdrawn or deemed invalid by Order of this court.

SECOND COUNTERCLAIM

ABUSE OF PROCESS

25. The Harmon Defendants reallege, readmit and redeny each allegation as alleged, admitted or denied above in the paragraphs of this Answer and Counterclaim

26. Paragraphs 14 through 19 are realleged.

27. The Harmon Defendants have been forced to expend large sums to defend their legal rights and have suffered actual, incidental, consequential damages and because the action is malicious and willful, the Harmon Defendants are entitled to an award of punitive damages with the Court and Jury to determine both actual and punitive damages.

WHEREFORE, the Harmon Defendants demand:

1. That the Complaint be dismissed with prejudice with costs assessed against the Plaintiffs
2. That the Court issue injunctions as set forth above with the Lis Pendens and this action dismissed with prejudice
3. That the Defendants be awarded actual and punitive damages against the Plaintiffs in such amount as the Court and Jury may find just.
4. That the Court grant such other and further relief as the Court may find just and as will prevent the Defendants from interfering with the contract between the Harmon Defendants and the Snelling Defendants.

s/John W. Harte
SC Bar No. 2773
Attorney for the Harmon Defendants
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803 226 0755

July 2, 2020

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	Case No.: 2020-CP-02-01173
Mark B. Mitchell and Celine C. Mitchell,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ANSWER OF DEFENDANTS RONALD
	)	JOSEPH ALBERTELLI AND MARY
Ronald Joseph Albertelli and Mary	)	FRANCES SNELLING, TRUSTEES OF
Frances Snelling, Trustees of the Mary	)	THE MARY FRANCES SNELLING LIVING
Frances Snelling Living Trust, and	)	TRUST
Donnita C. Harmon, and Jimmie Phillip	)	
Harmon,	)	
	)	
Defendants.	)	
	)	

NOW COME Defendants Ronald Joseph Albertelli and Mary Frances Snelling, individually and as Trustees of the Mary Frances Snelling Living Trust U/A dated July 29, 2012 as amended, by and through the undersigned counsel, and in Answer to the Plaintiffs' Complaint would show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of Plaintiffs' Complaint not specifically admitted is denied.
2. These Defendants admit the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Complaint.
3. As to the allegations contained in paragraph 10 of the Complaint, these Defendants admit that a document labeled contract of sale was executed, but do not admit that it is a valid contract of sale and request a judicial determination as to that fact.

4. These Defendants admit the allegations of paragraphs 11 and 12 of the Complaint.

5. As to paragraphs 13, 14, 15, and 16 of the Complaint, these allegations call for a legal conclusion and therefore these Defendants deny those allegations and request a judicial interpretation of the various documents which were executed by and among the parties.

6. These Defendants admit the allegations of paragraphs 17, 18, 19 and 20 of the Complaint.

7. These Defendants are without sufficient information to form a belief as to the allegations contained in paragraph 21 of the Complaint and therefore deny the same.

8. These Defendants admit the allegations contained in paragraph 22 of the Complaint.

9. As to the allegations contained in paragraph 23, these Defendants reallege their prior Answers.

10. These Defendants are without sufficient information to form a belief as to the allegations of paragraph 24 of the Complaint and therefore deny the same.

11. As to the allegations of paragraph 25 of the Complaint, these Defendants deny those allegations and request a judicial determination as to the documents executed by the parties pursuant to law.

12. These Defendants deny the allegations of paragraphs 26, 27, 28, 29, 30, and 31 of the Complaint and demand strict proof thereof.

13. The allegations of paragraphs 32, 33, 34, 35, 36 and 37 of the Complaint concern other Defendants, but to the extent an Answer is required of these Defendants, those allegations are denied.

14. These Defendants deny that the Plaintiff is entitled to the relief prayed for in its prayer for relief.

FOR A SECOND DEFENSE

(Statute of Frauds)

15. Plaintiffs' claims are barred, in whole or in part, by the Statute of Frauds, as the contract of sale possibly lacks all of the essential terms of a contract of sale as written.

FOR A THIRD DEFENSE

(Unclean Hands/Equitable Defenses)

16. Plaintiffs, the Mitchell Defendants, were notified of the possible existence of a first right of refusal to the Harmon Defendants by these Defendants prior to the execution of the contract of sale between the Mitchell Defendants and these Defendants, and therefore Plaintiffs' claims may be barred in whole in part by the doctrine of unclean hands, or other legal or equitable defenses, as Plaintiffs had actual knowledge of the possible first right of refusal to the Harmon Defendants.

FOR A FOURTH DEFENSE

(Defense to Specific Performance)

17. Upon information and belief, Plaintiffs do not meet the legal requirements for specific performance, and therefore Plaintiffs' claims are barred in whole or in part.

FOR A FIFTH DEFENSE

(Failure to Mitigate Damages)

18. Plaintiffs' claims are barred to the extent Plaintiffs have failed to mitigate their alleged damages.

19. These Defendants reserve the right to amend their pleadings and raise other defenses as discovery progresses in accordance with the S.C. Rules of Civil Procedure.

WHEREFORE, having fully answered, these Defendants pray that the Court inquire into these matters, that the Plaintiffs' Complaint be dismissed with costs and attorney' fees, and for such other and further relief that the Court deems just and proper.

Respectfully submitted,

SMITH, MASSEY, BRODIE, GUYNN & MAYES, LLC

By: /s/ Brad A. Brodie
Brad A. Brodie
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Attorney for Defendants
Ronald Joseph Albertelli and Mary Frances
Snelling, individually and as Trustees
of the Mary Frances Snelling Trust U/A dated
July 29, 2012

July 20, 2020

Aiken, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

C.A. NO.: 2020-CP-02-01137

Mark B. Mitchell and Celine C. Mitchell,

Plaintiffs,

vs.

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

Defendants.

**REPLY
TO
COUNTERCLAIM**

The Plaintiffs, replying to the Counterclaims of the Defendants Donnita C. Harmon and Jimmie Phillips Harmon, would respectfully show until this Honorable Court that:

1. Plaintiffs deny each and every allegation of the Defendants' Answer and Counterclaim inconsistent with Plaintiffs' Complaint and demand strict and absolute proof thereof.
2. Plaintiffs specifically deny the Allegations in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the Answer and Counterclaim and demand strict and absolute proof thereof.

WHEREFORE, having fully replied to the answer and Counterclaim of the Defendants Harmon, Plaintiffs pray that same be dismissed with costs, and that judgment be given on their Complaint, and for such other and further relief as this Court deems just and proper.

s/W. Grady Jordan
W. Grady Jordan (S.C. Bar # 066104)
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Date: July 7, 2020

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF AIKEN) CASE NO.: 2020-CP-02-01173

3
4 MARK B. MITCHELL AND CELINE)

5 C. MITCHELL,)

6 Plaintiff,)

7 vs.)

HEARING

NOVEMBER 8, 2021

8 RONALD JOSEPH ALBERTELLI,)

9 AND MARK FRANCES SNELLING,)

10 TRUSTEES OF THE MARY FRANCES)

11 SNELLING LIVING TRUST,)

12 DONNITA C. HARMON AND JIMMIE)

13 PHILLIP HARMON,)

14 Defendants,)

15 _____)

16 The within hearing, before the Honorable Anderson M.
17 Griffith, reported by Kathryn B Bostrom, Court Reporter and
18 Notary Public in and for the State of South Carolina;
19 pursuant to Rule 30 of the South Carolina Rules of Civil
20 Procedure; said deposition was taken at the Aiken County
21 Courthouse, 109 Park Avenue, Columbia, South Carolina, on
22 Monday, the 8th day of November 2021, commencing at the
23 hour of 10:37 a.m.

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APPEARANCES:

Before the Honorable Anderson M. Griffith:

Representing the Plaintiff:

W. Grady Jordan, Esquire
Smith Jordan
1801 East Main Street
Easley, South Carolina 29640

Representing Mr. Albertelli and Snelling as Trustees:

Brad Brodie, Esquire
Smith Massey Brodie Guynn & Mayes
210 Colony Parkway
Aiken, South Carolina 29803

Representing the Harmons:

John W. Harte, Esquire
Law Offices of John Harte
702 Chaffee Lane
Aiken, South Carolina 29801

1 THE COURT: All right. Go ahead.

2 MR. JORDAN: Your Honor, we have agreed to joint
3 exhibits that have been stipulated to and they
4 are numbers one through five.

5 THE COURT: Okay.

6 MR. JORDAN: If the Court wants me to go over it.

7 THE COURT: Yes, just go over what those are.

8 MR. JORDAN: The first exhibit, Your Honor, is the
9 contract of sale between the plaintiffs and
10 defendants Albertelli and Snelling. It is a
11 two-page document.

12 THE COURT: Okay.

13 MR. JORDAN: And the parties also stipulate that this
14 contract, Exhibit 1, was executed on or about May
15 6 of 2018.

16 MR. HARTE: 2020.

17 MR. JORDAN: I mean 2020.

18 MR. HARTE: 2020.

19 MR. JORDAN: Okay. Is that right?

20 MR. HARTE: That's right.

21 MR. JORDAN: The second document is an agreement to
22 buy and sell real estate between Jimmie Philip
23 Harmon and the defendants Albertelli and
24 Snelling. It is a seven-page document -- oh,
25 sorry. It is an eight-page document. Exhibit 3

1 is the addendum to the agreement of contracts for
2 the subject property. It has two pages, Your
3 Honor. One is signed by Mr. Albertelli and one
4 is unsigned by Mr. Albertelli. The one page has
5 white out on the signature.

6 THE COURT: And when you say an addendum to the
7 contract, is that for Exhibit 1 or Exhibit 2 that
8 the addendum applies to?

9 MR. JORDAN: Exhibit 2.

10 THE COURT: Okay. All right.

11 MR. JORDAN: And then we have the deed, which is
12 Exhibit 4. It is the general warranty deed from
13 the defendants Albertelli and Snelling as
14 trustees and to the defendant Harmon for tract
15 3-A. The property is identified plat --

16 THE COURT: Okay. Understood.

17 MR. JORDAN: Book 60, page 908.

18 THE COURT: Okay.

19 MR. JORDAN: And then Exhibit 5 is that plat, Your
20 Honor.

21 THE COURT: Okay.

22 MR. JORDAN: Then there is one -- so those documents
23 are stipulated to.

24 MR. HARTE: And, Your Honor, may I, the addendum,
25 which was mentioned, I believe that actually was

1 intended to be a transfer of Exhibit 1.

2 THE COURT: Okay.

3 MR. BRODIE: Your Honor, I agree.

4 MR. JORDAN: I said that wrong, yes.

5 THE COURT: So Addendum 2, Exhibit 1.

6 MR. BRODIE: It's an assignment.

7 MR. HARTE: Actually, I don't know what he's trying --

8 I can't remember what it's called but it actually

9 was intended to be an assignment had it been

10 fully executed, but it was -- it was at one time

11 it had the, I guess it was the Albertelli

12 signature on it. It never had the Mitchell

13 signature on it and the Albertelli signature

14 appears to have been whited out, but nobody seems

15 to know when that happened.

16 MR. JORDAN: So that was to replace the Mitchell's

17 purchase of Tract 3-D with the Harmons.

18 THE COURT: Okay.

19 MR. JORDAN: And then the defendants have one exhibit

20 which is an email from Ron. It is marked as

21 Defendant's 1 from Ron Albertelli to Mark

22 Mitchell.

23 MR. HARTE: I agree with everything you said. Your

24 Honor, one comment, it's my understanding that

25 the plaintiff may use parts of the deposition and

1 I presume that he will identify those as they
2 come along.

3 THE COURT: I got it.

4 MR. JORDAN: The plaintiffs do not, Your Honor,
5 stipulate to the admissibility of Defendant's 1,
6 but we marked it for The Court.

