

**RECEIVED**  
**Apr 24 2023**  
**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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APPELLATE CASE NO.  
2023-000438

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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.

---

**MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S  
INITIAL BRIEF OR IN THE ALTERNATIVE TO STAY THE APPEAL**

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The Appellants through their undersigned counsel, with leave of court, would move the court pursuant to Rule 240, SCRAP, for an order extending the time for filing the Appellants Initial Brief for a period of Sixty (60) days or in the alternative to stay the pendency of the appeal for a period of Ninety (90) days.

The Appellants Initial Brief is due on April 23, 2023 and no prior extensions have been requested. This motion seeks the same or similar relief that is provided under Rule 40(j) SCRCF though there is not a similar rule under South Carolina Rules of Appellate Procedure.

The grounds in support of the motion is that the Respondents were to the given up to April 21, 2023 to purchase the property subject to this action and have failed to do so. The Appellants have now moved the court below for an order granting them the opportunity to tender the purchase price for the property.

Upon the Appellants being granted the opportunity to purchase the property by the Master-in Equity. the appeal would become moot. The transcript of the hearing setting the deadline for the Respondents to purchase the property and the Appellant's motion to purchase the property in lieu of the Respondents' failure to do so is attached in support of this motion and our identified as Exhibit 1 and Exhibit 2 respectively.

Respectfully submitted,

The Houston Law Firm LLC  
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By: S/ Charles E. Houston Jr.  
Charles E. Houston Jr.  
SC Bar # 2663/ Fed. Bar # 1961  
Attorney for Appellant

April 22, 2023  
Hilton Head Island, SC

**STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORD**

**IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL DISTRICT  
CIVIL ACTION # 2020-CP-07-02301**

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

**Plaintiffs,**

**vs.**

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

**Defendants.**

---

**DEFENDANT’S MOTION TO  
ENFORCE RIGHT OF FIRST REFUSAL  
UNDER PINCKNEY ACT AND  
ALTERNATE RELIEF**

TO: THOMAS C TAYLOR, ESQ. AND CHESTER C. WILLIAMS, ESQ, ATTORNEYS FOR  
THE PLAINTIFFS.

The Defendants, through their undersigned counsel, would pursuant to Rule 7(b) SCRPC  
would move the court to Enforce their Right of First Refusal Under Pinckney Act and other  
alternative relief as follows:

### **BACKGROUND**

Plaintiffs commenced this action to clear title on November 24, 2020, attempting to sell  
their interests in the approximately 26.462 acres of real property located at the north end of Hilton  
Head Island, Beaufort County, South Carolina (the “Property”) to a third party – Rotunda Land  
and Development Corporation LLC (“Rotunda”); Plaintiffs entered the contract to sell the Property  
to Rotunda prior to commencing this lawsuit. It was determined by the Court by order dated  
September 15, 2021 that the Property was worth \$9.1 million. Defendants were only notified of  
their right of first refusal under South Carolina statute almost a year after the commencement of

this lawsuit on October 20, 2021 (the “Notice”) and after Plaintiffs already entered a contract to sell the property to a third party – Rotunda.

Defendants then properly notified the Court of their interest in purchasing the Property. The Court then ordered that Defendants pay the \$9.1 million in full within sixty days of the Notice (December 22, 2021). Given the considerably large purchase price, given the necessary due diligence required to close on the Property, and given the statutory scheme allowing for a period of longer than sixty days to put forth the purchase price, Defendants requested an extension of the sixty-day timeline in order to secure funding for the purchase of the Property; that request was denied.

Defendants have maintained throughout this litigation that they wish to purchase the Property. Defendants secured funding to purchase the Property before December 22, 2021. However, Defendants must use, as collateral, the clear, fee simple title to the Property. Without having a clear, marketable title to the Property, Defendants have been prohibited from purchasing the Property. In essence, this litigation primarily requests that the Court clear title to the property by issuing a fee simple title to the Property. The Court has refused to issue an Order declaring the fee simple absolute title to the Property is vested in the parties to this action as tenants in common.

On March 9, 2022, Defendants filed an appeal of the Court’s orders dated March 7, 2022, October 20, 2021, and September 25, 2021. On March 13, 2023, Defendants filed an appeal of the Court’s order filed March 8, 2023 denying Defendant’s Motion for Reconsideration. The second appeal is still pending; Plaintiffs attempted to close and sell the Property to Rotunda without first notifying the title company of the pending appeal. The title company will not close on the sale of the Property to Rotunda. Ultimately, Plaintiffs are unable to close on the sale of the Property to Rotunda. At the time Defendants were first given Notice, they did not have sufficient time to

conduct due diligence and secure funding to purchase the Property within sixty days. However, Defendants have been prepared to promptly deposit the full purchase price of the Property into the Court's registry and complete the purchase of the Property since December 22, 2022. Defendants thus respectfully request that the Court enter an order renewing Defendants' right of first refusal to purchase the Property under *S.C. Code Ann. § 15-61-310, et seq.* (the "Pinckney Act").

### **ARGUMENT**

The Court should grant the Motion and award Defendants the right to exercise their right to purchase the Property with a clear, marketable title under the Pinckney Act and under general principles of South Carolina law governing the right of first refusal.

#### *A. The Pinckney Act*

The Pinckney Act provides that upon filing a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for non-petitioning joint tenants or tenants in common<sup>1</sup> who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case; a joint tenant or tenant in common that properly notifies the court prior to the deadline "must be allowed to purchase the interests of any cotenant who requested a partition by sale..." *S.C. Code Ann. §§ 15-61-330(A); 15-61-370(B)*. In other words, non-petitioning joint tenants or tenants in common have a right of first refusal to purchase subject property. The purchase price for the interests of a cotenant that requested a partition by sale is the value of the entire parcel determined by the Court pursuant to § 15-61-360 multiplied by the cotenant's fractional ownership of the entire parcel. *S.C. Code Ann. § 15-61-370(C)*.

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<sup>1</sup> For purposes of the Pinckney Act, heirs and devisees are included within the definition of joint tenants and tenants in common. *S.C. Code Ann. § 15-61-25*.

If a joint tenant or tenant in common elects to buy all interests of its cotenants that requested partition by sale, the court shall notify the petitioning party of that fact; the petitioning party then shall notify all other parties of that same fact. *S.C. Code Ann. § 15-61-370(D)*. Once notices are properly sent, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which purchasing joint tenants or tenants in common must pay their apportioned price into the registry of the court. *S.C. Code Ann. § 15-61-370(E)*. If apportioned amounts are properly and timely paid, the court shall issue an order reallocating the interests and disbursing the amounts held by the court to the persons entitled to them. *Id.*

After receiving the Notice, Defendants have worked in good faith to secure the purchase of the Property, despite the fact that Plaintiff disregarded Defendants' right of first refusal and had already entered into an agreement to sell the Property to Rotunda. Because the Pinckney Act expressly allows the Court to grant the Defendants more than sixty days to put forth the funds to purchase the Property, and because of the complexity and value of the Property, Defendants requested a longer time period than sixty days to deposit the funds in accordance with the statute. That request was denied. Defendants were able to secure full funding for the Property's purchase by December 22, 2021, but requested the Court issue a marketable, clear title to the Property in order for Defendants to put forth the Property as collateral. That request was also denied. Defendants have put forth their best efforts in comporting with the Pinckney Act. The Pinckney Act's right of first refusal was promulgated so that properties, such as the Property, could remain in the interest of its cotenants if cotenants so chose. The intent to give cotenants an opportunity to maintain their interests in properties is particularly imperative here with the Property remaining one of the last undeveloped areas of this size and value on Hilton Head Island.

Additionally, Plaintiffs have maintained throughout this litigation that it would be impractical for it to honor Defendants' right of first refusal under the Pinckney Act given the advanced stage of the deal with Rotunda. However, any resulting damage to Plaintiffs or Rotunda in the Court's honoring of Defendants' right of first refusal under the Pinckney Act is directly because of Plaintiffs' own failure to notify Defendants of their intent to sell the Property until almost a year after commencing this suit and because Plaintiffs prematurely entered into the contract with Rotunda before honoring Defendants' right of first refusal under Pinckney Act. Furthermore, Rotunda cannot close on the Property with the appeal pending. Plaintiffs' and Defendants' interests are aligned in completing the sale of the Property; Plaintiffs want to sell and Defendants want to buy at the fair price.

Additionally, the spirit of the Pinckney Act provides that cotenants may have up until ten days prior to the trial setting to elect to purchase the subject property. *S.C. Code Ann. § 15-61-370(B)*. Defendants have expressed their intent to purchase the Property well before trial on this lawsuit. If Defendants had slightly more time, as allowed by statute, to complete the minimal due diligence as a condition to secure funding for the purchase of the Property, and if the Court had issued marketable title to the Property, Plaintiffs would have had no choice but to renege on the deal with Rotunda and sell the Property to Defendants anyway.

