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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2020-CP-07-0231

APPELLATE CASE NO. 2022-000277

Georgia Harrison, Barbara Harrison,
Joyce Ellen Harrison, William S. Harrison III,
Stanley Roberts, and
Diana Mendheim, Individually and As Attorney In Fact,

Respondents,

vs.

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

Appellants.

RESPONDENTS' MOTION TO STRIKE APPELLANTS' AMENDED INITIAL BRIEFS

On June 27, 2022, the Clerk of the Court of Appeals issued a notice letter to Charles Houston, Appellants' counsel, advising him and the Appellants that their initial brief was due to be filed on July 27, 2022. On August 24, 2022, Mr. Houston filed a Motion to Extend the Appellants' time for filing of their initial brief and designation of matter, and on August 25, 2022, this Court issued an Order granting the Appellants an extension until September 16, 2022 to file

their initial brief and designation of matter. On September 13, 2022, Mr. Houston filed a second Motion for an extension to file the Appellants' initial brief and designation of matter, to which the Respondents objected. On September 20, 2022, this Court issued an Order granting the second extension to file the Appellants' initial brief and designation of matter until October 17, 2022, and advised that "No further extensions will be granted absent extraordinary circumstances."

On October 17, 2022, Mr. Houston filed the Appellants' initial brief and what purported to be their designation of matter to be included on appeal. A true and correct copy of that initial brief as filed is attached hereto as Exhibit A. Respondents received a copy of the Appellants' initial brief as filed on October 17, 2022 and began to work on their draft responsive brief immediately due to the time exigencies of this case.

On November 2, 2022, sixteen (16) days after filing the Appellants' initial brief and designation of matter, and without having made a motion or having received permission from this Court, Mr. Houston submitted an "Amended Initial Brief" for the Appellants electronically to the Clerk of Court at 11:07 a.m., which was received and filed by the Clerk. A true and correct copy of that Amended Initial Brief is attached hereto as Exhibit B. Two hours later that same day, at 1:08 p.m., Mr. Houston submitted a second "corrected" Amended Initial Brief for the Appellants, which was electronically sent to the Clerk, and was received and stamped "filed" by the Clerk. A true and correct copy of that second "corrected" Amended Initial Brief is attached as Exhibit C. Both of the November 2, 2022 amended initial briefs contained substantively changed and supplemented arguments not included in the October 17, 2022 timely-filed initial brief.

Shortly after the second amended initial brief was sent to the Clerk on the afternoon of November 2, 2022, the Respondents filed their letter of objection with the Clerk, formally objecting to the Court's consideration of either of the two submitted "amended" initial Appellants'

briefs, and Respondents asked the Court to reject the proposed "amended" briefs and allow the briefing process to continue as per the Rules. True and correct copies of the Respondents' letter and email transmittal are attached hereto as Exhibits D and E.

The Respondents hereby formally move this Court to Strike both of the Appellants' amended initial briefs that were submitted by Mr. Houston on November 2, 2022 and allow the briefing process to proceed in a timely manner. As the basis for this Motion, the Respondents would show unto this honorable Court that the Rules of Appellate Procedure set forth a strict timetable for briefing, but allow for appropriate extensions of time for filing in certain circumstances, which Mr. Houston readily took advantage of and exercised in August and September, delaying the deadline for the timely filing of the Appellants' initial brief and designation of matter from the July 27, 2022 day originally set by the Clerk's letter of June 27, 2022, for 82 days, until October 17, 2022, when Mr. Houston finally submitted and filed the Appellants' initial brief and designation of matter.

The Court is well aware from earlier filings and Orders in this matter, that this case involves the sale of a large tract of land that is heirs property on Hilton Head Island, of which the Appellants own less than a two (2%) percent interest, and that the continuing delays occasioned by the repeated filings made by Mr. Houston on behalf of the Appellants, is jeopardizing the potential closing of the contract that will greatly benefit all of the co-owners of the land—the Appellants and the Respondents.

The Rules of Appellate Procedure do not allow a party to simply file an "amended" initial brief at their leisure, and the Appellants' attempt to do so (twice) without Court approval or motion is inappropriate and highly prejudicial to the Respondents because not only have the Respondents' counsel already spent substantial time researching and drafting their initial Respondents' brief in

reliance upon the Appellants' initial brief as filed on October 17, 2022, but the proposed "amended" briefs add substantial new arguments, which were not timely presented to this Court, coming well after the October 17, 2022 deadline for filing the Appellants' initial brief, that will necessitate substantially more research and preparation, probably necessitating an extension for the Respondents at this point, which will only unduly delay resolution of this case further. To the Respondents, Mr. Houston's submission to the Clerk of Court of his "amended" initial briefs is nothing more than a backdoor attempt to further extend the deadline for filing the Appellants' initial brief.

Respondents advise the Court that because this Motion To Strike Appellants' Amended Initial Briefs is based solely upon the Rules, no memorandum nor Affidavits are appropriate to be filed.

WHEREFORE, the Respondents move the Court to Strike the Appellants' Amended Initial Briefs submitted on November 2, 2022.

LAW OFFICE OF THOMAS C. TAYLOR, LLC

s/Thomas C. Taylor
Thomas C. Taylor
Attorney for Plaintiffs
SC Bar No.: 5499
PO Box 1808
Bluffton, SC 29910-1808
1-843-785-5050
tom@thomastaylorlaw.com

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

s/Chester C. Williams
Chester C. Williams
Attorney for Plaintiffs
17 Executive Park Road, Suite 2
PO Box 6028
Hilton Head Island, Sc 29938-6028
1-843-842-5411
firm@ccwlaw.net

Bluffton, South Carolina
November 6, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA
IN THE 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

INITIAL BRIEF OF APPELLANTS

The Houston Law Firm LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926
Phone: 843-684-0211
chouston@houstonlawfirm.net
By: S/ Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar # 2663 Fed. Bar # 1961
Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

CASES

COURT RULES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1

Was the Order filed October 20, 2021 issued by this Court a final order to the effect that the Court lacked subject matter jurisdiction to address a Motion for Reconsideration filed more than ten (10) days afterwards.?

2

In an action to quiet title is there any statutorily provisions that grants to a Master in Equity the authority to convey property that is the subject matter of the action and if it were done would that be a voidable transfer for lack of jurisdictional

Authority?

3

Was the court was in error and abused its discretion as a matter of law, when setting the conditions for the defendants to exercise their "Right of First Refusal" as provided under section 15-61-35 of the Clementa C. Pinckney Act by requiring Defendants to deposit with the clerk of court the sum of Six Million Dollars, within 60 days next to the order dated October 21, 2021 into an non-interest bearing account under the conditions where no provision was made in the order as to when they would receive a deed, and if so; would it be a warranty deed and what entity or person(s) would make the conveyance and would the deposit be refundable and/or applied to the purchase price.

STATEMENT OF CASE

ARGUMENTS

QUESTION PRESENTED

1

Was the Order filed October 20, 2021 issued by this Court a final order to the effect that the Court lacked subject matter jurisdiction to address a Motion for Reconsideration filed more than ten (10) days afterwards.?

2

Was the October 20, 2021 Consent Order the Final Order of the Court?

3

Was the court was in error and abused its discretion as a mater of law, when setting the conditions for the defendants to exercise their "Right of First Refusal" as provided under section 15-61-35 of the Clementa C. Pinckney Act by requiring Defendants to deposit with the clerk of court the sum of Six Million Dollars, within 60 days next to the order dated October 21, 2021 into an non-interest bearing account under the conditions where no provision was made in the order as to when they would receive a deed, and if so; would it be a warranty deed and what entity or person(s) would make the conveyance and would the deposit be refundable and/or applied to the purchase price.

ARGUMENT 1

1) The October 20 2021 Order is void or voidable for the following reasons:

A) This was not a Consent Order as the Defendants filed a response in opposition the provisions in its proposed order form.(Response in Opposition)

B) The Order was not raised by motion as required by *Rule 7(b)* (1) SCRCP and the filing fee of $25.00 paid to the Clerk of Court as required by *§ 8-21-320 S.C. Code Ann*. as amended, effective July 1, 2002, by H4431, R470, which requires a filing fee of $25 for all motions in a Court of Common Pleas and Family Court unless exempted under the Order of the South Carolina Supreme Court dated June 26, 2002 that allows for the waiver of the fee only when forma pauperis has been granted under Rule 3(c) SCRCP that is not present in this instance.

RULE 7, reads as follows:

PLEADINGS ALLOWED: FORM OF MOTIONS

(b) Motions and Other Papers.

(1) *An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.*

C) The October 20, 2021 Order Is not a final order as a provision in the

Order required that the publication of the Summons and Complaint be made to give prospective notice of the proceeding to unknown heirs, minors and present their claims., persons under disability and those who may be in the Military Services; of their right to appear in the action and state their claims upon the property.

D) An evidentiary hearing as required by *§15 –61–330* which is the prerequisite before a final order can be rendered as not been held. Section 15-61 – 330 reads as follows:

> ***(A)*** *In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.*
>
> ***(B)*** *This article supplements the provisions of Article 1 and if the provisions of this article differ from the provisions of Article 1, the provisions of this article control for partitions of heirs' property.*

E. The order of October 20, 2021 is not a final order or judgment as a judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment for appeal purposes. See *Watson v. Underwood 407 S.C. 443 756 S.E. 2d 1 55.*

This action was brought seeking a Court order quieting title to the property. This has not occurred. The property is heirs title property though the Court has not

officially decreed it as such. The Plaintiffs admitted in their complaint that two prior quiet title actions had been brought seeking to remove the “heirs title” cloud upon the property as a series of non-probated estates had reverted the title back into “heirs title.”

There are presently four foreign non probated intestate estates of deceased persons who held a possessor interest in the property to be probated and a judicial determination of who accedes to their interest has not been determined and no ancillary probate administration in South Carolina. Additionally, creditors or governmental agencies may have or acquire judgment liens upon these estates which may be registered in South Carolina.

F. If the Master in Equity had intended the Order of October 20, 2021 to have been the Final Order a Form 4 Order Sheet would have been filed with the Order indicating that the Order ended the case. If this had been done all parties would have been informed and noticed that the time for filing an appeal would begin to run. This was not done while the Defendant’s Motion for Determination has not been heard.

The text of the applicable rules is the following:

RULE 60

RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. *Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any*

party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion. ***Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.*** *On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:*

(1) *mistake, inadvertence, surprise, or excusable neglect;*

(2) *newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);*

(3) *fraud, misrepresentation, or other misconduct of an adverse party;*

(4) *the judgment is void;*

(5) *the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.*

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set

aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

G. By the Court making the proper finding that the October 20, 2021 is not the final Order of the case then Defendant's Motion should all be considered by this court under the purview of Rule 60 (b) (1) (2) and the axiom of Equity that " when matters of the conscience are decided in providentially equity stands ready to rectify" . See *Chapman v. Citizen and Southern National Bank of South Carolina 302 S.C. 469, 395 S.E.2d 446 (CT. APP. 1990)*.

The Defendants' second objection is to that section or portion of the proposed order that would require the Defendants, who have exercised their Right of First Refusal, to tender Six Million dollars of the purchase price of 9.1 million Dollars within a 60 days period of time. This required performance is premature, untenable, unreasonable, inequitable and judicially prejudicial;(an abuse of discretion) especially in an arm length transaction with a regulated commercial institution where *"Heirs' Title* and not the *Fee Simple Absolute* (marketable)

title, as collateral for the loan, cannot, as yet, be tendered.

Financing cannot be reasonable procured for the purchase of the property pursuant to *§ 15-61-25* until the Court issues an Order stating that the parties identified in the proposed order, are vested with the fee simple absolute title to the property by Adverse Possession since title by chain of title does not exist. Further until the Publication process not having started at the time this Order was issued left the title to the property to be exposed to new and adverse claims. the three out of state intestate estates are administered and auxiliary administration opened in the Probate Court for Beaufort County to enable a deed of conveyance from the deceased testators to their heirs, and

1) that the two completed estates that were cited in the complaint have not had auxiliary administration in Beaufort County, and

2) Further, no hearing has been scheduled to have pedigree and genealogy testimony and examination for the Court to find and verify who owns the property to the exclusion of the whole world and the exact percentage each of the owners possess with a description of the boundaries of the land that the possessory interest attached to.