7 THE COURT: Okay.

8 MR. JORDAN: And then there are several issues as to
9 pleadings that we cleaned up as well.

10 THE COURT: All right. If you want to put those on
11 the record?

12 MR. JORDAN: Your Honor, the Mitchells are not
13 claiming any damages as to the defendants
14 Albertelli and Snelling and vice versa. Those
15 defendants do not have any claim for damages as
16 to the Mitchells.

17 THE COURT: All right, hang on one second. Okay.

18 MR. JORDAN: And then the -- any causes of actions
19 between the defendants Harmon and the defendants
20 Mitchell claiming damages are also not going to
21 proceed.

22 THE COURT: Between Harmon and who?

23 MR. JORDAN: Harmon and the plaintiffs.

24 THE COURT: Okay.

25 MR. JORDAN: So then the -- so it leaves Your Honor

1 with a cause of action as to quiet title to the
2 property which goes to the question of the first
3 right of refusal. In an overabundance of caution
4 it goes to -- the plaintiffs still have causes of
5 action as to performance under contract Exhibit
6 1, which is a contract between the Mitchells and
7 the Albertellis.

8 THE COURT: So quiet title action and the specific
9 performance claim?

10 MR. JORDAN: Right. Frankly, I mean I don't want to
11 speak out of turn, but I don't think that's an
12 issue, but I just didn't want to drop that cause
13 of action and walk out and have a quiet title and
14 then have to later come back into the Court if
15 there was some issue as to the contract.

16 THE COURT: All right. Defense agree with that.

17 MR. HARTE: I do with this one defendant, Your Honor.
18 It's actually only one cause of action that was
19 between Harmon and Mitchell and that's the second
20 -- there's a counterclaim of abuse of process for
21 the filing of the Lis Pendens. I'm withdrawing
22 that without prejudice, Your Honor. That's
23 actually -- in my re-reading of the law that's
24 premature where we would have to prevail in this
25 action in order to proceed on that.

1 MR. JORDAN: That's fine too so not to complicate it,
2 we would just withdraw without prejudice our
3 claim as to tortuous interference with the
4 contract as to the Harmons.

5 THE COURT: Okay. Brad, do you agree with those?

6 MR. HARTE: I do, sir.

7 MR. BRODIE: I agree I guess on the admissibility of
8 joint exhibits one through five and then I guess
9 there was -- Grady had an objection to maybe D-1
10 that has to be heard at some point. And then,
11 yes, we are in agreement that we're not seeking
12 any damages from the Mitchells or the Harmons.
13 The Harmons don't have a cross claim against us.
14 But what we need the Court to do is determine
15 what these documents mean so the parties can
16 proceed one way or the other and maybe we can
17 stipulate that the parties -- that the Mitchells
18 and maybe the Harmons are ready, willing, and
19 able to perform under the contract for purposes
20 of specific performance. I'm assuming maybe both
21 parties are in a position to do so.

22 MR. JORDAN: Yes.

23 MR. BRODIE: Okay.

24 MR. HARTE: Well and, Your Honor, the bottom line is
25 whoever prevails as to -- one presumes that that

1 party will -- Also, Your Honor, please note
2 that, you know, the issue of standing remains
3 before you.

4 THE COURT: Right.

5 MR. HARTE: I have not abandoned that issue but that's
6 not a cross claim. That's a position relative to
7 the validity of that time period.

8 MR. BRODIE: And we need The title quieted, you know,
9 or we need some language of whatever order about
10 that. That's all, Your Honor.

11 THE COURT: Okay. All right. With that understanding
12 then, does anyone wish to -- of course, we don't
13 have a jury present, but I want to give everybody
14 an opportunity if they want to make an opening
15 statement. Does the plaintiff wish to make any
16 opening?

17 MR. JORDAN: Your Honor, I don't want to restate what
18 was in my brief. That's all I would do.

19 THE COURT: Okay.

20 MR. JORDAN: And I think Your Honor was --

21 THE COURT: I reviewed that, yes sir.

22 MR. JORDAN: And you told me you reviewed it. And the
23 only witness -- my clients can't provide any
24 testimony to -- obviously, it would help the
25 Court as well. There is a first right of

1 refusal. The only person that -- the only reason
2 I would call Donnita Harmon that I put in my
3 brief was because she specifically answers some
4 of the questions as to whether or not she drafted
5 this first right of refusal, agrees with our
6 position that it is lacking material elements.
7 That would be the only reason for me to call her
8 because I think based on our stipulation, we're
9 very close to just The Court applying the law to
10 the facts. I do think those facts, however,
11 unless we can stipulate as to her deposition
12 testimony that I just handed up that I would need
13 to call her.

14 MR. HARTE: Well, Your Honor, I would object to Ms.
15 Harmon's deposition but let me be clear on this
16 point. Whether Ms. Harmon agrees or disagrees is
17 not relevant to the ultimate outcome of the case.
18 The bottom line is as a matter of law whether
19 this -- whether this document and the right of
20 first refusal is or is not an enforceable right
21 of first refusal, not whether one of the parties
22 thinks it is or doesn't think it is. My client's
23 position in Ms. Harmon being one of the, not
24 direct parties but, you know, our position is, is
25 it an enforceable right of first refusal, period,

1 and that's a question for the Court to decide as
2 a matter of law and what one witness or another
3 might opine as to what they think is or is not
4 missing is not relevant. So he can put it in. I
5 don't care. He can either put her up there or he
6 can put the deposition in. Either way it's okay
7 with me.

8 THE COURT: All right. So they're indicating for the
9 plaintiff it's up to you whether you want to just
10 admit the deposition for the Court to review or
11 you want to put her on the stand.

12 MR. JORDAN: I was very pleased with her deposition
13 testimony, Your Honor, so I'll submit her
14 deposition.

15 THE COURT: Mr. Brodie, any objection?

16 MR. BRODIE: No, Your Honor.

17 THE COURT: We have that marked then as Exhibit --

18 MR. HARTE: That's without objection on my part.

19 MR. JORDAN: So it will be a joint exhibit.

20 THE COURT: I'm sorry, Mr. Harte.

21 MR. HARTE: That is without objection on our part.

22 THE COURT: Okay.

23 MR. JORDAN: So we just call that a joint exhibit,
24 Your Honor?

25 MR. HARTE: No, it's your exhibit.

1 MR. JORDAN: Okay, Plaintiff's Exhibit 1. It has the
2 -- it would be redundant as to documents, Your
3 Honor.
4 THE COURT: Okay.
5 MR. JORDAN: It has the exhibits.
6 THE COURT: And the witness' name on that deposition
7 is what again?
8 MR. JORDAN: That is defendant Donnita --
9 THE COURT: Donnita.
10 MR. JORDAN: Harmon, D-O-N-N-I-T-A.
11 (PLAINTIFF'S EXHIBIT 1 MARKED FOR
12 IDENTIFICATION PURPOSES (118
13 pages) - Deposition)
14 THE COURT: All right, Mr. Harte, any opening you wish
15 to make?
16 MR. HARTE: No, Your Honor. I set it out in the
17 brief.
18 THE COURT: Yes.
19 MR. HARTE: I'm well aware of the fact that you are
20 able to discern what's in there, that will be
21 fine.
22 THE COURT: Mr. Brodie?
23 MR. BRODIE: Your Honor, just that, you know, we ask
24 the Court to determine these things and whether
25 this is sort of what the language in that first

1 the property before you -- before he actually sold it
2 to you?

3 A. Yes, he did.

4 Q. Can you just tell the Court without me asking a bunch
5 of boring questions, just tell him what Mr. Albertelli
6 told you.

7 A. So, we approached -- we met out there one morning and
8 we told him, I told him that we were definitely
9 interested in proceeding with the purchase of the
10 property and at that time he said he needed to check
11 with the Harmons on if they wanted to buy it or not.
12 And I said do whatever you need to do but we're
13 definitely interested and let me know.

14 Q. And then did Mr. Albertelli come back to you at some
15 point?

16 A. Yes, he did. He came back to us and said that the
17 Harmons did not want to purchase, that we were able to
18 proceed with the purchase.

19 Q. Okay. And was it after he came back to you and said
20 that the Harmons did not want to purchase the property
21 and he could proceed, was it after that that you and
22 Ms. Mitchell executed the contract that's Exhibit 1?

23 A. Yes, it was.

24 Q. Okay. So at that point when you executed that
25 contract you had talked to Mr. Albertelli and he had

- 1 **sold under that contract?**
- 2 A. 555 Kendall Pond Road, Aiken, South Carolina 29803.
- 3 **Q. Whose address is 555 Kendall Pond Road?**
- 4 A. I would imagine that is the piece of property that
- 5 we're interested in purchasing.
- 6 **Q. Did you verify that?**
- 7 A. I don't believe we verified it but there's a tax
- 8 parcel number there that would probably link it to it.
- 9 **Q. Is there an identification of the tract number?**
- 10 A. Meaning the tax parcel number?
- 11 **Q. 3-A or 3-B?**
- 12 A. I do not see that.
- 13 **Q. And, in fact, the properties involved here are shown**
- 14 **on the back which is in evidence, one moment. All**
- 15 **right. This is Exhibit 5 and do you recognize that as**
- 16 **a plat of tracts 3-A and 3-B which are at issue in**
- 17 **this matter?**
- 18 A. Yes, I see 3-A and 3-B.
- 19 **Q. All right. And you were intending to purchase which**
- 20 **one of the two?**
- 21 A. 3-B.
- 22 **Q. And do you agree that that's the only piece that**
- 23 **adjoins 3-A, which is on that plat?**
- 24 A. Other than maybe whatever this is above it.
- 25 **Q. But that's not owned by the Albertellis, is it?**

1 A. No, not that I recall. Now he did give me a phone
2 call on the 27th or 28th, Mr. Albertelli, and said
3 that he had decided that it was better for him to sell
4 to the Harmons rather than us.

5 Q. Did you sign another document and an assignment or did
6 you not? You didn't sign that. Were you presented an
7 addendum to sign, which was really an assignment of
8 contract between the Harmons and Albertellis? Were
9 you ever presented that document, that two page
10 document?

11 A. I don't think so, huh-uh.

12 Q. Okay.

13 A. I can't remember actually.

14 Q. It was Joint Exhibit 3. I'm going to approach and see
15 if you can remember this.

16 A. Okay.

17 Q. Here we go.

18 A. Would this have been something at the signing of the
19 contract?

20 Q. This was -- this is a -- well its titled addendum.
21 Let me read the -- it references Kindell Pond Road,
22 Lot 3-B, and it says that it's signed electronically
23 by Donnita Harmon, Jimmie Harmon, Ronald Abertelli and
24 Mary Snelling at some point. I don't see her
25 signature. but I don't see your signature. I was

1 A. Yes, I am.

2 Q. And can you tell the Court your knowledge as to Mr.
3 Albertelli talking to you about a potential first
4 right of refusal and what he did with the Harmons and
5 coming back to you all before this contract was
6 entered into?