Because Defendants complied with all Pinckney Act notice requirements in expressing Defendants' good faith intent to purchase the Property; because the Pinckney Act's purpose is to allow cotenants the right to purchase other cotenants' interests as a right of first refusal; because Plaintiffs are unable to sell the Property to Rotunda; because Defendants are prepared to purchase the Property; and because any harm to Plaintiffs as a result of the Court's honoring of Defendants' right of first refusal results from Plaintiffs' own premature entry of an agreement to sell the

Property to a third party, Defendants respectfully request that the Court grant the Motion and allow Defendants to renew their rights under the Pinckney Act to purchase the Property.

B. Right of First Refusal

While the text and the spirit of the Pinckney Act favors Defendants' renewal of their right of first refusal to purchase the Property, South Carolina case law supports Defendants' position as well. Under well-established South Carolina law, a property owner is generally required, when he or she decides to sell, to first offer the property to the holder of a right of first refusal. *Webb v. Reames*, 485 S.E.2d 384, 385 (S.C. App. 1997). A right of first refusal constrains a real property owner's power of alienation of the property to a certain degree by requiring the owner to offer the property first to the holder of the right. *See Cnty. Of Jackson v. Nichols*, 623 S.E.2d 277, 280 (S.C. App. 2005).

A right of first refusal is only unenforceable if it unreasonably restrains alienation. *Wise v. Poston*, 316 S.E.2d 412, 415 (S.C. App. 1984); *Restatement (Third) of Property: Servitudes* §3.4. South Carolina courts consider the following factors in determining whether rights of first refusal are enforceable: (a) the legitimacy of the purpose of the right of first refusal, (b) the price at which the right of first refusal may be exercised, and (c) the procedures for exercising the right of first refusal. *Clarke v. Fine Housing, Inc.*, 882 S.E.2d 763, 767 (S.C. 2023) (citing *Restatement (Third) of Property: Servitudes* §3.4 cmt. f). "If the right to purchase is on the same terms and conditions as the owner may receive from a third party, if the procedures for exercising the right are clear, and if the period within which it must be exercised is relatively short, the right of first refusal is valid unless the purpose is not legitimate." *Restatement (Third) of Property: Servitudes* § 3.4 cmt. f. Courts typically only deem rights of first refusal to be invalid where the right of first refusal sets

forth no mechanism to determine the price of the property or where the right of first refusal period is unreasonably long. *See Clarke v. Fine Housing*, 882 S.E.2d at 766-767; *see also Mitchell v. Albertelli*, 2023 WL 292918 (S.C. App. 2023). Otherwise, rights of first refusal are honored and taken seriously.

Here, the Defendants' right of first refusal is valid and should be enforced. It is for a legitimate purpose – Defendants wish to retain the Property in which they hold interest as heirs. As stated above, Defendants' purpose in purchasing the Property is even more important because the Property is one of the last remaining undeveloped areas of this size on Hilton Head Island; the nature of the Property's ownership is critical.

Further, Defendants' purchase of the Property is pursuant to the payment terms set by the Court under the Pinckney Act, which is a fair and adequate figure. Defendants have no issues with paying the amounts set by the Court to purchase the Property. Additionally, the Defendants' right of first refusal is not for an unreasonable time period; the South Carolina legislature, per the Pinckney Act, has approved non-petitioning cotenants to elect to invoke their rights of first refusal and purchase respective properties as late as ten days prior to trial on a matter to partition property.

Because South Carolina law favors honoring rights of first refusal and because Defendants' right of first refusal does not unreasonably restrain alienation of the Property and Plaintiffs' Property rights, Defendants respectfully request the Court grant the Motion and enter an order allowing Defendants to invoke their right of first refusal to purchase the Property as they intend.

### **CONCLUSION**

WHEREFORE, Defendants respectfully request that the Court grant this Motion and enter an order allowing Defendants to invoke their right of first refusal uncourt may deem equitable and just under the Pinckney Act to purchase the property with a marketable, fee simple title thereto

and for such further and /or alternate relief that the court may deem equitable and just in the premises.

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Attorney for Defendants

April 21, 2023  
Hilton Head Island, SC

GEORGIA HARRISON vs STEPHANIE LORRAINE KIRKLAND et al  
2020-CP-07-02301 - CONFERENCE CALL

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IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

GEORGIA HARRISON, et al.  
Plaintiffs,

vs. CIVIL ACTION NUMBER  
2020-CP-07-02301

STEPHANIE LORRAINE KIRKLAND, et al.  
Defendants.

-----/

The telephonic conference-call, in the  
above-entitled cause, taken pursuant to Notice  
and agreement, before Honorable Marvin H. Dukes,  
Beaufort County Master In Equity, and Naomi  
McCracken, Stenographic Court Reporter and  
Notary Public, via telephone, on the 5th day of  
April 2023, commencing at or about the hour of  
2:29 p.m.

1 APPEARANCES of COUNSEL:

2

FOR PETITIONERS AND APPELLANTS / DEFENDANTS:

3

VIA TELEPHONE

4

CHARLES E. HOUSTON JR., ESQUIRE  
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Hilton Head Island, SC 29926

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7

8

FOR THE PLAINTIFF / RESPONDENTS:

9

VIA TELEPHONE

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11

12

13

AND

14

VIA TELEPHONE

15

THOMAS C. TAYLOR, ESQUIRE  
Law Office of Thomas C. Taylor, LLC  
Post Office Box 1808  
Bluffton, South Carolina 29910

16

17

18

ON BEHALF OF ROTUNDA REAL ESTATE:

19

VIA TELEPHONE

20

TERRY A. FINGER, ESQUIRE  
Finger Melnick Brooks & LaBruce, PA  
Post Office Box 24005  
Hilton Head, South Carolina 29936

21

22

23

24

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1 ALSO PRESENT (via telephone):

2 Earsa Jackson, Esquire  
3 Rose Hampton  
4 Mark Jones  
5 Georgia Harrison  
6 Diana Mendheim  
7 Tyrone Hodges  
8 Barbara Harrison

6 - - -

8 I N D E X

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10 PAGE  
11 OPENING REMARKS ----- 4

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24 CERTIFICATE ----- 38

25 (NO EXHIBITS MARKED.)



1 THE COURT: Marvin Dukes.

2 MR. TAYLOR: Good afternoon, Your  
3 Honor. Tom Taylor and a number of  
4 others here.

5 How are you.

6 THE COURT: Seven others, as I  
7 understand it from the computer. And  
8 Mr. Houston had a probate matter  
9 downstairs and so he's just come up  
10 from that. He's sitting here across  
11 the desk from me. And -- let's see, so  
12 I've got Charles here in the office.  
13 Got Tom.

14 Who else is with us?

15 MS. JACKSON: Earsa Jackson.

16 THE COURT: Welcome.

17 MS. JACKSON: Thank you.

18 MR. FINGER: Terry Finger.

19 THE COURT: And Terry. Shouldn't  
20 you be on the golf course or getting  
21 ready for the -- that's next week, I  
22 guess.

23 MR. FINGER: That's next week,  
24 Judge. Yeah, you're right. We're  
25 getting close. We're getting close.



1 THE COURT: All right. Terry, and  
2 who else? I'm sorry.

3 MS. HAMPTON: Rose Hampton.

4 MR. JONES: Mark Jones.

5 MS. HARRISON: Georgia Harrison.

6 MS. MENDHEIM: Diana Mendheim.

7 MR. HODGES: Tyrone Hodges.

8 MADAM COURT REPORTER: Naomi  
9 McCracken, court reporter.

10 THE COURT: Hey, Naomi McCracken,  
11 court reporter.

12 Okay. This is, of course, not a  
13 hearing, this is a conference call.  
14 But all are welcome.

15 Somebody else just joined us, I  
16 think.

17 MS. HARRISON: Barbara Harrison.

18 MR. WILLIAMS: Chet Williams.

19 THE COURT: Okay.

20 MR. WILLIAMS: Good afternoon.

21 THE COURT: Good afternoon.

22 MR. WILLIAMS: How are you today,  
23 Judge?

24 THE COURT: Just great. Thanks.

25 (Off the record discussion.)



1 THE COURT: All right. I've got  
2 2:31.

3 So this, again, is not a hearing,  
4 it's a conference call. I have got all  
5 of y'all on the phone, of course, and  
6 the rest of you just joining us,  
7 Charles Houston had a probate matter  
8 downstairs that just ended so he's just  
9 come up. So he's sitting across the  
10 table from me here.

