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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Master-In-Equity

The Honorable Marvin H. Dukes, III, Master-In-Equity
Beaufort County
Trial Court Case No. 2020-CP-07-2301

APPELLATE CASE NO. 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, Keita Nicole White, and Cheryl Kirkland,

Appellants.

INITIAL BRIEF OF RESPONDENTS

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Bluffton, South Carolina
November 20, 2023

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STATEMENT OF ISSUES ON APPEAL

The Respondents assert that there are no issues properly before this Court on appeal because the Appellants have improperly filed an appeal from an interlocutory Order dated November 7, 2022, and another interlocutory Order dated March 8, 2023, denying reconsideration of that November 7, 2022 Order.

S.C. Code Annot. Section 14-3-330 defines and limits this Court's appellate jurisdiction in law cases. There are only four basic situations from which a party may appeal: (1) intermediate judgments, orders or decrees involving the merits, (2) order affecting substantial rights when such orders in effect determine the action and prevent a judgment from which an appeal may be taken or when the orders discontinue the action, (3) a final order in special proceedings, and (4) interlocutory orders continuing, modifying or refusing injunctions.

Judge Dukes' Order of November 7, 2022 simply denied the Appellants/Defendants' Motion For Stay And Waiver Of Supersedeas Bond Or In The Alternative A Nominal Bond Pending Appeal dated September 7, 2022 and granted the Respondents/Petitioners' Amended Motion for Master Deed Conveying Ownership Interests Of All Owners Of Property To Rotunda Land & Development Group, LLC And For Order Directing Clerk Of Court to Hold Proceeds Of Sale Of Deceased Owners Pending Resolution Of Estates. (Record on appeal at ___). That order was interlocutory in nature and does not fall within any of the categories set forth in Section 14-3-330 set forth above. (As is set forth in detail below in the Statement of the Case, these Appellants have earlier filed a separate appeal to this Court of certain of Judge Dukes' earlier orders in this matter that were, arguendo, "intermediate orders or decrees involving the merits," and thus properly appealable at the time of their entry, but that appeal, captioned Appellant Case No. 2022-

000277, was dismissed by this Court on March 15, 2023 and those Orders are now the law of the case.

Reserving that argument, the Respondents also disagree with the Appellants' Statement of Issues on Appeal as is set forth at pages 1-3 of the Appellants' Initial Brief. Based upon the Statement of Issues On Appeal in the Appellants' Brief, the only issue properly before this Court (if any) in this appeal is: Did Judge Dukes err in granting the Respondents/Plaintiffs' Motion for a Master's Deed and notifying the parties that he would execute and deliver a Master's Deed conveying title, including the Defendants' collective undivided interest in the Real Property, to Rotunda or its assignee, pursuant to the contract between Rotunda and the Plaintiffs? (See the Appellants' "Statement of Issues on Appeal" Number 5, Appellants' Initial Brief at p. 1.)

As is set forth succinctly below, although the Appellants/Defendants have listed 11 "Issues on Appeal" in their Initial Brief (pp. 1-3), all but one of those "issues" listed were either raised in their earlier appeal that has been dismissed (and thus are the law of the case), or the assertions of error were not raised to Judge Dukes at the lower court level, have not been ruled upon in the lower court, and thus cannot be raised on appeal for the first time. Or, as with the last three issues numbered 9, 10 and 11, they have been abandoned by the Appellants' failure to brief them.

STATEMENT OF THE CASE

This is an action to quiet title filed under S.C. Code Annot. Section 15-67-10 *et seq.* and to Partition the land by sale, pursuant to S.C. Code Annot. Section 15-61-10 *et seq.* The Summons and Complaint were filed on November 24, 2020, (Record on Appeal P. _____) and the Complaint advised the Court and the Defendants in November of 2020, of a pending contract that had been entered into by the Plaintiffs to sell the property to Rotunda Land & Development Group, LLC,

for $9,100,000.00, which the Plaintiffs believed was a fair and equitable price for the property. (Record on Appeal P. ____.) The Rotunda contract was later amended to a sales price of $9,750,000.00.

The parcel at issue is a tract of approximately 26.462 acres located on the north end of Hilton Head Island, which has been through two previous quiet title actions. Pursuant to S.C.R.Civ.P. 71(e), because this action includes a partition action, the Circuit Court is empowered to determine the title and interests in the real property of the several parties to this action.

In response to the Complaint, the Defendants Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White and Cheryl Kirkland, filed an Answer on January 7, 2021. Record on Appeal, p. ___.

