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**Nov 07 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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**Appellate Case # 2022-000277**

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**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**

**vs.**

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

**APPELLANTS**

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**APPELLANTS' MOTION FOR REHEARING**

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The appellants would move the court pursuant to Rule 240, Rule 241 and Rule 221 SCRAP for a rehearing and reconsideration of the court's order of November 1, 2022 that denied the appellants motion for a supersedes bond that is required as a matter of law by nature of the character of the underlining case that an appeal has been taken.

The law pertaining to us stay of a lower court order for the sale of land is embodied as Rule 62 SCRCF and Rule 241 SCRAP and codified as § 18-9-170, Code of Laws of South Carolina Ann. This denial of a fundamental right denies the appellants of the equal protection of the laws as guaranteed by Article 3 Section 1 of the South Carolina Constitution and the 5th and 14th Amendments of the Constitution of the United States.

The court states in the order denying the applicants motion for a stay accompanied with a Writ of Supersedes (conditioned upon the posting of a bond for an amount to be determined by the court De Nova") that, "after careful consideration the motion is denied" without stating the factual basis or factors the court considered.

The pertinent point in both these court rules is that the granting of a supersedes bond is not discretionary, but mandatory in this case to prevent the appellants' property from being sold. The court's discretion is limited to setting the amount of the supersedeas bond after exercising its' careful consideration of what damages the

non-moving party may incur for not having possession of the property during the pendency of this appeal.

While The Master in Equity, who first denied the appellants Writ of supersedes. is of the judiciary he is appointed to his office by the governor of the state, being of the executive branch of our government; justices of the Court of Appeals are appointed by our State legislatures who derive their powers directly from the citizens of the State of South Carolina and have a disposition more firmly founded upon guaranteeing the constitutional protections of the citizenry they serve.

§ 18-9-170 the stay and supersedes statute, reads as follows:

*If the judgment appeal from direct to cell or delivery of possession of real property the execution of the judgment shall not be stayed unless a written undertaken be executed on the part of the appellant, with two sureties, to the fact that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaken until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaken. When did judgment directs the sale of land to satisfy a mortgage thereon or other lien the undertaken shall provide that in case the judgment appeal from be affirmed and the land be finally*

*sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and you'll pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaken to the time of sale, but not exceeding the amount of such deficiency which shall be duly entered as a payment on the judgment; and in case the land shall be unimproved land then in an action or proceedings now pending or hereafter begun in any other courts of this state the undertaking shall further provide for the payment by a pediment pellet if the judge would be affirmed of any taxes due at the time of the appeal or already paid by the mortgage or becoming due during the pendency of the appeal and also for the payment by appellant of the interest on the debts falling due the pendency of such appeal.*

A leading case construing this statutory provision is Wachesaw Plantation Community Services Association Inc., v Todd C Alexander 414 SC 355, 778 S. E. 2d 898, This case in reversing the Court of Appeals held that the issuance of a deed does not render a motion to vacate a foreclosure sale moot and that the appellate court was compelled to rule on the merits of the appeal. This is good law. However, the not addressed problem remains. Without the court granting the appellants a supersedeas bond the lower court may proceed to sell the property. What benefit is derived by the appellant who prevails upon appeal when the property has been sold. What benefit is derived by the Appellants to prevail upon appeal and the property is

gone? At least for the moment it satisfies the requirement of *Rule 219, SCRAP* that the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.

What has not been ruled upon though and is a requirement to be fulfilled by the Plaintiffs/Respondents is § 18-9-130 A (2), Code of laws of South Carolina Ann. This statute provides that a plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the to the defendant with good sureties and double their praise value of their property.

That statute reads as follows:

*A **plaintiff** may not enforce the sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant with two good securities in double the praise value of the property or double the amount of the judgment condition to pay all damages defendant may sustain by reason of the sale in case the judgment is reversed. The **plaintiff** in such a case may not proceed with a sale of defendants' property if the **defendant** enters into an undertaking with good sureties in double the appraised value of the property or the amount of the judgment to pay the judgment with legal interests and all costs and damages the plaintiff may sustain by reason of the appeal or to produce the property levied upon and submit to the sale if the judgment is confirmed.*

This appears to present off setting requirements or dual requirements; but the Defendant/appellant may need to comply with theirs first.

The movement appellants are black owners and a suspect class under constitutional law tiered scrutiny classifications; with all being citizens of the United States and taxpayers of the State of South Carolina. If the court does not grant a rehearing its' order of November 1, 2022 becomes the law upon the case and would be a denial of the equal protection of the laws to the appellants as embodied in Article 1 § 3 of the South Carolina Constitution and the 5th and 14th Amendments of the United States Constitution.

The 5th Amendment due process clause requires the United States government to practice equal protection. The 14th amendment's due process clause of the United States Constitution requires the states to comply with this mandate also. The 14th amendment basically states that *all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United states,; not shall any state deprive any person of life liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.*

The right of a party to obtain a Writ of Supersedeas is a property right which this court's order of November 1 2022 is denying to Black litigant citizens. It is a

right which has never, through a search of South Carolina jurisprudence, been previously denied to all other citizens. The right to a writ of supersedes in the civil law is tantamount to the right to vote and the right for bail in our criminal law. The right to acquire a supersedes bond (a property right) are both constitutionally guaranteed rights save the power of the court to exercise its discretion in calculating justice, to determine the amount of the bond. For a court not to exercise this discretion, when there is a legal constitutional imperative to do so, is tantamount to an abuse of discretion.

The appellant upon the grounds herein set forth, moves the court to grant a review and rehearing buy a three judge panel for the purposes of reconsidering its ruling set forth in the Order of November 1, 2022 and then grant to the appellants a supersedeas bond, upon the unimproved property, that is the subject matter of this action, on appeal, to which they hold a small minority interest as joint heirs, who are attempting to exercise their Right of First Refusal.

Respectfully submitted,

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By: S/ Charles E. Houston Jr.  
Charles E. Houston Jr.

SC Bar # 2663- Fed. Bar # 1961  
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Hilton Head Island, SC  
November 7, 2022

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**APPELLANTS**

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**PROFF OF SERVICE**

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I hereby certify that this law firm represents the Appellants in the above captioned matter and that on the date below at Hilton Head Island South Carolina I served a copy of the foregoing **Motion for Rehearing** and the **Proof of Service** on the following persons by electronic mail to their AIS email addresses and by US mail, first class postage prepaid, on November 7, 2020

**Documents served:**

**(1) Proof of Service and**

**(2) Motion for Rehearing**

**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 7<sup>th</sup> day of November, 2022**

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1000 Main Street, Suite 200C  
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By: S/ Charles E. Houston.

Jr.

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Hilton Head Island, SC



THE  
**HOUSTON**  
LAW FIRM LLC



Charles E. Houston, Jr.

November 7, 2022  
*Ctfilins@sccourts.org*

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**SC Court of Appeals**

Hon. Jenna Abbott Kitchings, Clerk  
The South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

**Re: *Appellate Case # 000277***  
***Harrison v Kirkland***  
***Filing of Motion for Rehearing***

Dear Ms. kitchings:

Our office represents the appellant in the above reference case on appeal before your court and we are submitting for filing the Appellants Motion for Rehearing along with our check for \$50 to cover the courts filing fee for this motion.

By copy this letter I am serving the same upon opposing counsels as set forth in our enclosed Proof of Service

With kind regards, I remain  
Respectfully

,  
***S/ Charles E. Houston Jr.***  
Charles E. Houston, Jr.

Cc: Chester C, Williams, Esq.  
Thomas Taylor, Esq.

Encls: as stated