11 MR. WILLIAMS: Okay.

12 THE COURT: The purpose of the  
13 conference call is this, I -- in the  
14 going back and forth, my understanding  
15 of this situation is as follows:  
16 Originally, an appeal of a prior order  
17 in this case, that appeal was  
18 dismissed. Then another order was  
19 issued, the final order -- well, won't  
20 be final because there has got to be  
21 disbursement and that sort of thing,  
22 but they're close to final order, and  
23 that will -- then a new appeal was  
24 filed under a new case number.

25 Now, since then, I don't think



1 anything has been filed either to allow  
2 relief from the automatic stay or to  
3 stay because, of course, under the  
4 rules, this, what is -- what is left to  
5 do under this order before disbursement  
6 of funds or anything is to transfer  
7 property. Of course, we all know the  
8 rule on transfer of property, but it's  
9 ordinarily not stayed.

10 In fact, the appeals court, I  
11 guess, made that clear in the order  
12 from the last appeal. But we've still  
13 got an appeal, but I don't know if it's  
14 stayed. And I'm happy to hear from  
15 counsel on what -- the different idea,  
16 but it seemed pretty clear from the  
17 order that the court issued last time  
18 that it's not stayed. Because, again,  
19 it was the same case, that kind of  
20 thing, even though it's a different  
21 appeal.

22 So anyway, with that as a -- and  
23 then my understanding -- my  
24 understanding watching the e-mails back  
25 and forth between, I think, Charles and



1 Tom and maybe Terry and Chet, I can't  
2 remember who all was on them, I was  
3 sort of peripherally copied on a couple  
4 of them. It's almost looked like y'all  
5 had reached some sort of an agreement  
6 to throw some language in the deed  
7 and -- but then I never really -- and,  
8 Charles, I understand you wanted all  
9 kind of language and contingencies on  
10 the closing, that kind of thing, and I  
11 think that was rejected.

12 But then it seems like y'all were  
13 back to just throwing a sentence or two  
14 (indiscernible) subject to common  
15 case -- and Charles is nodding.

16 So is that all -- is that where  
17 y'all are, because I can throw a  
18 sentence in there and sign the deed and  
19 done.

20 MR. HOUSTON: There are three  
21 things, Your Honor --

22 THE COURT: Can y'all year  
23 Charles?

24 MR. HOUSTON: Yes.

25 MADAM COURT REPORTER: No, I can't



1 hear.

2 THE COURT: Okay. You come in  
3 closer, don't worry.

4 MR. HOUSTON: There are three  
5 facts we wanted the Court to consider,  
6 Your Honor. One is that the deed be  
7 placed in escrow -- or not the deed be  
8 placed in escrow, but the funds be  
9 placed in escrow, the funds being  
10 placed in escrow if you grant -- issued  
11 the deed.

12 Second is that a time constraint  
13 before the --

14 MR. WILLIAMS: Charles, May 1st or  
15 May 31st?

16 MR. TAYLOR: May 1st.

17 MR. WILLIAMS: May 1st.

18 (Indiscernible.)

19 THE COURT: I don't even know what  
20 you mean by time constraint, but  
21 whatever y'all are talking about, y'all  
22 agree on that; is that correct?

23 (Audio interruption.)

24 MADAM COURT REPORTER: This is  
25 unreportable.



1 THE COURT: Yeah, this is a  
2 conference call, so I get it.

3 Let me make sure I understand.  
4 Item 2 on Charles's list is no longer  
5 an item because y'all agree to it's  
6 funding by May 1st; is that accurate?

7 MR. TAYLOR: Judge, it's Tom  
8 Taylor. It is appropriate from our  
9 perspective. We welcome a court order,  
10 if you would like, that with all -- all  
11 possible haste, we move forward to  
12 close by May 1st, and I believe Terry  
13 Finger's client is in agreement.

14 Terry?

15 MR. FINGER: That is correct, Your  
16 Honor.

17 MR. WILLIAMS: Chet Williams.  
18 Right now -- I mean, the contract  
19 between Rotunda and the sellers, I  
20 think, provides for closing, actually,  
21 on April 21st.

22 THE COURT: That's before  
23 May 1st. Okay.

24 All right. So that not an issue  
25 then, right?



1 MR. HOUSTON: Yeah, but we allow  
2 time because you can always have  
3 something go wrong.

4 THE COURT: Sure.

5 MR. HOUSTON: So you have a  
6 week --

7 (Indiscernible.)

8 MADAM COURT REPORTER: I can't  
9 hear him.

10 THE COURT: Come right around this  
11 way.

12 MR. HOUSTON: The point is that if  
13 it doesn't close by the 1st, then the  
14 order for the deed would become null  
15 and void.

16 THE COURT: Well, I'm not going to  
17 issue an order because that -- but  
18 you're welcome to petition, of course,  
19 if it doesn't close, you know, to  
20 whatever you want on the petition.  
21 But, you know, it may agree to that, I  
22 don't know. It maybe -- maybe the  
23 buyer walks away at that point. It may  
24 be self executing.

25 But I wasn't going to issue,



1 necessarily, any orders that weren't by  
2 consent. What I was trying to do is  
3 come up with a plan that resolved as  
4 many of the problems that y'all had.

5 MR. HOUSTON: Well, that would  
6 resolve it, but with the time  
7 constraint on it.

8 THE COURT: Well, it's got a time  
9 constraint, May 1st, but you want it to  
10 be null and avoid, the order to be  
11 vacated is basically what you just  
12 said.

13 Well, let me do this, I'm happy to  
14 hear, Tom, from you.

15 MR. TAYLOR: Your Honor, the  
16 plaintiffs do certainly not agree with  
17 that. Your Honor, it would be  
18 appropriate in the normal course of  
19 this, the way we do litigation and  
20 matters such as this, to have an order  
21 requiring that the closing be first,  
22 deadlined, and then certainly if  
23 something reasonable comes up at the  
24 last minute, I (indiscernible) the  
25 Court, but in no way would we agree to



1 an order that says everything is void  
2 May 1st --

3 MR. HOUSTON: Your Honor, that's  
4 the same position we had, you know, of  
5 December 23rd. If we didn't get --

6 (Crosstalk.)

7 MR. WILLIAMS: I'm sorry.

8 MR. HOUSTON: The right to  
9 purchase.

10 THE COURT: Well, let me do this,  
11 I don't -- I don't want to relitigate  
12 all that stuff, I'm just trying to --

13 MR. HOUSTON: We just want the  
14 same provision.

15 THE COURT: I'm not going to issue  
16 an order that vacates a prior order if  
17 it doesn't occur by that date.

18 However, if it doesn't, file a motion.  
19 You know, who knows what I might  
20 order. Okay? But to go ahead and do  
21 that -- well, they're not going to  
22 consent.

23 Let me ask you this, so the  
24 closing date is not an issue, it will  
25 be on or before May 1st. Now, you



1 escrow the money and then do the deed,  
2 that's not a standard closing issue. I  
3 know what you're going to say, well,  
4 that's not the way we were treated in  
5 December two years ago or whatever it  
6 was, but --

7 MR. HOUSTON: I glad you  
8 acknowledge that, Your Honor.

9 THE COURT: But that was a  
10 different matter. That was a -- we had  
11 already had a contract. You wanted to  
12 put in a backup, essentially.

13 MR. HOUSTON: You know --

14 MR. WILLIAMS: Your Honor, if I  
15 may. Chet Williams here.

16 Charles and his clients were  
17 operating pursuant to a specific  
18 statute that required those things.  
19 We're not operating pursuant to  
20 agreement, we're operating pursuant to  
21 the contract and the contract doesn't  
22 require an escrow of the funds prior to  
23 closing. And so, I mean, I don't speak  
24 for Terry, but I doubt his client would  
25 agree to that.



1 MR. HOUSTON: Your Honor, the  
2 other thing is --

3 MR. FINGER: This is Terry. This  
4 will be a normal Beaufort County  
5 closing. We would ask that the  
6 master's deed be issued prior to May  
7 1st. We would ask that there be no  
8 further modifications that Mr. Houston  
9 has asked to be put in that master's  
10 deed, and upon our client wiring the  
11 money, Chet Williams's office -- Chet,  
12 I assume you're going to handle the  
13 closing for the sellers?

14 MR. WILLIAMS: Yes.

15 MR. FINGER: Upon -- typical when  
16 good funds are received by  
17 Mr. Williams, he'll deliver the deed  
18 and other seller documents to me. I  
19 assume that the escrow that Mr. Houston  
20 may be referring to is his 1.2 percent,  
21 and that will be escrowed or paid out.

22 It doesn't matter to me. We just  
23 want to have a general warranty deed  
24 from the 98 plus percent that Tom and  
25 Chet represent. They tell me that's



1 what we'll get. We'll get a master's  
2 deed -- or Charles's people will not  
3 sign deeds apparently and then they  
4 can -- whatever happens to that 1.2  
5 percent doesn't really matter to my  
6 client, to be honest.