On February 28, 2021, an appraisal of the property (plus a contiguous 1.050-acre tract and a 2.568-acre tract owned by separate parties), was commissioned by the Defendants and their attorney, and the appraised value was determined to be $11,090,000. However, when the two tracts owned by others were removed from consideration, the appraised value appeared to be around $10,100,000. A copy of that appraisal is included in the Record on Appeal at P. _____. The case was then referred to the Master in Equity on April 21, 2021. (Record on Appeal P. _____.)

On May 21, 2021, following a status conference with the Master, the Plaintiffs and the Defendants presented a joint Consent Order to the Court resolving the quiet title portion of the case through a written agreement between all parties that the tract of land was owned in indivision by the Plaintiffs, the represented Co-Owners and the Defendants. That Consent Order provided a

detailed Exhibit A setting forth the mutually-agreed upon undivided interest percentages of each party. Judge Dukes signed and filed the Consent Order on May 21, 2021. (Record on Appeal P. ____.)

Over the course of the next four months, the Plaintiffs continued to attempt to move the case forward, and on October 20, 2021, following another status conference, the Court filed its Order realigning certain parties at the Defendants' counsel's request (with consent of the Plaintiffs), and allocating to the Defendants the "right to buy" interests of the co-tenant Plaintiffs pursuant to the Pinckney Act, codified as S.C. Code Annot. Section 15-61-370(D)(2), based upon their respective existing fractional ownership of the entire parcel. (Record on Appeal P. ____.) As the Court will note from the detailed Order of October 20, 2021, the petitioning Plaintiffs/Respondents own an undivided 98.828122 percent interest in the property and the Defendants/Appellants own in aggregate an undivided 1.171878 percent interest in the property.

By the clear terms of the October 20, 2021 Order, the Defendants were given until 5 p.m. December 22, 2021 to pay in their apportioned prices to the Court to buy out the Plaintiffs' interests under the Pinckney Act. Not a single Defendant tendered their apportioned price into Court by 5 p.m. on December 22, 2021, but their counsel did file a Motion For Relief of Judgment and For Extension of Time to Tender Price Under Right of First Refusal and Motion for Realignment of Parties at 7:54 p.m. that evening.

Another status conference and motion hearing was then held on January 6, 2022, which resulted in Judge Dukes' Order of January 20, 2022, which denied the Defendants' December 22, 2021 motion and further held that to the extent any of the three Motions then pending (*i.e.*, the Defendants' December 22, 2021 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; the Defendants' Supplemental Motion for Relief of Judgment and For Extension of Time to Tender Purchase Prices Under Right of First Refusal filed January 5, 2022; and the Defendants' Amended Supplemental Motion for Relief of Judgment and For Extension of Time to Tender Purchase Price Under Right of First Refusal filed later in the day on January 5, 2022) "are construed to seek relief or remedy from this Court in addition to reconsideration or amendment of my October 20, 2021 Order, I also respectfully deny those motions." *See* January 20, 2022 Order, page 2 at Record on Appeal, P. ____. The Defendants then filed a Motion for Reconsideration on January 31, 2022, which was denied on March 7, 2022.

On March 9, 2022, the Defendants filed a Notice of Appeal to this Court, appealing from the Order of the Hon. Marvin H. Dukes, III, Master In Equity and Special Circuit Court Judge, dated and filed March 7, 2022, "and the prior orders of January 20, 2022, October 20, 2021 and September 15, 2021. (Record on Appeal, p. ____.) Those four (4) Orders contained substantive Findings of Facts and Conclusions of Law as follows:

1. The action was properly filed on November 24, 2020, to quiet title and partition the land by sale pursuant to the Clementa C. Pinckney Uniform Partition of Heirs' Property Act, codified at S.C. Code Annot. Section 15-61-310 et. seq.

2. All Defendants were properly served or acknowledged service.

3. The case was properly referred the Master on April 21, 2021.

4. By a Consent Order entered on May 21, 2021, the parties agreed the property is owned in indivision by the Plaintiffs, the represented Co-Owners, and the Defendants, and their

respective undivided interests in the real property are as set forth in Exhibit A to that Consent Order.

5. The parties agreed that the Fair Market Value for the 26.462 acres of land described in the Complaint, was $9,100,000.00 as of September 15, 2021.

6. Pursuant to S.C. Code Annot. Section 15-61-360(B), the Court adopted the agreed upon Nine Million, One Hundred Thousand ($9,100,000.00) Dollar valuation as the then current Fair Market Value of the 26.462 acres.