7 A. Yes. So Mr. Albertelli, when we met him, mentioned
8 that he wanted to ask the Harmons if they wanted to
9 buy the property first and he told us that he was
10 going to give them seven days to answer and after
11 seven days he came back to us and said that Donnita
12 Harmon -- and I'm assuming Mr. and Mrs. Harmon said
13 that they did not want the property and that we could
14 proceed with the sale. And he told us that Ms.
15 Harmon would also help us financially with finding a
16 loan and everything else to continue on with the sale.
17 And he told us that we were good to go so we did. We
18 continued on and then had perk tests done on the land
19 because that was contingent on, I guess, purchasing
20 the land. He also told us by text that Ms. Harmon was
21 going to go to a lawyer's office, I'm not really sure
22 who, Boni, Boni's office, to get a first right of
23 refusal signed or say that she no longer wanted it.
24 That's what Mr. Harmon told us.

25 Q. Okay. So the document that said that she no longer

1 the contract to purchase Tract 3-B.

2 A. That is correct.

3 Q. And then sometime later after that when did you next
4 hear that something had changed all of a sudden on the
5 Harmons wanting to purchase the property?

6 A. I believe it was the -- maybe around the 25th, May the
7 25th. I'm not exactly sure of the date.

8 Q. Okay.

9 A. May the 24th.

10 Q. You're not exactly sure of the date but what happened?

11 A. Mr. Albertelli called us and told us that Donnita had
12 changed her mind and that she wanted to now buy the
13 property.

14 Q. Okay.

15 A. And that, yeah, so he was basically stuck.

16 Q. He was stuck?

17 A. He was not sure what to do. That's what he told us.

18 Q. Did Mr. Albertelli express to you he was unsure to do
19 at that point?

20 A. Well, he said that he felt he could get maybe in
21 trouble if he was not selling it to the Harmons so
22 that's what I'm guessing.

23 Q. Okay.

24 A. He told us he could not sell it to us at that time.

25 Q. Okay. And then we have the document that it's an

1 A. That's right. It's the same.

2 Q. Okay. And on the addendum, it also states that this
3 is Tract 3-B, correct?

4 A. Yes, it does.

5 Q. Okay.

6 A. Tract 3-B.

7 MR. JORDAN: I don't have anything else, Your Honor.

8 THE COURT: All right, give me one second. All right,
9 cross-examination, Mr. Harte.

10 CROSS-EXAMINATION

11 BY MR. HARTE:

12 Q. Ms. Mitchell, all of the conversations that you
13 related to us were with Mr. Albertelli, is that
14 correct?

15 A. Yes, it was.

16 Q. You didn't have any conversations with either Mr. or
17 Ms. Harmon, did you?

18 A. I did call Ms. Harmon, yes.

19 Q. All right. And did she discuss with you the right of
20 first refusal?

21 A. I don't recall.

22 Q. All right. Thank you. Did you ever receive or see a
23 written document in which the Harmons waived their
24 right of first refusal?

25 A. No, I did not.

1 THE COURT: All right.

2 THE WITNESS: Yes, sir.

3 BY MR. JORDAN:

4 Q. And so when you said the two first names Donnita and
5 Jim?

6 A. Donnita Harmon and Jim Harmon.

7 Q. Okay. So you represent the Harmons.

8 A. Yes, sir.

9 Q. And so what then happened as far as you and Mark or
10 Celine?

11 A. Well, the next conversation that I remember was a
12 conversation with Mark out at the property. He looked
13 at it again and at that point in time he told me that
14 he would be interested -- he and his wife would be
15 interested in buying it. And I mentioned to him then
16 that the only stipulation before we went too far in
17 negotiation, I wanted to make sure he knew that I felt
18 obligated because I had given the Harmons a right of
19 first refusal on the property and when it came to that
20 point, I would need to clear it with them to make sure
21 it would be acceptable to sell.

22 Q. And so then what did you do?

23 A. What did I do? Well the next action that I remember
24 was that Jim -- I'm sorry that the Mitchells looked at
25 the property again and we negotiated over a very short

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1 amount of time at a price because they were, in fact,
2 interested in negotiating a price for the sale because
3 I told them that's what I would need in order to
4 approach the Harmons back to know that I wasn't
5 wasting their time talking to them. So I got an
6 offer from the Mitchells, and I went back to Donnita,
7 in this case Donnita Harmon, to let her know that this
8 offer was on the table and asked what she wanted me to
9 do.

10 **Q. And can you tell the Court what she told you?**

11 A. At that point in time she advised me that they would
12 not be able to move on the property and that they did
13 not have any reason at that point in time to identify
14 that they wanted it, so they said that I was free to
15 move forward with the Mitchells.

16 **Q. And then did you then contact the Mitchells?**

17 A. I contacted Mark and advised him that I had gotten a
18 verbal okay from the Harmons in regards to the right
19 of first refusal I had given them and as long as that
20 ends up in writing, I had no problem with proceeding
21 with the sale of the property.

22 **Q. Okay. And then the contract that we have, Mr.**
23 **Albertelli, that's marked as Exhibit 1, between you**
24 **and Ms. Snelling and the Mitchells, that was executed**
25 **after the Harmons informed you that they no longer**

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1 property was moving forward and that was the
2 information I left with her.

3 **Q. All right. And then did you go back to the Mitchells**
4 **and tell them that Donnita Harmon had contacted you?**

5 A. Yes, I did and I don't remember whether that was
6 face-to-face or by phone but I did communicate with
7 Mark Mitchell about it and related that there was a
8 problem or a confusion that I needed to be resolved
9 because of the fact that the Harmons were still
10 interested in buying the property.

11 **Q. Okay. We have this Exhibit 3, which is a -- it's the**
12 **same document. One is executed by you and one is --**
13 **your signature is whited out.**

14 A. Uh-huh.

15 **Q. Who provided this document to you?**

16 A. Donnita Mitchell provided that document to me.

17 **Q. Donnita?**

18 A. I'm sorry, Donnita Harmon, yes Donnita Harmon.

19 **Q. And what did she tell you that it was for?**

20 A. As I understood it, it was for the opportunity for
21 them to move forward on activating this term right of
22 first refusal and purchasing the property instead of
23 my selling it to the Mitchells.

24 **Q. Okay. And did you understand that this document was**
25 **essentially substituting the Harmons for the Mitchells**

1 **to purchase your property?**

2 A. By reading it, I ^{HEARING PROCEEDINGS} understood that that's what the
3 intent of that document would be, yes, after it was
4 given to me.

5 **Q. And did you electronically sign it?**

6 A. Did I electronically sign it? I do believe yes, sir.

7 **Q. Do you remember signing this using the software on the**
8 **computer dot loop?**

9 A. I do not remember. Computers are not my bag and, no,
10 sir I do not remember how I did that electronically,
11 but I do remember doing it, probably on my phone but I
12 don't remember specifically.

13 **Q. Okay. All right. And then we have the second page of**
14 **Exhibit 3, Mr. Albertelli, which has the electronic**
15 **signature and the electronic initial of yours whited**
16 **out. Do you know anything about that?**

17 A. I do not know how or when or how that occurred, no,
18 sir.

19 **Q. Okay. I want to ask you a couple of questions, Mr.**
20 **Albertelli, about Exhibit 2. The contract for the**
21 **Harmons and actually it's for Jimmie Philip Harmon.**
22 **He is the buyer.**

23 A. Yes.

24 **Q. We've been using both names but Exhibit 2 has one**
25 **purchaser, Jimmie Philip Harmon.**

1 A. Yes, sir.

2 Q. The contract for him to purchase 3-A, I want to ask
 3 you about this language that is claimed as a first
 4 right of refusal. I'll just flip to that page for
 5 you. And on the exhibit, this page says seven of
 6 eight. It has this language here and I want to just
 7 read it out loud that is being claimed as a first
 8 right of refusal, "And first right of refusal of
 9 property adjoining outside of immediate family," do
 10 you see that?

11 A. Yes, sir.

12 Q. Okay. So, Mr. Albertelli, you didn't draft that
 13 document?

14 A. No, sir.

15 Q. You did not draft that phrase?

16 A. Not my verbiage, no, sir.

17 Q. Okay. No other document was ever executed as to any
 18 first right of refusal?

19 A. Not that I'm aware of just what's here.

20 Q. And can you look at that and tell the Court what price
 21 you were going to sell 3-B to Mr. Harmon for?

22 A. There was no price stipulated. It was whatever
 23 happened by another offer being made would dictate the
 24 price. That was my understanding.

25 Q. Okay. But does the document say that?

- 1 A. No, the document does not state that.
- 2 Q. Okay. HEARING PROCEEDINGS
- 3 A. That was in my --
- 4 Q. Okay. All right. And does the document state how
- 5 long the first right of refusal is going to be in
- 6 existence or how long Mr. Harmon has to execute it?
- 7 A. The document does not state that, no sir.
- 8 Q. All right. And does it state -- does it state that
- 9 it's Tract 3-B?
- 10 A. No, sir. It just talks about the adjacent one, but no
- 11 specific 3-B.
- 12 Q. Okay. And it doesn't have a tax map number, right?
- 13 A. No, sir.
- 14 Q. Okay. Does it state that the first right of refusal
- 15 -- it says property adjoining but does it state that
- 16 that's property that belongs to you and Ms. Snelling?
- 17 A. No, sir it does not.
- 18 Q. And it says outside of immediate family, do you see
- 19 that?
- 20 A. Correct, yes sir.
- 21 Q. Does it state or define what immediate family means?
- 22 A. No, sir it doesn't.
- 23 Q. Okay. All right. And I understand that the contract
- 24 for this 3-A was \$435,000. Is that right?
- 25 A. Yes, sir.

1 Q. Was there -- there was -- the contract doesn't state
2 any dollar amount ^{HEARING PROCEEDINGS} paid to you or Ms. Snelling for a
3 separate first right of refusal, does it?

4 A. No, sir. It does not.

5 Q. And were you or Ms. Snelling paid any separate amount
6 for a first right of refusal?

7 A. Not to my knowledge, no sir.

8 Q. This is Joint Exhibit 4, if you want to peak at that.
9 That, Mr. Albertelli, I understand and we've agreed is
10 the deed from the trust from you and Ms. Snelling, the
11 trust deed for Tract 3-A to the Harmons.

12 A. Yes, sir.

13 Q. All right. And how much is the value paid for Tract
14 3-A on there? What does the deed say?

15 A. \$435,000.

16 Q. Okay. And that was the contract price, wasn't it,
17 under number two?

18 A. Yes, sir.

19 Q. And the deed, without torturing the witness, Your
20 Honor, I would submit there is no reference to any
21 further --

22 MR. HARTE: Objection. He's not asking questions.

23 He's arguing the --

24 THE COURT: He can ask the question.
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25 BY MR. JORDAN:

- 1 individual price items for each paragraph in this
2 contract, is there?
- 3 A. No, sir.
- 4 Q. The \$435,000 did you understand it to be consideration
5 for the entire contract?
- 6 A. Yes, sir.
- 7 Q. Including the right of first refusal?
- 8 A. Everything that's on the piece of paper, yes sir, as I
9 understand it.
- 10 Q. Yes, sir. Now, with respect to your understanding of
11 that right of first refusal, how many adjoining pieces
12 of property or I'm sorry, how many pieces of property
13 did you own that adjoined Tract 3-A?
- 14 A. There are only two pieces of property that we had, A
15 and B.
- 16 Q. So with respect to what was meant by the adjoining
17 property that could only be Tract 3-B, is that
18 correct?
- 19 A. It was very clear between myself and the Harmons that
20 that's what we were talking about in my mind, yes sir.
- 21 Q. Now, Mr. Grady mentioned several times that there's no
22 specific price identified here for the purchase of 3-B
23 if the right of first refusal were used.
- 24 A. Right.
- 25 Q. Did you understand and have a means in mind by which

1 Boni's office where a more formal document was
2 drafted. There wasn't a formal first right of refusal
3 other than what's in the contract you've already
4 looked at.