7 MR. HOUSTON: Another point, it's  
8 not supposed to be a general warranty  
9 deed. Just supposed to be a --

10 THE COURT: Charles, I'll --

11 MR. WILLIAMS: Excuse me, Your  
12 Honor.

13 THE COURT: Yeah.

14 MR. WILLIAMS: Chet Williams.

15 THE COURT: Yeah.

16 MR. WILLIAMS: Charles, the  
17 contract requires -- calls for a  
18 warranty deed. And with respect to the  
19 master's deed, Your Honor, I direct you  
20 to the third whereas paragraph page 3  
21 that says that you're executing it  
22 pursuant to your order of November 7th  
23 and that -- deliver it to counsel for  
24 plaintiffs to be held in escrow pending  
25 the closing of the sale of the property



1 pursuant to the (indiscernible) --

2 (Crosstalk.)

3 THE COURT: I'm not -- their  
4 individual people are going to sign the  
5 deed, but the master's deed is what  
6 I've got.

7 MR. WILLIAMS: And, again, and  
8 that's not --

9 THE COURT: It's not a warranty  
10 deed.

11 MR. WILLIAMS: No, it's not.

12 THE COURT: Yeah. That's -- so, I  
13 mean, that's -- so that's not really an  
14 issue.

15 So we're sort of down to --

16 MR. HOUSTON: Now, is this  
17 warranty deed, does it propose -- it's  
18 not going to be incumbent upon my  
19 client because I don't want my clients  
20 to be (indiscernible) to a third party  
21 coming back and suing them saying you  
22 didn't give us a warranty deed.

23 THE COURT: They're not giving a  
24 warranty deed, they're -- I'm signing a  
25 master's deed on their behalf, okay, is



1 what's going on. The warranty deed, if  
2 anybody sues on the warranty, I can't  
3 imagine the -- your clients would be  
4 defendants because they wouldn't have  
5 signed the warranty, right?

6 MR. HOUSTON: You're signing on  
7 behalf of my client.

8 THE COURT: No warranties.

9 MR. FINGER: Charles, we will be  
10 happy to take quit claim deed from your  
11 clients.

12 MR. HOUSTON: No, I'm talking  
13 about what the master is conveying, not  
14 a warranty.

15 MR. WILLIAMS: Of course, the  
16 master's deed contains no warranty of  
17 title whatsoever in it.

18 THE COURT: And even if it did, it  
19 would be warranty by -- you know, not  
20 me, the office, but --

21 (Audio interruption.)

22 MR. FINGER: Charles, this is  
23 Terry.

24 Are your clients willing to give a  
25 quit claim deed to my clients?



1 MR. HOUSTON: No.

2 MR. FINGER: Okay.

3 MS. JACKSON: Your Honor, this is  
4 Earsa Jackson. I would like to at  
5 least make one comment to the proposed  
6 master's deed, even if we're talking  
7 about the limited interest of the  
8 defendant heirs.

9 I do think that referencing the  
10 court of appeals matter as if it's  
11 closed is not accurate. That -- at a  
12 minimum, that needs to be modified.  
13 That is not accurate as it sits because  
14 the appeal is still pending.

15 THE COURT: Which paragraph is  
16 that in?

17 MS. JACKSON: This is on page 2,  
18 second to the last paragraph that  
19 references that the court of appeals  
20 denied the motions for supersedeas.

21 THE COURT: Yeah.

22 MS. JACKSON: All of that is  
23 factual, but it's not -- it's not  
24 accurate or it's not complete as  
25 written.



1           THE COURT: Got you. So if a  
2 phrase were added that says,  
3 thereafter, an appeal was filed in  
4 case -- or thereafter, another appeal  
5 was filed in this same case which  
6 remains pending as appeals court number  
7 whatever it is.

8           MS. JACKSON: I think for  
9 completeness, that at minimum, that  
10 needs to be included.

11          THE COURT: Yeah. I mean, I don't  
12 know what else you would put other than  
13 that.

14          MS. JACKSON: Right.

15          THE COURT: But that would -- that  
16 would tell the whole -- what you want  
17 to tell is the whole story and --

18          MS. JACKSON: Exactly.

19          MR. WILLIAMS: If I may, Your  
20 Honor.

21          THE COURT: Yes.

22          MR. WILLIAMS: In all fairness, at  
23 the time this master deed was draft,  
24 that second appeal wasn't  
25 (indiscernible) --



1 THE COURT: Oh, no, I know, I --  
2 but I can't see a problem with adding  
3 what's requested there, though. Just a  
4 phrase that says, you know -- I don't  
5 know if anybody wrote it down, but  
6 roughly what I just said, which was  
7 probably wrong. But, you know,  
8 thereafter, another appeal was filed in  
9 this case which remains pending as of  
10 the date of this order as case number  
11 whatever.

12 MR. HOUSTON: Technically, there  
13 are two appeals still pending.

14 MR. WILLIAMS: Terry, are you okay  
15 with that?

16 MR. HOUSTON: What was dismissed  
17 was the amended appeal.

18 THE COURT: Okay. Well, I mean,  
19 this would direct them -- the concern  
20 is if someone looked at the deed and  
21 said -- (indiscernible) -- this  
22 paragraph -- the fact is.

23 (Audio interruption.)

24 MR. HOUSTON: I have --

25 MADAM COURT REPORTER: I can't



1 hear anything.

2 MR. WILLIAMS: Somebody somewhere  
3 doesn't have their phone on mute when  
4 they're not talking.

5 MR. HOUSTON: The concern is this,  
6 the order that you signed empowered  
7 them to sell the property to Rotunda.  
8 All right? Now they're not going to  
9 sell the property to Rotunda, they're  
10 selling it to some new party, which  
11 infers two things.

12 Number one, that the  
13 misrepresentation was made to the Court  
14 that Rotunda was -- has all this time  
15 to prepare to buy the property. And  
16 now there's no order authorizing them  
17 to sell the property to this other  
18 third LLC.

19 THE COURT: All right. Anybody  
20 shed light on --

21 MR. WILLIAMS: With an assignment  
22 of Rotunda's rights, that issue is  
23 resolved.

24 THE COURT: Okay.

25 MR. HOUSTON: Your Honor, no



1 assignment has been filed. We have  
2 haven't been served with any  
3 assignment.

4 THE COURT: All right. Is the  
5 assignment something --

6 MR. WILLIAMS: I'll get -- those  
7 assignments are executed at closing.

8 THE COURT: Okay. I mean -

9 MR. TAYLOR: Your Honor, your  
10 order of November 7th authorizes  
11 partition of the property by sale, it  
12 does not restrict it to Rotunda. And,  
13 in fact, Rotunda is technically not a  
14 party to this action.

15 What it authorizes is the  
16 prevailing plaintiffs to move forward  
17 with the partition by sale. And, quite  
18 candidly, we would not be restricted to  
19 Rotunda, but we certainly in all good  
20 faith are representing to the Court  
21 that's exactly who we're closing it to,  
22 it's simply a new entity that has been  
23 created by the assignment, which we'll  
24 be glad to provide.

25 THE COURT: Company owned by



1 Rotunda or something; is that correct?

2 MR. WILLIAMS: That is correct,  
3 Your Honor.

4 THE COURT: Got you. All right.  
5 Let's do this, then -- I can't remember  
6 who drafted the deed.

7 MR. WILLIAMS: I did, Your Honor.  
8 Chet Williams. I did.

9 THE COURT: Chet, do you think you  
10 could put that language in there  
11 bringing the current status of the  
12 appeals up to date?

13 MR. HOUSTON: I think the example  
14 you gave was adequate, Your Honor.

15 THE COURT: Okay.

16 MR. HOUSTON: Incorporate that.

17 THE COURT: Yeah. Just put that  
18 in there. I think that was  
19 Ms. Jackson's suggestion. And that --  
20 and if y'all could do that and --

21 MR. HOUSTON: I'm talking about  
22 your language here, part of the appeal  
23 and --

24 THE COURT: Right. Yeah, that's  
25 what I'm talking about.



1           MR. FINGER: This is Terry Finger.  
2           I'd just like to register my objection  
3           to any changes in this proposed  
4           master's deed. We have shared this  
5           master's deed with the entity that's  
6           going to be handling the title  
7           insurance, issuing the title insurance.  
8           Any further changes are going to just  
9           create more problems.

10           This is not stating anything that  
11           isn't already of public record. I  
12           don't know whether Mr. Houston's  
13           clients are going to perfect this  
14           appeal. Their prior appeal has been  
15           dismissed.