7. The Court ordered that all Defendants who were interested in purchasing the interests of the Plaintiffs and the represented Cotenants that requested partition by sale, must notify the court of that interest no later than September 26, 2021, being ten (10) days prior to the then scheduled partition trial.

8. The Court ordered that the purchase price for each of the interests of the cotenants that requested partition by sale was Nine Million, One Hundred Thousand ($9,100,000.00), multiplied by the cotenant's fractional ownership of the entire parcel.

See Order dated September 15, 2021, Record on Appeal, pp.____.

9. On September 27, 2021, Defendants Keita Nicole White, Gary Lamont Kirkland, Stephanie Lorraine Kirkland, and Cheryl Kirkland, through their then counsel of record, Charles E. Houston, Jr., notified the Court pursuant to S.C. Code Annot. Section 15-61-370 (B), that they were interested in purchasing the ownership interests of the cotenants that requested partition

by sale in this case. Said Notice was made via the filing of a "Notice of Exercise of Right of First Refusal" by Attorney Houston with the Clerk of Court on September 27, 2021.

10. On October 5, 2021, Attorney Houston, counsel for the original four (4) Defendants, notified counsel for the Plaintiffs that five of the original Represented Co-Owners, namely Christopher Kirkland, Shawn Kirkland, William Charles Kirkland, Paulette Kirkland, and Paul T. Allbright, had revoked their respective Powers of Attorney earlier given to Plaintiff Diana Mendheim, and that they wished to henceforth be positioned as Defendants in this action and that Mr. Houston then also represented these individuals. Attorney Houston also advised the Plaintiffs that those five individuals also are interested in purchasing the ownership interests of the cotenants that requested partition by sale in this case pursuant to South Carolina Code Annot. Section 15-61-370(B).

11. In response, the Plaintiffs advised the Court that the Plaintiffs consented to William Charles Kirkland, Paulette Kirkland, Paul T. Allbright, Christopher Kirkland, and Shawn Kirkland being re-aligned as Defendants in this action and further that the Plaintiffs, for purposes of this action, agreed that the new Defendants William Charles Kirkland, Paulette Kirkland, Paul T. Allbright, Christopher Kirkland, and Shawn Kirkland timely notified the Court and the Plaintiffs of their interest in purchasing the ownership interests of the cotenants that requested partition by sale in the case pursuant to South Carolina Code Annot. Section 15-61-370 (B).

12. The Court held another status conference in this matter on October 6, 2021. The Plaintiffs were represented by Thomas C. Taylor and Chester C. Williams. The Defendants (including the five new Defendants above-named) were represented by Attorney Houston.

13. The Court found that all counsel had agreed that each and every owner of an undivided interest in the land as were identified in this Court's Order of May 21, 2021, had been notified of their South Carolina Code Annot. Section 15-61-370 (B) right of purchase, and that only the nine Defendants had timely exercised their right of notice provided by South Carolina Code Annot. Section 15-61-370 (B) to the Court of their interest in purchasing the ownership interests of the cotenants that requested partition by sale in this case.

14. That although not required under the statutes and although all owners of the property had been identified and their interests set forth by Judge Dukes' Order dated May 21, 2021, the parties agreed that they would publish a notice of the pendency of this action in a newspaper of general circulation in Beaufort County, once a week for three successive weeks following the entry of the Court's Order, to provide additional notice to the public of the pendency of the action and an opportunity for any other person who might claim some interest in the property, to petition the Court for inclusion in the suit if such claim was well founded. However, all parties agreed that there were no other known individuals or entities with any interest in the property other than those identified in the Court's May 21, 2021 Order.

15. Upon receipt of timely notice of the intention of the nine Defendants to purchase the interests of the cotenants who initiated this action, pursuant to S.C. Code Annot. Section 15-61-370 (D)(2), the Court allocated the right to buy those interests among the electing Defendant cotenants based upon their respective existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy as follows:

ELECTING COTENANT	PERCENTAGE OWNERSHIP INTEREST	ALLOCATED RIGHT TO BUY INTEREST
Stephanie Lorraine Kirkland	0.260417%	22.22220%
Gary Lamont Kirkland	0.260417%	22.22220%
Keita Nicole White	0.260417%	22.22220%
William Charles Kirkland	0.260417%	22.22220%
Cheryl Kirkland	0.026042%	2.22224%
Christopher Kirkland	0.026042%	2.22224%
Shawn Kirkland	0.026042%	2.22224%
Paulette Kirkland	0.026042%	2.22224%
Paul T. Allbright	0.026042%	2.22224%
TOTAL	1.171878%	100.00%