3) While it is true that some buyers may offer to purchase "Heirs Title" property on a title "as is" basis, this risk is undertaken because the trade-off is acquiring the property at a below market value and after purchase than quieting the title to the property to achieve its market value. In contrast, here the designated Defendant purchasers desire to acquire the financing to enable the plaintiff heirs to receive their own appraisal value

of their inheritance.

Argument 2

FIRST: The Court objected to a Master's Deed for the proposed sale of the property when the Defendants were attempting to exercise their Right of First Refusal. (Tr..) The court would now, by the principle of *Stare Decisis* , be precluded from taking an opposite position, especially where the Court is aware that a Master's Deed for the property subject to this action cannot convey fee simple marketable title and for the same reason did not grant the Defendant's request for a Master's deed. Additionally, for the Court to grant this relief to the Plaintiffs while having previously denied it to the Defendants would constitute an inequity and impinge upon the Defendants constitutional right for the equal application and equal protection of the laws administered by the Court. It would be a travesty of justice and judicial bias for the Court to grant the issuance of a Master's Deed

SECOND: Without an order decreeing the fee simple title on the property the only title the court could convey would be a quit-claim deed that would not be commercially acceptable. The American Land Title Associations (ATLA} in their industry regulations on this point, state the following:

STG
12/01/1995
V 4
Require General Warranty Deed
The Company requires for its review a satisfactory General Warranty Deed conveying the title to the land. The Deed must then be signed, delivered and recorded.
Comment: *The title commitment customarily requires a deed (or other instrument, if appropriate) from the current owner. Additional requirements may be necessary when securing conveyances from fiduciaries or entities.*

DDSR03
STG
12/01/1995
V 4
Require Warranty Deed
The Company requires for its review a satisfactory Warranty Deed conveying the title to the land. The Deed must then be signed, delivered and recorded.
Comment: *The title commitment customarily requires a deed (or other instrument, if appropriate) from the current owner. Additional requirements may be necessary when securing conveyances from fiduciaries or*

THIRD: That to issue a Master's Deed would be in violation of Rule 71, SCRCP. This rule states that "Prior to the filing of the master's report or final order of judgment, the judge or master shall assure that the plaintiff and all other claimants have complied with the statutes pertaining to the filing of notices of Lis pendens." The Plaintiffs have not filed a Lis Pendens in this action that would constitute both a procedural and jurisdictional defect.

FOURTH: That required and indispensable parties have not been joined in this action that constitutes another jurisdictional defect. There are Four (4) non probated estates of deceased persons possessing an undivided interest in the property subject to this action in violation of Rule 71(d)(1), SCRCP. This rule states the following: Parties to Partition Actions. In addition to the requirements of these rules for the joinder in an action of all parties in interest, pursuant to Rule 17(f) no partition of real property of a deceased person shall be had unless the legal representative or representatives of such deceased person be made parties to the action and it be made to appear to the court that the debts of such deceased person are fully paid or that the personal estate in the hands of the personal representative or representatives is sufficient for the payment of the debts of such deceased person. Likewise, the adjoining land owners have not been joined as parties to this action. There being made parties is mandatory and compulsive to provide the court with a factual basis upon which to rule that the boundaries of the property are correct.

If the partition action involves real property of a deceased person whose estate has not been administered or is not being administered at the time of the bringing of the action, then all known encumbrancers of the estate of the deceased person shall be made parties to the action and no decree in partition shall be entered unless due provision is made for the payment of the debts found due such encumbrancers. In all actions for partition, all heirs at law or devisees of the deceased person shall likewise

be made parties. The Plaintiffs who commenced and prosecuted this action have failed to do this which constitutes a personal jurisdictional defect in this proceeding.

FIFTH: Another jurisdictional defect falls under Rule 71(e). This Rule states the following: Actions When Title Is at Issue. In foreclosure or partition

actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired. The Plaintiffs have failed to convene and the Court "Sua Sponte" has not held an evidentiary hearing in this proceeding to come into compliance with the provisions of this rule.

SIXTH: and lastly, it would be an injustice perpetrated upon our citizenry for the Court to convey the property by Master's Deed as many would misconstrue a Masters' deed equivalent to a warrant deed that conveys marketable title. Additionally, the completion of an action to quiet title, not as it is in the present case, infers that all the clouds, imperfections and impediments upon the title have been removed and what remains is the naked unencumbered fee simple absolute marketable title.

A perfect example of this is the prior action to quiet title to this same tract of land. (See Case # 2008-CP-07-0452.) In this case the Master in Equity in his *Final Order* of the case stated the following; "*I now conclude as a matter of law: a) The property which is the subject of this action is now owned in fee simple absolute by the following persons, having the respective ownership shares as outlined below:"* (Order of the Court)

ARGUMENT 3

The court was in error and abused its discretion when setting the unconscionable conditions for the defendants to exercise their right of first refusal as provided under section) of the Clementa C. Pinckney Act by depositing with the clerk of court the sum of Six Million Dollars within 60 days next to the filing of its order dated October 21, 2021 with the Clerk of Court in an non-interest bearing account under the conditions where no provision was made in the order as to when they would receive a deed, and if so; would it be a warranty deed and what entity or person(s) would make the conveyance and would the deposit be refundable.

An order setting forth unconscionable conditions is a denial of due process of law and in this case unreasonably effectuated the denial to the defendants of

exercising their right of first refusal to buy the property from the petitioning heirs. Unconscionability is defined as unfair or oppressive to one party in a way that suggests abuses during its formation, a court may find it unconscionable and refuse to enforce it. A contract is most likely to be found unconscionable if both unfair bargaining and unfair substantive terms are shown. An absence of meaningful choice by the disadvantaged party is often used to prove unfair bargaining. § 37 - 5 – 108 Code of Laws of South Carolina and *Holler v. Holler,* 364 S.C. 256, 612 S,E, 2d 469 (Ct App 2005), Smith v. D.R. Horton "403 S.C. 1042 S.E.2d 37, Smith v. D.R. Horton, Inc., 403 S.C. 10, 742 S.E.2d 37, (Ct. App. 2013) This was done despite the defendants demonstrating to the court that they had the financial resources to pay the purchase price of Nine Million

CONCLUSION

There have been multiple procedural and due process of law discrepancies in this case along with demonstrated abuse of discretion committed by the lower court and foundational jurisdictional infractions committed during the course of this proceeding. The Order of October 20, 2021 should be set aside and the case remanded for further proceedings including the filing of a Lis Pendens and serving a copy of the Summons and Complaint upon all the adjacent landowners. Upon the completion of this the master in Equity shall make a determination rather the property is heirs property and upon a factual showing

that the title to the property has been quieted among the established heirs issue an Order decreeing they are vested with the fee simple title to the property. Upon the court issuing such a decree the defendants shall thereafter have a period of 75 days to purchase the property from the petitioning heirs. The conveyance shall be by the petitioning heirs conveying their interest in the property to the Defendants.

Respectfully submitted,

The Houston Law Firm LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926
Phone: 843-684-0211
chouston@houstonlawfirm.net
By: S/ Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar # 2663 Fed. Bar # 1961
Attorney for Appellants

October 17, 2022

Hilton Head Island, SC

EXHIBIT B

RECEIVED
Nov 02 2022
SC Court of Appeals

STATEMENT OF ISSUES ON APPEAL

ISSUE 1

Does South Carolina law allow a party to avoid statutory jurisdictional prerequisites simply required by § 15-61-310 the Clemente C Pinckney Act by simply entering a Consent Order?

ISSUE 2

When statutory jurisdictional, prerequisites are not complied with, do any subsequent orders of the court retain any validity or become null and void for lack of subject matter jurisdiction?

ISSUE 3

Does an oxymoron of meaning exists to classify the order of the court dated October 20th 2021 as a final order when (1) a provision within the order calls for the publication of the summons and complaint (2) no form for order accompanied it's failing stating that the order ended the case and (3) where the complaint stated A cause of action to quiet title had been brought and was never withdrawn and for the defendant answered and participated in the action relying upon the relief being granted as prayed for in the complaint and (4) the order concluding the proceeding without having an prerequisite evidentiary hearing.

ISSUE 4

Was the Court in error upon ruling that it lacked jurisdiction to hear the defendant's motion for reconsideration to it order of October 20th, 2021, and made the pellet court now rule upon the matters set forth in this motion?

ISSUE 5

Other than the specific limited authority granted to a Master in Equity by South Carolina Code of Laws *§14-11-160*, (judicial sales) §4806<0;631 (Judicial sales) §*12-24-20* (deed upon foreclosure) and § *14-11-160* Master may sell real estate in any county under order by consent (South Carolina Code of Laws (2022 Edition) does a master in equity have the judicial authority to convey land that is the in-rem property subject matter in an action to quiet title.

ISSUE 6

Assuming are you endo that a Mason equity has the authority to convey land in an action to quiet title does the judicial doctrine of *stare decisis* and the Fifth and Fourteenth Amendments of the US Constitution and the provision guarantee of equal protection clause to the 14th amendment of the United States Constitution and Article 1 § three of the SC Constitution prohibition against the taking of property without due compensation prohibit the Master

in Equity to withhold conveying the property when the defendants were in the process of exercising their "Right of First Refusal and afterwards agree to convey the land to facilitate the plaintiffs purported contract of sale.

ISSUE 7

Were The terms issued by the court in the October 20, 2021, Order for defendants to exercise their "Right of First Refusal "as provided by the Clementa C. Pinckney Act economically and pragmatically unconscionable. For to deposit $6 million dollars with the court without any provisions being made for the property to be conveyed to them and without warranty of title and without provisions for the deposit to be applied to the purchase price of 9.1 million and (4) no provisions for the refunding of the purchase effectively eliminated the defendants exercise of their right of first refusal (a property right) and constituted a taken of a property right as guaranteed by Article 1 § 3 of the SC Constitution and the enumerated Amendments of the U.S. Constitution been infringed upon by having been denied due process of law and the equal protection of the laws in this proceeding.

STATEMENT OF CASE

This is an action filed by the Respondents to quiet title filed under S.C. Code Ann. § 15-67-10 *et seq.* and to Partition the land by sale, pursuant to S.C. Code Anno. § *15-61-10 et seq.* and to quiet title under the Pinckney Act (S.C. Code Ann. § *15-61-310, et seq.)* The Summons and Complaint were filed on November 24, 2020, and the Complaint advised the court and the defendants in November of 2020, of a pending contract that had been entered into by the Respondents to sell the property at issue to Rotunda Land & Development Group, LLC ("Rotunda") for $9,100,000.00. See the Affidavit of Andre Johnny White (the "White Affidavit") filed in support of the Respondents' Return to the Appellants' original Motion for Stay filed on March 28, 2022, and Exhibits A and B thereto.

The property at issue is a tract of approximately 26.462 acres located on the north end of Hilton Head Island in Beaufort County (the "Property"), which has been through two previous quiet title actions. Pursuant to Rule 71 (E) South Carolina Rule of Civil Procedure because this suit included a partition action the Circuit Court was empowered to determine the title and interest in the real property of the several parties to the action.

In response to the Complaint, counsel for some of the Appellants/Defendants filed an Answer on January 7, 2021. The Answer generically refers to Defendants but does not identify which Defendants the Answer is on behalf of or whether all named Defendants appeared. The case was then referred to the

Beaufort County Master in Equity.

On May 21, 2021, counsel the Plaintiffs and the prior counsel for some of the Defendants presented a joint Consent Order to the Court evidencing a written agreement between them that the Property is owned indivisibly by the Plaintiffs, the represented Co-Owners, and the Defendants, and that Consent Order provided a detailed "Exhibit A" setting forth the mutually agreed upon undivided interest percentages of each party. The Master in Equity signed and filed the Consent Order on May 21, 2021. See Exhibit E to the White Affidavit. At that time, the Respondents owned an undivided approximately 99.192707 percent interest in the Property and the Appellants owned an undivided 0.807293 percent interest in the Property.