16           MR. HOUSTON: No, it hasn't been  
17           dismissed, Terry.

18           MR. FINGER: Oh, yes it has.

19           MR. HOUSTON: The amended appeal  
20           was dismissed. The first one still  
21           stands.

22           THE COURT: Well, y'all --  
23           (indiscernible) -- just keep going.  
24           What else?

25           MR. FINGER: It's going cause



1 Rotunda some issues with their title  
2 insurance entity that had pretty much  
3 passed grace over the prior draft and  
4 now you're introducing something that  
5 I'll have to go back and see if I can  
6 got approval on. I don't know if I'll  
7 be able to or not, to be perfectly  
8 blunt with it, and it's just -- it's  
9 unnecessary in my opinion. It doesn't  
10 state anything that's not of public  
11 record anyway. Were we aware of it --

12 THE COURT: Go ahead. I'm sorry.

13 MR. FINGER: We're aware of the  
14 new appeal. Chet Williams and Tom  
15 Taylor have made me aware of the new  
16 appeal. I don't know when their  
17 designation of matter is due or when  
18 their brief is due. I suspect it's  
19 fairly soon, but my understanding is  
20 that the prior appeals have all been  
21 dismissed.

22 MR. HOUSTON: No, it hasn't,  
23 Terry, just the amended one. So the  
24 first initial appeal is still standing.  
25 They dismissed the amended one.



1           MR. WILLIAMS: I don't think  
2 you're right, Charles.

3           THE COURT: Let's do this, you  
4 know, somebody can figure that out  
5 later.

6           So, Terry, I understand what  
7 you're saying. I can't image, though,  
8 simply bringing this up to date is  
9 going to cause them too much heartburn  
10 because as you've pointed out, it's all  
11 public record anyway and this is simply  
12 amending the public record portion of  
13 this -- of this deed.

14           So hopefully it won't be a  
15 problem. If they say forget it, this  
16 language ruins everything, we'll have  
17 another conference call and we'll talk,  
18 but at this point, if -- Chet, if you  
19 can add that language in there and get  
20 it to me, I'll go ahead and execute it  
21 and return it in a timely fashion to be  
22 held in escrow pending the usual  
23 closing.

24           MR. WILLIAMS: Okay.

25           MR. FINGER: Okay. Thank you,



1 Judge.

2 THE COURT: Terry, if that's a  
3 disaster, ask somebody for a conference  
4 call and we'll talk and we'll see what  
5 we can do.

6 MR. FINGER: I will do everything  
7 in my power to not make it a disaster.

8 THE COURT: Okay.

9 MR. WILLIAMS: Thank you, Terry.

10 THE COURT: As always, if y'all  
11 can figure out a way to resolve this,  
12 let me know. That would be great.

13 All right. This, again, was not a  
14 hearing, but anything for our  
15 conference call?

16 MR. TAYLOR: Not on behalf of the  
17 plaintiffs, Judge.

18 THE COURT: Okay.

19 All right. Naomi, good luck  
20 trying to turn this into something on  
21 paper.

22 MR. HOUSTON: Your Honor, the  
23 other thing we want to do, if they do  
24 close is to hold the funds for the  
25 defendants in escrow.



1 THE COURT: Well, we always do  
2 that for some period of time.

3 MR. WILLIAMS: Charles, I'll be  
4 glad to give you the funds for the  
5 defendants.

6 MR. HOUSTON: You give us  
7 (indiscernible) --

8 THE COURT: Let's do this. Let's  
9 see if it closes.

10 MR. HOUSTON: Yeah.

11 THE COURT: And if it does, then  
12 there will be some net funds, and I'm  
13 sure we will all get together and there  
14 will be some claims for fees and costs  
15 and that kind of thing that we'll all  
16 need hash out. We do in all these  
17 cases. But yeah, the money, you know,  
18 we -- it can be paid into the clerk.  
19 Most attorneys don't  
20 want (indiscernible) --

21 MR. WILLIAMS: Oh, yeah. The  
22 plaintiffs are going to want their  
23 funds held.

24 MR. HOUSTON: Well, we don't  
25 have -- they can do whatever they want



1 to do with the plaintiff's money,  
2 but --

3 THE COURT: Well, let's do this,  
4 what -- right now, the order calls for  
5 doing what with the net proceeds?

6 MR. TAYLOR: Your Honor, it's  
7 first -- normal course, I have it in  
8 front of me, plaintiff's are authorized  
9 to move forward with the closing of the  
10 sale for 9,750,000 and the defendants  
11 shall each receive their proportionate  
12 share of the purchase price of net the  
13 sellers proceeds as computed by their  
14 ownership interest in the consent  
15 order.

16 The closing costs for the sale  
17 shall be provided for in the Rotunda  
18 contract, and the Court recognizes the  
19 equitable lien of the interest of all  
20 owners of the real property in  
21 proportion to their respective interest  
22 or cost and attorney's fees incurred by  
23 the plaintiff and the maintenance and  
24 prosecution of this action.

25 MR. HOUSTON: (Indiscernible) --



1 fees.

2 THE COURT: Hold on a second.

3 Keep going. I'm sorry.

4 MR. TAYLOR: In addition, Your  
5 Honor, it's at page 36 of what I --  
6 excuse me, 26 of what I sent you  
7 earlier. If you have it and want to  
8 refer to it. And it, basically, Judge,  
9 provides for the distribution of all  
10 costs and proceeds on a pro-rata basis  
11 with the defendant's portion being  
12 delivered, we assume to them.

13 And then to the deceased  
14 defendants, Your Honor, we had already  
15 arranged and you had put in the order  
16 that those proceeds would be given to  
17 the clerk of court and held for one  
18 year pending someone comes forward in  
19 those.

20 But Mr. Houston's alive defendants  
21 will receive a check and we're prepared  
22 to cut the check for them at closing.

23 THE COURT: What -- don't we still  
24 need to have a hearing to approve  
25 attorneys fees?



1 MS. JACKSON: Yes. Your Honor,  
2 this is Earsa Jackson. I agree with  
3 that. We also need to see that closing  
4 statement. I'm sure there's a  
5 tentative one floating around as well.  
6 That could be taken care of at the same  
7 time.

8 MR. TAYLOR: There's no  
9 provisions -- (indiscernible) --  
10 allowed anybody.

11 THE COURT: I'm sorry, I couldn't  
12 hear you.

13 MR. TAYLOR: I said, Your Honor,  
14 there's no provision about the  
15 defendants having any type of say in  
16 the disbursement of the monies or other  
17 costs. It is -- again, Your Honor, I  
18 draw your attention to the order of  
19 November the 7th that provides that  
20 closing costs will be as per normal in  
21 Beaufort County.

22 And we're certainly at the Court's  
23 pleasure, but we did not anticipate,  
24 Judge, that the Court was going to be  
25 holding funds and then having any other



1 type of hearing on disbursement of  
2 those funds.

3 THE COURT: No, no, no. I'm  
4 talking regular closing costs, of  
5 course.

6 What I was talking about is it  
7 sounded like there was going to be a  
8 reduction for --

9 MR. HOUSTON: Attorney fees.

10 THE COURT: -- from the gross for  
11 plaintiff's attorneys fees, which, you  
12 know, again, wouldn't be unusual, but  
13 ordinarily, we would have at least some  
14 brief hearing to determine the amount  
15 of that number.

16 MR. HOUSTON: Well, we don't have  
17 any objection so long as it's not --  
18 affects against the defendants. They  
19 can charge the plaintiffs for all they  
20 want.

21 THE COURT: Well, there's an  
22 option.

23 MR. WILLIAMS: That's what I had  
24 anticipated that we would do.

25 THE COURT: All right. Well, if



1 you want to memorialize that with an  
2 order, then Charles, you've no problem  
3 with it; is that correct?

4 MR. HOUSTON: Yeah.

5 THE COURT: I think I still  
6 probably need to approve it because we  
7 do have unknowns and deceased persons.  
8 So as I understand it, Charles, on  
9 behalf of his client, waives that, but  
10 I think I probably still need to take a  
11 look at that.

12 So when will that be prepared or  
13 when -- I mean, y'all aren't finished  
14 yet, you don't know what it's going to  
15 be.

16 MR. TAYLOR: Chet, what do you  
17 think about when we'll have a closing  
18 statement that would have that for the  
19 Court's review?

20 MR. WILLIAMS: Typically it's the  
21 purchaser's attorney that prepares the  
22 closing statement, so that would come  
23 from Terry.

24 THE COURT: But the number is what  
25 I'm worried about.



1 MR. WILLIAMS: I'm sorry, say  
2 again, Your Honor.

3 THE COURT: I mean, it will be in  
4 the closing statement, but it's in  
5 number that will actually come from the  
6 plaintiffs that -- the usual closing  
7 stuff, you know, the proration of taxes  
8 and all that, it just is what it is.  
9 But I'm just talking about the  
10 deduction from the gross except for  
11 Charles's clients of the attorney's  
12 fees.