5 A. Yes, sir.

6 Q. Right?

7 A. Yes, sir.

8 Q. Okay. Now, you testified that, and there has been
9 other testimony that you approached the Harmons and
10 then Donnita Harmon said, no we're not going to go
11 forward with it, is that right?

12 A. The first communication I had suggested that they
13 would not be able to move forward on it.

14 Q. And did you rely on that statement?

15 A. I relied on that statement enough to go back to the
16 Mitchells and tell them that I had gotten the
17 preliminary answer that they would not be interested
18 but I gave it in writing. I need to get it back in
19 writing. So we discussed how that would happen and in
20 the conversation, there was some suggestion from
21 Donnita with the back and forth that she would draft
22 it and go to Boni's and write that and sign it if you
23 would.

24 Q. My question though really was you relied on that
25 statement from Donnita Harmon?

1 A. Yes, I was.

2 Q. Okay. Do you remember and this is page 58 and 59, do
3 you remember I showed her a copy of this deed that we
4 marked today as Exhibit 4? And I'll just -- I'm going
5 to ask you if you agree with her testimony, Mr.
6 Harmon. I asked her, "You've already said this but I
7 just want to make sure, Exhibit 2 that we marked as
8 the deed Ms. Harmon," and she said "okay". And I
9 said, "It does not reference the first right of
10 refusal, does it?" And she said, "It does not." And
11 my question to her was, "And your testimony is did you
12 think that the deed was going to contain a first right
13 of refusal for you and your husband to purchase the
14 Tract 3-B in the future if you wanted to?" And her
15 answer on line 8 of 59 was, "Yes." So your wife
16 testified that she thought when this deed was done
17 conveying Tract 3-A that there was also going to be a
18 first right of refusal in this deed protecting you for
19 Tract 3-B. And my question to you is do you agree
20 with your wife's testimony?

21 A. The closing attorney should have inserted that, yes.

22 Q. Okay. And I think she testified in her deposition
23 that she was a little bit aggravated that the closing
24 attorney did not put the first right of refusal in the
25 deed.

1 A. I don't remember her being angry.

2 Q. Okay. Now that you know what you know are you
3 aggravated that that first right of refusal wasn't put
4 in this deed?

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5 A. He should have, yes, the closing attorney should have
6 put that in there.

7 Q. And he didn't?

8 A. No.

9 Q. All right. And you've already testified that you
10 agree with your wife that she thought the first right
11 of refusal was going to be in the deed, but the
12 closing attorney didn't do it?

13 A. Right. It was in the sales contract, and it should
14 have transitioned to the deed when it was filed.

15 Q. But it wasn't?

16 A. No.

17 Q. Okay. And had that been done we probably wouldn't be
18 here today, right?

19 A. No. This whole thing would have been cleared up
20 pretty quickly.

21 Q. All right. Okay. But we don't have any evidence that
22 the closing attorney was told to put that in the deed.

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23 A. It's in the sales contract.

24 Q. Right. But we don't have anything showing that the
25 lawyer did anything other than what he was asked to

1 do.

2 MR. HARTE: Your Honor, I object to the relevance of
3 what the attorney was told and not told and that
4 sort of thing. I think the witness has testified
5 as to what happened.

6 THE COURT: Well, let me hear the question. Go ahead
7 and ask the question.

8 BY MR. JORDAN:

9 Q. We don't have any evidence that the closing attorney
10 was told to put the first right of refusal in this
11 deed, Exhibit 4, do we?

12 A. Yes. It's in the sales contract. It specifically
13 states the first right of refusal.

14 Q. Right. But the contract doesn't say that that first
15 -- the alleged first right of refusal is to be
16 incorporated into a deed, does it?

17 A. That's the closing attorney's job is to take that
18 contract and relay that information to the county.

19 Q. Well you saw the deed, didn't you, Exhibit 4?

20 A. In passing. I've never read over the whole thing.
21 It's got my name on it, but I never read it in detail.

22 Q. But you were party to -- I mean you're the one being
23 conveyed the property along with your wife, right?

24 A. Correct.

25 Q. Did you look at the deed to see if it had a first

1 right of refusal in it?

2 A. I did not.

3 Q. Okay. Now, can you look at -- can you look at page 7
4 of 8 for me in Exhibit 2? I'm going to ask you about
5 this language we've been talking about and the
6 language is so that it's clear what my question is
7 about, the language is "and first right of refusal
8 property adjoining outside of immediate family," do
9 you see that?

10 A. Yes.

11 Q. Okay. Whose immediate family is it talking about?

12 A. Ms. Snelling's children.

13 Q. Whose children?

14 A. I'm sorry, the Albertelli's children.

15 Q. Where does it say that?

16 A. That was understood between myself and the
17 Albertellis.

18 Q. Where does Exhibit 2 say that?

19 A. Immediate family.

20 Q. Where does it say immediate family of the Snellings?

21 A. I'm sorry. It should have been Albertelli not
22 Snelling.

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23 Q. Okay. Where does Exhibit 2 say immediate family of
24 Albertellis?

25 A. Right there, immediate family.

1 Q. Right but does it say immediate family of the
2 Albertellis?

3 A. Who else's family would it be?

4 Q. Can you answer my question yes or no and then explain
5 it? My question to you is does Exhibit 2 say on page
6 7 of 8 immediate family of the Albertellis?

7 MR. HARTE: May it please the Court, Your Honor, the
8 contract speaks for itself.

9 THE COURT: Well, I agree the contract speaks for
10 itself but he's asking a pretty direct question
11 and reviewing the language on the contract I
12 think he can answer that question.

13 MR. HARTE: Okay.

14 THE WITNESS: It does not say that specifically.

15 BY MR. JORDAN:

16 Q. It doesn't. Well you said that it says specifically.
17 It does not say it at all does it?

18 A. By your interpretation. Mine immediate family was
19 pretty clear, so no it doesn't say it specifically.

20 Q. Does it say it un-specifically?

21 A. Yes. It says immediate family.

22 Q. But does it say Albertelli on page 7?

23 A. That's who the contract is with.

24 Q. I'm asking you a very direct question, sir, and I'd
25 just ask you for an answer. Does the --

1 MR. HARTE: Your Honor, I object. He's answered the
2 question. Mr. Jordan wants him to testify to
3 what Mr. Jordan wants to hear but the witness has
4 answered the question about three times.

5 THE COURT: Be glad to hear from you.

6 MR. JORDAN: He's not giving me a yes or no. Each
7 answer has been conditioned with a specifically
8 or his understanding, but he will not tell me yes
9 or no if this contract says Albertelli.

10 THE COURT: But it's the question does paragraph 28
11 say the term Albertelli, is that the question?

12 MR. JORDAN: Yes.

13 THE COURT: Because I think when you go direct,
14 indirect, it can be somewhat confusing so if
15 that's the point. I'm just asking a question.

16 BY MR. JORDAN:

17 Q. Okay. All right. So paragraph 28, which is right
18 here which contains this language, does paragraph 28
19 contain the word Albertelli?

20 A. No.

21 Q. Thank you. Does paragraph 28 contain a purchase
22 price?

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23 A. No.

24 Q. Does paragraph 28 of Exhibit 2, make sure I got the
25 right exhibit, does paragraph 28 of Exhibit 2 state a

1 timeframe?

2 A. No.

3 Q. Does paragraph 28 of Exhibit 2 state a mechanism to
4 determine a price?

HEARING PROCEEDINGS

5 A. No.

6 Q. Does paragraph 28 of Exhibit 2 contain an expiration
7 date?

8 A. No.

9 Q. Does paragraph 28 of Exhibit 2 contain the name of a
10 person or persons who have any rights?

11 A. No.

12 Q. Does paragraph 28 of Exhibit 2 contain a description
13 of any real estate?

14 A. Other than saying adjoining.

15 Q. Okay. Other than the word adjoining, does paragraph
16 28 of Exhibit 2 contain any description of real
17 estate?

18 A. No.

19 Q. And who is the buyer on Exhibit 2?

20 A. I am.

21 Q. Okay. And only you, correct?

22 A. That's correct. Garber Reporting
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23 Q. And the conveyance of Tract 3-A was to you and your
24 wife, Ms. Harmon?

25 A. Correct.

1 Q. Okay. But the contract for the purchase of Tract 3-A
2 you were the only buyer?

3 A. That is a VA requirement. I'm the veteran. It's my
4 name alone that goes on the contract.

5 Q. Okay. And did the VA tell you you can put her on the
6 deed?

7 A. Yes.

8 Q. So you're the buyer -- Tell me you've heard these
9 conversations about Mr. Albertelli talking about
10 coming back to the Harmons and talking to your wife?

11 A. Yes.

12 Q. Okay. Did your wife -- has there been any testimony
13 today of what your wife told Mr. Albertelli that you
14 would testify to the Court was not authorized on your
15 behalf?

16 A. No.

17 Q. Okay. So when Ms. Harmon, Donnita Harmon, was
18 speaking to Mr. Albertelli as to whether or not the
19 two of you or you wanted to purchase 3-B, was she
20 speaking on behalf of you as well?

21 A. She is speaking on behalf of me, yes.

22 Q. Okay. And in her deposition when she discussed the
23 fact that at the beginning, she told Mr. Albertelli
24 that y'all needed to get financing and didn't want to
25 hold him up if you have a sale, do you remember that?

1 A. I do.

2 Q. And was your wife authorized on your behalf to tell
3 Mr. Albertelli that you or you and your wife were not
4 willing to hold up a sale Mr. Albertelli had on 3-B
5 waiting on you all to get financing?

6 A. What was stated was we didn't want to cost them, the
7 Albertellis, the sale to proceed while we investigated
8 our own financing to see if we could swing the loan
9 because at that time the VA had a cap on how much they
10 would finance.

11 Q. Okay.

12 A. That was lifted.

13 Q. All right. So what she told Mr. Albertelli and what
14 she says she told Mr. Albertelli and what Mr.
15 Albertelli has testified to, you don't disagree she
16 was authorized to speak on your behalf and didn't say
17 that you wouldn't have said it had it been you?

18 A. I would agree with that.

19 Q. Okay. And you understand that when Mr. Albertelli
20 goes to your wife, Donnita Harmon, and tells her that
21 he has a person that wants to buy the property and she
22 says she doesn't want to hold up that sale, did you
23 not understand that Mr. Albertelli was going to go
24 back and bind himself in a contract to sell the
25 property?

1 record parol evidence. He is not asking the
2 witness what paragraph 28 contains. He could
3 rephrase his question and it would be
4 objectionable if he were to say well tell me what
5 should it contain? What do you think it had in
6 it? The question is what does it have in it?
7 And the witness can answer that but the witness,
8 under the Statute of Frauds, cannot add to the
9 contract through his parol evidence. And I will
10 object or I can just have a running objection to
11 any testimony as to this witness to add
12 specificity to paragraph 28 that does not exist.

13 THE COURT: All right. Don't answer. Give me the
14 question again, Mr. Harte.

15 BY MR. HARTE:

16 Q. Let me ask it this way. Do you have any confusion or
17 by the direct, specific language in that contract as
18 to how to determine the price when a right of first
19 refusal would be activated?

20 A. I do not. I have no confusion.

21 Q. Thank you. Now, just one moment. And I believe you
22 have testified that you never gave a written or oral
23 waiver of the right of first refusal, am I correct on
24 that?

