STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **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,** **vs.** **STEPHANIE LORRAINE KIRKLAND, GARY LAMONT KIRKLAND, KEITA NICOLE WHITE, CHERYL KIRKLAND, WILLIAM CHARLES KIRKLAND, PAULETTE KIRKLAND, PAUL T. ALLBRIGHT, CHRISTOPHER KIRKLAND AND SHAWN KIRKLAND,** **Defendants.**	)	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT** **CIVIL ACTION NO. 2020-CP-07-02301** **ORDER**

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THIS MATTER CAME BEFORE THE COURT for consideration of the Plaintiffs' pending Amended Motion For Master's Deed Conveying Ownership Interests of All Owners of Property to Rotunda Land & Development Group, LLP, and for consideration of the Defendants' pending Motion For Stay and Waiver of Supersedeas Bond or in the Alternative a Nominal Bond Pending Appeal. A hearing on the motions was held via WebEx on Thursday, September 15, 2022. Present at that hearing via video link where Thomas C. Taylor, Esq. and Chester C. Williams, Esq. for the Plaintiffs, and Charles Houston, Esq. for the Defendants. Also present on the video

conference were Terry A. Finger, Esq. for Rotunda Land & Development Group, LLC ("Rotunda"), the entity currently under contract with the Plaintiffs for the sale of the land at issue in this case, Earsa Jackson, Esq. of the Texas Bar, who, according to Mr. Houston, is representing the Defendants in negotiations with one or more potential other third-party developers, and several of the Plaintiffs and the Defendants, along with the Plaintiffs' advisor, Andre White.

Following arguments of counsel on the pending motions, Mr. Houston requested additional time to prepare and file a supplemental Brief addressing issues discussed during the WebEx hearing, and leave of Court was granted for Mr. Houston to file additional briefing by September 19, 2022. No additional briefing was filed by Mr. Houston with the Court, but an unexecuted draft "Purchase and Sale Agreement" was sent to the Court by email from Mr. Houston on September 20, 2022, and a Certificate of Technical Failure or Technical Difficulties was filed by Mr. Houston on September 20, 2022 and a copy also directed to the Court via email on that date.

On September 22, 2022, another WebEx hearing on the pending motions was held. Present at that hearing via video link were Mr. Taylor, Mr. Williams, Mr. Houston, Mr. Finger, Ms. Jackson, Mr. White, and several of the Plaintiffs and Defendants. Arguments of counsel were presented, and comments were also received from the Plaintiffs and Defendants in attendance who wished to speak by video link. The Court has considered these arguments, reviewed all of the briefs and memoranda filed, and upon due, careful, and just consideration, finds and orders as follows:

This action was initiated by the Plaintiffs on November 24, 2020, to quiet title and partition by sale a 26.462-acre tract of real property located on Hilton Head Island, in Beaufort County, South Carolina (the "Real Property"). (See Paragraph 5 of the Complaint. Admitted in Answer). Title to the Real Property had twice been quieted previously in separate actions. (See Paragraphs 7, 8 and 16 of the Complaint. Admitted in Answer). The Complaint notified the Court and all Defendants that the Plaintiffs had, on September 14, 2020, entered into a contract of purchase and sale of the Real Property to Rotunda for a purchase price of $9,100,000.00, alleged that the $9,100,000.00 purchase price was a fair and equitable price for the Real Property, and requested the Court again quiet title and partition the Real Property by sale pursuant to South Carolina law. (See Paragraph 46 of the Complaint. Defendants claimed they lacked sufficient information and demanded strict proof). The Complaint specifically referred to the Defendants' rights to purchase the interests of the Plaintiffs in the Real Property under the South Carolina law commonly known as the Pinckney Act, and sought an equitable lien on the interests of all owners of the Real Property in proportion to their respective interests for costs and attorney's fees incurred by the Plaintiffs in the maintenance and prosecution of this action. (See Wherefore clause in Complaint). Answers were timely filed by the then Defendants Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White, and Cheryl Kirkland, and the case was referred to the Master by consent.

On May 21, 2021, a Consent Order was filed quieting title to the parcel, and further establishing that the Real Property was at that time, owned in indivision by the Plaintiffs, the

represented Co-Owners and the Defendants, and the respective undivided interests in the real property were set forth as is shown on Exhibit A to the May 21, 2021 Consent Order.

On September 15, 2021, this Court entered its Consent Order setting the Fair Market Value of the Real Property at $9,100,000.00, after all parties agreed to that valuation and the Court was provided with a recent appraisal obtained by the Defendants justifying that valuation. This Consent Order specifically stated the action was pursuant to the Clementa C. Pinckney Uniform Partition of Heirs' Property Act. Shortly thereafter, the Defendants retained Mr. Houston and substituted him as counsel.