13 MR. WILLIAMS: That -- I can have  
14 that. It may take me two weeks to put  
15 that together.

16 THE COURT: Okay. That's fine.

17 MR. WILLIAMS: I, in all honestly,  
18 am substantially behind on my billing.

19 THE COURT: Okay. All right.  
20 But, again, I think that probably ought  
21 to be approved by the Court even if  
22 Charles -- y'all aren't going to assess  
23 it against Charles's client, but still,  
24 with regard to -- and of course your  
25 clients agree, but the -- there are



1 some unknowns and deceased people that  
2 I think should be looked at.

3 MR. WILLIAMS: Okay.

4 THE COURT: Whose the guardian? I  
5 can't remember.

6 MR. WILLIAMS: Maria Parker.

7 THE COURT: Okay. I would like  
8 for her to take a look at them as  
9 well.

10 All right. So let's see, Chet,  
11 you're going to throw in the sentence  
12 suggested by Ms. Jackson and then --

13 MR. WILLIAMS: As long as you're  
14 doing that, you know, this doesn't  
15 include any reference to the -- I'm  
16 sorry, it does say -- it does refer to  
17 the supreme court denial. Okay. Never  
18 mind.

19 Yep, we'll add in the fact that  
20 there is another appeal had -- has been  
21 filed but not yet perfected with  
22 respect to the order that you signed  
23 recently.

24 MR. HOUSTON: What do you mean by  
25 not perfected?



1 MR. WILLIAMS: Say again.

2 MR. HOUSTON: What do you mean by  
3 not perfected?

4 MR. WILLIAMS: If you don't file  
5 your brief --

6 THE COURT: Why don't you just say  
7 filed and leave out the not perfected  
8 and -- anyway, anybody (indiscernible)  
9 is going to look and see that.

10 MR. TAYLOR: It has been assigned,  
11 Your Honor.

12 THE COURT: Okay. All right. All  
13 right. I think that will do it then.

14 So, again, I'll keep an eye out.  
15 Y'all get that order to either Heather  
16 or Jared, that would be great, and just  
17 let me know.

18 All right, then, y'all have a  
19 great afternoon and a happy and  
20 wonderful Easter. And thank y'all so  
21 much for accommodating me with the  
22 conference call.

23 (Whereupon, the conference-call was  
24 concluded at approximately 2:59 p.m.)

25



1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA:

4 BEAUFORT COUNTY:

5

6 I, Naomi McCracken, Court Reporter and Notary  
7 Public in and for the above county and state, do  
8 hereby certify that the foregoing  
9 conference-call was taken before me via  
10 telephone at the time and herein-before set  
11 forth; that thereupon the foregoing testimony  
12 was later reduced by computer transcription; and  
13 I certify that this is a true and correct  
14 transcript of my stenographic notes so taken.

15 I further certify that I am not of counsel to  
16 either party, nor interested in the event of  
17 this cause.

18

19

20

21

*Naomi McCracken*

22

Naomi McCracken

23

Court Reporter

24

Notary Public

25

Beaufort, South Carolina



**1**

**1.2** 15:20 16:4  
**1st** 9:14,16,17 10:6,12,23 11:13 12:9 13:2,25 15:7

**2**

**2** 10:4 19:17  
**21st** 10:21  
**23rd** 13:5  
**26** 31:6  
**2:31** 6:2  
**2:59** 37:24

**3**

**3** 16:20  
**31st** 9:15  
**36** 31:5

**7**

**7th** 16:22 23:10 32:19

**9**

**9,750,000** 30:10  
**98** 15:24

**A**

**accommodating** 37:21  
**accurate** 10:6 19:11,13,24  
**acknowledge** 14:8  
**action** 23:14 30:24  
**add** 27:19 36:19  
**added** 20:2

**adding** 21:2  
**addition** 31:4  
**adequate** 24:14  
**affects** 33:18  
**afternoon** 4:2 5:20,21 37:19  
**agree** 9:22 10:5 11:21 12:16,25 14:25 32:2 35:25  
**agreement** 8:5 10:13 14:20  
**ahead** 13:20 26:12 27:20  
**alive** 31:20  
**allowed** 32:10  
**amended** 21:17 25:19 26:23,25  
**amending** 27:12  
**amount** 33:14  
**anticipate** 32:23  
**anticipated** 33:24  
**apparently** 16:3  
**appeal** 6:16,17,23 7:12,13,21 19:14 20:3,4,24 21:8,17 24:22 25:14,19 26:14,16,24 36:20  
**appeals** 7:10 19:10,19 20:6 21:13 24:12 26:20  
**approval** 26:6  
**approve** 31:24 34:6  
**approved** 35:21  
**approximately** 37:24  
**April** 10:21  
**arranged** 31:15  
**assess** 35:22  
**assigned** 37:10  
**assignment** 22:21 23:1,3,5,23  
**assignments** 23:7

**assume** 15:12,19 31:12  
**attention** 32:18  
**attorney** 33:9 34:21  
**attorney's** 30:22 35:11  
**attorneys** 29:19 31:25 33:11  
**audio** 9:23 18:21 21:23  
**authorized** 30:8  
**authorizes** 23:10,15  
**authorizing** 22:16  
**automatic** 7:2  
**avoid** 12:10  
**aware** 26:11,13,15

**B**

**back** 6:14 7:24 8:13 17:21 26:5  
**backup** 14:12  
**Barbara** 5:17  
**basically** 12:11 31:8  
**basis** 31:10  
**Beaufort** 15:4 32:21  
**behalf** 17:25 18:7 28:16 34:9  
**billing** 35:18  
**blunt** 26:8  
**bringing** 24:11 27:8  
**buy** 22:15  
**buyer** 11:23

**C**

**call** 5:13 6:4,13 10:2 27:17 28:4,15 37:22  
**calls** 16:17 30:4  
**candidly** 23:18  
**care** 32:6  
**case** 6:17,24 7:19 8:15

20:4,5 21:9,10  
**cases** 29:17  
**charge** 33:19  
**Charles** 4:12 6:7 7:25 8:8,15,23 9:14 14:16 16:10,16 18:9,22 27:2 29:3 34:2,8 35:22  
**Charles's** 10:4 16:2 35:11,23  
**check** 31:21,22  
**Chet** 5:18 8:1 10:17 14:15 15:11,25 16:14 24:8,9 26:14 27:18 34:16 36:10  
**claim** 18:10,25  
**claims** 29:14  
**clear** 7:11,16  
**clerk** 29:18 31:17  
**client** 10:13 14:24 15:10 16:6 17:19 18:7 34:9 35:23  
**clients** 14:16 17:19 18:3,11,24,25 25:13 35:11,25  
**close** 4:25 6:22 10:12 11:13,19 28:24  
**closed** 19:11  
**closer** 9:3  
**closes** 29:9  
**closing** 8:10 10:20 12:21 13:24 14:2,23 15:5,13 16:25 23:7,21 27:23 30:9,16 31:22 32:3,20 33:4 34:17,22 35:4,6  
**comment** 19:5  
**common** 8:14  
**Company** 23:25  
**complete** 19:24  
**completeness** 20:9  
**computed** 30:13



**computer** 4:7  
**concern** 21:19 22:5  
**concluded** 37:24  
**conference** 5:13 6:4, 13 10:2 27:17 28:3,15 37:22  
**conference-call** 37:23  
**consent** 12:2 13:22 30:14  
**constraint** 9:12,20 12:7,9  
**contingencies** 8:9  
**contract** 10:18 14:11, 21 16:17 30:18  
**conveying** 18:13  
**copied** 8:3  
**correct** 9:22 10:15 24:1,2 34:3  
**cost** 30:22  
**costs** 29:14 30:16 31:10 32:17,20 33:4  
**counsel** 7:15 16:23  
**County** 15:4 32:21  
**couple** 8:3  
**court** 4:1,6,16,19 5:1,8, 9,10,11,19,21,24 6:1,12 7:10,17 8:22,25 9:2,5, 19,24 10:1,9,22 11:4,8, 10,16 12:8,25 13:10,15 14:9 16:10,13,15 17:3, 9,12,23 18:8,18 19:10, 15,19,21 20:1,6,11,15, 21 21:1,18,25 22:13,19, 24 23:4,8,20,25 24:4,9, 15,17,24 25:22 26:12 27:3 28:2,8,10,18 29:1, 8,11 30:3,18 31:2,17,23 32:11,24 33:3,10,21,25 34:5,24 35:3,16,19,21 36:4,7,17 37:6,12  
**Court's** 32:22 34:19  
**create** 25:9  
**created** 23:23

