

RECEIVED

Jun 20 2023

SC Court of Appeals

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 # 2023-000438

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

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 CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF CASE	2
STANDARD OF REVIEW	19
ARGUMENT 1	21
ARGUMENT 2	29
CONCLUSION	44

TABLE OF AUTHORITIES

CASES

<i>Byrd v. Johnson</i> , 417 S.C. 474, 790 S.E. 2d 200 (Ct. App. 2016)	28
<i>Clark v. Hargrave</i> , 323 S.C. 84, 87, 473 S.E.2d 474 (Ct. App. 1996).....	10
<i>Consignment Sales, LLC v. Tucker Oil Co.</i> , 391 S.C. 266, 705 S.E.2d 73 (Ct. App. 2010)	13
<i>Corley v. Ott</i> , 326 S.C. 89, 485 S.E.2d 97.....	13
<i>Dean v. Kilgore</i> , 313 S.C. 257 , 437 S.E.2d 154 (Ct.App.1993)	13
<i>Doe v. Clark</i> , 318 S.C. 274, 457 S.E.2d 2nd 336 (1995).....	13
Edmonson v. Leesville Concrete Co., 500 U.S. 614, 620 (1991)	
<i>Ex parte Capital U-Drive-It, Inc.</i> , 369 S.C. 1, 630 S.E.2d 464, (2006).....	14
Exparte Virginia, 100 U.S. 339, 346-47 (1879)	
<i>Hagood v. Sammerville</i> , 362 S.C. 191, 607 S.E.2d 707 (2005).....	14
<i>Holler v. Holler</i> , 364 S.C. 256, 612 S,E, 2d 469 (Ct App 2005)	27
<i>Home Tel. & Tel. Co. v. City of Los Angeles, 227 U.S. 278, 287 (1913).</i>	
<i>Jeter v. S.C. Dept. of Transp.</i> , 369 S.C. 433, 633 S.E.2d 143 (2006).....	13
<i>Lugar v. Edmondson Oil Co.</i>, 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982)	

<i>Major v. Penn Community. Services., Inc.,</i> 395 S.C. 175, 717 S.E.2d 70 (Ct. App. 2011)	10
<i>May v. Jeter,</i> 245 S.C. 529, 534, 141 S.E.2d 655 (1965)	10
<i>Ornelas v. United States,</i> 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)	14
<i>Scalise Dev., Inc. v. Tidelands Investments., LLC,</i> 392 S.C. 27, 707 S.E.2d 440 (Ct. App. 2011)	10
<i>Shelley’s Iron Works, Inc, v. City of Union,</i> 403 S.C. 560, 743 S.E. 2d 778 (2013)	21
Shelley v. Kraemer, 334 U.S. 1 (1948)	
<i>Smith v. D.R. Horton, Inc.,</i> 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013)	27
<i>Watson v. Underwood,</i> 407 S.C. 443 756 S.E. 2d 1 55	19
<i>Weil v. Weil,</i> 299 S.C. 84, 382 S.E.2d 471 (Ct. App. 1989)	21
<u>STATUTES:</u>	
42 U.S.C. § 1983	
S.C. Code Ann. § 15-61-10.....	3
S.C. Code Ann. § 15-61-310	1, 3, 5, 14
S.C. Code Ann. § 15-61-330)(c).....	29
S.C. Code Ann. § 15-61-35.....	28
S.C. Code Ann. § 15-61-360 B.....	5
S.C. Code Ann. § 15-61-370(A).....	9
S.C. Code Ann. § 15-61-370(B)	9

S.C. Code Ann. § 15-61-390(A)	27
S.C. Code Ann. § 15-67-10	3
S.C. Code Ann. § 37 - 5 – 108	27
S.C. Code Ann. § 8-21-320	17
S.C. Code Ann. §14-3-330(1)	7
S.C. Code Ann. §14-3-330(2)	7
S.C. Code Ann. §14-3-330(3)	7
S.C. Code Ann. §15-61-330	15, 18, 25, 29

RULES

Rule 7 SCRCP	18
Rule 12(b)(4) SCRCP	8
Rule 12(b)(6) SCRCP	9
Rule 12(b)(7) SCRCP	9
Rule 17(f) SCRCP	24
Rule 3(c) SCRCP	18
Rule 52(a) SCRCP	7
Rule 52(b) SCRCP	5
Rule 54(b) SCRCP	5, 7, 17
Rule 59 (a)(2) SCRCP	5
Rule 59 SCRCP	20, 21, 22
Rule 59(e) SCRCP	5
Rule 60 SCRCP	21, 22
Rule 60(b)(2) SCRCP	5

Rule 7(b)(1) SCRCF	17
Rule 71 SCRCF.....	24
Rule 71(d)(1) SCRCF	24
Rule 71(e) SCRCF	25
Rule 71E SCRCF	4

