THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

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Appellate Case No.: 2022-000470
Case No. 2021-CP-10-04342

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Levi Grantham, LLC, .....Appellant,

v.

Kathy Wright Mitchell, .....Respondent.

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# INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court err by granting summary judgment and ruling that a failure to close on the purchase of real estate within approximately one year was unreasonable where the purchase agreement specifically allowed the purchaser to toll the closing while it sought to satisfy closing contingencies?

II. Did the circuit court err by granting summary judgment based on a determination that time was of the essence of contract where the tolling provision created ambiguities about the parties' actual intent?

III. Did the circuit court err by granting summary judgment prior to Appellant being able to conduct discovery on the issues of whether time was of the essence of the purchase agreement and whether an unreasonable amount of time has passed while Appellant sought to satisfy the closing contingencies?

## STATEMENT OF THE CASE

This case involves a dispute arising from a real estate purchase agreement between Appellant Levi Grantham, LLC, as the purchaser, and Respondent Kathy Wright Mitchell, as the seller. (Compl.) The parties entered into the agreement on February 11, 2021, and Levi Grantham, in accordance with the agreement, tolled the closing date on July 9, 2021 because not all closing contingencies had been satisfied. (*Id.* at ¶¶ 5, 10.) Although Levi Grantham tolled the agreement, Mitchell informed Levi Grantham that she no longer intended to honor her obligation to sell the property to Levi Grantham. (*Id.* at ¶11.) She then listed the property for sale and tried to sell it. (*Id.*)

As a result of Mitchell's actions, Levi Grantham filed a lis pendens on the property on August 30, 2021, to give notice of its potential claim for breach of contract. (*Id.* at ¶ 12; Lis Pendens.) Levi Grantham then perfected the lis pendens by filing its complaint in this action on September 20, 2021. (Compl.) The complaint asserts a cause of action against Mitchell for anticipatory breach of contract and seeks specific performance of her obligations under the purchase agreement. (*Id.* at ¶¶ 18-24.)

Mitchell filed her answer and counterclaim on November 8, 2021, asserting that Levi Grantham had breached the purchase agreement for failure to fulfill the conditions precedent and caused unreasonable delay in performance of the contract and that the purchase agreement should be rescinded as a result. (Answer and Counterclaim.) Levi Grantham submitted its reply to Mitchell's counterclaim on December 8, 2021. (Pl. Reply Counterclaim.)

On February 22, 2022, Mitchell filed a motion for summary judgment and a supporting affidavit. (Def's Mot. Summ. J.; Mitchell Aff.) Levi Grantham submitted its Memorandum in Opposition to Defendant's Motion for Summary Judgment and Affidavit of Joshua Craig on March 28, 2022, and Mitchell filed a Memorandum in Support of Summary Judgment on March 29, 2022. (Pl.'s Memo. Opp. Summ. J.; Def.'s Memo. Supp. Summ. J.) A hearing on Mitchell's motion for summary judgment was held before the Honorable Frank R. Addy, Jr. on March 31, 2022. (Tr. pp. 1-32.)

Judge Addy issued his order granting Mitchell summary judgment on April 1, 2022. (Order Granting Summ. J., April 1, 2022.) In the order, the circuit court ruled that "[r]equiring the seller to wait more than one year to close on the Agreement, when "time is of the essence," and no date is set for the satisfaction for contingencies, is unreasonable." (*Id.* at p. 3.) As a result, the circuit court ruled that the purchase agreement would be rescinded if Levi Grantham did not close on the property by April 15, 2022. (*Id.* at p. 4.)

Levi Grantham filed a motion to reconsider the order granting summary judgment on April 11, 2022. (Pl.'s Mot. Recon.) Mitchell filed a memorandum in opposition to Levi Grantham's motion to reconsider on April 13, 2022. (Def's Memo. Opp. Mot. Recon.) Judge Addy issued a Form 4 Order denying Levi Grantham's Motion for Reconsideration on April 14, 2022. (Form 4 Order, April 14, 2022.) Levi Grantham filed its Notice of Appeal with the Court of Appeals on April 18, 2022. (Not. Appeal.)