**Crosstalk** 13:6 17:2  
**current** 24:11  
**cut** 31:22

---

**D**

---

**date** 13:17,24 21:10 24:12 27:8  
**deadlined** 12:22  
**deceased** 31:13 34:7 36:1  
**December** 13:5 14:5  
**deduction** 35:10  
**deed** 8:6,18 9:6,7,11 11:14 14:1 15:6,10,17, 23 16:2,9,18,19 17:5, 10,17,22,24,25 18:1,10, 16,25 19:6 20:23 21:20 24:6 25:4,5 27:13  
**deeds** 16:3  
**defendant** 19:8  
**defendant's** 31:11  
**defendants** 18:4 28:25 29:5 30:10 31:14,20 32:15 33:18  
**deliver** 15:17 16:23  
**delivered** 31:12  
**denial** 36:17  
**denied** 19:20  
**designation** 26:17  
**desk** 4:11  
**determine** 33:14  
**Diana** 5:6  
**direct** 16:19 21:19  
**disaster** 28:3,7  
**disbursement** 6:21 7:5 32:16 33:1  
**discussion** 5:25  
**dismissed** 6:18 21:16 25:15,17,20 26:21,25

**distribution** 31:9  
**documents** 15:18  
**doubt** 14:24  
**downstairs** 4:9 6:8  
**draft** 20:23 26:3  
**drafted** 24:6  
**draw** 32:18  
**due** 26:17,18  
**Dukes** 4:1

---

**E**

---

**e-mails** 7:24  
**earlier** 31:7  
**Earsa** 4:15 19:4 32:2  
**Easter** 37:20  
**empowered** 22:6  
**ended** 6:8  
**entity** 23:22 25:5 26:2  
**equitable** 30:19  
**escrow** 9:7,8,9,10 14:1, 22 15:19 16:24 27:22 28:25  
**escrowed** 15:21  
**essentially** 14:12  
**excuse** 16:11 31:6  
**execute** 27:20  
**executed** 23:7  
**executing** 11:24 16:21  
**eye** 37:14

---

**F**

---

**fact** 7:10 21:22 23:13 36:19  
**facts** 9:5  
**factual** 19:23  
**fairly** 26:19

**fairness** 20:22  
**faith** 23:20  
**fashion** 27:21  
**fees** 29:14 30:22 31:1, 25 33:9,11 35:12  
**figure** 27:4 28:11  
**file** 13:18 37:4  
**filed** 6:24 7:1 20:3,5 21:8 23:1 36:21 37:7  
**final** 6:19,20,22  
**fine** 35:16  
**Finger** 4:18,23 10:15 15:3,15 18:9,22 19:2 25:1,18,25 26:13 27:25 28:6  
**Finger's** 10:13  
**finished** 34:13  
**floating** 32:5  
**forget** 27:15  
**forward** 10:11 23:16 30:9 31:18  
**front** 30:8  
**funding** 10:6  
**funds** 7:6 9:8,9 14:22 15:16 28:24 29:4,12,23 32:25 33:2

---

**G**

---

**gave** 24:14  
**general** 15:23 16:8  
**Georgia** 5:5  
**give** 17:22 18:24 29:4,6  
**giving** 17:23  
**glad** 14:7 23:24 29:4  
**golf** 4:20  
**good** 4:2 5:20,21 15:16 23:19 28:19  
**grace** 26:3



**grant** 9:10

**great** 5:24 28:12 37:16,  
19

**gross** 33:10 35:10

**guardian** 36:4

**guess** 4:22 7:11

---

**H**

---

**Hampton** 5:3

**handle** 15:12

**handling** 25:6

**happy** 7:14 12:13 18:10  
37:19

**Harrison** 5:5,17

**hash** 29:16

**haste** 10:11

**he'll** 15:17

**hear** 7:14 9:1 11:9  
12:14 22:1 32:12

**hearing** 5:13 6:3 28:14  
31:24 33:1,14

**heartburn** 27:9

**Heather** 37:15

**heirs** 19:8

**held** 16:24 27:22 29:23  
31:17

**Hey** 5:10

**Hodges** 5:7

**hold** 28:24 31:2

**holding** 32:25

**honest** 16:6

**honestly** 35:17

**Honor** 4:3 8:21 9:6  
10:16 12:15,17 13:3  
14:8,14 15:1 16:12,19  
19:3 20:20 22:25 23:9  
24:3,7,14 28:22 30:6  
31:5,14 32:1,13,17 35:2  
37:11

**Houston** 4:8 6:7 8:20,  
24 9:4 11:1,5,12 12:5  
13:3,8,13 14:7,13 15:1,  
8,19 16:7 17:16 18:6,12  
19:1 21:12,16,24 22:5,  
25 24:13,16,21 25:16,  
19 26:22 28:22 29:6,10,  
24 30:25 33:9,16 34:4  
36:24 37:2

**Houston's** 25:12 31:20

---

**I**

---

**idea** 7:15

**image** 27:7

**imagine** 18:3

**include** 36:15

**included** 20:10

**Incorporate** 24:16

**incumbent** 17:18

**incurred** 30:22

**indiscernible** 8:14  
9:18 11:7 12:24 17:1,20  
20:25 21:21 25:23 29:7,  
20 30:25 32:9 37:8

**individual** 17:4

**infers** 22:11

**initial** 26:24

**insurance** 25:7 26:2

**interest** 19:7 30:14,19,  
21

**interruption** 9:23  
18:21 21:23

**introducing** 26:4

**issue** 10:24 11:17,25  
13:15,24 14:2 17:14  
22:22

**issued** 6:19 7:17 9:10  
15:6

**issues** 26:1

**issuing** 25:7

**item** 10:4,5

---

**J**

---

**Jackson** 4:15,17 19:3,  
4,17,22 20:8,14,18  
32:1,2 36:12

**Jackson's** 24:19

**Jared** 37:16

**joined** 5:15

**joining** 6:6

**Jones** 5:4

**Judge** 4:24 5:23 10:7  
28:1,17 31:8 32:24

---

**K**

---

**kind** 7:19 8:9,10 29:15

---

**L**

---

**language** 8:6,9 24:10,  
22 27:16,19

**leave** 37:7

**left** 7:4

**lien** 30:19

**light** 22:20

**limited** 19:7

**list** 10:4

**litigation** 12:19

**LLC** 22:18

**long** 33:17 36:13

**longer** 10:4

**looked** 8:4 21:20 36:2

**luck** 28:19

---

**M**

---

**MADAM** 5:8 8:25 9:24  
11:8 21:25

**made** 7:11 22:13 26:15

**maintenance** 30:23

**make** 10:3 19:5 28:7

**Maria** 36:6

**Mark** 5:4

**Marvin** 4:1

**master** 18:13 20:23

**master's** 15:6,9 16:1,  
19 17:5,25 18:16 19:6  
25:4,5

**matter** 4:8 6:7 14:10  
15:22 16:5 19:10 26:17

**matters** 12:20

**Mccracken** 5:9,10

**memorialize** 34:1

**Mendheim** 5:6

**mind** 36:18

**minimum** 19:12 20:9

**minute** 12:24

**misrepresentation**  
22:13

**modifications** 15:8

**modified** 19:12

**money** 14:1 15:11  
29:17 30:1

**monies** 32:16

**motion** 13:18

**motions** 19:20

**move** 10:11 23:16 30:9

**mute** 22:3

---

**N**

---

**Naomi** 5:8,10 28:19

**necessarily** 12:1

**net** 29:12 30:5,12

**nodding** 8:15

**normal** 12:18 15:4 30:7  
32:20

**November** 16:22 23:10  
32:19



**null** 11:14 12:10

**number** 4:3 6:24 20:6  
21:10 22:12 33:15  
34:24 35:5

---

**O**

---

**objection** 25:2 33:17

**occur** 13:17

**office** 4:12 15:11 18:20

**operating** 14:17,19,20

**opinion** 26:9

**option** 33:22

**order** 6:16,18,19,22  
7:5,11,17 10:9 11:14,17  
12:10,20 13:1,16,20  
16:22 21:10 22:6,16  
23:10 30:4,15 31:15  
32:18 34:2 36:22 37:15