CONSTITUTIONAL PROVISIONS

S.C. Const. Art. 1 § 3	3
S.C. Const., Art. 3 Art. 1 § three.....	27
S.C. Const., Art. I § 3.....	2, 14
S.C. Const., Art. V, § 5	13
U.S. Const. amend. V.....	2, 14, 22
U.S. Const. amend. XIV	2, 14, 22

STATEMENT OF ISSUES ON APPEAL

ISSUE 1

In an action for Partition Quiet Title and Sale is state action established where the below listed discrepancy 1 through 9 are shown to have been exercised by the Master in Equity, an official of the State of South Carolina, is the Appellant entitled to have the Master Deed granting their propriety interest in the property, to a third party grantee under a contract of sale entered into by the partitioning heirs prior to the commencement of the , set aside and rescinded as null and void upon the grounds that this is the wrongful taking of property rights as violative of the due process of law and equal protection of the law provisions of Article 1 Section 3 and 13 of the SC Constitution and the 5th and 14th Amendment of the U.S. Constitution and US Code § 1983?

ISSUE 2

When a Master in Equity exceeds the legislative authority granted by the provisions of the Roberta C. Pinkney Act or in particular instances demonstrates an abuse of discretion or lack of jurisdictional authority as set forth in the nine instances set forth below; may the Appellate Court under trial de Nova review make new findings of fact and conclusions of law by nullifying the Master Deed issued in the proceeding, restoring the Appellants right of First Refusal upon

reasonable conditions and /or order that the property be sold as provided by *S.C. Code § 15-61-370*.

ASSIGNMENTS OF ERROR

Due process Discrepancies’:

- 1 No signs were posted on the property as required by *S.C. Code § § 15-61-340*
- 2 No evidentiary hearing was held as mandated by *S.C. Code § 15-61-330*
- 3 The MASTER IN EQUITY twice issued orders ending the case without conducting hearing proceedings necessary to decree fee simple title upon the property

Jurisdictional Discrepancies

- 4 The Personal Representatives of four open estates of deceased heirs were not joined as parties to the action
- 5 Publication of process was not made prior to the first hearing as required by *S.C. Code § 15-61-340*
- 6 Master in Equity exceeded jurisdictional authority by issuing a Master’s Deed conveying the defendants interest in the party against their consent that is not in compliance with and violative of *S.C. Code § 15-61-400* that requires a public sale or auction.
- 7 The Master in Equity after the Appellants filed their Notice of Appeal on March 13,2023 was ousted of jurisdiction of the case with jurisdiction being

vested with the Appellate Court. The Master in Equity therefore had no jurisdictional authority to issue any further order for Sale of the property after the case was transferred to the Appellate Court.

Abuse of Discretion Discrepancies

8 The terms and conditions set by the Master in Equity for the Appellants to exercise their Right of First Refusal was extremely unconscionable.

9 The Master in Equity first granted the Plaintiffs by order dated October 21, 2021 the authority to consummate their contract of sale with Rotunda LLC. This was not accomplished.

A second similar order for sale was issued on November 7, 2022. The terms of this order were not fulfilled.

A third order for sale was issued on March 9, 2022. The terms of this order were not fulfilled.

A Fourth order was issued on June 5, 2023 after the Appellants Notice of Appeal was filed on March 13, 2023,

10 The Order of June 5, 2023 did not contain a time constraint for the Respondents to complete their sale transaction resulting in the Appellants being perpetually or indefinitely alienated of their property rights.

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 Ann. § 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. Priscilla to South Carolina Rule of Civil Procedure 71 E 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 as not all Defendants were served in the case. The case was then referred to the Beaufort County Master in Equity.

On May 21, 2021, counsel for the Plaintiffs and prior counsel for some presented what was styled as a joint Consent Order to the Court purportedly evidencing a written agreement between them that the Property is owned in indivision 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 21, 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 Ann. *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 Ann, establishing the fair market value of the 26.462 acres at \$9,100,000 despite Respondents own acknowledgment

that the only appraisal set the value at 9,756,100. *See* Plaintiffs Memorandum in Support of Motion to Set Fair Market Value dated August 30, 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), SCRCF, moved the lower to alter or amend the Orders of the court entered on January 20, 2022, October 20, 2021 and 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, the lower 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 thereto was the transcript of said hearing in its entirety. (Jan. 6, 2022 Tr. p. 15, line 15 – p. 16, line 18). The trial court specifically ruled during the January 6, 2022 hearing that the provisions of the October 20, 2021 order were unappealable because no motion for reconsideration was 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), SCRCF, 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 Judgment 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 S.C. Code Ann. §14-3-330(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 lower 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 Defendants put forth to the Plaintiffs put 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. **(Jan. 6, 2022 Tr. p. 15, line 15 – p. 16, line 18)**. 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

9

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 in 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

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

12

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?