Once the partition portion of the case had been purportedly resolved by the May 21st, 2021, consent order and all owners of the property specifically identified by percentage ownership, the parties and counsels moved forward under the (Clementa C. Pinckney Act) § 15-61-310 S. C. Code of Laws Annotated et. Seq. to determine the fair market value of the 26.462 acres and on September 15 2021 the court entered an order pursuant to § 15-61-360 B, S.C. Code Annotated establishing the fair market value of the 26.462 acres at $9,100,000 despite respondents own acknowledgment that the only appraisal of form set the value at 9,756,100 and three Dallas (see plaintiffs memorandum in support of motion to set fair market value August 30th 2021)

By Order dated October 20, 2021, the lower court established the fair market

value of the property at $9,100,000 and required Defendants to pay $8,993,359.10 into the court by December 22, 2021. **(October 20, 2021, Order, p 4-5.)**

Appellants, pursuant to Rule 52(b), Rule 54(b), Rule 59 (a)(2) and (e), and Rule 60(b)(2), SCRCP, moved the lower to alter or amend the Orders of the court entered on January 20, 2022, October 20, 2021and May 21, 2021, in the following particulars:

1. To amend the findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the case herein.

2. Request the court to reconsider matters properly encompassed in a decision on the merits.

3. To rule upon motions that have not been addressed upon the merits of the issues raised in this proceeding.

4. To set forth the court's findings, the reasons for those findings and conclusion of law.

5. To open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law.

6. Receive newly discovered evidence; and

7. Make new findings and conclusions and direct the entry of a new judgment.

On January 6, 2022, this court heard Defendants' Motion for Relief & Extension of Time & Realignment of Heirs, and Defendants. Appellants reassert and

incorporated by reference said motion in its entirety. Attached hereto is the transcript of said hearing in its entirety as **Exhibit A**. The trial court specifically ruled during the January 6, 2022, hearing that the provisions of the October 20, 2021, order were unappealable nor had a motion for reconsideration been filed, such that the order of October 20, 2021, could not be modified. **(Jan. 6, 2022, Tr. p. 15, line 15 – p. 16, line 18**).

On January 20, 2022, the Court entered an order generally denying relief without making specific findings, rulings and conclusions of law as required by Rule 52(a), SCRCP, and without sufficiently addressing:

1. Defendants' Motion to modify the terms of the October 20, 2021, order. Additionally, the Court did not rule on Defendants' Motion for Relief of Judgment and for Extension of Time to Tender Purchase Price and Right of First Refusal filed December 22, 2021.

2. Defendants' Amended Supplemental Motion for Relief of Judgement and for extension of time to Tender Purchase Price under Right of First Refusal filed January 5, 2022; and

3. Defendants' Objections to Proposed Order filed January 11, 2022.

To the extent that the January 20, 2022, order addressed its inability to modify the October 20, 2021, order, it was in error. *See* Rule 54(b), *cited above.* Appellants' foregoing appeal includes an appeal of the orders of May 21, 2021 order and the

October 22, 2021 orders, neither of which were appealable at the time they were issued but are now subject to appellate review (combined with an appeal from a final order) pursuant to S.C. Code Ann. §14-3-330(1),(2) and (3).

At the heart of this matter is determining how a court, in equity, may effectuate the purpose and intent of the Pinckney Act. As specifically set forth in Defendants' motion to the court dated December 22, 2022, and the hearing on January 6, 2022, Defendants within a 60-day window identified a partner to purchase the heir property and participate in the development of the property. The proposal put forth put the plaintiffs in a better position than the contract plaintiffs previously brought before the court. Additionally, defendants' developer partner has the financial wherewithal to quickly close on the purchase of the property once technical impediments are removed. Appellants requested specific finding of facts, conclusions of law and rulings of the Court set forth below.

1

The Plaintiffs' Complaint on its face admits that there are at least two un-probated estates, with unknown heirs, which have not been established to include persons who are or may be under some disability or a minor and thus the Complaint is subject to being dismissed pursuant to SCRCP 12(b)(4).

2

There are at least four un-probated estates of heirs, two coming into existence

since the Publication of the Summons and with unknown heirs, which have not been established to include persons who are or may be under some disability or a minor and thus the Complaint should be dismissed pursuant to SCRCP 12(b)(6). Defendants seek a ruling from the Court upon this issue.

3

Defendants seek a ruling that the Plaintiffs have failed to join necessary parties and, therefore, the Complaint should be dismissed pursuant to SCRCP 12(b)(7).

4

Defendants seek a finding of fact or ruling that an evidentiary hearing has not been provided to the Defendants, though requested and as required by receive evidence pertaining to their factual denials of Paragraphs 1, 2, 3, 4 11, 14, 15, 20 22, 26, 27 28, 29,30, and 31 of the Complaint. In fact, the Pinckney Act contemplates a trial will be set (15-61-370(B) states that cotenant shall have until ten days prior to trial setting to elect option to purchase property). Once valuation of the property is established, Plaintiffs were required to serve all co-tenants, this relates to even cotenants who have not made an appearance in the case. § 15-61-370(A). The Pinckney Act event contemplates that a cotenant in default still has the ability to purchase the heir property. No service by publication occurred prior to the court's order purporting to quiet title. Months after the purported quieting of title, the court

ordered publication. See Affidavit of Maria Belbus Parker, individual designated by the court to procure publication on October 20, 2021, order. Ms. Parker sets forth that publication was made on October 25, 2021, and November 8, 2021. Defendants seek a ruling that the court's May 21, 2021, Order is void, set aside and of no further effect.

5

Defendants seek a finding of fact and ruling by the Court that the Plaintiff's Complaint never requested the court to certify that the co-tenants be bestowed or endowed with the fee simple absolute title to the property subject to this action.

6

Defendants seek a finding of fact and ruling by the Court whether the title to the property subject to this action has been at all times from the commencement of this action been and remains "Heirs Title" property.

7

Defendants seek a finding of fact and ruling by the Court that the present title status of the property does not meet the "marketable title standard as set forth in *Scalise Dev., Inc. v. Tidelands Investments., LLC, 392 S.C. 27, 707 S.E.2d 440 (Ct. App. 2011).* (Principle that to have the cloud on the title removed is to receive fee simple title to property. Clark v. Hargrave, 323 S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1996). *May v. Jeter, 245 S.C. 529, 534, 141 S.E.2d 655, 658 (1965),*

Major v. Penn Community. Services., Inc., 395 S.C. 175, 717 S.E.2d 70 (Ct. App. 2011)).

8

Defendants seek a finding of fact and ruling by the Court whether the tendered contract between the Defendants and SRE that, among other things, provides for the Defendants to hold and retain a ten percent equity participation in the development of the property is more consistent with the legislative goals and purposes of the Clementa Pinckney Act than the straight contract for purchase proffered by the Plaintiffs under which they would be bought out and then permanently removed from their heritage land.

9

Defendants seek a finding of fact and ruling by the Court whether that SRE has demonstrated a sufficient showing of its capabilities and financial resources to fulfill the purchase of the property.

10

Defendants seek a finding of fact and ruling by the Court whether a deed of conveyance either with or without marketable title was in preparedness to be delivered to SRE on December 23, 2021.

11

Defendants seek a finding of fact and ruling by the Court whether the

property was available to be mortgaged by SRE on December 23, 2021.

12

Defendants seek a finding of fact and ruling by the Court whether a conflict of interest exist with counsel for the Plaintiffs who represents parties both in this action and in one or more of the open estates; (see Affidavit of Keita White) especially where the relief sought by their clients solely seeks to confirm the percentage ownership among the family heirs and not clear the title to the land knowing that without a marketable title and is unjust impediment has been created to prevent SRE from purchasing the property.

13

Did the Court commit an abuse of discretion as a matter of law by not granting the Defendants request for 45 days to have a hearing to receive testimonial evidence to determine the heirs of the estates of the four deceased heirs and to tender the purchase price, with the Defendants depositing 10%percent down with the court and also paying to the Plaintiffs the amount of 9.7 million in lieu of the appraisal price.

14

Did the Court commit an abuse of discretion as a matter of law by not granting the Defendants an extension of time to tender the purchase price in light of the fact that the Clementa C. Pinckney Act provides for a minimum of 60 days for heirs exercising their Right of First Refusal to complete the purchase especially

where the 60 day period allotted to the Defendants is commercially impossible to achieve, especially considering the large purchase price and the cloudy title encumbered upon the property rendering it useless for loan collateral purposes?

15

Have the Defendants property rights under the provisions of Article 1 § 3 of the SC Constitution and the enumerated Amendments of the U.S. Constitution been infringed upon by having been denied due process of law and the equal protection of the laws in this proceeding.

STANDARD OF REVIEW

An action to "Quiet Title" is an action in equity and the standard of review is "De Nova review as prescribed by *article V, § 5* of the South Carolina Constitution. the reviewing court may make findings in accordance with its own view of the preponderance of the evidence); *Dean v. Kilgore,* 313 S.C. 257, 437 S.E.2d 154 (Ct.App.1993)

A partition action is an action in equity and an appeal from an equitable action this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Doe v. Clark 318 S.C. 274, 457 S.E.2d 2nd 336 (1995)*

When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal. *Corley v. Ott* , 326 S.C. 89, 485 S.E.2d 97 and *Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 705 S.E.2d 73 (Ct. App. 2010).*

An issue regarding statutory interpretation (Clementa C. Pinckney Act "Right of First Refusal" is a question of law *Jeter v. S.C. Dept. of Transp., 369 S.C. 433, , 633 S.E.2d 143,* (2006). In a case raising a novel question of law the appellate court is free to decide the question

with no particular deference to the lower court *Ex parte Capital U-Drive-It, Inc.*, *369 S.C. 1, 630 S.E.2d 464,* (2006); *Hagood v. Summerville*, *362 S.C. 191, 607 S.E.2d 707*, (2005).

For Fifth and Fourteenth Amendment and Article I § 3 violations under the SC Constitution in this case should be reviewed *de novo* pursuant to *Ornelas v. United States*, *517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)*

ARGUMENT 1

South Carolina law does not allow a party to avoid statutory jurisdictional prerequisites required by § S.C. Code Ann. § 15-61-310, *et seq*. known as the Clemente C Pinckney Act by simply entering a Consent Order?

Here there were multiple prerequisite jurisdictional requirements that were not complied with. *First*, the personal representatives or administrators of the four open estates of diseased heirs We're not served I joined in the action. *Second*, a Lis Pendens was not filed. *Third*, there was no publication of process made on unknown parties prior to the entry of the consent order. *Fourth*, a Guardians *Ad Litem* had been appointed to represent the interests of unknown heirs, persons under disability, miners or a person's serving in the armed forces of the United States. *Fifth*, no notice signs were erected or placed upon the property (the type used by Counties to notify the public that a tax lien has been placed upon the property) to notify all persons especially adjoining landowners that an action to quiet title to the property had been commenced. A corollary to this would be Sixth; failure to join adjacent landowners in the action to eliminate or address any issues pertaining to the correct boundaries to the property. Seventh, an evidentiary hearing as required by *§15 –61–330* which is the prerequisite before a final order can be rendered as not been held.

§ 15- 61 – 330 reads as follows:

In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.

The Defendants made the court and parties aware of this deficiency by formal motion (*See Defendants Motion for Instructions*) and repeatedly at the Conference Hearings *(Transcripts)*

Additionally, the court failed to permit Appellants an evidentiary hearing, though requested and as required to receive evidence pertaining to their factual denials of Paragraphs 1, 2, 3, 4 11, 14, *15, 20 22, 26, 27 28, 29,30, and 31, of the Complaint and thus making the court's May 21, 2021 Consent Order void and of no further effect.* **(Def. Jan. 31, 2022, Motion for Reconsideration, p 5.)**

Further, the court failed to issue a finding of fact and ruling regarding whether the title to the property subject to this action has been at all times from the commencement of this action been and remains "Heirs Title" property? **(Def. Jan. 31, 2022, Motion for Reconsideration, p6.)** The well-established case of *Robinson v. Estate of Harris, 378 S.C.140, 662 S.E.2d 420 (Ct. App 2008)*

adequately support this principle of law and the facts are strongly within their prevue.