## STATEMENT OF FACTS

On February 11, 2021, Respondent Kathy Wright Mitchell and Appellant Levi Grantham, LLC entered into a purchase agreement, under which Levi Grantham agreed to purchase the property commonly known as 1584 Folly Road, Charleston, South Carolina, from Mitchell. (Compl. ¶ 5; Purchase Agreement.) The property is adjacent to another parcel that Levi Grantham has contracted to purchase, and Levi Grantham plans to assemble the parcels and develop them for residential homes. (Compl. ¶ 7; Craig Aff. ¶ 5.)

Under the purchase agreement, the closing of the transaction and conveyance of the property was to occur 30 days after the end of a 90-day due diligence period. (Purchase Agreement §§ 8, 13.) The form purchase agreement used by the parties also included a "time is of the essence" clause in the closing provision. (*Id.* at § 13.) However, because the property is integral to Levi Grantham's development plan, the parties also agreed that the closing of the sale and purchase of the property would be contingent upon Levi Grantham obtaining certain governmental approvals necessary for the development plan. (*Id.* § 36; Craig Aff. ¶ 8.) Specifically, Paragraph 36 of the purchase agreement provides:

> The following conditions shall be satisfied prior to closing under the Agreement:
>
> A. Purchaser's receipt of preliminary plat approval from the applicable governmental entity for Purchaser's intended development plan.
>
> B. Access availability from the SCDOT or applicable authority for Purchaser's intended development plan.

> **If all of the conditions set forth in this Paragraph are not satisfied as of closing,** the Buyer, at its option in addition to applicable remedies, may terminate the Agreement by delivering written notice thereof to Seller, and upon such termination the Earnest Money shall be returned to Buyer, **or at the election of Buyer as evidenced by written notice thereof to Seller, the Agreement may be tolled until all such conditions are satisfied**.

(Purchase Agreement § 36) (emphasis added). Section 36 also states that the contingencies and stipulations contained in that section "shall preempt" other sections in the purchase agreement. (*Id.*) This tolling provision was necessary because Levi Grantham does not control the approval process and is subject to the timing and dictates of the municipalities and governmental agencies that have jurisdiction over approving the development. (Craig Aff. ¶ 9.)

After entering into the purchase agreement, Levi Grantham began diligently designing its intended development and seeking the necessary government approvals of its development plan. (*Id.* at ¶¶ 9-13.) Because the assemblage of the property is partly under the jurisdiction of the City of Charleston and partly under the jurisdiction of Charleston County, both the City and the County must separately approve various aspects of the proposed development. (*Id.* at ¶ 6.)

With respect to the City process alone, several steps are required to develop a new residential subdivision and receive a preliminary plat. (*Id.* at ¶ 7.) These include: (1) hiring an engineer and/or land planner to prepare the concept plan of the subdivision; (2) preparing a concept plan that must be approved by the City's Technical Review Committee ("TRC") and Planning Commission; (3) attending a pre-application meeting with the City's planning staff; (3) submitting a concept plan

application to the TRC; (4) coordinating with other local governmental agencies and utility providers to ensure that adequate public infrastructure exists to service the new development; (5) attending TRC meetings to receive comments to the plans submitted for review; (6) revising the concept plan based on comments from the TRC members; and (7) obtaining approval from the Planning Commission after receiving approval from the TRC. (*Id.*) This process requires a significant expenditure of time and resources and can take anywhere from 1 to 3 years depending on the challenges with the development site. (*Id.*)

Given the length of time needed to obtain the approvals, Levi Grantham began the process prior to the parties finalizing the purchase agreement. (*Id.* at ¶ 10.) To start the process, Levi Grantham hired a planning and engineering consultant to prepare the concept plan and related documents for the development to ensure that it complied with the applicable zoning code and land development regulations, including stormwater regulations. (*Id.*) During the process of preparing these materials, Levi Grantham and the consultant held a meeting with the City's planning staff on December 15, 2020 to discuss the development and receive guidance regarding the issues needed to obtain approval. (*Id.*) Based on the feedback received from this meeting, the consultant prepared a preliminary concept plan and submitted it to the City for informal review as part of the TRC's scheduled Sketch Plan Wednesday meetings, which was held in May 2021. (*Id.*) Also, the consultant and Levi Grantham held an additional meeting with the City's planning staff in June