On January 20, 2022, the Court denied Defendants' Motion for Relief of Judgment and for Extension of Time to Tender Purchase Price Under Right of First Refusal and Motion for Realignment of Parties filed on December 22, 2021.

Defendants filed a Motion for Reconsideration of January 20, 2022 Order, and the Court denied said motion by Order dated March 7, 2022.

On March 13, 2022 Defendants/Appellants filed a Notice of Appeal with South Carolina Court of Appeals regarding the Court's Orders of March 7, 2022, January 20, 2022, October 20, 2021, and September 15, 2021, designated as Appellate Case No. 2022-000277 (“Appeal 1”). On March 1, 2022, the Defendants filed an Amended Notice of Appeal.

On May 15, 2022, Appellants filed a Motion to Stay with the South Carolina Court of Appeals. On June 23, 2022 the Appellate Court denied the Appellant's motion seeking an automatic stay intended to stay the sale of the Property. On November 1, 2022, the Appellate Court denied the Appellants' petition for a supersedeas intended to block the sale of the Property pursuant to Court's Order dated October 20, 2021. Thereafter, the South Carolina Supreme Court, by its Order January 25, 2023 in Appellate Case No. 2022-001628, denied Appellants' motion for a writ of mandamus regarding stay of the sale of the Property.

Defendants/Appellants filed its Motion for a Stay and Waiver of Supersedeas Bond with the lower Court. On November 7, 2022, the lower Court denied said motion for a stay and waiver of supersedeas bond intended to block the sale of the Property. The November 7, 2022 Order authorized the execution of a Master's Deed conveying title to the Property. Defendants thereafter filed a Motion for Reconsideration of lower Court's November 7, 2022 Order. On March 8, 2023, the Court denied Defendants' Motion for Reconsideration of this Court's Order of November 7, 2022.

On March 13, 2023, the Defendants filed a Notice of Appeal with the South Carolina Court of Appeals regarding the lower Court's Orders of 7 November 7, 2022 and March 8, 2022, designated as Appellate Case No. 2023000438 which is currently pending before this Appellate Court.

On March 15, 2023, Appellants' First Appeal was dismissed by the South Carolina Court of Appeals, and that case was remitted to lower Court on April 5, 2023.

On April 5, 2023, the lower Court held a status conference. Plaintiffs petitioned the court to issue a Master's Deed. Plaintiffs represented numerous times that they were prepared to close on the Rotunda contract (over Defendants' objection); however, the reality is that Plaintiffs are unable to close on the sale of the property without the Court's assistance to get marketable title. This is the same assurance and direction that the Defendants sought from the Court in December 2021. At that time, Defendants were advised by the Court that the Court was not prepared to take any action at all and that Defendants would receive only what Plaintiffs could transfer to them. (See Transcript, January 6, 2023 at 37:12 – 38:11). Now that Plaintiffs and Rotunda are attempting to secure title insurance, they, too, need assistance from the Court. Plaintiffs' counsel represented in status conference held April 5, 2023 that the Rotunda contract required the parties to close on April 21, 2023. (See Transcript, April 5, 2023 at 10:17-21). Defendants objected to Plaintiffs' proposed Master's Deed because it failed to acknowledge the pending appeal.¹ After the objection was raised, counsel for Plaintiffs and Rotunda questioned whether the

¹ Defendants maintain that the Court's proposed entry of a Master's Deed for the Rotunda contract is improper and inconsistent with the law and spirit of the Pinkney Act.

title company would issue title insurance given the pending appeal. Rotunda is not prepared to close without marketable title to the Property.

Defendants have maintained throughout this litigation that they wish to purchase the Property and stand ready and capable to close immediately. 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 lower Court clear title to the property by issuing a fee simple title to the Property. The lower 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.

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 requested that the lower 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").

On May 10, 2023, Plaintiffs uploaded its proposed Master's Deed which the lower Court instructed Plaintiffs to prepare on April 5, 2023 during status conference held by Court. The Court instructed Plaintiffs to provide a proposed Master's Deed in response to Plaintiffs' representation that sale of the Property could be

accomplished by April 21, 2023 and for sure by May 1, 2023. Having failed to satisfy this timeframe, Defendants filed Motion to Renew Right of First Refusal. Plaintiffs have maintained that Defendants' failure to post full purchase price with the Court without any clarification about how Defendants will get title to Property was fatal to their right of first refusal. If Defendants are held to strict deadlines despite the Pinckney Act's intent to provide the heirs with purchase rights, Plaintiffs, too, must be judged by the same standard. Additionally, as set forth in Defendants' Motion to Reinstate Right of First Refusal, the pre-packaged contract with a third party – Rotunda Land and Development Corporation LLC (“Rotunda”) is counter to the Pinckney Act.