Here the Respondents failed to join necessary parties and, therefore, the Complaint should be dismissed pursuant to SCRCP 12(b)(7). **(Def. Jan. 31, 2022, Motion for Reconsideration, p 3.)** The docket lacks any evidence of the establishment of heirs related to the pending probate matters referenced in the Complaint and no publication was perfected prior to the Consent Order and the Order of October 20. 2021. order title.

When statutory jurisdictional prerequisites are not complied with subsequent orders of the court retain no validity and become null and void for lack of subject matter jurisdiction.

ARGUMENT 2

The order of the court dated October 20, 2021 was not a valid or final order when (1) a provision within the order calls for the publication of the summons and complaint (2) the Form 4 order sheet accompanied it's filing did not state that the order ended the case and (3) where the complaint stated a cause of action to quiet title that had not been prosecutorial developed and was never withdrawn and the defendants answered and participated in the action relying upon the relief being granted as prayed for in the complaint and (4) the order as

written purported as a final order concluded the proceeding without ever having the prerequisite evidentiary hearing required under the provisions of §15-61-330 of the Pinckney Act.

There are additional reasons this order was not a final order as Rule 54(b) SCRCP specifically provides that "*any order. . . however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all of the claims and the rights and liabilities of all the parties."*

a. This was not a Consent Order as the Defendants filed a response in opposition the provisions in its proposed order form. (Response in Opposition)

b. The Order was not raised by motion as required by *Rule 7(b)* (1) SCRCP and the filing fee of $25.00 paid to the Clerk of Court as required by *§ 8-21-320 S.C. Code Ann*. as amended, effective July 1, 2002, by H4431, R470, which requires a filing fee of $25 for all motions in a Court of Common Pleas and Family Court unless exempted under the Order of the South Carolina Supreme Court dated June 26, 2002 that allows for the waiver of the fee only when forma pauperis has been granted under Rule 3(c) SCRCP that is not present in this instance

.

RULE 7, reads as follows:

PLEADINGS ALLOWED: FORM OF MOTIONS: Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

c. The October 20, 2021 Order Is not a final order as a provision in the Order required that the publication of the Summons and Complaint be made to give prospective notice of the proceeding to unknown heirs, minors and present their claims., persons under disability and those who may be in the Military Services; of their right to appear in the action and state their claims upon the property.

d. An evidentiary hearing as required by *§15 –61–330* which is the prerequisite before a final order can be rendered as not been held. § 15-61 – 330 reads as follows:

i.In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.

ii. This article supplements the provisions of Article 1 and if the provisions of this article differ from the provisions of Article 1, the provisions of this article control for partitions of heirs' property.

e. The order of October 20, 2021 is not a final order or judgment as a judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment for appeal purposes. *Watson v. Underwood 407 S.C. 443 756 S.E. 2d 1 55.*

ARGUMENT 3

An oxymoron of meaning exists to classify the order of the court dated October 20th 2021 as a final order when (1) This Order Is not a final order as a provision in the Order required that the publication of the Summons and Complaint be made to give prospective notice of the proceeding to unknown heirs, minors and present their claims., persons under disability and those who may be in the Military Services; of their right to appear in the action and state their claims upon the property.

(2) no form for order accompanied it's failing stating that the order ended the case and (3) where the complaint stated A cause of action to quiet title had been brought and was never withdrawn and for the defendant answered and participated in the action relying upon the relief being granted as prayed for in the complaint and (4) the order concluding the proceeding without having an prerequisite

evidentiary hearing.

Here is how this is an oxymoron. The Court was correct in asserting that it lacked jurisdiction to hear the Appellants' Motion for Reconsideration and other relief for lack of jurisdiction by the court. The court was stating that it lacked jurisdiction because a Rule 59 SCRCP motion is required to be filed within ten days next from the filing of the "Final Order", (Order of October 20, 2021) which the appellant did not do. The Appellants' position is that the court at the time it issued the "Final Order" did not have jurisdiction to issue the Order for the reasons set forth supra (Argument 1) and the action should be dismissed for lack of subject matter jurisdiction. But assuming *arguendo* that the Court had retained jurisdiction of the action was its Order of October 20, 2021, the Final Order of the case.

The Appellants' position is that the Final Order of the Court was yet to come. The ultimate relief sought in this case was to "quiet Title" to the property. A final order would rule upon this issue. This order would more accurately be classified as an interlocutory order.

The court had not issued a finding of fact and ruling regarding whether the title to the property subject to this action has been at all times from the commencement of this action been and remains "Heirs Title" property. A jurisdictional requirement under the Pinckney Act. **(Def. Jan. 31, 2022, Motion for Reconsideration, p6.**

Ordinarily an interlocutory order which merely decides some point or matter

essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits. *Weil v. Weil, 299 S.C. 84, 382 S.E.2d 471 (Ct. App. 1989) and Shelley's Iron Works, Inc, v. City of Union 403S.C. 560, 743 S.E. 2d 778(2013).*

Argument 4

The Court erred in ruling that the ten (10) day filing restrictions imposed upon Rule 59 SCRCP motions that it lacked jurisdiction to hear the defendants Motion brought under Rule 59 and 60 SCRCPR in response to the Order of October 20th, 2021, and the reviewing court may now de *nova* rule upon the matters set forth in the motions?

The pivotal or most significant point that determines this question is rather the October 20th, 2021, order was a final order. Appellants have shown in their prior Arguments (supra)es that this order do not qualify as a final order that would jettison the application of the Rule 59, SCRCP, 10-day jurisdictional filing restriction. In any event the court should have heard Appellants' Rule 60 SCRCP motion, and the issues raised in the Rule 59 SCRAP motion as a Rule 60, SCRCP motion.

ARGUMENT 5

The statutory powers held by a Master in Equity to convey property is controlled by statute and does not extend to conveying property that is the subject

matter of a quiet title action. In a partition action it is authorized only with the consent of the parties. *§14-11-160*, (judicial sales) *§4806<0;631* (Judicial sales) §*12-24-20* (deed upon foreclosure) and § *14-11-160 (Master* may sell real estate in any county under order by consent (South Carolina Code of Laws (2022 Edition)

Second: Without an order decreeing the fee simple title on the property the only title the court could convey would be a quit-claim deed that would not be commercially acceptable. The American Land Title Associations (ATLA} in their industry regulations on this point, state the following:

DDSR02
STG
12/01/1995
V 4
Require General Warranty Deed
The Company requires for its review a satisfactory General Warranty Deed conveying the title to the land. The Deed must then be signed, delivered and recorded.
Comment: *The title commitment customarily requires a deed (or other instrument, if appropriate) from the current owner. Additional requirements may be necessary when securing conveyances from fiduciaries or entities.*

DDSR03
STG
12/01/1995
V 4

Require Warranty Deed
The Company requires for its review a satisfactory Warranty Deed conveying the title to the land. The Deed must then be signed, delivered and recorded.
Comment: *The title commitment customarily requires a deed (or other instrument, if appropriate) from the current owner. Additional requirements may be necessary when securing conveyances from fiduciaries or*

THIRD: That to issue a master's Deed would be in violation of Rule 71, SCRCP. This rule states that "Prior to the filing of the master's report or final order of judgment, the judge or master shall assure that the plaintiff and all other claimants have complied with the statutes pertaining to the filing of notices of Lis pendens." The Plaintiffs have not filed a Lis Pendens in this action that would constitute both a procedural and jurisdictional defect.

FOURTH: That required and indispensable parties have not been joined in this action that constitutes another jurisdictional defect. There are Four (4) non probated estates of deceased persons possessing an undivided interest in the property subject to this action in violation of Rule 71(d)(1), SCRCP. This rule states the following: Parties to Partition Actions. In addition to the requirements of these rules for the joinder in an action of all parties in interest, pursuant to Rule 17(f) no partition of real property of a deceased person shall be had unless the legal representative or representatives of such deceased person be made parties to the action and it be made to appear to the court that the debts of such deceased person are fully paid or that the personal estate in the hands of the personal representative or representatives is sufficient for the payment of the debts of such deceased

person. Likewise, the adjoining landowners have not been joined as parties to this action. There being made parties is mandatory and compulsive to provide the court with a factual basis upon which to rule that the boundaries of the property are correct.

If the partition action involves real property of a deceased person whose estate has not been administered or is not being administered at the time of the bringing of the action, then all known encumbrancers of the estate of the deceased person shall be made parties to the action and no decree in partition shall be entered unless due provision is made for the payment of the debts found due such encumbrancers. In all actions for partition, all heirs at law or devisees of the deceased person shall likewise be made parties. The Plaintiffs who commenced and prosecuted this action have failed to do this which constitutes a personal jurisdictional defect in this proceeding.

FIFTH: Another jurisdictional defect falls under Rule 71(e). This Rule states the following: Actions When Title Is at Issue. In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired. The Plaintiffs have failed to convene and the

Court "Sua Sponte" has not held an evidentiary hearing pursuant to *§ 15-61-330* in this proceeding to come into compliance with the provisions of this rule.

SIXTH: it would be an injustice perpetrated upon our citizenry for the Court to convey the property by master's Deed as many would misconstrue a Masters' deed equivalent to a warrant deed that conveys marketable title. Additionally, the completion of an action to quiet title, not as it is in the present case, infers that all the clouds, imperfections and impediments upon the title have been removed and what remains is the naked unencumbered fee simple absolute marketable title.

A perfect example of this is the prior action to quiet title to this same tract of land. (See Case # 2008-CP-07-0452.) In this case the Master in Equity in his *Final Order* of the case stated the following: "*I now conclude as a matter of law: a) The property which is the subject of this action is now owned in fee simple absolute by the following persons, having the respective ownership shares as outlined below:"* (Order of the Court)

ARGUMENT 6

The judicial doctrine of *stare decisis* and the Fifth and Fourteenth Amendments of the US Constitution and the provision guarantee of equal protection clause to the 14th amendment of the United States Constitution and Article 1 § three of the SC Constitution prohibition against the taking of property without due compensation would prohibit the Master in Equity from withhold

conveying the property when the defendants were in the process of exercising their "Right of First Refusal and afterwards agree to convey the land to facilitate the plaintiffs purported contract of sale.

The Court objected to a master's Deed for the proposed sale of the property when the Defendants were attempting to exercise their Right of First Refusal. (Tr..) The court would now, by the principle of *Stare Decisis*, be precluded from taking an opposite position, especially where the Court is aware that a master's Deed for the property subject to this action cannot convey fee simple marketable title and for the same reason did not grant the Defendant's request for a master's deed. Additionally, for the Court to grant this relief to the Plaintiffs while having previously denied it to the Defendants would constitute an inequity and impinge upon the Defendants constitutional right for the equal application and equal protection of the laws administered by the Court. It would be a travesty of justice and judicial bias for the Master in Equity to convey to another the Defendants' interest in their property without their consent.