25 A. That is correct.

1 MR. JORDAN: Well he had testified that he hadn't
2 given -- that he didn't receive a written release
3 and I'm saying where does it say they had to give
4 him one?

5 THE COURT: I'm going to allow the question.

6 MR. BRODIE: Does it state and I don't want to -- you
7 read this many times on Exhibit 2, paragraph 28.

8 BY MR. BRODIE:

9 Q. Does it state in there that you're entitled to a
10 written release from Mr. Albertelli or Ms. Snelling
11 for the waiver of a possible right of first refusal?

12 A. Same paragraph?

13 Q. Same thing.

14 A. No, it does not say they have to have a written
15 release.

16 Q. It also doesn't contain a time that you would be
17 given, like a week or two weeks. There's no time
18 period mentioned to execute a waiver, is there?

19 A. No.

20 Q. I mean it's just indefinite. Now what caught me was
21 your prior testimony that sort of struck me when Mr.
22 Jordan was asking you questions that you had thought
23 that there was going to be another document in the
24 deed. There was going to be a first right of refusal
25 in the deed from Boni's office, is that right?

1 A. That the first right of refusal should have been
2 included in the deed?

HEARING PROCEEDINGS

3 Q. Right.

4 A. That should have been his responsibility to transition
5 this requirement in this contract to the deed.

6 Q. And why was that because this Exhibit 2 didn't contain
7 enough detail?

8 A. No, because that's the condition of the sale of the
9 property.

10 Q. Do you follow me that Exhibit 2 didn't contain a time
11 period and it didn't contain a mechanism for how long
12 you had to consider a right of first refusal. It
13 didn't have an expiration date or anything like that
14 or a description. You thought Boni was going to
15 prepare something else?

16 A. I thought it would be included with the deed for the
17 property.

18 Q. Such that this was sort of like an agreement to agree
19 on a later, more formal document?

20 A. No. I think the agreement is settled in this
21 contract.

22 Q. So then why would Boni need to do another one?

23 A. So that it could be recorded at the county.

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24 Q. Okay and then have other more elaborate terms or more
25 definite terms to it?

1 A. I'm not sure what legal terms.

2 Q. I know you're not an attorney and I know it's -- And
HEARING PROCEEDINGS
 3 you've heard Mr. Albertelli's testimony that he
 4 thought he may have done one. He thought he was
 5 giving you the right of first refusal and that's why
 6 we're here. Do you understand the more it cost him by
 7 going through all this? When he was told that you all
 8 didn't want to purchase the property, Donnita told him
 9 that, then he signed the contract, you understand how
 10 he's been harmed by that?

11 A. I think we've all been harmed by this, I mean, but
 12 I've never relinquished my right of first refusal.
 13 Mr. Albertelli has testified right here that he
 14 thought we had a right of first refusal. We both
 15 understood this contract.

16 Q. But Ms. Harmon testified, and you that you told him to
 17 proceed, do you follow me? He was told to proceed and
 18 then he did on reliance on that. Do you understand
 19 what I'm saying?

20 A. I understand what you're saying. I don't agree with
 21 what you're saying because that's ---

22 Q. Was there -- okay and then after the fact I guess the
 23 May 6 contract, I'm still a little confused about it.
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 24 After May 6, then you or Donnita came back to Mr.
 25 Albertelli and then said, oh, now we want to purchase

25 Q. Okay. Do you see Tract 3-B?

- 1 A. Yes, I do.
- 2 Q. Okay. Does Tract 3-B adjoin 3-A?
HEARING PROCEEDINGS
- 3 A. Yes, it does.
- 4 Q. Okay. Look on the other side. Does Lot 1 of Blackman
5 adjoin 3-A?
- 6 A. It does.
- 7 Q. Does Lot 1 of Edel Jonathan H. and Michele E. L.
8 adjoin your property 3-A?
- 9 A. What was that name again?
- 10 Q. Right here.
- 11 A. Yes, that does.
- 12 Q. Okay. Does Lot 2-A with the name Michael Wayne and
13 Beth Elaine, I'll call it Wallick, W-A-L-L-I-C-K, does
14 that adjoin your property?
- 15 A. Yes, it does.
- 16 Q. Okay. And on the corner does Lot 2 of W-A-L-L-I-C-K
17 adjoin your property?
- 18 A. Well, it touches at the corner.
- 19 Q. Okay. It touches at the corner, so it adjoins.
- 20 A. Uh-huh.
- 21 Q. Is that a yes?
- 22 A. Yes.
- 23 Q. Okay. And does the property belonging to J. D.
24 Gaskins adjoin on the corner of Lot 3-A?
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- 25 A. Yes, it does.

1 Q. Okay. So there are one, two, three, four, five, six
2 properties that adjoin your property 3-A, correct?

HEARING PROCEEDINGS

3 A. Seven if you count Tract 3-B.

4 Q. Okay. So your testimony is there are seven properties
5 that adjoin your property Tract 3-A, correct?

6 A. That is correct.

7 MR. JORDAN: Okay. I don't have any other questions.

8 RECROSS EXAMINATION

9 BY MR. HARTE:

10 Q. Is Mr. Albertelli or either of the Albertellis in the
11 estate or the trust own any of those properties other
12 than the one that is designated as 3-B?

13 A. No, they don't.

14 MR. JORDAN: I'll have to object to that unless he's
15 got specific testimony as a title of real estate
16 on those properties, whether Mr. Albertelli owns
17 it or has a right to it.

18 MR. HARTE: The plats speak for itself, but I'll
19 rephrase it.

20 BY MR. HARTE:

21 Q. Does Mr. Albertelli's name appear on any of the
22 descriptions on that plat adjoining property other
23 than the one that is 3-B and 3-A?

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24 A. No, it does not.

25 MR. HARTE: Thank you. That's all.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

CONTRACT OF SALE

Date:

Purchaser(s): Mark B. Mitchell and Celine C. Mitchell

Seller(s): Ronald Joseph Albertelli Trust

Purchaser(s) agrees to buy, and Seller(s) agrees to sell the following described property, to wit:

555 Kimball Pond Road
Aiken, SC 29803

Tax Parcel No.: 091-16-01-003

Subject to all covenants and easements of record and to all governmental statutes, ordinances, rules and regulations.

Price

The Purchase Price is	\$ 135,000.00
Less:	
Earnest money held by attorney Brad Boni	\$ 5000.00
Amount due by 06-01-2020	\$ 65,000.00
Amount due by 11-15-2020	\$ 65,000.00

To be paid by: Earnest money and 1st payment by Cash and 2nd payment by either cash or bank loan

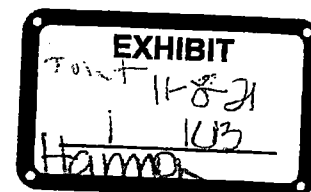
Closing Costs If new loan is obtained, closing costs to be paid by the buyers;

Conditions Property is being sold in "as is" condition.

Sale is contingent on perc test.

Seller shall be responsible for 2020 pro-rata taxes.

Purchasers shall be responsible for perc test, preparation of deed, revenue stamps on deed, and recording deed, survey and attorney's fee.



Deed Seller agrees to deliver a marketable, general warranty deed, free and clear of encumbrances, with all stamps affixed thereon. The Deed shall be prepared in the name of Mark B. Mitchell and Celine C. Mitchell

Closing Date The closing shall take place on or before. 06-01-2020

Default Upon failure of either party to comply with the terms hereof within the stipulated time, then the other party shall have the right to retain the earnest money paid and to seek any remedies available at law or in equity to the aggrieved party including specific performance.

This contract shall be binding upon all parties, their heirs and assigns.

IN THE PRESENCE OF:

Stephanie Noggle
Witness

Stephanie Noggle
Witness

Stephanie Noggle
Witness

Stephanie Noggle
Witness

Ronald J. Albertelli
Seller

Mary J. Chelling
Seller

[Signature]
Purchaser

[Signature]
Purchaser

Purchaser Contact Information:

Mark B. Mitchell and Celine C. Mitchell

1438 Moultrie Drive

Aiken SC 29803

Mark: mitchellmb@live.com, 803-522-2542

Celine: frenchv76400@hotmail.com, 803-292-9905

Seller Contact Information:

Ronald Joseph Albertelli Trust

124 South Park Commons

Aiken SC 29803

ron.bigspur@gmail.com, 803- 439-0180



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Jimmie Phillip Harmon

("Buyer"), and

Seller(s), Mary Frances Snelling & Ronald J Albertelli

("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. Bradley L Bond
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☒ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. PURCHASE PRICE: ~~\$ 425,000.00~~ 435,000.00

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.
Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before _____
This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☒ is not not attached.

3. PROPERTY: Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 555 Kimball Pond Rd Unit # _____
City Alpena State of South Carolina

Zip 29803 County of Alpena

Lot _____ Block _____ Section/Phase _____ Subdivision _____

Other Tra 3-A Eula Lamar Estates Tax Map 891-16-01-002

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☒ in attachment(s):

Range, Dishwasher

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before 09/21/2018 10-17-2018 ("Closing Date") with an automatic extension of 10 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s):

Jimmie Phillip Harmon & Donalea Christine Harmon with rights of survivorship

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EXHIBIT

Joint 11821
2 118
Harmon

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total \$ 1000.00 (USD) Earnest Money is paid as follows:
\$ _____ accompanies this offer and \$ 1000.00 will be paid within 3 Business Days after Effective Date and Earnest Money is in the form of ☐ check ☐ cash ☒ other (e.g. wire) Funds at Attorney to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Bradley L Beni - Law Firm as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 120.00 SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, flood, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHAVA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/lens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ 1500 OR 1.5 % of 8/21/2018 purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHAVA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (e.g. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☒ Seller's or ☐ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.
N/A

7. FINANCE: Buyer's obligation under this Contract ☒ is not contingent upon obtaining financing of a ☒ 30 year or ☐ 15 year or ☐ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a minimum 100 % and maximum 100 % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within 3 Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final



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loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions within 5 Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): Guild Mortgage ☐ FHA ☒ VA ☐ Conventional ☐ Seller
☐ Other . An FHA VA Financing Addendum ☒ is ☐ is not attached. Additional financing terms
☐ are ☒ are not attached.

8. REPAIR PROCEDURE:

Parties agree upon Repair Procedure unless a Due Diligence Addendum is agreed upon and part of this Contract.

The Due Diligence Addendum (e.g. SCR311) can create advantages for Buyer and Seller by creating a known limited time frame for a Buyer to make a decision to buy or not buy or buy with new terms (e.g. seller agreed repairs, price). Per the Due Diligence Addendum, the Seller can receive money when the Buyer timely/property terminates for any or no reason under the Due Diligence Addendum. The Due Diligence Addendum covers a broad range of issues, not just repairs/price. The Due Diligence Addendum allows the Buyer to consider on-site and off-site issues.

If the Parties agree to a Due Diligence Addendum then during the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/inspectors, Seller/Estimators, and Brokers all have adequate time for: Buyer to coordinate inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/proper Due Diligence terminate or buy. Delivering a Repair Request does not extend the Due Diligence Period.

(A) All Repair Procedure Inspections shall be completed no later than 24 Business Days after the Contract's original primary Effective Date unless the all the Parties agree in writing to extend. In the event repairs are necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Repair Procedure Inspection date mentioned above. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances.