On May 17, 2023, Plaintiffs tendered an amended Master's Deed to the undersigned counsel. Defendants renewed their previous objections and additional objections to Plaintiff's May 17, 2023 amended Master's Deed. Defendants took the position that in the event the lower Court was not inclined to reinstate Defendants' right of first refusal, the Property must be sold on open market or via auction – not a prepackaged contract as Plaintiffs entered with Rotunda.

On May 24, 2023 and over the objection of Defendants, the Court entered a Master's Deed purportedly transferring Defendants' interest in the property. The Master's Deed fails to provide a deadline for Plaintiffs to close on the sale of the

Property and essentially holds the Property in abeyance into perpetuity. This violates Defendants' due process rights and is an unlawful taking.

On June 6, 2023, the lower Court entered an order stating as follows:

Under South Carolina Appellate Court Rule 205, "Upon the service of the notice of the appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241." However, nothing in the Rules prohibits a lower court from proceeding with matters of the case not affected by the appeal, including enforcing matters not stayed by the appeal. SCACR 205 and 241. The Plaintiffs having filed their Notice of Appeal of my November 7, 2022 Order authorizing the closing of the sale of the real property, I respectfully find that this Court is without jurisdiction to now consider the Defendants' pending Amended Motion To Enforce Right Of First Refusal Under Pinckney Act And Alternative Relief. (June 6, 2023 Order).

If the lower Court lacks jurisdiction to hear Defendants' request to reinstate its right of first refusal because the November 7, 2023 Order authorizing the closing of the sale of the Property is currently before this Court, the lower Court, likewise, lacks jurisdiction to enter a Master's Deed regarding the same Property.

To date, Plaintiffs have still not closed on the sale of the Property.

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 upon 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. Sammerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

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

In an action for Partition Quiet Title and Sale is state action established where the below listed discrepancy 1 through 9 are shown to have been exercised by the Master in Equity, an official of the State of South Carolina, is the Appellant entitled to have the Master Deed granting their propriety interest in the property, to a third party grantee under a contract of sale entered into by the partitioning heirs prior to the commencement of the , set aside and rescinded as null and void upon the grounds that this is the wrongful taking of property rights as violative of the due process of law and equal protection of the law provisions of Article 1 Section 3 and 13 of the SC Constitution and the 5th and 14th Amendment of the U.S. Constitution and US Code § 1983?

In an action for Partition Quiet Title and Sale the Master in Equity presiding with the powers of a Circuit Court Judge bestowed to that state office under S.C. code §14-11-10-310, weather within or without the jurisdictional powers granted to that state office; did by tendered Master's Deed, convey the property interest held by the Appellants, a group of Black indigenous natives of Hilton Head Island, SC; without their consent and under their expressed opposition, to Rotunda LLC, a Georgia Company, whom they never had contacted with, contrary to law. This act by the Master in Equity constitutes "State Action" used to facilitate the wrongful taking of property rights. This

action is indeed violative of the due process of law and the equal protection of the law provisions of *Article 1 Section 3 and 13 of the SC Constitution and the 5th and 14th Amendment of the U.S. Constitution and also codified as U.S. Code § 1983.*

THE STATE ACTION IS WRONGFUL

Assuming, arguendo that the Master in Equity had acquired jurisdiction, (Appellant will set forth the facts and reasons in Argument 11 infra that the Master in Equity was without jurisdiction supplemented by erroneous rulings of error) the Master in Equity, if the right had properly accrued by due process of law to convey Appellants property interest; the Master did not convey the property as mandated by state statute being *S,C, Code §15-16-400* that requires an open market sale.

The sole and only authorized power legislatively granted to a Master in Equity to sell property is connected to foreclosure proceedings and in all other proceedings solely with the consent of the parties.

THE APPELLANTS TAKEN PROPERTY RIGHT

The property is encumbered with "heirs title". The action below was instituted for the purposes of Partition. Quiet title. and Sale. By a denial of due process, the proceeding was terminated by the Master in Equity without continuing the proceeding to obtain a decree of fee simple marketable title.

Instead, the Master in Equity, after setting unconscionable terms for the non-petitioning Appellants to exercise their “right of first refusal” (See Argument 2) by depositing 9.1 Million Dollars with the court within 60 days without benefit of receiving a Master’s Deed despite their proffering sound proof of financial resources to complete the purchase. When the Appellants did not meet these conditions the Master in Equity subsequently ordered that the non-partitioning heirs, being the Plaintiffs/Respondents, would sell the property to a developer purchaser, Rotunda LLC, who had contracted with them to buy the property prior to the commencement of this action. The Master in Equity denied issuing a Master’s Deed to the Appellants at the time they desired to exercise their Right of First Refusal to purchase the property. Afterwards the prior ruling was reversed and the Master in Equity then under a third court order to the same effect, issued a Master’s deed conveying all of the interest held by all the heirs to be held in trust by Plaintiff’s attorney until such time as Rotunda, LLC would tender the purchase price. These facts establish that Rotunda for no consideration being paid to the Appellants, holds an indefinite perpetual, in perpetuity offer to buy the property at any time of its choosing; while the order disallows the Appellants to purchase it The first order was issued on October 20, 2021. No closing occurred. A second order in March 2023 was issued. No closing occurred. The most recent order of June 7, 2023 was issued. As of June 19, 2023

no notice of a closing date has been rendered to the court. This is a taking of property rights by a state official.