On September 27, Keita White, Gary Kirkland, Stephanie Kirkland, and Cheryl Kirkland gave notice that they wanted to exercise the Pinckney Act right of first refusal.

On October 5, 2021, Mr. Houston notified the Plaintiffs and the Court that former Plaintiffs Christopher Kirkland, Shawn Kirkland, William Charles Kirkland, Paulette Kirkland, and Paul T. Allbright, had revoked their Powers of Attorney earlier given Plaintiff Diana Mendheim, and wished to be positioned as Defendants and represented by Mr. Houston. The request was consented to by the Plaintiffs, and they were realigned as Defendants by Order dated October 20, 2021.

At the request of the Defendants, and notwithstanding the fact that all parties to this action, including the Defendants, agreed that there were no other known individuals or entities with any interest in the Real Property other than those identified in this Court's Order of May 21, 2021, the October 20, 2021 Order also noted that the parties had agreed to publish a notice of the pendency

of this action in a newspaper of general circulation in Beaufort County, once a week for three successive weeks following the entry of this Order, in order to provide additional notice to the public of the pendency of this action and provide an opportunity for any other person who might claim some interest in the property, to petition the Court for inclusion in the suit if such claim is well founded. To that end, the Court appointed Maria Belbas Parker, Esq. as the Guardian ad Litem Nisi for any infants, insane or incompetent persons, persons in the military, and any other persons who may claim a right, title, interest in or lien on the Real Property. The notice of pendency was published in *The Island Packet* on October 25, 2021, on November 1, 2021, and on November 8, 2021, as evidenced by the Affidavit of Publication included in the record of this action, and in her Affidavit filed in this action on December 8, 2021, Mrs. Parker confirmed that no person or entity had contacted her and asserted any claim of right, title, interest in, or lien upon the Real Property, nor provided to her any notice of any type of claim in the Real Property.

As of the filing of the October 20, 2021 Order and the realignment of the parties, the Plaintiffs collectively owned a 98.82813 percent undivided interest in the Real Property, and the then nine (9) Defendants collectively owned a 1.171878 percent undivided interest in the Real Property. Using those agreed upon percentage ownerships, this Court's October 20, 2021 Order formally again notified the nine defendants owning the 1.171878 percent interest in the Real Property of their statutory rights under the Pinckney Act, as codified at S.C. Code Section Annot. 15-61-370 (D)(2), to purchase the 98.82813 percent undivided interest of the Plaintiffs in the Real

Property by tendering the purchase prices as allocated therein to each Defendant, to the Clerk of Court by December 22, 2021 at 5:00 p.m. EST. That Order also provided that if the Defendants failed to timely pay their apportioned prices into the Court, "then the property that is the subject of this action shall be partitioned by sale at a purchase price of not less than $9,100,000.00 and that the Plaintiffs shall be authorized to enter into, or ratify, a contract of sale for not less than such price, and including such other commercially reasonable terms and conditions as are deemed appropriate." (Order of October 20, 2021, at p. 5).

The Court notes that the October 21, 2021 Order was not appealed nor was a timely Motion to Alter or Amend filed regarding that Order.

None of the nine Defendants tendered or attempted to tender his or her portion of the purchase price to acquire the Plaintiffs' undivided ownership interests in the Real Property pursuant to the provisions of the Pinckney Act as set forth in S.C. Code Annot. Section 15-61-371 (E), by the December 22, 2021 deadline (see this Court's Order of January 2022). The portion of this Court's Order of October 20, 2021 providing that the property shall be partitioned by sale at a purchase price of not less than $9,100,000.00, thus became automatically effective.

Notwithstanding the Defendants' collective failure to timely pay their respective portions of the purchase price for the Plaintiffs' undivided interests in the Real Property, on the evening of December 22, 2021, the deadline for the Defendants' payment, Mr. Houston, on behalf of the Defendants, filed a Motion for Relief of Judgement and for Extension of Time to Tender Purchase

Price, seeking to obtain additional time for the Defendants to tender their respective portions of the Purchase Price to the Clerk of Court beyond the December 22, 2021 deadline on various grounds. By way of this Court's Order of January 20, 2022, the Defendants' Motion was denied.

On January 31, 2022, the Defendants filed a Motion for Reconsideration of the January 20, 2022 Order, which, after a WebEx hearing held on February 28, 2022, attended by Mr. Taylor, Mr. Williams, Mr. Houston, Ms. Jackson, Mr. White, and various Plaintiffs and Defendants, was denied by this Court's Order entered on March 7, 2022.

On March 9, 2022, the Defendants filed a Notice of Appeal of this Court's March 7, 2022, January 20, 2022, October 20, 2021, and September 15, 2021 Orders with the Clerk of the South Carolina Court of Appeals, which Notice was amended by the Defendants by filings with the Court of Appeals on March 9, 2022 and March 14, 2022. The Court gives no opinion as to whether this March 7, 2022 Notice of Appeal was timely as to any Orders except the March 7 2022 Order.