2021 to get additional information regarding the City's interpretation of the commercial requirements for the site. (*Id.*)

Although Levi Grantham had been diligently seeking the necessary approvals, they were not obtained by the anticipated closing date. (*Id.* at ¶ 13; Compl. ¶ 10.) As a result, Levi Grantham, on July 9, 2021, provided Mitchell with notice of its election to toll the purchase agreement until the contingencies were satisfied in accordance with Paragraph 36. (*Id.*; Ltr to Mitchell, July 9, 2021.) Based on this action, Levi Grantham continued its activities to finalize the design of the development and get approvals from the City. (Craig Aff. ¶ 13.)

Despite Levi Grantham's tolling the purchase agreement and continued planning activities, Mitchell, through her real estate agent, informed Levi Grantham that she no longer intended to honor her obligation to sell the property to Levi Grantham under the purchase agreement. (Compl. ¶ 11.) Consistent with that representation, in August 2021, Mitchell listed the property for sale by owner on www.zillow.com for $295,000 more than what was agreed to in the purchase agreement with Levi Grantham and began actively marketing and attempting to sell the property to another purchaser. (*Id.*)

As a result of these actions, which Levi Grantham considered to be an anticipatory breach of the purchase agreement, it filed in September 2021 the complaint in this action, which alleges that Mitchell had breached the purchase agreement and seeks specific performance. (Compl.) In response, Mitchell asserted counterclaims for breach of contract and rescission of the purchase agreement based

on Levi Grantham's alleged "unreasonable delay" in closing on the purchase of the property. (Answer and Counterclaim.)

While the action was pending, Mitchell ceased her attempts to sell the property and, through her attorney, informed Levi Grantham that, if the closing did not occur by December 10, 2021, she would consider the contract terminated. (Mitchell Aff. ¶ 9.) In response to that letter, Levi Grantham provided Mitchell with additional information about the status of the approval process and closing contingencies. (*Id.* at ¶ 10.)

At that point, the concept plan for the development had been significantly modified based on the feedback received in the City's TRC process in May and June 2021. (Craig Aff. ¶ 11.) The feedback required extensive changes for the entire project that took a considerable amount of time to make. (*Id.*) After the changes were complete, Levi Grantham submitted a concept plan application to the City in December 2021 for TRC and Planning Commission review. (*Id.*)

After Levi Grantham provided that information to Mitchell's attorney, Mitchell's attorney provided Levi Grantham notice on January 5, 2022 that, if the closing did not occur by February 11, 2022, the purchase agreement would be considered terminated. (Mitchell Aff. ¶ 11; Ltr to Levi Grantham, Jan. 5 , 2022.) Shortly after that notice was sent, the City's TRC conducted its first review of the concept plan on January 13, 2022. (Craig Aff. ¶ 11.) Although most departments involved in the TRC review process submitted comments to proposed concept plan

and application, the City's engineering department did not provide any comments. (*Id.*)

Despite the incomplete comments from the TRC, Levi Grantham again modified its concept plan for the second TRC review, which was scheduled to occur on April 14, 2022. (Craig Aff. ¶ 12.) Prior to that review occurring, Mitchell filed a motion for summary judgment on her counterclaim on February 22, 2022. (Def's Mot. Summ. J.) After the motion was heard on March 31, 2022, the circuit court granted summary judgment to Mitchell. (Order Granting Summ. J., April 1, 2022.) In the order, the circuit court found that Levi Grantham had committed a substantial and fundamental breach of the purchase agreement by failing to close on the purchase within a reasonable period of time. (*Id.* at p. 3.) It, therefore, ordered the purchase agreement terminated and immediately rescinded if the purchase was not closed by April 15, 2022. (*Id.* at p. 4.)