THE VALUE OF APPELLANTS INTEREST HAS BEEN DIMINISHED BY THE TAKING

This action was commenced for the purpose of partitioning quieting title and sale of the property. In what the Appellants have alleged as an improper denial of due process of law by the Master in Equity, the action below was terminated by the challenged classification of the October 20 2021 Order of the Master in Equity as a final order (See Argument 2 *infra*) as many hearings and subsequent rulings were made afterwards. The gravamen point is that the Master in Equity refused to proceed with the judicial process necessary to quiet title to the property. By these judicial proceedings the cloud upon the title of the property commonly referred to as heirs title would be removed once an evidentiary determination has been had that definitely establishes who all the heirs are and an allocation made as to their respective percentage interest with no outstanding liens or encumbrances. At this stage a Master in Equity could properly issue an order stating that the designated heirs, now converted to tenants in common, hold a undivided interest with fee simple absolute marketable title to the property. Property vested with fee simple title is freely transferrable as the grantor can warrant the title and title insurance companies will issue policies of title insurance and lending intuitions will except the

property as collateral for the purchase price. For this reason, property vested with fee simple title is more easily marketable and therefore more valuable than similar property encumbered with “heirs title”. Because the Master in Equity has refused to continue with the proceedings, the Appellants cannot obtain fee simple property to their property. This is a taking of property rights by state action and additionally a denial of Appellants constitutional right to Petition their government for relief.

The property rights taken from the Appellants would inure as an unjust enrichment and inequitable profit to Rotunda.

But for the intercession of this court, Rotunda could purchase this property held for over a century by the native indigenous ancestors of the Appellants, and immediately thereafter commence a quiet title anew without having to join any of the heirs as parties because they would have acquired their interest by the Master’s Deed. It is easily and reasonably foreseeable that the Master in Equity, especially with all opposing parties not involved with the action, would at that time grant them the fee simple title to the property and upon that event the value of the property would tremendously escalate in value. This is a property right taking from the Appellants that would accrue to Rotunda, Inc. as a proximate result of this state action.

That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of the US Supreme Court. *Shelley v Cramer* 334 U.S.1 at 14.

State action generally arises out of a person's acting on behalf of the government or performance of a duty that is traditionally carried out by the state. *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991). 29. 168 AM. JUR. 2D Constitutional Law § 800 (1998)

Coinciding with the section 1983 "color of state law" requirement is the Fourteenth Amendment's "state action" requirement. Remedies for violations of section 1983 and the Fourteenth Amendment differ, with the former providing civil relief and the latter providing equitable relief. With most parties instituting suits interested in both types of remedies, section 1983 issues are presented in many "state action" cases. According to the Supreme Court in *Lugar v. Edmondson Oil Co.* 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982). The scope of section 1983 is slightly broader than the Fourteenth Amendment's "state action" requirement. For the most part, however, liability under section 1983's "color of state law" requirement is equivalent to that of state action under the Fourteenth Amendment.

The analysis of the above fourteenth amendment cases set forth supra requires a two-step inquiry: first, is state action involved, and then, is that state action unconstitutional. The state action determination "has always depended on a baseline establishing the legitimate or at least ordinary functions of government" and the courts have "relied on common law baselines like those expounded in the case of *Lochner v. New York*, 198 U.S. 45. In *Lochner* the case was predicated upon state action visa private contracts. In this case we are concerned with property rights and a suspect classification of minority citizens.

If the Court were to and should conclude that the state actors were responsible, it should proceed to determine whether that state action was unconstitutional. The amendment simply states that "no State shall" violate equal protection or due process principles. If the words are given their ordinary meaning, then state action should be understood as any action taken by a state or a state actor using authority derived from the state, regardless of whether the action is authorized by, or contrary to, law.

The settled construction of the Fourteenth Amendment is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed and deals with such a contingency. The theory of the Amendment is that where an officer or other representative of a State in the exercise of the authority with which he is clothed misuses the power possessed

to do a wrong forbidden by the Amendment, inquiry concerning whether the State has authorized the wrong is irrelevant and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power. *Home Tel. & Tel. Co. v. City of Los Angeles*, 227 U.S. 278, 287 (1913). **30** *Exparte Virginia*, **100 U.S. 339, 346-47 (1879)**.