ARGUMENT 7

The terms issued by the court to the defendants to deposit $8.9 million dollars with the court in order to exercise their right of first refusal as per as provided by South Carolina code of laws § *15-61-25* the Clemente see Pinkney Act and apprentices that did not make provisions one for the property to be conveyed to them to without warranty of title without provisions for the deposit to be applied

to the purchase price of 9.1 million and four no provisions for the refunding of the purchase of the money so outrageously unconscionable by their terms by these terms that it effectively eliminated the defendants exercise of their right of first refusal as provided by the Clemente C Pinckney act constitute an unlawful deprivation of property right add provided by Article 3 Section 1 of the South Carolina constitution

An order setting forth unconscionable conditions is a denial of due process of law and in this case unreasonably effectuated the denial to the defendants of exercising their right of first refusal to buy the property from the petitioning heirs. Unconscionability is defined as unfair or oppressive to one party in a way that suggests abuses during its formation, a court may find it unconscionable and refuse to enforce it. A contract is most likely to be found unconscionable if both unfair bargaining and unfair substantive terms are shown. An absence of meaningful choice by the disadvantaged party is often used to prove unfair bargaining. § 37 - 5 – 108 Code of Laws of South Carolina and *Holler v. Holler,* 364 S.C. 256, 612 S,E, 2d 469 (Ct App 2005), Smith v. D.R. Horton "403 S.C. 1042 S.E.2d 37, Smith v. D.R. Horton, Inc., 403 S.C. 10, 742 S.E.2d 37, (Ct. App. 2013) This was done despite the defendants demonstrating to the court that they had the financial resources to pay the purchase price of Nine Million The Pinckney Act defines “manifest Prejudice” or “manifest injury” as a result that is obviously unfair or shocking to the conscience and is direct, obvious, and

observable when considering the factors under § 15-61-390(A). Manifest injustice may be shown by enumerating the unreasonable risk for the Appellants to have deposited 8.9 million dollars with the court, especially where the Appellants produced adequate evidence of their financial capability to purchase the property; save only, that the court have decreed the fee simple title upon it.

The court was in error and abused its discretion as a matter of law, when setting the conditions for the defendants to exercise their "Right of First Refusal" as provided under § 15-61-35 of the Clementa C. Pinckney Act by requiring Defendants to deposit with the clerk of court the sum of 8.9 Million Dollars, within 60 days next to the order dated October 21, 2021 into an non-interest bearing account under the conditions where no provision was made in the order as to when they would receive a deed, and if so; would it be a warranty deed and what entity or person(s) would make the conveyance and would the deposit be refundable and/or applied to the purchase price.

The lower court erred in proceeding with purported quieting of title while at least four open probate matters were pending related to heirs to subject *property.* It is undisputed by Respondent that at least three estates were pending related to deceased heirs of subject property. When there are pending probate matters, the probate court has subject matter jurisdiction related to partition of property. *Byrd v. Johnson*, 417 S.C. 474, 790 S.E. 2d 200 (Ct. App. 2016).

While it is true that all co-tenants can agree as to the determination of heirs,

the court lacked evidence before it at the time May 21, 2021, order was issued that no other parties held a claim to subject property. (15-61-330) (c) ("Preliminary hearing is required unless all cotenants agree in a record.")

The May 21, 2021, Order is void for failure to submit proof of all co-tenants in agreement as to representations regarding heirs to subject property. Upon a court's determination that subject property is heirs' property, the court is required to order notice by publication ten (10) days after court determines subject property is their property ("If the property is determined "heirs' property" at the hearing per 15-61-330.

The purported order to quiet title dated May 21, 2021, void for failure of court to require notice of pending matter via publication prior to purported quieting of title when record at the time order entered lacked evidence of service of Defendant Heirs Stephanie Kirkland and Gary Lamont Kirkland. (See Index)

Prior to entry of May 21, 2021, Order, Respondents failed to serve all defendants. Pursuant to Affidavit of Non-Service on Stephanie Kirkland, dated January 1, 2021, summons for Stephanie Kirkland and Complaint for Quiet Title were placed in the hands of process server Anabela Pinto on November 25, 2020. Attempts to serve were made on November 27 and 28, 2020. On January 21, 2021, said process server filed the foregoing Affidavit of Non-Service. No affidavit regarding service (or attempts to serve) Defendant Gary Lamont Kirkland is present in the court's docket. To the extent that the October 22, 2021, order stated there had been

a revocation of a power of attorney, how can the order be valid without the filing of the revocation of power of attorney and a determination of the validity of the revocation of the power of attorney?

The three out of state intestate estates our ministered an axillary administration opened in the probate court for Beaufort County to enable ad to conveyance from the deceased test status to the heirs um one the two completed estates that was cited in the complaint had had had not had auxiliary ministration in Beaufort County and that the two completed states that were cited and complained had not had auxiliary administration in Beaver County and two further no hearing has been scheduled to have pedigree and genealogy testimony and examination for the court to find and verify who owns the property to the seclusion of the whole world and the exact percentage each of the owners possesses with a description The boundaries of the land that the possessory interest attached to.

CONCLUSION

The Respondents have to date and depending upon it being set aside by this court, pursued a course of conduct designed to defeat the purposes espoused under the Pinckney Act. If they are permitted to purchase the property this will extinguish the rights of the present defendants to participate in a near future action to quiet title to the property that would be brought by the Plaintiffs' purchaser, Rotunda.

In contrast, with the Defendants being permitted to exercise their "Right of

First Refusal" to buy the property this will greatly aid Black landowners and the people of South Carolina, similarly situated, who are burdened with "heirs title property the opportunity to hold on to their property against the forces of gentrification. The defendants strive to not only hold onto their land but through partnering with a developer and retain an equity ownership in the property and make its usage available to the public. This would fulfill the purposes of the act as enacted by our legislatures to its upmost fulfilment and purposes.

There have been multiple procedural and due process of law discrepancies in this case along with demonstrated abuse of discretion committed by the lower court and foundational jurisdictional infractions committed during the course of this proceeding. The Order of October 20, 2021 should be set aside and the case remanded for further proceedings including the filing of a Lis Pendens and serving a copy of the Summons and Complaint upon all the adjacent landowners. Upon the completion of this the master in Equity shall make a determination rather the property is heirs' property and upon a factual showing that the title to the property has been quieted among the established heirs issue an Order decreeing they are vested with the fee simple title to the property. Upon the court issuing such a decree the defendants shall thereafter have a period of 75 days to purchase the property from the petitioning heirs. The conveyance shall be by the petitioning heirs conveying their interest in the property to the Defendants.

Respectfully submitted,

The Houston Law Firm LLC
1000 Main Street, Suite 200 C
Hilton Head Island, SC
chouston@houstonlawfirm.net

By:S/ Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar # 2663 Fed. Bar # 1961
Attorney for Appellants

November 1, 2022
Hilton Head Island, SC

EXHIBIT C

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

APPELLATE CASE # 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

vs.

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

APPELLANTS

AMENDED INITIAL BRIEF OF APPELLANTS

The Houston Law Firm LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926
Phone: 843-684-0211
chouston@houstonlawfirm.net
By: S/ Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar # 2663 Fed. Bar # 1961
Attorney for Appellants

November 2, 2022
Hilton Head Island, SC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONS

STATUTES

CASES

COURT RULES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

ISSUE 1

Does South Carolina law allow a party to avoid statutory jurisdictional prerequisites simply required by § 15-61-310 the Clemente C Pinckney Act by simply entering a Consent Order?

ISSUE 2

When statutory jurisdictional, prerequisites are not complied with, do any subsequent orders of the court retain any validity or become null and void for lack of subject matter jurisdiction?

ISSUE 3

Does an oxymoron of meaning exists to classify the order of the court dated October 20th 2021 as a final order when (1) a provision within the order calls for the publication of the summons and complaint (2) no form for order accompanied it's failing stating that the order ended the case and (3) where the complaint stated A cause of action to quiet title had been brought and was never withdrawn and for the defendant answered and participated in the action relying upon the relief being granted as prayed for in the complaint and (4) the order concluding the proceeding without having an prerequisite evidentiary hearing.

ISSUE 4

Was the Court in error upon ruling that it lacked jurisdiction to hear the defendant's motion for reconsideration to it order of October 20th, 2021, and made the pellet court now rule upon the matters set forth in this motion?

ISSUE 5

Other than the specific limited authority granted to a Master in Equity by South Carolina Code of Laws *§14-11-160*, (judicial sales) §4806<0;631 (Judicial sales) §*12-24-20* (deed upon foreclosure) and § *14-11-160* Master may sell real estate in any county under order by consent (South Carolina Code of Laws (2022 Edition) does a master in equity have the judicial authority to convey land that is the in-rem property subject matter in an action to quiet title.

ISSUE 6

Assuming are you endo that a Mason equity has the authority to convey land in an action to quiet title does the judicial doctrine of *stare decisis* and the Fifth and Fourteenth Amendments of the US Constitution and the provision guarantee of equal protection clause to the 14th amendment of the United States Constitution and Article 1 § three of the SC Constitution prohibition against the taking of property without due compensation prohibit the Master

in Equity to withhold conveying the property when the defendants were in the process of exercising their "Right of First Refusal and afterwards agree to convey the land to facilitate the plaintiffs purported contract of sale.

ISSUE 7

Were The terms issued by the court in the October 20, 2021, Order for defendants to exercise their "Right of First Refusal "as provided by the Clementa C. Pinckney Act economically and pragmatically unconscionable. For to deposit $6 million dollars with the court without any provisions being made for the property to be conveyed to them and without warranty of title and without provisions for the deposit to be applied to the purchase price of 9.1 million and (4) no provisions for the refunding of the purchase effectively eliminated the defendants exercise of their right of first refusal (a property right) and constituted a taken of a property right as guaranteed by Article 1 § 3 of the SC Constitution and the enumerated Amendments of the U.S. Constitution been infringed upon by having been denied due process of law and the equal protection of the laws in this proceeding.

STATEMENT OF CASE

This is an action filed by the Respondents to quiet title filed under S.C. Code Ann. § 15-67-10 *et seq.* and to Partition the land by sale, pursuant to S.C. Code Anno. § *15-61-10 et seq.* and to quiet title under the Pinckney Act (S.C. Code Ann. § *15-61-310, et seq.)* The Summons and Complaint were filed on November 24, 2020, and the Complaint advised the court and the defendants in November of 2020, of a pending contract that had been entered into by the Respondents to sell the property at issue to Rotunda Land & Development Group, LLC ("Rotunda") for $9,100,000.00. See the Affidavit of Andre Johnny White (the "White Affidavit") filed in support of the Respondents' Return to the Appellants' original Motion for Stay filed on March 28, 2022, and Exhibits A and B thereto.

The property at issue is a tract of approximately 26.462 acres located on the north end of Hilton Head Island in Beaufort County (the "Property"), which has been through two previous quiet title actions. Pursuant to Rule 71 (E) South Carolina Rule of Civil Procedure because this suit included a partition action the Circuit Court was empowered to determine the title and interest in the real property of the several parties to the action.

In response to the Complaint, counsel for some of the Appellants/Defendants filed an Answer on January 7, 2021. The Answer generically refers to Defendants but does not identify which Defendants the Answer is on behalf of or whether all named Defendants appeared. The case was then referred to the

Beaufort County Master in Equity.

On May 21, 2021, counsel the Plaintiffs and the prior counsel for some of the Defendants presented a joint Consent Order to the Court evidencing a written agreement between them that the Property is owned indivisibly by the Plaintiffs, the represented Co-Owners, and the Defendants, and that Consent Order provided a detailed "Exhibit A" setting forth the mutually agreed upon undivided interest percentages of each party. The Master in Equity signed and filed the Consent Order on May 21, 2021. See Exhibit E to the White Affidavit. At that time, the Respondents owned an undivided approximately 99.192707 percent interest in the Property and the Appellants owned an undivided 0.807293 percent interest in the Property.