## STANDARD OF REVIEW

"In ruling on motions for summary judgment, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." *Johnston v. Bowen*, 313 S.C. 61, 437 S.E.2d 45 (1993). "Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions, and affidavits, [if any] show that there is no genuine issue of material fact." *Shuler v. Tuomey Regional Medical Center, Inc.*, 313 S.C. 225, 227, 437 S.E.2d 128, 130 (Ct. App. 1993). To withstand a motion for summary judgment "in cases applying the preponderance of evidence burden of proof, the non-moving party is only

required to submit a mere scintilla of evidence." *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.'" *Baughman v. AT&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C. 1975)). For this reason, "summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.*

## ARGUMENT

I. Summary judgment was improper because the reasonableness of the time to close under the purchase agreement was a question of disputed fact that should have been decided under the particular circumstances of the case.

The circuit court erred by ruling that Levi Grantham "substantially and materially" breached the purchase agreement by failing to close on the property within a "reasonable" time. In making this ruling, the circuit court resolved all issues of fact in favor of the moving party although no discovery had been conducted in the case. As a result of this error, summary judgment should be reversed.

In this case, it is undisputed that closing contingencies existed in the purchase agreement and that Levi Grantham had the ability to toll the anticipated closing date if the contingencies were not satisfied by that date. Nevertheless, Mitchell argued, and the circuit court agreed, that Levi Grantham had an obligation to close on the purchase within a "reasonable" period of time.

Where the contract does not provide a precise date by which payment or conveyance must be made, a reasonable time will be implied. *Davis v. Cordell*, 237 S.C. 88, 99, 115 S.E.2d 649, 654 (1960). The determination of what is a reasonable time must be determined "according to the circumstances of the case." *Id.* at 101, 115 S.E.2d at 655. "What is a 'reasonable time' . . . is a question of fact" and is not subject to any particular rule. *Minshew v. Atl. Coast Lumber Corp.*, 98 S.C. 8, 23, 81 S.E. 1027, 1032 (1914). Furthermore, a party to a contract may make time of the essence of the other party's performance of the contract by "giving notice to the other that he will insist on performance by a certain date, provided the time allowed by the notice is reasonable, which is a question of fact for the jury depending on the circumstances of the particular case." *Hobgood v. Pennington*, 300 S.C. 309, 314, 387 S.E.2d 690, 693 (Ct. App. 1989).

Here, the limited facts before the court indicate that, at the very least, there is an issue of disputed fact about whether Levi Grantham failed to close within a reasonable period. To begin, Section 36 of the purchase agreement reveals that the parties understood that the closing would be contingent on getting the necessary government approvals for a preliminary plat for the planned development and that such approvals could take longer than the anticipated closing date. Moreover, Levi Grantham presented evidence indicating that the process for satisfying the contingencies and obtaining the necessary approvals to close on the Property could take from one to three years, which indicates that a failure to close within a one-year period is not unreasonable. (Craig Aff. ¶ 7.) And there is no evidence in the record

indicating that Levi Grantham was dilatory in seeking the approvals or otherwise acted unreasonably in such efforts. Thus, the particular facts of this case, when construed in the light most favorable to Levi Grantham, reveal that there are questions of fact that preclude summary judgment on the issue of whether Levi Grantham failed to purchase the property within a reasonable time.

Instead of construing the facts in the light most favorable to Levi Grantham to determine a reasonable time to close based on the particular circumstances of this case, the circuit court appears to have created a rule that requiring a seller to wait more than one year to close on the sale of the property with no date set for the satisfaction of contingencies is *per se* unreasonable. As stated above, no such *per se* rule is cognizable under South Carolina law. *Minshew*, 98 S.C. at 23, 81 S.E. at 1032 (stating that no particular rule governs what is time).

Indeed, the circuit court's order and application of a *per se* rule to this case ignores the realities of real estate development. It is a common practice for real estate purchases to be conditioned upon the purchaser obtaining various government approvals needed to develop the subject property. And it is beyond debate that such approvals require significant planning and time, much of which is out of the control of the parties to the underlying transaction.