In *Edmonson v. Leesville Concrete Co., Inc.*, [500 U.S. 614 \(1991\)](#), the U.S. Supreme Court ruled That "Although the conduct of private parties lies beyond the Constitution's scope in most instances, governmental authority may dominate an activity to such an extent that its participants must be deemed to act with the authority of the government and, as a result, be subject to constitutional constraints."

According to the United States Supreme Court, one great object of the Constitution is to permit citizens to structure their private relations as they choose subject only to the constraints of statutory or decisional law." By focusing the judiciary's attention on state action, this doctrine limits the courts' power to regulate private interests and ensures that states and state actors respect individual liberties. Regardless of whether this is good or bad policy, it is a fundamental fact of our political objectives coinciding with the section 1983 "color of state law" requirement is the Fourteenth Amendment's "state action" requirement. Remedies for violations of section 1983 and the Fourteenth

Amendment differ, with the former providing civil relief and the latter providing equitable relief. With most parties instituting suits interested in both types of remedies, section 1983 issues are presented in many "state action" cases. According to the Supreme Court in *Lugar v. Edmondson Oil Co.*, the scope of § 1983 is slightly broader than the Fourteenth Amendment's "state action" requirement. For the most part, however, liability under section 1983's "color of state law" requirement is equivalent to that of state action under the Fourteenth Amendment

ARGUMENT 2

The Master in Equity by issuing a Master's Deed to the property to a potential third party purchaser was without jurisdictional authority and exceeded and was without the legislative grant of authority under the provisions of the *Clementa C. Pinckney Uniform Partition Heirs' Property Act*, codified as *S.C. Code § 14-11-10 et. seq.* Other than proceedings in foreclosure and judicial sales a Master in Equity may only convey property with the consent of all parties having an interest in the property that has come under the jurisdiction of the Circuit Court and referred to the Master in Equity by a Circuit Court Order of Reference. SC Code § 14-11-160

The categories of lack of jurisdictional authority, abuse of discretion, and the denial of due process of law assigned as error in the proceedings held in the court below as set forth infra. There are multiple, adequate and persuasive grounds presented to enable this court to correct under trial de Nova review. This would include this court, in its appellate jurisdiction, drawing from the record presented, new findings of fact and conclusions of law and particularly nullifying the Master Deed issued in the proceeding, restoring the Appellants right of First Refusal upon reasonable conditions and /or order that the property be sold as provided by S.C. Code § 15-61-370.

ASSIGNMENTS OF ERROR

Due process Discrepancies’:

- 1 No signs were posted on the property as required by *S.C. Code § 15-61-340*
- 2 No evidentiary hearing was held as mandated by *S.C. Code § 15-61-330*
- 3 The Master in Equity issued three purported final orders ending the case without conducting hearing proceedings necessary to decree fee simple title upon the property. This was the prayer for relief demanded in the complaint.

Jurisdictional Discrepancies

- 4 Publication of process was not made prior to the first hearing as required by *S.C. Code § 15-61-340*

5 The master in Equity exceeded jurisdictional authority by issuing a Master’s Deed conveying the defendants interest in the party against their consent is not in compliance with and violative of *S.C. Code § 15-61-400* that requires a public sale or auction.

6 The Master in Equity after the Appellants filed their Notice of Appeal on March was ousted from retaining jurisdiction of the case with jurisdiction having been transferred and presently vested with the Appellate Court. The Master in Equity therefore had no jurisdictional authority to issue any further order for Sale of the property after the case was transferred to the Appellate Court.

7 The October 20, 2021 “Final Order” was not a final order ending the case.

Abuse of Discretion Discrepancies

8 The terms and conditions set by the Master in Equity for the Appellants to exercise their Right of First refusal were extremely unconscionable.

9 The Order of June 5, 2023 did not contain a time constraint for the Respondents to complete their sale transaction resulting in the Appellants being perpetually or indefinitely alienated of their property rights.

**NO SIGNS WERE POSTED ON THE PROPERTY AS REQUIRED BY
*S.C. CODE § § 15-61-340***

This is a salient and important reason for this signage requirement. It is designed and calculated to give notice to the public and any unknown heirs that if they have a potential claim to or interest in the property that they will need to present it now or risk being permanently precluded from doing so. Additionally, this signage requirement gives notice to adjoining landowners to make inquiry of potential boundary disputes. Similar to tax foreclosure proceedings this signage requirement supplements newspaper publication requirements towards the end of better insuring adequate notice of the commencement of the proceeding is circulated to the greatest extent possible. This was avoided and not complied with by the plaintiffs and was not corrected by the Master in Equity when requested by motion of the Appellants to do so.

NO EVIDENTIARY HEARING WAS HELD AS MANDATED BY S.C. CODE § 15-61-330

An evidentiary hearing as required by §15-61-330 which is the prerequisite before a final order can be rendered was not 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 case of *Robinson v Estate of Harris* 378 S.C. 140, 662 S.E.2d 420 (Ct. App 2008) superbly supports the principle of law and the facts are staunchly within its prevue.