(B) No later than 7 Business Days after the date of the Delivered Notice of the Repair Requests, Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). If the Seller contractually agrees to make all the requested Seller Paid Repairs, the Parties agree to proceed under the amended Contract. The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not timely respond per above or does not agree to make all the Seller Paid Repairs, the Buyer shall within 2 Business Days choose any one of the following options (1) accept the Property in its present condition, (2) negotiate a new/amended Contract with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice. IF BUYER FAILS TO ACCEPT, RENEGOTIATE A NEW/AMENDED CONTRACT WITH SELLER, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 BUSINESS DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. The obligations of the Seller for repairs terminate upon Closing.

IF A DUE DILIGENCE ADDENDUM IS SIGNED, DATED AND TIMED BY ALL PARTIES; THE PARTIES AGREE THAT THE LANGUAGE IN THE DUE DILIGENCE ADDENDUM SHALL REPLACE THE REPAIR PROCEDURE LANGUAGE IN THIS SECTION AND THE PARTIES AGREE THAT THIS TRANSACTION SHALL BE CONDUCTED IN ACCORDANCE WITH THE DUE DILIGENCE ADDENDUM WHICH GRANTS THE BUYER A UNILATERAL RIGHT TO INSPECT THE PROPERTY AND TERMINATE FOR ANY REASON WITH WRITTEN NOTICE AND PAYMENT OF A FEE IN A PERIOD.

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9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:

☐ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections

Other Seller to leave utilities connected during due diligence up to closing

☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and inspectors use insurance to manage risk.

10. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is ☒ contingent ☐ not contingent upon the ☐ Buyer ☒ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☐ Buyer ☒ Seller. ☐ Buyer ☒ Seller shall deliver timely Notice of and shall deliver to Closing a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than 5 calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the wood infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with a CL100 wood infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

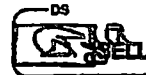
13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

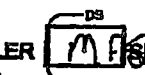


BUYER

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BUYER





SELLER

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14. **HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"):** Parties agree that a Home Warranty (HWC) will be provided by buyer with at least twelve months of coverage after Closing Date ☒ will ☐ will not be provided by seller to the Home Warranty Company. Closing and \$ 760.00 will be paid by buyer to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: old Republic Home Warranty.
15. **FIRE OR CASUALTY OR INJURY:** In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.
16. **SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:**
☒ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property Issues" for all needs.
☐ Buyer and Seller agree that Seller will NOT complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.
17. **LEAD BASED PAINT/LEAD HAZARDS:** If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain inspections of all Property Issues per their needs.
18. **SEX OFFENDER/CRIMINAL INFORMATION:** Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.
19. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.
20. **SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX:** Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.
21. **ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE):** Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.
22. **ADJUSTMENTS:** Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.



BUYER ☐

BUYER ☐





SELLER HAVE READ THIS PAGE

23. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract; and
 - (ii) Pursue any remedies available to Buyer at law or equity; and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract; and
 - (ii) Pursue any remedies available to Seller at law or equity; and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System 803-772-5206 or www.NAR-REALTOR/policy/mediation or www.screaltors.org/mediation. Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

27. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency and/or non-agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.



BUYER

☐ BUYER



SELLER



SELLER

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8/2017 FORM 310 PAGE 6 of 8

TRANSACTIONAL INFORMATION ONLY (Attach SCR390 if space needed for contractual agreement terms):

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: _____

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): Bradley L Boni

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): Law Firm

ESCROW AGENT CONTACT INFO: 803-644-4460 rachel@thebglawfirm.com

LICENSEE: Donnita Harmon SC LICENSE # 104782 EXPIRES 06/30/2019

BROKER IN CHARGE: Melissa Major SC LICENSE # 39487 EXPIRES 06/30/2020

BROKERAGE COMPANY NAME: Carolina Real Estate Company

INVOLVED AS: ☒ BUYER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ BUYER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE

MEMBERS OF _____ ABOR _____ ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: 333 Park Ave SW - Aiken SC 29801

NOTICE EMAIL/FAX: Donnita@carolinacompany.com

MOBILE PHONE: 803-508-1936 OFFICE PHONE: 803-648-8660

OTHER: _____

LICENSEE: PAT ROBERTS SC LICENSE # _____ EXPIRES 6-20

BROKER IN CHARGE: PAT CUNNING SC LICENSE # _____ EXPIRES 6-20

BROKERAGE COMPANY NAME: Woodside Aiken Realty

INVOLVED AS: ☒ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ SELLER DESIGNATED AGENT*
☐ CUSTOMER FACILITATOR ☐ TRANSACTION BROKERAGE

MEMBERS OF Woodside Aiken Realty ASSOCIATION/BOARD OF REALTORS®

NOTICE ADDRESS: 1419 Silverbluff Road Aiken SC 29803

NOTICE EMAIL/FAX: pat.roberts@aikensc.com

MOBILE PHONE: 803-270-1730 OFFICE PHONE: 803-643-1699

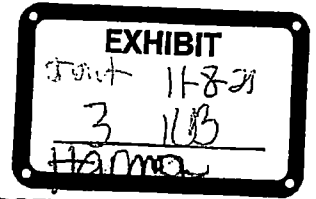
OTHER: _____

***DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE DESIGNATED AGENTS, ARE DUAL AGENTS. NO AGENT IS NO CLIENT SERVICE. YES CUSTOMER SERVICE.**

 BUYER ☐ BUYER  SELLER  SELLER HAVE READ THIS PAGE
FORM 310 PAGE 8 of 8



ADDENDUM/AMENDMENT TO



☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☒ OFFER OR ☐ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER:

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☒ OTHER: KIMBALL POND RD LOT
 TR 3-B EULA LAMAR EST

Further described or commonly known as:

Address KIMBALL POND ROAD

Unit #

City AIKEN

State of South Carolina

Other

TMS 091-16-01-003

The undersigned Parties hereby agree as follows:

- (1) Contract in place to be assigned to Jimmie P Harmon & Donnita C Harmon & Kathleen Harwood
- (2) Purchase Price to be \$135,000 (One Hundred Thirty Five Thousand Dollars)
- (3) Return of \$5,000 (Five Thousand Dollars) Earnest Money to Mark B Mitchell & Celine C Mitchell.
- (4) All closing costs to be paid by the Buyer.
- (5) Closing to happen on or before 07/24/2020 with an automatic extension of 15 business days for any unforeseen concerns through no fault of either party. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in the names of Jimmie Phillip Harmon, Donnita C Harmon & Kathleen T Harwood, with rights of survivorship.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 6:00 ☐ AM ☒ PM on 05/26/2020 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: Jimmie P Harmon dotloop verified 05/21/20 1:48 PM EDT WSM3-IZFT-T13X-GEGR

Date: Time:

BUYER: Donnita C Harmon dotloop verified 05/21/20 1:50 PM EDT DMOJ-FAQT-GZXG-JYJ

Date: Time:

Kathleen T Harwood dotloop verified 05/22/20 12:24 PM EDT TM9Q-UQCN-NULY-CKRS

Date: Time:

Kathleen T Harwood

Date: Time:

SELLER: Ronald J Albertelli dotloop verified 05/21/20 3:10 PM EDT TSWO-GENY-IRRW-AK2R

Date: Time:

SELLER: Mary F Snelling

Date: Time:

Mark B Mitchell

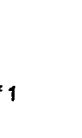
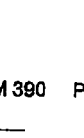
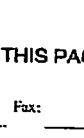
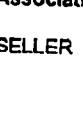
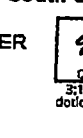
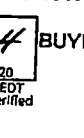
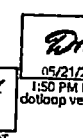
Date: Time:

Celine C Mitchell

Date: Time:

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SELLER HAVE READ THIS PAGE

Phone: Fax:

FORM 390 PAGE 1 of 1



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☒ OFFER OR ☐ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☒ OTHER: KIMBALL POND RD LOT
TR 3-B EULA LAMAR EST

Further described or commonly known as: _____

Address KIMBALL POND ROAD

Unit # _____

City AIKEN

State of South Carolina

Other _____

TMS 091-16-01-053

The undersigned Parties hereby agree as follows:

- (1) Contract in place to be assigned to Jimmie P Harmon & Donnita C Harmon & Kathleen Harwood
- (2) Purchase Price to be \$135,000 (One Hundred Thirty Five Thousand Dollars)
- (3) Return of \$5,000 (Five Thousand Dollars) Earnest Money to Mark B Mitchell & Celine C Mitchell.
- (4) All closing costs to be paid by the Buyer.
- (5) Closing to happen on or before 07/24/2020 with an automatic extension of 15 business days for any unforeseen concerns through no fault of either party. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in the names of Jimmie Phillip Harmon, Donnita C Harmon & Kathleen T Harwood, with rights of survivorship.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 6:00 ☐ AM ☒ PM on 05/26/2020 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: Jimmie P Harmon date verified 05/21/20 1:48 PM EDT WOL-024-1150-GECH Date: _____ Time: _____
Donnita C Harmon date verified 05/21/20 1:50 PM EDT WOL-024-1150-GECH Date: _____ Time: _____
Kathleen T Harwood Date: _____ Time: _____

SELLER: Ronald J Albertelli Date: _____ Time: _____
Mary F Santilli Date: _____ Time: _____
Mark B Mitchell Date: _____ Time: _____
Celine C Mitchell Date: _____ Time: _____

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BUYER



BUYER



SELLER



SELLER HAVE READ THIS PAGE

FORM 390 PAGE 1 of 1

AIKEN COUNTY ASSESSOR
Tax Map:
091-16-01-002 PORTION
Date: 10/12/2018

AIKEN COUNTY GIS
Tax Map:
091-16-01-002
Date: 10/12/2018

AIKEN COUNTY AUDITOR
Charles T. Barton
Endorsed 01/04/2019

2018024726

DEED
RECORDING FEES \$10.00
STATE TAX \$1131.00
COUNTY TAX \$478.50
PRESENTED & RECORDED:

10-11-2018 01:56 PM

JUDITH WARNER
REGISTER OF DEEDS CONVEYANCE
AIKEN COUNTY, SC
BY: JENNIFER YOUNG DEPUTY

BK: RB 4745

PG: 408 - 410

Space above for recording use only

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

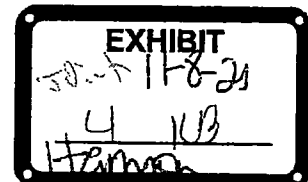
GENERAL WARRANTY DEED
(TITLE TO REAL ESTATE)

KNOW ALL MEN BY THESE PRESENTS, THAT

RONALD JOSEPH ALBERTELLI AND MARY FRANCES SNELLING, TRUSTEES OF THE MARY FRANCES SNELLING LIVING TRUST U/A DATED JULY 29, 2013, AS AMENDED (hereinafter "Grantor") in the State aforesaid, for and in consideration of the sum of FOUR HUNDRED THIRTY FIVE THOUSAND AND 00/100 (\$435,000.00), actual consideration to Grantor in hand paid at and before the sealing of these presents by JIMMIE PHILLIP HARMON AND DONNITA C. HARMON (hereinafter "Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said, JIMMIE PHILLIP HARMON AND DONNITA C. HARMON, as joint tenants with rights of survivorship and not as tenants in common, their heirs and assigns forever, all my right, title and interest in and to the following described real property, to wit:

ALL that certain piece, parcel, or tract of land with improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, East of South Carolina Highway 302 (Silver Bluff Road), approximately four miles Southwest of the City of Aiken, as shown and designated as Tract 3A, upon a plat prepared for Mary F. Snelling, by Jones & Murph, PLS, dated August 5, 1993, and recorded in Misc. Book 716, at Page 22, and also shown on a plat prepared for Mary Frances Snelling and Ronald Joseph Albertelli, by Hass & Hilderbrand, Inc., dated September 5, 2018, and recorded in Plat Book 60, at Page 908, records of the Office of the RMC for Aiken County, South Carolina. Reference is hereby made to said plats for a more complete and accurate description of the subject property.