**orders** 12:1

**ordinarily** 7:9 33:13

**Originally** 6:16

**owned** 23:25

**owners** 30:20

**ownership** 30:14

---

**P**

---

**p.m.** 37:24

**paid** 15:21 29:18

**paper** 28:21

**paragraph** 16:20  
19:15,18 21:22

**Parker** 36:6

**part** 24:22

**partition** 23:11,17

**party** 17:20 22:10 23:14

**passed** 26:3

**pending** 16:24 19:14  
20:6 21:9,13 27:22  
31:18

**people** 16:2 17:4 36:1

**percent** 15:20,24 16:5

**perfect** 25:13

**perfected** 36:21,25  
37:3,7

**perfectly** 26:7

**period** 29:2

**peripherally** 8:3

**persons** 34:7

**perspective** 10:9

**petition** 11:18,20

**phone** 6:5 22:3

**phrase** 20:2 21:4

**plaintiff** 30:23

**plaintiff's** 30:1,8 33:11

**plaintiffs** 12:16 16:24  
23:16 28:17 29:22  
33:19 35:6

**plan** 12:3

**pleasure** 32:23

**point** 11:12,23 16:7  
27:18

**pointed** 27:10

**portion** 27:12 31:11

**position** 13:4

**power** 28:7

**prepare** 22:15

**prepared** 31:21 34:12

**prepares** 34:21

**pretty** 7:16 26:2

**prevailing** 23:16

**price** 30:12

**prior** 6:16 13:16 14:22  
15:6 25:14 26:3,20

**pro-rata** 31:10

**probate** 4:8 6:7

**problem** 21:2 27:15  
34:2

**problems** 12:4 25:9

**proceeds** 30:5,13  
31:10,16

**property** 7:7,8 16:25  
22:7,9,15,17 23:11  
30:20

**proportion** 30:21

**proportionate** 30:11

**propose** 17:17

**proposed** 19:5 25:3

**proration** 35:7

**prosecution** 30:24

**provide** 23:24

**provided** 30:17

**provision** 13:14 32:14

**provisions** 32:9

**public** 25:11 26:10  
27:11,12

**purchase** 13:9 30:12

**purchaser's** 34:21

**purpose** 6:12

**pursuant** 14:17,19,20  
16:22 17:1

**put** 14:12 15:9 20:12  
24:10,17 31:15 35:14

---

**Q**

---

**quit** 18:10,25

---

**R**

---

**reached** 8:5

**ready** 4:21

**real** 30:20

**reasonable** 12:23

**receive** 30:11 31:21

**received** 15:16

**recently** 36:23

**recognizes** 30:18

**record** 5:25 25:11  
26:11 27:11,12

**reduction** 33:8

**refer** 31:8 36:16

**reference** 36:15

**references** 19:19

**referencing** 19:9

**referring** 15:20

**regard** 35:24

**register** 25:2

**regular** 33:4

**rejected** 8:11

**relief** 7:2

**relitigate** 13:11

**remains** 20:6 21:9

**remember** 8:2 24:5  
36:5

**reporter** 5:8,9,11 8:25  
9:24 11:8 21:25

**represent** 15:25

**representing** 23:20

**requested** 21:3

**require** 14:22

**required** 14:18

**requires** 16:17

**requiring** 12:21

**resolve** 12:6 28:11

**resolved** 12:3 22:23

**respect** 16:18 36:22

**respective** 30:21

**rest** 6:6

**restrict** 23:12

**restricted** 23:18

**return** 27:21

**review** 34:19

**rights** 22:22



**Rose** 5:3  
**Rotunda** 10:19 22:7,9,  
 14 23:12,13,19 24:1  
 26:1 30:17  
**Rotunda's** 22:22  
**roughly** 21:6  
**ruins** 27:16  
**rule** 7:8  
**rules** 7:4

**S**

**sale** 16:25 23:11,17  
 30:10,16  
**sell** 22:7,9,17  
**seller** 15:18  
**sellers** 10:19 15:13  
 30:13  
**selling** 22:10  
**sentence** 8:13,18  
 36:11  
**served** 23:2  
**share** 30:12  
**shared** 25:4  
**shed** 22:20  
**sign** 8:18 16:3 17:4  
**signed** 18:5 22:6 36:22  
**signing** 17:24 18:6  
**simply** 23:22 27:8,11  
**sits** 19:13  
**sitting** 4:10 6:9  
**situation** 6:15  
**sort** 6:21 8:3,5 17:15  
**sounded** 33:7  
**speak** 14:23  
**specific** 14:17  
**standard** 14:2  
**standing** 26:24

**stands** 25:21  
**state** 26:10  
**statement** 32:4 34:18,  
 22 35:4  
**stating** 25:10  
**status** 24:11  
**statute** 14:18  
**stay** 7:2,3  
**stayed** 7:9,14,18  
**story** 20:17  
**stuff** 13:12 35:7  
**subject** 8:14  
**substantially** 35:18  
**sues** 18:2  
**suggested** 36:12  
**suggestion** 24:19  
**suing** 17:21  
**supersedeas** 19:20  
**supposed** 16:8,9  
**supreme** 36:17  
**suspect** 26:18

**T**

**table** 6:10  
**talk** 27:17 28:4  
**talking** 9:21 18:12 19:6  
 22:4 24:21,25 33:4,6  
 35:9  
**taxes** 35:7  
**Taylor** 4:2,3 9:16 10:7,  
 8 12:15 23:9 26:15  
 28:16 30:6 31:4 32:8,13  
 34:16 37:10  
**technically** 21:12  
 23:13  
**tentative** 32:5  
**Terry** 4:18,19 5:1 8:1  
 10:12,14 14:24 15:3  
 18:23 21:14 25:1,17

26:23 27:6 28:2,9 34:23  
**thing** 6:21 7:20 8:10  
 15:2 28:23 29:15  
**things** 8:21 14:18  
 22:11  
**throw** 8:6,17 36:11  
**throwing** 8:13  
**time** 7:17 9:12,20 11:2  
 12:6,8 20:23 22:14 29:2  
 32:7  
**timely** 27:21  
**title** 18:17 25:6,7 26:1  
**today** 5:22  
**Tom** 4:3,13 8:1 10:7  
 12:14 15:24 26:14  
**transfer** 7:6,8  
**treated** 14:4  
**turn** 28:20  
**type** 32:15 33:1  
**typical** 15:15  
**Typically** 34:20  
**Tyrone** 5:7

**U**

**understand** 4:7 8:8  
 10:3 27:6 34:8  
**understanding** 6:14  
 7:23,24 26:19  
**unknowns** 34:7 36:1  
**unnecessary** 26:9  
**unreportable** 9:25  
**unusual** 33:12  
**usual** 27:22 35:6

**V**

**vacated** 12:11  
**vacates** 13:16  
**void** 11:15 13:1

**W**

**waives** 34:9  
**walks** 11:23  
**wanted** 8:8 9:5 14:11  
**warranties** 18:8  
**warranty** 15:23 16:8,18  
 17:9,17,22,24 18:1,2,5,  
 14,16,19  
**watching** 7:24  
**week** 4:21,23 11:6  
**weeks** 35:14  
**whatsoever** 18:17  
**Williams** 5:18,20,22  
 6:11 9:14,17 10:17 13:7  
 14:14,15 15:14,17  
 16:11,14,16 17:7,11  
 18:15 20:19,22 21:14  
 22:2,21 23:6 24:2,7,8  
 26:14 27:1,24 28:9  
 29:3,21 33:23 34:20  
 35:1,13,17 36:3,6,13  
 37:1,4

**Williams's** 15:11  
**wiring** 15:10  
**wonderful** 37:20  
**worried** 34:25  
**worry** 9:3  
**written** 19:25  
**wrong** 11:3 21:7  
**wrote** 21:5

**Y**

**y'all** 6:5 8:4,12,17,22  
 9:21 10:5 12:4 24:20  
 25:22 28:10 34:13  
 35:22 37:15,18,20  
**year** 8:22 31:18  
**years** 14:5



IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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APPELLATE CASE NO. 2022-000277

---

**RECEIVED**  
**Apr 24 2023**  
**SC Court of Appeals**

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 Appellants in the above-captioned matter and that on the date below, in Hilton Head Island, South Carolina, I served a copy of the forgoing on the following person via electronic mail to his ATS E-mail address and by USPS postage prepaid and affixed.

**Documents Served: RESPONDENTS' Motion for Extension of time to file Initial Brief and /or stay of the appeal**

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April 22, 2023  
Hilton Head Island, SC

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Charles E. Houston, Jr.

April 22, 2023

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**Apr 24 2023**

**SC Court of Appeals**

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

*Re: Georgia Harrison v. Stephanie Kirkland  
Appellate Case # 20203-000438  
Motion for Extension of Time*

Dear Ms. Kitchings:

I am enclosing for filing with the Court the Appellant's' Motion for Extension of Time to File Initial Brief and check for \$50.00 to cover the filing fee. By copy of this letter the Proof of Service and the motion with Exhibits 1 and Exhibit 2 is being served upon all counsels of record.

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

With kind regards, I am,

Respectfully,  
The Houston Law Firm LLC

Charles E. Houston Jr.  
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**cc:**  
Thomas Taylor, Esquire  
Chester Williams, Esquire  
Encls: as stated