On March 11, 2022, the Plaintiffs filed a Motion for Master's Deed with this Court, and on March 14, 2022, the Plaintiffs filed the pending Amended Motion for Master's Deed, advising the Court that the proposed purchaser, Rotunda had agreed to pay the Plaintiffs and the Defendants an additional $650,000.00 for the Real Property, bringing the total purchase price for the Real Property to $9,750,000.00, and requested this Court's issuance of a Master's Deed to allow the Rotunda closing to move forward immediately.

On March 17, 2022, the Defendants filed a Motion Pursuant to Rule 241(A) with the Court of Appeals, requesting an Order from the Court of Appeals holding that an "automatic stay" was in effect pursuant to SCRAP 241 as to further actions at this trial court. On June 23, 2022, the Court of Appeals denied the Motion for a Stay on the basis that this Court's Order of October 20, 2021 was a judgment directing the sale or delivery of possession of real property. Thereafter, the Defendants then filed a Motion to Reconsider with the Court of Appeals, which Motion was denied on August 17, 2022.

The Plaintiffs then petitioned this Court for a hearing on their Amended Motion for a Master's Deed filed March 14, 2022, and the Defendants responded by filing the pending Motion for Stay and Waiver of Supersedeas Bond or In The Alternative a Nominal Bond Pending Appeal.

This Court is charged with the responsibility in this case of protecting the collective interests of all of the property owners within the dictates of South Carolina law, and this Court cannot, and will not, take any action that benefits the interests of the owners of a small percentage interest in the Real Property to the detriment of the owners of the vast lion's share percentage interest in the Real Property. Given the facts as set forth above, including the earlier agreed upon fair market valuation of the property at $9,100,000.00 and the current Rotunda contract that is ready for closing at $9,750,000.00, I believe I must try to protect the best interests of both the Plaintiff and Defendant owners in this volatile financial time, by denying the Defendants' Motion for Stay and granting the Plaintiffs' Motion for Issuance of Master's Deed.

I find that the purpose of the Pinckney Act is to provide a method by which fee simple title to heirs' property can be kept in the family when one or more co-owner heirs want to sell their respective interests in the family property. I further find that the Defendants in this action have been afforded all of the protections of the Pinckney Act, including being offered their right of first refusal to purchase the collective ownership interests in the Real Property, and that the Defendants failed or refused to exercise that right of first refusal on a timely basis, as provided for in this Court's October 20, 2021 Order. Further, the Defendants have offered no evidence to support any assertion that they have a plan to maintain fee simple ownership of the Real Property in their family.

I find that the Defendants' arguments that, notwithstanding the Consent Order of May 21, 2021 in this action, title to the Real Property is unsettled because of several open estates of co-owners of the Real Property who have passed away since the entry of the May 21, 2021 Consent Order, to be without merit, especially considering that the Defendants have taken no action to open the probates of any of those estates, which is well within their power to do.

I reaffirm my October 20, 2021 Order under which I authorized partition of the property by sale. Mr. Finger, on behalf of Rotunda, having advised the Court that Rotunda will accept a deed from the Plaintiffs for their collective undivided interest in the Real Property, this Court will execute and deliver a Master's Deed conveying title, including the Defendants' collective undivided interest in the Real Property, to the Real Property to Rotunda or its assignee, pursuant

to the contract between Rotunda and the Plaintiffs upon presentation of the draft Master's Deed to be prepared by the Plaintiffs' counsel. The Plaintiffs are authorized to move forward with the closing of the sale of the Real Property pursuant to the Rotunda contract, as amended, for $9,750,000.00 and the Defendants shall each receive their proportionate share of the purchase price of the net Sellers' proceeds as computed by their ownership interests set forth in the Consent Order of May 21, 2021. The closing costs for the sale of the Real Property shall be as provided for in the Rotunda contract, and the Court recognizes the equitable lien on the interests of all owners of the Real Property in proportion to their respective interests for costs and attorney's fees incurred by the Plaintiffs in the maintenance and prosecution of this action and the costs and fees incurred in the Closing. In addition, the net proceeds that are due to any of owners of the Real Property that have died during the pendency of this case shall be deposited with the Clerk of Court at closing, and this case shall remain open for one year from the date of closing to allow the petition by the Personal Representative of any estate of those deceased owners for recovery of their specific proceeds upon presentation of evidence to this Court affirming such ownership right.

AND IT IS SO ORDERED this ____day of October, 2022.

s/_____
Marvin Dukes, III
Master In Equity and Special Circuit
Court Judge of Beaufort County