

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Sep 13 2022

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
HON. MARVIN H. DUKES
MASTER IN EQUITY

Appellate Case # 2022-00027

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

Plaintiffs,

RESPONDENTS

vs.

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

Defendants.

APPELLANTS

**MOTION FOR EXTENSION OF TIME TO FILE INTIAL BRIEF
AND DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL**

Pursuant to Rule 240, SCACR, appellant Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nichole White and Cheryl Kirkland ("Appellant") move for an extension of time in which to serve and file appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal ("Designation of Matter"). Appellant requests an extension of time to file the Initial Brief and Designation of Matter which are currently due September 16, 2022. This is the second request for an extension filed by Appellant.

The grounds for this motion are that other impending professional matters and obligations have created a need for additional time to prepare the Initial Brief and Designation of Matter, including matters pending before The Honorable Marvin H. Dukes, III, Beaufort County relating to Appellant's efforts to stay enforcement of judgment pending appeal. (See Exhibit 1 attached) Appellant will be severely prejudiced if Respondents are permitted to consummate a sale of the property at issue while an appeal is pending before this Court challenging the validity of Respondent's ability to proceed with sale of the property at issue. The granting of an extension of time will not prejudice the rights of any of the parties.

We have notified counsel for Respondents of our intent to file this motion. Respondent objects to the relief sought in this motion.

For these reasons, Respondents requests an extension of the deadline for filing and serving the Initial Brief and Designation of Matter once the issue pertaining to the stay and supersedeas sought by the Appellants would have been

ruled upon by the Master in Equity or upon ruling of this Court; but no later than
October 15, 2022.

Respectfully submitted,

THE HOUSTON LAW FIRM, LLC
1000 Main Street, Suite 200C
Hilton Head Island, South Carolina 29926
Telephone: 843-684-0211
Email: chouston@houstonlawfirm.net

By: S/ Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar # 2663
Attorney for Appellants

September 13, 2022
Hilton Head Island, SC

Hilton Head Islands, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE # 2020-CP-07--2301

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

V

**DEFENDANTS' MOTION
FOR STAY AND WAIVER OF
SUPERSEDES BOND OR IN
THE ALTERNATIVE A
NOMINAL BOND PENDING
APPEAL**

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

Defendants.

**To: Thomas Heyward, Esq.; and Chester C. Williams , Esq. Attorneys for
Plaintiffs:**

The Defendants, through their undersigned counsel, would respectfully move this Court pursuant to S.C. Code Ann. §18-9-170; Rule 241 (a) (b) (4) and (c) (1) (2) (3) (4) SCRAP ; Rule 62 (a) (b) (d)(e)and(f) to enter an Order staying the enforcement and suspending its Order filed on October 20, 2021 and waiving the necessity of the Defendants’ posting a suspercedeas bond or in the alternative, ordering and setting a nominal bond amount pending Defendants’/ Appellants’ appeal taking in this case.

THE RELIEF REQUESTED SHOULD BE GRANTED UPON THE FOLLOWING GROUNDS:

1. Substantial likelihood on the merits
2. Irreparable harm
3. No harm to parties
4. No Public Interest

FACTS

1

The plaintiffs instituting this action seeking the following relief

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

2

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

3

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

4

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

5

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

6

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

7

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

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

8

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

9

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

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

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

11

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

12

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

13

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

14

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

15

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

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

ARGUMENT 1

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

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

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

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

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

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

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

ARGUMENT 2

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

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

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

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

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

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

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

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

Respectfully submitted,

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

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

September 7, 2021
Hilton Head Island, SC

STATE OF SOUTH CAROLINA .
IN THE COURT OF APPEALS

RECEIVED

Sep 13 2022

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, Master in Equity

Appellate Case No. 2022-000277

Georgia Harrison, Barbara Harrison, Joyce Ellen Harrison,
William S. Harrison III, Stanley Roberts, and Diana
Mendheim, individually and as agent and attorney in fact,

Respondents,

v.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,
Keita Nicole White and Cheryl Kirkland,

Appellants.

PROOF OF SERVICE

I certify that I have served the within MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S INITIAL BRIEF via email on the Court E-Filing system and also by depositing a copy of it in the United States Mail, postage prepaid, to all counsels of

record and addressed as follows:

Parties Served:

Thomas C. Taylor, Esq.
Law Office of Thomas C. Taylor, LLC
P.O. Box 5550
22 Bow Circle, Suite A
Hilton Head, SC 29928

And

Chester C. Williams, Esq.
Law Office of Chester C. Williams, LLC
17 Executive Park Road, Suite 2
PO Box 6028
Hilton Head Island, SC 29938-6028
Attorneys for Respondents

This 13th day of Septembert 2022 at Hilton Head Island, SC

The Houston Law Firm LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926
Phone:843-715-9078
chouston@houstonlawfirm.net

By: S/ Charles E. Houston Jr.
Charles E. Houston, Jr.
SC Bar # 2663



September 13 2022

Via U.S. Mail and Email (ctappfilings@sccourts.org)

RECEIVED

Sep 13 2022

SC Court of Appeals

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: Georgia Harrison v. Stephanie Kirkland
Appellate Case No.: 2022-000277**

Dear Ms. Kitchings:

I am submitting for filing in the above referenced case the following items in lieu of and in substitution for our earlier submittal sent earlier today, that at this time, has not been filed of record.

- (1) Proof of Service
- (2) Proof/Affidavit of Service by e-mail and mailing
- (3) Motion for Extension of Time to File Appellant's Initial Brief
- (4) Check for \$50.00

Thank you in advance for your consideration of this request. If you have any questions, please do not hesitate to contact my office.

With kind regards, I am,

Respectfully,

The Houston Law Firm LLC

S/ Charles E. Houston Jr.
Charles E. Houston Jr.
Attorney for Appellant
SC Bar # 2663

cc: Via Email

Thomas Taylor, Esquire
Chester Williams, Esquire
Encls: as stated