PUBLICATION OF PROCESS WAS NOT MADE PRIOR TO THE FIRST HEARING AS REQUIRED BY S.C. CODE § 15-61-340

An action for partition is an action "in rem" It also is quasi in rem as the rights of parties into the property has to be adjudicated. Known parties possessing an

interest in the property are served by personal service. Service by publication is required by statute as the best means to give notice to unknown claimants, claimants under incapacity, minors, and those serving in the armed services. This notice is required to be published prior to the joinder of the issues raised by the opposing parties. An Affidavit and Motion for the Publication of Process and for the Appointment of a Guardian Ad Litem and Lis Pendens are required to be filed along with the Summons and Complaint. This is a prerequisite requirement necessary to bestow jurisdiction upon the court to enable it to acquire jurisdiction over all claims pertaining to the partition action. This jurisdictional defect is not cured by the issuance of an Order for Publication after joinder of the pleadings though a late publication is better than none at all the jurisdictional defect remains intact. There was error therefore by the Master in Equity by denying Appellants *Rule 12 b SCRPC* Motion to Dismiss. for lack of jurisdiction and Rule 19 SCRPC Motion to Dismiss on grounds of non- joinder of necessary parties.

The Master in Equity exceeded jurisdictional authority by issuing a Master's Deed conveying the defendants interest in the property against their consent is not in compliance with and violative of *S.C. Code § 15-61-4*

This statute reads as follows:

Section 15-61-400 - Sale of heirs' property; open-market sale; sale by sealed bids

- (A) If the court orders a sale of heirs' property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group*
- (B) If the court orders an open-market sale and the parties, not later than thirty days after the entry of the order, agree on a real estate broker licensed in this State to offer the property for sale, the court, upon consultation with the parties, shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this State to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.*
- (C) If a broker appointed under subsection (B) obtains within a reasonable time an offer to purchase the property for at least the determination of value: (1) the broker shall comply with the reporting requirements in Section 15-61-410; (2) the sale may be completed in accordance with state law other than this article; and (3) the commission of the real estate broker must be paid from the proceeds of the sale.*
- (D) If the broker appointed under subsection (B) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after a hearing, may*
- : (1) approve the highest outstanding offer, if any;*
- (2) redetermine the value of the property and order that the property continue to be offered for an additional time; or*

(3) order that the property be sold by sealed bids or at an auction.

(E) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted pursuant to procedures governing judicial sales and auctions.

(F) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds. that requires a public sale or auction.

As this statute plainly sets forth without any ambiguity or exceptions, in the absence of an agreement among all the parties in interest, a Master's Deed for sale of the property directly to a third party is not contemplated or permitted nor is there in existence any other statute that authorizes a sale of property subject to partition by a Master's Deed. The Pinckney Act is exclusive within its provisions.

The Master in Equity was in error ruling over the vehement objections of the Appellants by ordering the property to be sold to Rotunda with the Master in Equity facilitating this transaction by the issuance of a Master 's Deed conveying the Appellants interest in the property to Rotunda, LLC.

The Master in Equity after the Appellants filed their Notice of Appeal on March was ousted of jurisdiction of the case with jurisdiction being vested with the Appellate Court. The Master in Equity therefore had no

jurisdictional authority to issue any further order for Sale of the property after the case was transferred to the Appellate Court.

The Master in Equity first granted the Plaintiffs by order dated October 21, 2021 the authority to consummate their contract of sale with Rotunda LLC. This was not accomplished.

A second similar order for sale was issued on November 7, 2022. The terms of this order were not fulfilled.

A third order for sale was issued on March 9, 2022. The terms of this order were not fulfilled.

A Fourth order was issued on June 5, 2023 after the Appellants Notice of Appeal was filed on March 13, 2023,

The Master in Equity's order dated October 20, 2021 granted the Plaintiffs the opportunity to consummate their contract of sale with Rotunda, LLC for the sale of the property. The Appellants filed their Notice of Appeal to the Court of Appeals on _____. At that point the Court of Appeals acquired jurisdiction of the case. Subsequent to the Court of Appeals acquiring jurisdiction of the case the Plaintiffs were not able to complete and consummate their sales transaction with Rotunda, LLC. Afterwards they entered into a new, revised or amended sales agreement with Rotunda and motioned the Master in Equity again

for another order to complete the sale. Presently they are attempting to close with Rotunda for the fourth time; the latest being June 7, 2023.