Once the partition portion of the case had been purportedly resolved by the May 21st, 2021, consent order and all owners of the property specifically identified by percentage ownership, the parties and counsels moved forward under the (Clementa C. Pinckney Act) § 15-61-310 S. C. Code of Laws Annotated et. Seq. to determine the fair market value of the 26.462 acres and on September 15 2021 the court entered an order pursuant to § 15-61-360 B, S.C. Code Annotated establishing the fair market value of the 26.462 acres at $9,100,000 despite respondents own acknowledgment that the only appraisal of form set the value at 9,756,100 and three Dallas (see plaintiffs memorandum in support of motion to set fair market value August 30th 2021)

By Order dated October 20, 2021, the lower court established the fair market

value of the property at $9,100,000 and required Defendants to pay $8,993,359.10 into the court by December 22, 2021. **(October 20, 2021, Order, p 4-5.)**

Appellants, pursuant to Rule 52(b), Rule 54(b), Rule 59 (a)(2) and (e), and Rule 60(b)(2), SCRCP, moved the lower to alter or amend the Orders of the court entered on January 20, 2022, October 20, 2021and May 21, 2021, in the following particulars:

1. To amend the findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the case herein.

2. Request the court to reconsider matters properly encompassed in a decision on the merits.

3. To rule upon motions that have not been addressed upon the merits of the issues raised in this proceeding.

4. To set forth the court's findings, the reasons for those findings and conclusion of law.

5. To open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law.

6. Receive newly discovered evidence; and

7. Make new findings and conclusions and direct the entry of a new judgment.

On January 6, 2022, this court heard Defendants' Motion for Relief & Extension of Time & Realignment of Heirs, and Defendants. Appellants reassert and

incorporated by reference said motion in its entirety. Attached hereto is the transcript of said hearing in its entirety as **Exhibit A**. The trial court specifically ruled during the January 6, 2022, hearing that the provisions of the October 20, 2021, order were unappealable nor had a motion for reconsideration been filed, such that the order of October 20, 2021, could not be modified. **(Jan. 6, 2022, Tr. p. 15, line 15 – p. 16, line 18**).

On January 20, 2022, the Court entered an order generally denying relief without making specific findings, rulings and conclusions of law as required by Rule 52(a), SCRCP, and without sufficiently addressing:

1. Defendants' Motion to modify the terms of the October 20, 2021, order. Additionally, the Court did not rule on Defendants' Motion for Relief of Judgment and for Extension of Time to Tender Purchase Price and Right of First Refusal filed December 22, 2021.

2. Defendants' Amended Supplemental Motion for Relief of Judgement and for extension of time to Tender Purchase Price under Right of First Refusal filed January 5, 2022; and

3. Defendants' Objections to Proposed Order filed January 11, 2022.

To the extent that the January 20, 2022, order addressed its inability to modify the October 20, 2021, order, it was in error. *See* Rule 54(b), *cited above.* Appellants' foregoing appeal includes an appeal of the orders of May 21, 2021 order and the

October 22, 2021 orders, neither of which were appealable at the time they were issued but are now subject to appellate review (combined with an appeal from a final order) pursuant to S.C. Code Ann. §14-3-330(1),(2) and (3).

At the heart of this matter is determining how a court, in equity, may effectuate the purpose and intent of the Pinckney Act. As specifically set forth in Defendants' motion to the court dated December 22, 2022, and the hearing on January 6, 2022, Defendants within a 60-day window identified a partner to purchase the heir property and participate in the development of the property. The proposal put forth put the plaintiffs in a better position than the contract plaintiffs previously brought before the court. Additionally, defendants' developer partner has the financial wherewithal to quickly close on the purchase of the property once technical impediments are removed. Appellants requested specific finding of facts, conclusions of law and rulings of the Court set forth below.

1

The Plaintiffs' Complaint on its face admits that there are at least two un-probated estates, with unknown heirs, which have not been established to include persons who are or may be under some disability or a minor and thus the Complaint is subject to being dismissed pursuant to SCRCP 12(b)(4).

2

There are at least four un-probated estates of heirs, two coming into existence

since the Publication of the Summons and with unknown heirs, which have not been established to include persons who are or may be under some disability or a minor and thus the Complaint should be dismissed pursuant to SCRCP 12(b)(6). Defendants seek a ruling from the Court upon this issue.

3

Defendants seek a ruling that the Plaintiffs have failed to join necessary parties and, therefore, the Complaint should be dismissed pursuant to SCRCP 12(b)(7).

4

Defendants seek a finding of fact or ruling that an evidentiary hearing has not been provided to the Defendants, though requested and as required by receive evidence pertaining to their factual denials of Paragraphs 1, 2, 3, 4 11, 14, 15, 20 22, 26, 27 28, 29,30, and 31 of the Complaint. In fact, the Pinckney Act contemplates a trial will be set (15-61-370(B) states that cotenant shall have until ten days prior to trial setting to elect option to purchase property). Once valuation of the property is established, Plaintiffs were required to serve all co-tenants, this relates to even cotenants who have not made an appearance in the case. § 15-61-370(A). The Pinckney Act event contemplates that a cotenant in default still has the ability to purchase the heir property. No service by publication occurred prior to the court's order purporting to quiet title. Months after the purported quieting of title, the court

ordered publication. See Affidavit of Maria Belbus Parker, individual designated by the court to procure publication on October 20, 2021, order. Ms. Parker sets forth that publication was made on October 25, 2021, and November 8, 2021. Defendants seek a ruling that the court's May 21, 2021, Order is void, set aside and of no further effect.

5

Defendants seek a finding of fact and ruling by the Court that the Plaintiff's Complaint never requested the court to certify that the co-tenants be bestowed or endowed with the fee simple absolute title to the property subject to this action.

6

Defendants seek a finding of fact and ruling by the Court whether the title to the property subject to this action has been at all times from the commencement of this action been and remains "Heirs Title" property.

7

Defendants seek a finding of fact and ruling by the Court that the present title status of the property does not meet the "marketable title standard as set forth in *Scalise Dev., Inc. v. Tidelands Investments., LLC, 392 S.C. 27, 707 S.E.2d 440 (Ct. App. 2011).* (Principle that to have the cloud on the title removed is to receive fee simple title to property. Clark v. Hargrave, 323 S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1996). *May v. Jeter, 245 S.C. 529, 534, 141 S.E.2d 655, 658 (1965),*

Major v. Penn Community. Services., Inc., 395 S.C. 175, 717 S.E.2d 70 (Ct. App. 2011)).

8

Defendants seek a finding of fact and ruling by the Court whether the tendered contract between the Defendants and SRE that, among other things, provides for the Defendants to hold and retain a ten percent equity participation in the development of the property is more consistent with the legislative goals and purposes of the Clementa Pinckney Act than the straight contract for purchase proffered by the Plaintiffs under which they would be bought out and then permanently removed from their heritage land.

9

Defendants seek a finding of fact and ruling by the Court whether that SRE has demonstrated a sufficient showing of its capabilities and financial resources to fulfill the purchase of the property.

10

Defendants seek a finding of fact and ruling by the Court whether a deed of conveyance either with or without marketable title was in preparedness to be delivered to SRE on December 23, 2021.

11

Defendants seek a finding of fact and ruling by the Court whether the

property was available to be mortgaged by SRE on December 23, 2021.

12

Defendants seek a finding of fact and ruling by the Court whether a conflict of interest exist with counsel for the Plaintiffs who represents parties both in this action and in one or more of the open estates; (see Affidavit of Keita White) especially where the relief sought by their clients solely seeks to confirm the percentage ownership among the family heirs and not clear the title to the land knowing that without a marketable title and is unjust impediment has been created to prevent SRE from purchasing the property.

13

Did the Court commit an abuse of discretion as a matter of law by not granting the Defendants request for 45 days to have a hearing to receive testimonial evidence to determine the heirs of the estates of the four deceased heirs and to tender the purchase price, with the Defendants depositing 10%percent down with the court and also paying to the Plaintiffs the amount of 9.7 million in lieu of the appraisal price.

14

Did the Court commit an abuse of discretion as a matter of law by not granting the Defendants an extension of time to tender the purchase price in light of the fact that the Clementa C. Pinckney Act provides for a minimum of 60 days for heirs exercising their Right of First Refusal to complete the purchase especially

where the 60 day period allotted to the Defendants is commercially impossible to achieve, especially considering the large purchase price and the cloudy title encumbered upon the property rendering it useless for loan collateral purposes?

15

Have the Defendants property rights under the provisions of Article 1 § 3 of the SC Constitution and the enumerated Amendments of the U.S. Constitution been infringed upon by having been denied due process of law and the equal protection of the laws in this proceeding.

STANDARD OF REVIEW

An action to "Quiet Title" is an action in equity and the standard of review is "De Nova review as prescribed by *article V, § 5* of the South Carolina Constitution. the reviewing court may make findings in accordance with its own view of the preponderance of the evidence); *Dean v. Kilgore,* 313 S.C. 257, 437 S.E.2d 154 (Ct.App.1993)

A partition action is an action in equity and an appeal from an equitable action this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Doe v. Clark 318 S.C. 274, 457 S.E.2d 2nd 336 (1995)*

When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal. *Corley v. Ott* , 326 S.C. 89, 485 S.E.2d 97 and *Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 705 S.E.2d 73 (Ct. App. 2010).*

An issue regarding statutory interpretation (Clementa C. Pinckney Act "Right of First Refusal" is a question of law *Jeter v. S.C. Dept. of Transp., 369 S.C. 433, , 633 S.E.2d 143,* (2006). In a case raising a novel question of law the appellate court is free to decide the question

with no particular deference to the lower court *Ex parte Capital U-Drive-It, Inc.*, *369 S.C. 1, 630 S.E.2d 464,* (2006); *Hagood v. Summerville*, *362 S.C. 191, 607 S.E.2d 707*, (2005).

For Fifth and Fourteenth Amendment and Article I § 3 violations under the SC Constitution in this case should be reviewed *de novo* pursuant to *Ornelas v. United States*, *517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)*

ARGUMENT 1

South Carolina law does not allow a party to avoid statutory jurisdictional prerequisites required by § S.C. Code Ann. § 15-61-310, *et seq*. known as the Clemente C Pinckney Act by simply entering a Consent Order?

Here there were multiple prerequisite jurisdictional requirements that were not complied with. *First*, the personal representatives or administrators of the four open estates of diseased heirs We're not served I joined in the action. *Second*, a Lis Pendens was not filed. *Third*, there was no publication of process made on unknown parties prior to the entry of the consent order. *Fourth*, a Guardians *Ad Litem* had been appointed to represent the interests of unknown heirs, persons under disability, miners or a person's serving in the armed forces of the United States. *Fifth*, no notice signs were erected or placed upon the property (the type used by Counties to notify the public that a tax lien has been placed upon the property) to notify all persons especially adjoining landowners that an action to quiet title to the property had been commenced. A corollary to this would be Sixth; failure to join adjacent landowners in the action to eliminate or address any issues pertaining to the correct boundaries to the property. Seventh, an evidentiary hearing as required by *§15 –61–330* which is the prerequisite before a final order can be rendered as not been held.

§ 15- 61 – 330 reads as follows:

In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.

The Defendants made the court and parties aware of this deficiency by formal motion (*See Defendants Motion for Instructions*) and repeatedly at the Conference Hearings *(Transcripts)*

Additionally, the court failed to permit Appellants an evidentiary hearing, though requested and as required to receive evidence pertaining to their factual denials of Paragraphs 1, 2, 3, 4 11, 14, *15, 20 22, 26, 27 28, 29,30, and 31, of the Complaint and thus making the court's May 21, 2021 Consent Order void and of no further effect.* **(Def. Jan. 31, 2022, Motion for Reconsideration, p 5.)**

Further, the court failed to issue a finding of fact and ruling regarding whether the title to the property subject to this action has been at all times from the commencement of this action been and remains "Heirs Title" property? **(Def. Jan. 31, 2022, Motion for Reconsideration, p6.)** The well-established case of *Robinson v. Estate of Harris, 378 S.C.140, 662 S.E.2d 420 (Ct. App 2008)*

adequately support this principle of law and the facts are strongly within their prevue.

Here the Respondents failed to join necessary parties and, therefore, the Complaint should be dismissed pursuant to SCRCP 12(b)(7). **(Def. Jan. 31, 2022, Motion for Reconsideration, p 3.)** The docket lacks any evidence of the establishment of heirs related to the pending probate matters referenced in the Complaint and no publication was perfected prior to the Consent Order and the Order of October 20. 2021. order title.

When statutory jurisdictional prerequisites are not complied with subsequent orders of the court retain no validity and become null and void for lack of subject matter jurisdiction.