To account for the uncertainty in the outcome and timing of government approvals, purchasers and sellers routinely enter into contractual provisions that delay a real estate closing until such approvals are granted. Here, the parties did just that. By agreeing to Section 36 of the purchase agreement, Mitchell and Levi

Grantham voluntarily agreed to allow Levi Grantham to toll the closing until the preliminary plat was approved, and Mitchell knew or should have known that such approval could take considerable time, even more than one year. Instead of recognizing that Mitchell understood this possibility and knowingly agreed that the closing could be extended for a period reasonably sufficient to allow Levi Grantham to obtain approval of the preliminary plat, the circuit court effectively rewrote the parties' contract and imposed a closing period that was insufficient under the particular facts of this case to satisfy the closing contingencies.

If this court affirms the circuit court's order ruling that taking more than one year to close on a real estate transaction while the buyer is pursuing closing contingencies is unreasonable without regard to the realities of the particular governmental permitting process involved in the case, it would threaten the enforceability of innumerable real estate contracts and jeopardize countless development projects. To avoid this result, the Court should reverse summary judgment and remand to the circuit court for proper consideration of the time needed to satisfy the particular contingencies set forth in Section 36 of the purchase agreement.

II. The court erred in granting summary judgment because the issue of whether time was of the essence of the purchase agreement was ambiguous.

In granting summary judgment to Mitchell, the circuit court also erred in determining that time was of the essence of the purchase agreement. To be sure, the purchase agreement contains multiple provisions stating that "time is of the essence," as the circuit court found. However, the circuit court's order completely ignores the

language of Section 36 that allowed Levi Grantham to toll the closing if the contingencies were not satisfied and that section's express provision that it preempts other parts of the agreement. When Section 36 is construed in the light most favorable to Levi Grantham, it nullifies and preempts the "time is of the essence" provisions.

While an express contractual provision that time is of the essence is usually deemed evidence of the parties' intent, such a provision is not controlling where other portions of the same contract demonstrate a contrary intent. *Tamko Asphalt Products, Inc. v. Fenix*, 321 S.W.2d 527, 533-34 (Mo. Ct. App. 1958). "The fact that the contract expressly states that time is of the essence is not conclusive. Other provisions of the contract may be so inconsistent with this as to lead to the conclusion that time is not essential." *Rocky Mountain Gold Mines, Inc. v. Gold, Silver & Tungsten, Inc.*, 104 Colo. 478, 500, 93 P.2d 973, 983 (Colo. 1939) (citing 3 Williston on Contracts (Rev. Ed.), p. 2388, § 852, Note 8).

When faced with inconsistent contractual language, such as present in the purchase agreement, courts have routinely refused to give effect to time of the essence clauses. *See, e.g., Prime Group, Inc. v. Northern Trust Co.* 215 Ill. App. 3d 1065, 1071, 159 576 N.E.2d 841, 845 (Ill. App. 1991) (refusing to apply time is of the essence clause to separate provision allowing purchaser to extend closing date); *Honeyman v. Closterman*, 90 Ore. App. 615, 620-621, 753 P.2d 1384, 1387 (Ore. Ct. App. 1988) (resolving ambiguity in closing date provision by giving special condition clause more weight than time is of the essence clause), *overruled on other grounds by Baugh v.*

*Bryant Ltd. Partnerships I through IV,* 104 Ore. App. 665, 803 P.2d 742 (1990); *Pederseon v. McGuire*, 333 N.W.2d 823, 826 (S.D. 1983) (disregarding time is of the essence clause because terms of the contract regarding time of performance was indefinite); *Vecellio v. Bopst*, 121 W. Va. 562, 6 S.E.2d 708 (W. Va. 1939) (ruling that time was not of the essence of contract, despite express provision to that effect, because it was inconsistent with other material provisions of the contract); *Tamko Asphalt Products*, 321 S.W.2d at 534 (giving effect to more specific provisions of contract that were inconsistent with time is of the essence clause).