THIS being the same property conveyed to Ronald Joseph Albertelli and Mary Frances Snelling, Trustees of The Mary Frances Snelling Living Trust, U/A dated July 29, 2013, as amended, by Mary F. Snelling, in deed dated August 6, 2013, and recorded August 8, 2013, in Record Book 4473, at Page 370, records of the Office of the RMC for Aiken County, South Carolina.



TMS#: 091-16-01-002

Grantee's Address: 555 Kimball Pond Road
Aiken, SC 29803

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto Grantees, as joint tenants with rights of survivorship and not as tenants in common, Their Heirs and Assigns forever.

AND Grantor does hereby bind Heirs and Assigns to warrant and forever defend, all and singular, the said Premises unto Grantee, their Heirs and Assigns, as hereinabove provided, against Grantor and Heirs and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my hand and seal this 10, day of October, 2018.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(Witness)

Rachel H. Hillard
(Witness)

BY: *Ronald Joseph Albertelli*
RONALD JOSEPH ALBERTELLI,
TRUSTEE OF THE MARY FRANCES
SNELLING LIVING TRUST U/A DATED
JULY 29, 2013, AS AMENDED

BY: *Mary Frances Snelling*
MARY FRANCES SNELLING, TRUSTEE
OF THE MARY FRANCES SNELLING
LIVING TRUST U/A DATED JULY 29,
2013, AS AMENDED

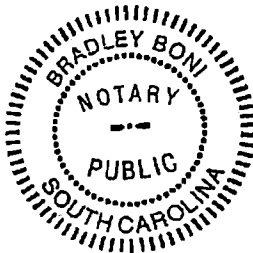
STATE OF SOUTH CAROLINA)

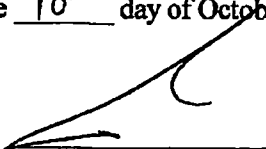
COUNTY OF AIKEN)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do certify that **RONALD JOSEPH ALBERTELLI AND MARY FRANCES SNELLING, TRUSTEES OF THE MARY FRANCES SNELLING LIVING TRUST U/A DATED JULY 29, 2013, AS AMENDED**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal the 10th day of October, 2018.





(L.S.)
Notary Public for South Carolina
My commission expires: 7/27/15

NOT OFFICIAL

Return to:
Bradley L. Boni, LLC
18986

On Mar 25, 2020, at 9:30 PM, Mark B. Mitchell <macelectric.mark@gmail.com> wrote:

Ron, all is well here. I hope that all is well with you and the Mrs.
We are still interested and we will get back to you asap.

Thanks,

Mark B. Mitchell
MAC Electric, LLC
803.522.2542

From: Ron Albertelli
Sent: Wednesday, March 25, 2020 11:10 AM
To: macelectric.mark@gmail.com
Subject: Land on Kimball Pond Road

Mark

I hope this note finds you in good health & spirits. As I'm sure you can understand life has gotten a little confusing since the last time we talked. However, I've been able to do enough communicating to give you this feedback.

What my wife & I will need to sell the land would be as follows:

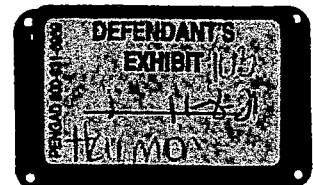
- A) \$135,000.00 - Clear.
- B) Any paper work &/or legal fees required = the responsibility of buyer.
- C) Contract to be written up by buyer & approved by sellers to include:
 - 1) \$5,000.00 - down payment due at closing (activation of contract)
 - 2) \$65,000.00 - due by 6-1-20
 - 3) \$65,000.00 - due between 1-1-21 & 1-15-21.
 - 4) Note: A separate release must be written up for the neighbors to sign.
(To release the right of 1st refusal that they have)

If you are still interested, please let me know. I have gotten 1 other inquiry about the land, but I have told the other people what my process will be, and I will not respond to them till either I hear from you, or 4-30-20. (Whichever comes 1st)

Thank you & your wife for your interest. I look forward to talking with you further.

Ron

<Contract of Sale 555 Kimball Pond.pdf>

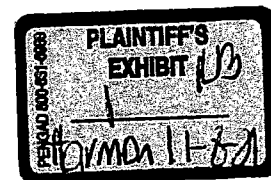


Plaintiff's Exhibit 1 is the transcript of
the deposition of Donnita Harmon.
Relevant pages follow.

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF AIKEN
3
4 MARK B. MITCHELL AND CELINE C. MITCHELL,
5 PLAINTIFFS,
6 v. CASE NO. 2020-CP-02-01173
7 RONALD JOSEPH ALBERTELLI AND MARY FRANCES SNELLING,
8 TRUSTEES OF THE MARY FRANCES SNELLING LIVING TRUST,
9 DONNITA C. HARMON AND JIMMIE PHILLIP HARMON,
10 DEFENDANTS.

11
12 DEPOSITION OF: DONNITA C. HARMON (Via VTC)
13 DATE: September, 30 2020
14 TIME: 3:03 p.m.
15 LOCATION: REMOTE DEPOSITION
16 702 CHAFFEE LANE
17 Aiken, SC 29801
18
19 TAKEN BY: Counsel for the Plaintiff
20
21
22 REPORTED BY: Marisha Statham, CVR
23 Court Reporter
24 (Appearing by VTC)
25

Certified Original



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2
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(803) 643-4110

bbrodie@smbgm.com

22 ALSO PRESENT:

23 Jimmie P. Harmon, defendant's spouse and

24 Krissy Hiese, Paralegal to Mr. Harte.

25 (INDEX AT REAR OF TRANSCRIPT)

1 Q. And why did you stop being a flight attendant?

2 A. It was too hard on myself for being gone all
3 the time.

4 Q. When you worked as a real estate agent in
5 New Mexico, what type real estate did you sell?

6 A. Residential.

7 Q. And then -- you went to real estate school in
8 Columbia, South Carolina in 2018?

9 A. Yes.

10 Q. And did you then get your license?

11 A. I did get my license.

12 Q. And who did you go to work for when you got
13 your license?

14 A. I went and worked for Concierge Real Estate and
15 I left there and went to Carolina Company.

16 Q. You started Concierge Real Estate?

17 A. Yes.

18 Q. Okay. I'm having a little trouble hearing you.
19 The volume on your end is a little bit low.

20 A. It was Concierge Real Estate first, and then I
21 moved over to Carolina Real Estate Company.

22 Q. Okay. That's better. I don't know where your
23 mic is, but that was better. All right. So how long did
24 you work at Concierge?

25 A. About a year.

1 Q. What type of real estate did you handle there?

2 A. Residential.

3 Q. And then you moved to where? Where are
4 you now?

5 A. Carolina Real Estate Company.

6 Q. And when did you come to Carolina Real Estate?

7 A. It was June of 2018.

8 Q. All right. But you got your license in 2018,
9 and you worked at Concierge for a year, it would've have
10 been June of 2018.

11 A. I don't know. I've been doing real estate now
12 for -- maybe it was real estate school in 2017.

13 Q. You think it was 2017?

14 A. Yes.

15 Q. All right. Did you get your license when you
16 finished real estate school?

17 A. Yes.

18 Q. Or was there a pause?

19 A. Pardon me?

20 Q. A gap. Was there a gap, or did you get the
21 license right after you finished school?

22 A. Right after I went to the test.

23 Q. Okay. And when did you marry your
24 current husband?

25 A. That would have been 2015.

1 Q. Okay. And was -- the contract says that the
2 closing was to be done at what lawyer's office?

3 A. Bradley L. Boni.

4 Q. What's the last name?

5 A. Boni, B-O-N-I.

6 Q. Okay. And is that where the closing
7 took place?

8 A. Yes.

9 Q. All right. Can you tell me exactly what
10 language in the contract we marked Exhibit 1, is what you
11 claim to be a first right of refusal?

12 A. That would be: Attachments, or other
13 contingency terms and stipulations.

14 Q. Okay. Can you just read to me what language is
15 the first right of refusal that you claim?

16 A. First right of refusal on the property
17 adjoining outside of immediate family.

18 Q. Right. And that's the language you claim to be
19 first right of refusal?

20 A. Yes. It's in the contract, No. 13 of the
21 contract, on page four. It says, Survival: If any
22 provisions herein contained which is in the nature or
23 affect is required to be observed, kept, or performed
24 after, closing, it will survive the closing and remain
25 binding upon the parties hereto and fully observed, kept

1 and performed.

2 Q. And you claim that Paragraph 13 is the first
3 right of refusal too?

4 A. I'm not claiming that as a first right of
5 refusal. It's a stipulation.

6 Q. It does what?

7 A. It holds to the stipulation of the tract on
8 Albertelli, and Snelling.

9 Q. Okay. You're breaking up. Okay. I don't
10 quite understand, so what are you saying about that? How
11 does that affect the first right of refusal that you claim
12 is Paragraph 13?

13 A. Say that again.

14 Q. Does this Paragraph 13, in Exhibit 1 affect the
15 first right of refusal?

16 A. It only states that if anything that is in the
17 contract is provided at closing, so since Brad Boni did not
18 register the deed -- or his legal assistant, to
19 bypass closing.

20 Q. Who told you that?

21 A. That's what 13 states.

22 Q. Right. But was Mr. Boni supposed to put the
23 first right of refusal in the deed?

24 A. Yeah.

25 Q. Okay. And when did you figure out that he

1 forgot to do that?

2 A. When we decided not to give up first right of
3 refusal --

4 Q. All right. Was that after you found out that
5 Mitchells had signed the contract?

6 A. What do you mean?

7 Q. Well, tell me -- give me a time frame of when
8 you figured out that Mr. Boni forgot to make reference to
9 the first right of refusal on the deed and to you and
10 your husband?

11 A. When I went over her papers. She said she was
12 going to get an attorney.

13 Q. Okay. So that's what I -- that's what I was
14 asking. So when you got served with this lawsuit, sometime
15 after that, you and your husband figured out that this
16 first right of refusal that you claim was not carried over
17 into the deed to you and your husband on the property that
18 you purchased at 555 Kimball Pond Road?

19 A. Right.

20 Q. Okay. Did you talk to Mr. Boni about that
21 after you figured that out?

22 A. Yes. And then he said if we waive the first
23 right of refusal that way we do have a contract addendum
24 signed saying that the Mitchells would get back their
25 earnest money in order to move forward because we do have

1 Q. So it sounds like he's busy and he needs
2 somebody to help him, so you help him and you do your
3 own stuff?

4 A. Correct.

5 Q. All right. Let's go back and look at this
6 contract language about the first right of refusal if you
7 don't mind. Back on Paragraph 28.

8 A. Okay.

9 Q. Who drafted -- and I may have asked you this
10 and if I did, I'm sorry. Who drafted the language on
11 Paragraph 28 that you state is a first right of refusal?

12 A. I did.

13 Q. And tell me for that first right of refusal,
14 what does is at stake -- what monies are being paid for the
15 first right of refusal?

16 A. I'm not sure what you're asking.

17 Q. I want you to look at me, okay?

18 A. I'm looking at my husband.

19 Q. You were looking at your lawyer too out of the
20 corner of your eye. All right. I want you to tell me what
21 price is referenced -- what was paid -- what price in this
22 first right of refusal, what money was paid for it. Does
23 it state in the contract?