ARGUMENT 2

The order of the court dated October 20, 2021 was not a valid or final order when (1) a provision within the order calls for the publication of the summons and complaint (2) the Form 4 order sheet accompanied it's filing did not state that the order ended the case and (3) where the complaint stated a cause of action to quiet title that had not been prosecutorial developed and was never withdrawn and the defendants answered and participated in the action relying upon the relief being granted as prayed for in the complaint and (4) the order as

written purported as a final order concluded the proceeding without ever having the prerequisite evidentiary hearing required under the provisions of §15-61-330 of the Pinckney Act.

There are additional reasons this order was not a final order as Rule 54(b) SCRCP specifically provides that "*any order. . . however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all of the claims and the rights and liabilities of all the parties."*

a. This was not a Consent Order as the Defendants filed a response in opposition the provisions in its proposed order form. (Response in Opposition)

b. The Order was not raised by motion as required by *Rule 7(b)* (1) SCRCP and the filing fee of $25.00 paid to the Clerk of Court as required by *§ 8-21-320 S.C. Code Ann*. as amended, effective July 1, 2002, by H4431, R470, which requires a filing fee of $25 for all motions in a Court of Common Pleas and Family Court unless exempted under the Order of the South Carolina Supreme Court dated June 26, 2002 that allows for the waiver of the fee only when forma pauperis has been granted under Rule 3(c) SCRCP that is not present in this instance

.

RULE 7, reads as follows:

PLEADINGS ALLOWED: FORM OF MOTIONS: Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

c. The October 20, 2021 Order Is not a final order as a provision in the Order required that the publication of the Summons and Complaint be made to give prospective notice of the proceeding to unknown heirs, minors and present their claims., persons under disability and those who may be in the Military Services; of their right to appear in the action and state their claims upon the property.

d. An evidentiary hearing as required by *§15 –61–330* which is the prerequisite before a final order can be rendered as not been held. § 15-61 – 330 reads as follows:

i.In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.

ii. This article supplements the provisions of Article 1 and if the provisions of this article differ from the provisions of Article 1, the provisions of this article control for partitions of heirs' property.

e. The order of October 20, 2021 is not a final order or judgment as a judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment for appeal purposes. *Watson v. Underwood 407 S.C. 443 756 S.E. 2d 1 55.*

ARGUMENT 3

An oxymoron of meaning exists to classify the order of the court dated October 20th 2021 as a final order when (1) This Order Is not a final order as a provision in the Order required that the publication of the Summons and Complaint be made to give prospective notice of the proceeding to unknown heirs, minors and present their claims., persons under disability and those who may be in the Military Services; of their right to appear in the action and state their claims upon the property.

(2) no form for order accompanied it's failing stating that the order ended the case and (3) where the complaint stated A cause of action to quiet title had been brought and was never withdrawn and for the defendant answered and participated in the action relying upon the relief being granted as prayed for in the complaint and (4) the order concluding the proceeding without having an prerequisite

evidentiary hearing.

Here is how this is an oxymoron. The Court was correct in asserting that it lacked jurisdiction to hear the Appellants' Motion for Reconsideration and other relief for lack of jurisdiction by the court. The court was stating that it lacked jurisdiction because a Rule 59 SCRCP motion is required to be filed within ten days next from the filing of the "Final Order", (Order of October 20, 2021) which the appellant did not do. The Appellants' position is that the court at the time it issued the "Final Order" did not have jurisdiction to issue the Order for the reasons set forth supra (Argument 1) and the action should be dismissed for lack of subject matter jurisdiction. But assuming *arguendo* that the Court had retained jurisdiction of the action was its Order of October 20, 2021, the Final Order of the case.

The Appellants' position is that the Final Order of the Court was yet to come. The ultimate relief sought in this case was to "quiet Title" to the property. A final order would rule upon this issue. This order would more accurately be classified as an interlocutory order.

The court had not issued a finding of fact and ruling regarding whether the title to the property subject to this action has been at all times from the commencement of this action been and remains "Heirs Title" property. A jurisdictional requirement under the Pinckney Act. **(Def. Jan. 31, 2022, Motion for Reconsideration, p6.**

Ordinarily an interlocutory order which merely decides some point or matter

essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits. *Weil v. Weil, 299 S.C. 84, 382 S.E.2d 471 (Ct. App. 1989) and Shelley's Iron Works, Inc, v. City of Union 403S.C. 560, 743 S.E. 2d 778(2013).*

Argument 4

The Court erred in ruling that the ten (10) day filing restrictions imposed upon Rule 59 SCRCP motions that it lacked jurisdiction to hear the defendants Motion brought under Rule 59 and 60 SCRCPR in response to the Order of October 20th, 2021, and the reviewing court may now de *nova* rule upon the matters set forth in the motions?

The pivotal or most significant point that determines this question is rather the October 20th, 2021, order was a final order. Appellants have shown in their prior Arguments (supra)es that this order do not qualify as a final order that would jettison the application of the Rule 59, SCRCP, 10-day jurisdictional filing restriction. In any event the court should have heard Appellants' Rule 60 SCRCP motion, and the issues raised in the Rule 59 SCRAP motion as a Rule 60, SCRCP motion.

ARGUMENT 5

The statutory powers held by a Master in Equity to convey property is controlled by statute and does not extend to conveying property that is the subject

matter of a quiet title action. In a partition action it is authorized only with the consent of the parties. *§14-11-160*, (judicial sales) *§4806<0;631* (Judicial sales) §*12-24-20* (deed upon foreclosure) and § *14-11-160 (Master* may sell real estate in any county under order by consent (South Carolina Code of Laws (2022 Edition)

Second: Without an order decreeing the fee simple title on the property the only title the court could convey would be a quit-claim deed that would not be commercially acceptable. The American Land Title Associations (ATLA} in their industry regulations on this point, state the following:

DDSR02
STG
12/01/1995
V 4
Require General Warranty Deed
The Company requires for its review a satisfactory General Warranty Deed conveying the title to the land. The Deed must then be signed, delivered and recorded.
Comment: *The title commitment customarily requires a deed (or other instrument, if appropriate) from the current owner. Additional requirements may be necessary when securing conveyances from fiduciaries or entities.*

DDSR03
STG
12/01/1995
V 4

Require Warranty Deed
The Company requires for its review a satisfactory Warranty Deed conveying the title to the land. The Deed must then be signed, delivered and recorded.
Comment: *The title commitment customarily requires a deed (or other instrument, if appropriate) from the current owner. Additional requirements may be necessary when securing conveyances from fiduciaries or*

THIRD: That to issue a master's Deed would be in violation of Rule 71, SCRCP. This rule states that "Prior to the filing of the master's report or final order of judgment, the judge or master shall assure that the plaintiff and all other claimants have complied with the statutes pertaining to the filing of notices of Lis pendens." The Plaintiffs have not filed a Lis Pendens in this action that would constitute both a procedural and jurisdictional defect.

FOURTH: That required and indispensable parties have not been joined in this action that constitutes another jurisdictional defect. There are Four (4) non probated estates of deceased persons possessing an undivided interest in the property subject to this action in violation of Rule 71(d)(1), SCRCP. This rule states the following: Parties to Partition Actions. In addition to the requirements of these rules for the joinder in an action of all parties in interest, pursuant to Rule 17(f) no partition of real property of a deceased person shall be had unless the legal representative or representatives of such deceased person be made parties to the action and it be made to appear to the court that the debts of such deceased person are fully paid or that the personal estate in the hands of the personal representative or representatives is sufficient for the payment of the debts of such deceased

person. Likewise, the adjoining landowners have not been joined as parties to this action. There being made parties is mandatory and compulsive to provide the court with a factual basis upon which to rule that the boundaries of the property are correct.

If the partition action involves real property of a deceased person whose estate has not been administered or is not being administered at the time of the bringing of the action, then all known encumbrancers of the estate of the deceased person shall be made parties to the action and no decree in partition shall be entered unless due provision is made for the payment of the debts found due such encumbrancers. In all actions for partition, all heirs at law or devisees of the deceased person shall likewise be made parties. The Plaintiffs who commenced and prosecuted this action have failed to do this which constitutes a personal jurisdictional defect in this proceeding.

FIFTH: Another jurisdictional defect falls under Rule 71(e). This Rule states the following: Actions When Title Is at Issue. In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired. The Plaintiffs have failed to convene and the

Court "Sua Sponte" has not held an evidentiary hearing pursuant to *§ 15-61-330* in this proceeding to come into compliance with the provisions of this rule.

SIXTH: it would be an injustice perpetrated upon our citizenry for the Court to convey the property by master's Deed as many would misconstrue a Masters' deed equivalent to a warrant deed that conveys marketable title. Additionally, the completion of an action to quiet title, not as it is in the present case, infers that all the clouds, imperfections and impediments upon the title have been removed and what remains is the naked unencumbered fee simple absolute marketable title.

A perfect example of this is the prior action to quiet title to this same tract of land. (See Case # 2008-CP-07-0452.) In this case the Master in Equity in his *Final Order* of the case stated the following: "*I now conclude as a matter of law: a) The property which is the subject of this action is now owned in fee simple absolute by the following persons, having the respective ownership shares as outlined below:"* (Order of the Court)

ARGUMENT 6

The judicial doctrine of *stare decisis* and the Fifth and Fourteenth Amendments of the US Constitution and the provision guarantee of equal protection clause to the 14th amendment of the United States Constitution and Article 1 § three of the SC Constitution prohibition against the taking of property without due compensation would prohibit the Master in Equity from withhold

conveying the property when the defendants were in the process of exercising their "Right of First Refusal and afterwards agree to convey the land to facilitate the plaintiffs purported contract of sale.

The Court objected to a master's Deed for the proposed sale of the property when the Defendants were attempting to exercise their Right of First Refusal. (Tr..) The court would now, by the principle of *Stare Decisis*, be precluded from taking an opposite position, especially where the Court is aware that a master's Deed for the property subject to this action cannot convey fee simple marketable title and for the same reason did not grant the Defendant's request for a master's deed. Additionally, for the Court to grant this relief to the Plaintiffs while having previously denied it to the Defendants would constitute an inequity and impinge upon the Defendants constitutional right for the equal application and equal protection of the laws administered by the Court. It would be a travesty of justice and judicial bias for the Master in Equity to convey to another the Defendants' interest in their property without their consent.

ARGUMENT 7

The terms issued by the court to the defendants to deposit $8.9 million dollars with the court in order to exercise their right of first refusal as per as provided by South Carolina code of laws § *15-61-25* the Clemente see Pinkney Act and apprentices that did not make provisions one for the property to be conveyed to them to without warranty of title without provisions for the deposit to be applied

to the purchase price of 9.1 million and four no provisions for the refunding of the purchase of the money so outrageously unconscionable by their terms by these terms that it effectively eliminated the defendants exercise of their right of first refusal as provided by the Clemente C Pinckney act constitute an unlawful deprivation of property right add provided by Article 3 Section 1 of the South Carolina constitution

An order setting forth unconscionable conditions is a denial of due process of law and in this case unreasonably effectuated the denial to the defendants of exercising their right of first refusal to buy the property from the petitioning heirs. Unconscionability is defined as unfair or oppressive to one party in a way that suggests abuses during its formation, a court may find it unconscionable and refuse to enforce it. A contract is most likely to be found unconscionable if both unfair bargaining and unfair substantive terms are shown. An absence of meaningful choice by the disadvantaged party is often used to prove unfair bargaining. § 37 - 5 – 108 Code of Laws of South Carolina and *Holler v. Holler,* 364 S.C. 256, 612 S,E, 2d 469 (Ct App 2005), Smith v. D.R. Horton "403 S.C. 1042 S.E.2d 37, Smith v. D.R. Horton, Inc., 403 S.C. 10, 742 S.E.2d 37, (Ct. App. 2013) This was done despite the defendants demonstrating to the court that they had the financial resources to pay the purchase price of Nine Million The Pinckney Act defines “manifest Prejudice” or “manifest injury” as a result that is obviously unfair or shocking to the conscience and is direct, obvious, and

observable when considering the factors under § 15-61-390(A). Manifest injustice may be shown by enumerating the unreasonable risk for the Appellants to have deposited 8.9 million dollars with the court, especially where the Appellants produced adequate evidence of their financial capability to purchase the property; save only, that the court have decreed the fee simple title upon it.