The Appellants maintain and assert that after the issuance of the first order the Master in Equity did not have jurisdiction to issue any further orders. He expressly asserted extreme tribulation this conjecturing having jurisdiction through out the course of the post appeal proceedings (Tr-----)

The controlling Appellate Rule would be *Rule 205 SCRAP*. The rule reads as follows:

RULE 205 EFFECT OF APPEAL

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

The case of *Brinkley v Burry* construing Rule 205 SCRAP sets forth the test that if the post appeal issue differs from those raised on appeal then a lower court may retain jurisdiction to address the motion. The ruling of the Court of Appeals was stated as follows:

As with the Binkleys' argument concerning jurisdiction, we hold the question of notice regarding the existence of an easement is distinct from the question of notice as it relates to the

*scope and enforceability of the easement. We therefore hold that, although the law of the case doctrine may preclude Haynsworth from challenging Judge Kittredge's finding that the Binkleys **did not have notice of the scope and enforceability of the easement**, the doctrine does not prevent Haynsworth from raising the issue of **when the Binkleys had notice of the existence of the easement**.*

The Appellants, following the court's logical guidance, assert that the Master in Equity's pre appealed orders that were not complied with or fulfilled by the Plaintiff's, the issue as to the authenticity or legal efficacy of these orders were before the Court of Appeals and under its jurisdiction. The fourth motion for the same relief to sell the property is not a different issue and therefore the master in Equity lacked jurisdiction to grant the June 7 2023 Order to sell the property or to issue a Master's Deed.

The terms and conditions set by the Master in Equity for the Appellants to exercise their Right of First refusal were extremely unconscionable.

THE OCTOBER 20, 2021 "FINAL ORDER" WAS NOT A FINAL ORDER ENDING THE CASE.

An oxymoron of meaning exists to classify the order of the court dated October 20, 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 its filing 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 but lacked jurisdiction for reasoning different from that articulated by the court. The court was stating that it lacked jurisdiction because a Rule 59 SCRPC 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*, 403 S.C. 560, 743 S.E. 2d 778 (2013

THE TERMS AND CONDITIONS SET BY THE MASTER IN EQUITY FOR THE APPELLANTS TO EXERCISE THEIR RIGHT OF FIRST REFUSAL WERE EXTREMELY UNCONSCIONABLE

The terms issued by the court to the defendants to deposit \$8.9 million dollars with the court within 60 days in order to perfect their right of first refusal as provided

by SC Code of Laws § 15-61-25(D (*Pinkney Act*) made no provisions for the property to be conveyed to them without the simultaneous issuance of a Master's Deed. This was done despite the defendants demonstrating to the court that they had the financial resources to pay the purchase price. The Master in Equity knew that no prudent person would place 9.1 Million Dollars in a non-interest-bearing account without knowing when they would receive a deed to the property coupled with the fact that the property inadequately qualified as marketable collateral because it was encumbered with "heirs' title". Added upon this was the Master in Equity's and the Plaintiffs reluctance to proceed with securing a decree of fee simple marketable title upon the property that the Appellants were urgently requesting.

These terms were so outrageously unconscionable that it effectively eliminated the defendants exercise of their right of first refusal a constituted an unlawful taking of their property rights without due process of law as provided and protected by Article 1 § t3 of the South Carolina Constitution and the Fifth and Fourteenth Amendment of the U.S. Constitution. Then afterwards when the Master in Equity reversed this position and agreed to issue a Master's Deed to the Plaintiffsto facilitate their efforts to sell the property it became a denial of the equal protection of the laws violation

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. SC Code of Laws § 37 - 5 – 108. *Holler v. Holler*, 364 S.C. 256, 612 S.E, 2d 469 (Ct App 2005), *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 742 S.E.2d 37, (Ct. App. 2013).

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 ORDER OF JUNE 5, 2023 DID NOT CONTAIN A TIME CONSTRAINT FOR THE RESPONDENTS TO COMPLETE THEIR SALE TRANSACTION RESULTING IN THE APPELLANTS BEING PERPETUALLY OR INDEFINITELY ALIENATED OF THEIR PROPERTY RIGHTS.

As discussed in Argument 1 the Master Deed issued by the Master in Equity contains no time constraints for the performance of the title closing to be completed

and the Third-Party purchaser lacks any compulsion to make time as of being of the essence.

The Appellants receive no consideration for any undue delay. The Appellants seek for the court to rule the contract to purchase as a nullity for the reasons and grounds herein before set forth. The court is urged, having jurisdiction now of this proceeding can under its review de nova powers to place and impose such time constraints as it in its wise discretion deem properly to modify and adjust.

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 land owners 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 on to their land but, through partnering with a developer, retain equity ownership in the property and make its

usage available to the general 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 should thereafter be granted a reasonable period of time 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.

Finally their has been procedural and equal protection violations incurred by the Appellants during the course of this proceeding which this court in its de nova review of the proceeding below and make new findings of facts and conclusion of laws consistent with what it deems calculate justice predicated upon appropriate equitable applications of the law among the litigants before it.

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

June 20, 2023
Hilton Head Island, SC