Here, the inconsistency between the time is of the essence provisions and Section 36 creates an ambiguity about whether time was of the essence when the contingencies to the closing had not been satisfied. Significantly, the contract used by the parties in this case was a form contract that allowed the parties to add material terms to the agreement. The time is of the essence provisions were pre-existing provisions in the form; whereas, the provisions of Section 36 were specifically inserted into the purchase agreement to allow for the closing to be extended for an indefinite amount of time. Perhaps more importantly, the parties agreed to express language providing that Section 36 preempted other terms of the purchase agreement. At the very least, the inconsistencies in these two provisions and the preemption language in Section 36 create an ambiguity about whether the parties actually intended for time to be of the essence of the purchase agreement.

As this Court has ruled, "[s]ummary judgment is improper when there is an issue as to the construction of a written contract and the contract is ambiguous

because the intent of the parties cannot be gathered from the four corners of the instrument." *Wallace v. Day*, 390 S.C. 69, 74, 700 S.E. 2d 446, 448 (Ct. App. 2020). Because the inconsistencies between the time is of the essence provisions and the tolling provision in Section 36 create an ambiguity in the purchase agreement, the circuit court erred in conclusively determining that time was of the essence of the purchase agreement and relying on that conclusion to determine that an unreasonable period of time had passed without Levi Grantham closing on the purchase. *See id.* at 76-77, 700 S.E. 2d at 449 (ruling that master erred in granting summary judgment on breach of contract claim arising from failure to close on purchase of property because contract was ambiguous). Therefore, the circuit court's order granting summary judgment should be reversed.

III. The circuit court erred in granting summary judgment prior to Levi Grantham having a full and fair opportunity to conduct discovery.

Given the ambiguities in whether time was of the essence of the purchase agreement and the disputed facts about the reasonableness of the time to close on the purchase of the property, the circuit court should have refrained from granting summary judgment until the parties had completed discovery on these topics. As discussed above, "summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *John Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001). Here, Levi Grantham was denied this opportunity, and summary judgment was, therefore, premature.

At the time summary judgment was granted, Mitchell's counterclaims had been pending less than five months. Although the parties had exchanged information

regarding Mitchell's expectations of the closing and Levi Grantham's progress in seeking the preliminary plat approval, the parties had not engaged in written discovery or taken any depositions. Thus, the circuit court's decision granting summary judgment deprived Levi Grantham of an opportunity to depose Mitchell and determine her understanding and intent in entering into the purchase agreement, especially regarding the closing contingencies and tolling provision in Section 36. To cure this deprivation, it is imperative that the Court reverse the circuit court's order and remand the case to allow Levi Grantham to conduct discovery on these and other pertinent issues.

## CONCLUSION

Based on the foregoing discussion and analysis, Levi Grantham respectfully requests that the Court reverse the circuit court's order granting Mitchell summary judgment.

Respectfully submitted,

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October 7, 2022
Charleston, South Carolina

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr., Circuit Court Judge

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Appellate Case No.:2022-000470
Case No.: 2021-CP-10-04342

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Levi Grantham, LLC, .....Appellant,

v.

Kathy Wright Mitchell, .....Respondent.

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**PROOF OF SERVICE**

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This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the ***Initial Brief of Appellant*** and ***Designation of Matter to be Included in the Record on Appeal*** via electronic mail only, addressed as follows:

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**Re: Levi Grantham, LLC v. Kathy Wright Mitchell**
**Civil Action No.: 2021-CP-10-04342**
**Appellate Case No.: 2022-000470**
**MVA File No.: 048042.000001**

Dear Ms. Kitchings,

With regard to the above-referenced matter, please accept the following for filing in the above matter:

1. Initial Brief of Appellant Levi Grantham, LLC;

2. Designation of Matter to be Included in the Record on Appeal; and

3. Proof of Service.

By copy of this letter, I am serving Respondent's attorney with a copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal.

Thank you for your assistance with this matter. If you should you have any questions, please feel free to contact me.

Sincerely,

MOORE & VAN ALLEN PLLC

E. Brandon Gaskins

EBG/llp

Enclosure: As Stated.

cc: Donald J. Budman, Esquire *(via e-mail only)*