The court was in error and abused its discretion as a matter of law, when setting the conditions for the defendants to exercise their "Right of First Refusal" as provided under § 15-61-35 of the Clementa C. Pinckney Act by requiring Defendants to deposit with the clerk of court the sum of 8.9 Million Dollars, within 60 days next to the order dated October 21, 2021 into an non-interest bearing account under the conditions where no provision was made in the order as to when they would receive a deed, and if so; would it be a warranty deed and what entity or person(s) would make the conveyance and would the deposit be refundable and/or applied to the purchase price.

The lower court erred in proceeding with purported quieting of title while at least four open probate matters were pending related to heirs to subject *property.* It is undisputed by Respondent that at least three estates were pending related to deceased heirs of subject property. When there are pending probate matters, the probate court has subject matter jurisdiction related to partition of property. *Byrd v. Johnson*, 417 S.C. 474, 790 S.E. 2d 200 (Ct. App. 2016).

While it is true that all co-tenants can agree as to the determination of heirs,

the court lacked evidence before it at the time May 21, 2021, order was issued that no other parties held a claim to subject property. (15-61-330) (c) ("Preliminary hearing is required unless all cotenants agree in a record.")

The May 21, 2021, Order is void for failure to submit proof of all co-tenants in agreement as to representations regarding heirs to subject property. Upon a court's determination that subject property is heirs' property, the court is required to order notice by publication ten (10) days after court determines subject property is their property ("If the property is determined "heirs' property" at the hearing per 15-61-330.

The purported order to quiet title dated May 21, 2021, void for failure of court to require notice of pending matter via publication prior to purported quieting of title when record at the time order entered lacked evidence of service of Defendant Heirs Stephanie Kirkland and Gary Lamont Kirkland. (See Index)

Prior to entry of May 21, 2021, Order, Respondents failed to serve all defendants. Pursuant to Affidavit of Non-Service on Stephanie Kirkland, dated January 1, 2021, summons for Stephanie Kirkland and Complaint for Quiet Title were placed in the hands of process server Anabela Pinto on November 25, 2020. Attempts to serve were made on November 27 and 28, 2020. On January 21, 2021, said process server filed the foregoing Affidavit of Non-Service. No affidavit regarding service (or attempts to serve) Defendant Gary Lamont Kirkland is present in the court's docket. To the extent that the October 22, 2021, order stated there had been

a revocation of a power of attorney, how can the order be valid without the filing of the revocation of power of attorney and a determination of the validity of the revocation of the power of attorney?

The three out of state intestate estates our ministered an axillary administration opened in the probate court for Beaufort County to enable ad to conveyance from the deceased test status to the heirs um one the two completed estates that was cited in the complaint had had had not had auxiliary ministration in Beaufort County and that the two completed states that were cited and complained had not had auxiliary administration in Beaver County and two further no hearing has been scheduled to have pedigree and genealogy testimony and examination for the court to find and verify who owns the property to the seclusion of the whole world and the exact percentage each of the owners possesses with a description The boundaries of the land that the possessory interest attached to.

CONCLUSION

The Respondents have to date and depending upon it being set aside by this court, pursued a course of conduct designed to defeat the purposes espoused under the Pinckney Act. If they are permitted to purchase the property this will extinguish the rights of the present defendants to participate in a near future action to quiet title to the property that would be brought by the Plaintiffs' purchaser, Rotunda.

In contrast, with the Defendants being permitted to exercise their "Right of

First Refusal" to buy the property this will greatly aid Black landowners and the people of South Carolina, similarly situated, who are burdened with "heirs title property the opportunity to hold on to their property against the forces of gentrification. The defendants strive to not only hold onto their land but through partnering with a developer and retain an equity ownership in the property and make its usage available to the public. This would fulfill the purposes of the act as enacted by our legislatures to its upmost fulfilment and purposes.

There have been multiple procedural and due process of law discrepancies in this case along with demonstrated abuse of discretion committed by the lower court and foundational jurisdictional infractions committed during the course of this proceeding. The Order of October 20, 2021 should be set aside and the case remanded for further proceedings including the filing of a Lis Pendens and serving a copy of the Summons and Complaint upon all the adjacent landowners. Upon the completion of this the master in Equity shall make a determination rather the property is heirs' property and upon a factual showing that the title to the property has been quieted among the established heirs issue an Order decreeing they are vested with the fee simple title to the property. Upon the court issuing such a decree the defendants shall thereafter have a period of 75 days to purchase the property from the petitioning heirs. The conveyance shall be by the petitioning heirs conveying their interest in the property to the Defendants.

Respectfully submitted,

The Houston Law Firm LLC
1000 Main Street, Suite 200 C
Hilton Head Island, SC
chouston@houstonlawfirm.net

By:S/ Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar # 2663 Fed. Bar # 1961
Attorney for Appellants

November 1, 2022
Hilton Head Island, SC

EXHIBIT D

From:	Tom Taylor
To:	Singleton, Mary C.; "ctappfilings@sccourts.org"
Cc:	Charles E. Houston; "Law Office of Chester C. Williams"; tfinger@fingerlaw.com; Andre J. White (andrewhite@mitchelville.com); Donna P. Taylor, Legal Assistant (donna@thomastaylorlaw.com)
Subject:	Respondents" letter objection to Amended Initial Brief filed in 2022-00277 today
Date:	Wednesday, November 2, 2022 2:16:00 PM
Attachments:	Taylor to Court of Appeals in 2022-000277 objecting to Appellants" amended brief submitted November 2, 2022.pdf

Ms. Singleton—Good afternoon. Chet Williams and I represent the Plaintiffs/Respondents in this appeal, and I am attaching my letter of this date formally objecting to the Court's consideration of Mr. Houston's amended initial brief first filed this morning, and then, just minutes ago, refiled in another version again.

Would you please make this letter response a part of the record and advise the Court of it's contents? Thank you so much.

Mr. Houston is copied on this email of course.

Please let me know if you have any questions.

Best.

Tom Taylor

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC
10 Pinckney Colony Road
1808
Building 400
Bluffton, SC 29909
843-785-5050 (office)
843-301-6900 (cell)

PLEASE NOTE OUR NEW MAILING ADDRESS:
P.O. Box 1808, Bluffton, SC 29910-

not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.

EXHIBIT E

ADMITTED TO THE UNITED STATES SUPREME COURT BAR

ADMITTED IN SOUTH CAROLINA, COLORADO AND GEORGIA

CERTIFIED SC CIRCUIT COURT MEDIATOR

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

10 PINCKNEY COLONY ROAD
BUILDING 400
BLUFFTON, SC 29909

TELEPHONE 843-785-5050
TELECOPIER 843-738-4502
www.thomastaylorlaw.com • tom@thomastaylorlaw.com

MAILING ADDRESS
P.O. BOX 1808
BLUFFTON, SC
29910-1808

November 2, 2022

Via E-Mail Attachment to: msingleton@sccourts.org
Ms. Mary-Caitlyn Singleton
Appeals Specialist
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Georgia Harrison, et al. vs. Stephanie Lorraine Kirkland, et al.; Appellate Case Number: 2022-000277; Appellants' filing of an "Amended Initial Brief" on November 2, 2022

Dear Ms. Singleton,

As your file indicates, Chet Williams and I represent the Respondents in this appeal. I am writing the Court this morning to advise that the Respondents object to the Court's consideration of the "Appellants' Amended Initial Brief" that was filed by Mr. Houston this morning. I know of no provision in the Rules that allows such a filing, and I wish to bring to the Court's attention that the "amended" initial brief is a substantively changed and supplemented document: the original initial brief filed on October 17, 2022, contained three (3) issues on appeal. The proposed amended initial brief now contains seven (7) issues on appeal, and the three initial ones have been re-worded and supplemented. All in all, the proposed amended initial brief is a wholesale revision and supplementation of the initial appellants' brief. Thus, the Respondents ask that the Court reject the proposed "amended brief" and allow the briefing to continue as per the Rules.

Please make this letter a part of the Court's file in this matter. Thank you. Mr. Houston is copied on this court communication of course. Please let me know if you have any questions.

Cordially yours,

Thomas C. Taylor

TCT/dpt
cc: Chester C. Williams, Esq., via email transmittal
Andre J. White, via email transmittal
Charles E. Houston, Esq., via email transmittal
Terry A. Finger, Esq., via email transmittal

RECEIVED
Nov 07 2022
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2020-CP-07-0231

APPELLATE CASE NO. 2022-000277

Georgia Harrison, Barbara Harrison,
Joyce Ellen Harrison, William S. Harrison III,
Stanley Roberts and
Diana Mendheim Individually And As Attorney In Fact,

Respondents,

vs.

Stephanie Lorraine Kirkland, Gary Lamont Kirkland,
Kieta Nicole White, And Cheryl Kirkland,

Appellants.

PROOF OF SERVICE

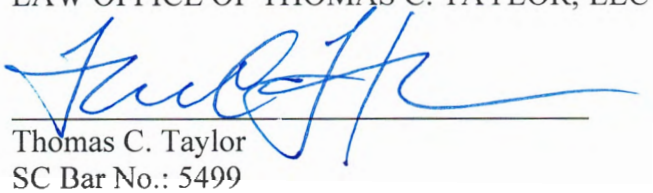
I hereby certify that this law firm represents the Respondents in the above-captioned matter and that on the date below, in Bluffton, South Carolina, I served a copy of the forgoing on the following person via U.S. Mail, first class postage pre-paid, and electronic mail to his AIS E-mail address:

Documents Served: **RESPONDENTS' MOTION TO STRIKE APPELLANTS' AMENDED INITIAL BRIEFS**

Parties Served: Charles E. Houston, Esquire
The Houston Law Firm, LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926;
chouston@houstonlawfirm.net

ATTORNEY FOR APPELLANTS

LAW OFFICE OF THOMAS C. TAYLOR, LLC



Thomas C. Taylor
SC Bar No.: 5499
Law Office of Thomas C. Taylor, LLC
PO Box 1880
Bluffton, SC 29910-1808
843-785-5050
tom@thomastaylorlaw.com

ATTORNEY FOR RESPONDENTS

Bluffton, South Carolina
November 6, 2022

ADMITTED TO THE UNITED STATES SUPREME COURT BAR

ADMITTED IN SOUTH CAROLINA, COLORADO AND GEORGIA

CERTIFIED SC CIRCUIT COURT MEDIATOR

LAW OFFICE OF
THOMAS C. TAYLOR, LLC

10 PINCKNEY COLONY ROAD
BUILDING 400
BLUFFTON, SC 29909

TELEPHONE 843-785-5050
TELECOPIER 843-738-4502
www.thomastaylorlaw.com • tom@thomastaylorlaw.com

MAILING ADDRESS
P.O. BOX 1808
BLUFFTON, SC
29910-1808

November 6, 2022

Via E-Mail Attachment to: msingleton@sccourts.org
Ms. Mary-Caitlyn Singleton, SC Court of Appeals Specialist
1220 Senate Street
Columbia, SC 29201

Re: Georgia Harrison, et al. vs. Stephanie Lorraine Kirkland, et al.; Appellate Case No.: 2022-000277; Respondents' Motion to Strike Appellants' Amended Initial Briefs

Dear Ms. Singleton,

As your file indicates, Chet Williams and I represent the Respondents in this appeal. On behalf of the Respondents, I attach hereto for electronic filing the following:

a. Respondents' Motion to Strike Appellants' Amended Initial Briefs;
b. Exhibits A, B, C, D and E; and,
c. Proof of Service of a copy of the documents upon Appellants' counsel.

I am also enclosing a check for the $50 filing fee today via US Mail. Please let me know if you have any questions. Than you as always for your professionalism in these matters.

Cordially yours,

Thomas C. Taylor

TCT/dpt
Enclosures
cc: Chester C. Williams, Esq., via email transmittal
Andre J. White, via email transmittal
Charles E. Houston, Esq., via email transmittal
Terry A. Finger, Esq., via email transmittal