24 A. Yes. \$435,000.

25 Q. And that's for the first right of refusal?

1 A. Yes. \$435,000.

2 Q. Okay. Wasn't that what you paid for the
3 property that you bought?

4 A. Yes. And we also put in as a stipulation first
5 right of refusal to the adjoining property outside of
6 immediate family.

7 Q. Right. But you remember you and I have already
8 looked at the deed and the deed has a \$435,000 for tract
9 3-A. Do you remember we talked about that?

10 A. Yes.

11 Q. So that was the price for the property. I'm
12 asking you what was paid to have this first right of
13 refusal? What did you pay for that?

14 MR. HARTE: Sir, I'm going to object
15 --(inaudible)--

16 MR. JORDAN: That's fine. Go ahead and
17 answer it, ma'am.

18 MR. HARTE: You can answer the question if
19 you can.

20 THE WITNESS: Well, I can't because there is no
21 monetary -- and there was no first right of refusal
22 document offered by the LLR of our forms used.

23 BY MR. JORDAN:

24 Q. Okay. Well, that's all I am asking you. So
25 the first right of refusal in this Paragraph 28 doesn't

1 reference any money as being paid specifically for the
2 first right of refusal. That's all I'm asking.

3 A. No. It was done specifically as school.

4 Q. It was that what?

5 A. It was done old-school. Basically I entered
6 into a contract with somebody, and we agreed what it said
7 and this is what we agreed to and this is what we were
8 going to live by.

9 Q. Okay. So when you say ---

10 A. It was to buy as our --

11 Q. Okay. Yeah. Looking at -- I'm not asking you
12 about that right now. I'm just asking what you testify to.
13 When you say old-school, are you talking about a
14 handshake, you do the deal, and someone needs to stand by
15 their word and do this?

16 A. Correct.

17 Q. Okay. And so does the first right of refusal
18 state what property for your getting the first right of the
19 refusal for?

20 A. The adjoining property. That's the only
21 property that's adjoining that the Albertellis and
22 Snellings owned.

23 Q. Does it say on here anywhere what property on
24 the first right of refusal language -- so let me just read
25 that to make sure I'm understanding it. You testified that

1 the first right of refusal is where it says "And first
2 right of refusal of property adjoining outside of immediate
3 family." Is that correct?

4 A. Correct.

5 Q. That's the first right of refusal?

6 A. Yes.

7 Q. Okay. And so those words that I just read,
8 tell me where in those words it states the property that
9 there would be a first right of refusal on?

10 MR. BRODIE: Brent Williams just logged on.

11 MR. JORDAN: Who is that? Hold on a second,
12 Ms. Harmon.

13 MR. HARTE: Grady, I think you've got a phone
14 conversation coming from somewhere.

15 MR. JORDAN: Brad, I think you've got a phone
16 call coming in or something. Did someone else join the
17 meeting? I don't think so ...

18 BY MR. JORDAN:

19 Q. All right. Ms. Harmon, so my question was:
20 Where does it state on those words that I just read -- and
21 I'll read that again because we got interrupted. You said
22 the first right of refusal is: "And first right of refusal
23 of property adjoining outside of immediate family." My
24 question is: Where in that sentence that I just read,
25 where does it state what the property is?

1 A. It's the adjoining property of ours that's part
2 of the contract.

3 Q. Where does it state that?

4 A. Of property adjoining.

5 Q. Right. It doesn't say adjoining lot, does it?

6 A. It's the property adjoining ours. It's in the
7 contract that says that it's tract 3.

8 Q. It doesn't say property adjoining the tract
9 3-A, does it?

10 A. No. It doesn't say that, but it's straight
11 from the first part, on page one, that it's the property
12 adjoining. It's the only property that they own. It's not
13 the property to the right of us. It's not the property to
14 the back of us, and it's not the property on the other side
15 of the property adjoining ours.

16 Q. Well, that -- you may understand that, but the
17 first right of refusal holder is --(inaudible)--

18 MR. HARTE: Grady, you're breaking up
19 --(inaudible)--

20 MR. JORDAN: Well, yeah. I asked you a
21 question, and I want an answer.

22 THE WITNESS: Well, if I could hear you, I
23 would do that.

24 MR. JORDAN: Did you not just hear me?

25 THE WITNESS: I hear you.

1 BY MR. JORDAN:

2 Q. So my question to you was, you're saying that
3 was the property adjoining tract 3-A, but my question to
4 you is: Does it state that in the first right of refusal?

5 A. It doesn't say 3-A --(inaudible)-- on the
6 front page.

7 Q. Okay. Does the first right of refusal that you
8 claim, does it state what the duration of the right of
9 refusal was?

10 A. No. Because it's in the contract, and it says
11 that in No. 13 it would still survive past closing if it
12 didn't get reported right.

13 Q. Now, but my question is: How long were you
14 claiming you had the first right of refusal, how long the
15 period was.

16 MR. HARTE: Objection. I just want to note an
17 objection. You're asking her to form --(inaudible)--

18 MR. JORDAN: Yeah. The only proper objection
19 in this deposition is the form of the question, and if
20 that's what you're making that's fine, but she still has
21 to answer.

22 MR. HARTE: I'm not telling her not to answer.

23 MR. JORDAN: I know that. The proper objection
24 is to the form of the question.

25

1 BY MR. JORDAN:

2 Q. Ma'am, let me ask my question again since -- my
3 question to you is: How long was this first right of
4 refusal going to last? What's the period?

5 A. So in my general basis of knowledge, it would
6 be until one or the other dies.

7 Q. Who dies?

8 A. My husband who is in the contract or Ron
9 or Mary.

10 Q. Okay. So this first right of refusal would --
11 it would endure until one of the parties -- one of the
12 parties to the contract died?

13 A. Yeah. Because I didn't change until they just
14 got it, I guess.

15 Q. Okay. So that's all I'm asking. Is that the
16 duration of the first right of refusal? Until one of the
17 parties of the contract dies?

18 A. Correct.

19 Q. And where does it state that in the first
20 right refusal?

21 A. It doesn't, but that was my understanding.

22 Q. Okay. What would be the price paid? Does that
23 first right of refusal state what price is going to be paid
24 for the property if the first right of refusal
25 is exercised?

1 A. No.

2 Q. Okay. Does the first right of refusal state a
3 -- some type of a mechanism of determining what the
4 purchase price would be if the first right of refusal
5 is exercised?

6 A. Can you repeat that or rephrase it.

7 Q. Yeah, I can. And you're probably going to need
8 that to look at what I'm asking you, but my question is:
9 Does the language that you say is the first right of
10 refusal, does it contain a mechanism to determine what the
11 purchase price would be when the first right of refusal
12 is exercised?

13 MR. HARTE: Object to the form of the question.

14 MR. JORDAN: You can go ahead and answer.

15 THE WITNESS: No. Because I don't know.

16 MR. JORDAN: Well, can you look at the language
17 that you and I just looked at that you said was the first
18 right of refusal and tell me, does it contain a mechanism
19 to determine the price if the first right of refusal
20 is exercised?

21 MR. HARTE: Object to the form of the question.

22 THE WITNESS: If it does not --

23 MR. JORDAN: Okay. That's all I'm asking.

24 THE WITNESS: And it could be for a dollar for
25 all they --

1 MR. JORDAN: But it doesn't contain a mechanism
2 of how you determine what the price is going to be?

3 MR. HARTE: Object to the form of the question.

4 MR. JORDAN: What was your answer, ma'am?

5 THE WITNESS: I said, no, it wouldn't.

6 MR. JORDAN: Okay. I just want to make sure
7 that we have a clear record now because we've had several
8 objections. Your testimony was that the language that you
9 claim as the first right of refusal does not have a
10 mechanism to determine what the purchase price would be if
11 the first right of refusal is exercise, correct?

12 MR. HARTE: Object to the form of the question
13 --(inaudible) --

14 MR. JORDAN: If you keep objecting like that,
15 we're going to have to have a judge come down on this
16 deposition because all you can do is object to the form of
17 the question and not try to lead your witness. Okay? Do
18 it again, and I will have to have a judge lay down
19 a motion.

20 MR. HARTE: You do what you please --

21 MR. JORDAN: I will.

22 MR. HARTE: I'm objecting to the form of
23 the question.

24 MR. JORDAN: I'm going to -- we're going to do
25 this according to the rules. Now, I'm going to ask you

1 again, Ms. Harmon, you testified there is no mechanism to
2 determine the price in this language of the first right
3 refusal, correct?

4 THE WITNESS: At this time, no.

5 BY MR. JORDAN:

6 Q. Okay. At what time did it have a mechanism, or
7 was that to be determined later?

8 A. That's always to be determined later because it
9 wasn't written in there for a price. So if the Albertellis
10 decided they wanted to sell it to me for five dollars they
11 could have sold it to me for five dollars. If they wanted
12 to sell it for 135, they could sell for that.

13 They could sell for half a million dollars if
14 they wanted to. It's who ever brings the money for it, I
15 guess, for whatever they're asking.

16 Q. Have you ever seen a first right of refusal
17 that -- well, have you ever been involved in a first right
18 of refusal before as a real estate agent?

19 A. No, I have not.

20 Q. Okay. And you said earlier that somebody
21 was -- (inaudible) --

22 A. I can't hear you. You were, like, dead in
23 the water.

24 Q. Okay. I'll start again. Can you hear me now?

25 A. I can.

1 Q. --(inaudible)--

2 THE COURT REPORTER: Mr. Jordan, this is the
3 court reporter. You are breaking up.

4 MR. JORDAN: Madam Court Reporter, it looks
5 like her video is slowing down. How about now, Ms. Harmon?
6 Let's cycle back. Can you hear me now?

7 THE WITNESS: Okay. Yes.

8 MR. JORDAN: Okay. I think we're having a
9 little bit of an internet problem.

10 BY MR. JORDAN:

11 Q. So. You said earlier that somebody didn't have
12 a form for the first right of refusal. Where was that that
13 you were trying to get the form?

14 A. Through my real estate forms that we have
15 on our --

16 Q. Okay. And they just didn't have a form that
17 you could fill out.

18 A. No.

19 Q. All right. Did you ask the lawyer to give you
20 a form for first right of refusal?

21 A. No. That would've been Brad Boni's job in
22 the contract.

23 Q. Right. But I mean when you were doing the
24 contract, at that time, did you ask Brad Boni to give you a
25 form for a first right of refusal to help you draft one?

1 Q. All right. Did you talk to any real estate
2 agents in your office to try to get help on how to draft
3 the first right of refusal?

4 A. No.

5 Q. Okay. And I think you testified earlier, you
6 had never drafted a first right of refusal before?

7 A. No.

8 Q. Now, looking back on -- and forgetting about
9 having the lawyer, do you wish you had drafted this first
10 right of refusal a little more differently or more
11 specifically so we would don't have all these questions?

12 A. I guess so, yes.

13 Q. Do you still want to purchase this tract 3-B,
14 Ms. Harmon?

15 A. Yes, I can close it within ten days. What
16 Shane Bagby said.

17 Q. So the only thing I'd like to do, John, is
18 reserve the right to question her as to these documents.
19 She said she has this pre-approval letter. I may not have
20 to but I'm going to reserve my right to come back and
21 question her as to that -- and with that understanding, how
22 long will it take you to get that document to John,
23 Ms. Harmon?

24 A. Probably a couple -- maybe an hour.

25 MR. HARTE: Well, I'm not going be here