ELECTING COTENANT	FAIR MARKET VALUE OF THE PROPERTY	FAIR MARKET VALUE OF THE NON-ELECTING COTENANTS' INTERESTS IN THE PROPERTY (98.82813%)	PRICE TO BE PAID
	$9,100,000.00	$8,993,359.10	
Stephanie Lorraine Kirkland			$1,998,522.25
Gary Lamont Kirkland			$1,998,522.25
Keita Nicole White			$1,998,522.25
William Charles Kirkland			$1,998,522.25
Cheryl Kirkland			$199,854.02
Christopher Kirkland			$199,854.02
Shawn Kirkland			$199,854.02
Paulette Kirkland			$199,854.02
Paul T. Allbright			$199,854.02
TOTAL			$8,993,359.10

16. Thus, the nine (9) Defendants (specifically Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White, Cheryl Kirkland, Christopher Kirkland, Shawn Kirkland, William Charles Kirkland, Paulette Kirkland, and Paul T. Allbright) were notified by the Order

dated October 20, 2021, of their rights to purchase all of the petitioning cotenants' ownership upon the payments into the Court as set forth above.

17. The Court further held that because the petitioning Plaintiffs composed or represented all of the cotenants of the property except the nine (9) Defendants set forth above, the filing of the October 20, 2021 Order satisfied the notice requirement to all other cotenants set forth in S.C. Code Section 15-61-370 (D)(2), with no further notice to the cotenants being necessary.

18. Pursuant to S.C. Code Section 15-61-370 (E), the Court set the date of December 22, 2021 at 5 p.m. as the date and time by which the Defendants had to pay their apportioned prices into the Court.

19. The Court further ordered that if the Defendants failed to pay their apportioned prices into the Court by 5 p.m. December 22, 2021, then the property was to be partitioned by sale at a purchase price of not less than $9,100,000.00, and that the Plaintiffs would then be authorized to enter into, or ratify, a contract of sale for not less than such price.

See Order dated October 20, 2021, Record on Appeal at pp.____.

20. After the December 22, 2021 deadline came and went without any action by the Defendants, the Court entered its Order formally establishing that none of the Defendants had paid any of the apportioned purchase price by 5 p.m. December 22, 2021.

21. After a January 6, 2022 hearing on the 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 that was filed on December 22, 2021 at 7:54 p.m.; the Supplemental Motion For Relief Of Judgment and For Extension of Time To Tender Purchase Price Under

Right of First Refusal that was filed January 5, 2022; and the Defendants' Amended Supplemental Motion for Relief Of Judgment And For Extension Of Time To Tender Purchase Price Under Right Of First Refusal filed later in the day on January 5, 2022, the Court entered an Order holding that because the October 20, 2021, Order that set a date of December 22, 2021, for the Defendants to pay their apportioned prices into the Court, was not appealed in a timely manner nor was a Motion to Alter or Amend timely filed, then the October 20, 2021 Order was final and that the Court was without jurisdiction to reconsider it, "even if I desired to do so." Judge Dukes then denied all of the aforementioned Defendants' Motions.

See Order dated January 20, 2022. (Record on Appeal at pp.____.)

22. The Defendants then filed a Motion for Reconsideration of the January 20, 2022 Order, and on March 7, 2022, the Court "respectfully denied" that motion.

See Order dated March 7, 2022. (Record on Appeal at pp. ____.)

The Defendants/Appellants' March 9, 2022, appeal of the above four (4) Orders and their substantive holdings, was assigned Appellant Case No. 2022-000277. Over the course of the next 12 months, numerous motions were filed in the case, including the Appellants' Motion To Stay and/or For Supersedeas (the denial of which resulted in a Petition to the Supreme Court seeking a Writ of Mandamus requiring the Court of Appeals to issue a Stay or Supersedeas, which was also denied with an admonition that the Respondents' request for sanctions against the Appellants "is denied without prejudice to Respondent's right to resubmit the request should Petitioner continue to act in a manner inconsistent with bringing this matter to a timely conclusion") (Record on Appeal at p. ____), and on March 15, 2023, this Court entered its final Order dismissing Appeal No. 2022-000277, and the Remittitur was sent on April 5, 2023.

Just prior to this Court's dismissal of Appeal No. 2022-000277 on March 15, 2023, the Defendants/Appellants filed this new Notice of Appeal on March 13, 2023, seeking this Court's review of Judge Dukes' Order of November 7, 2022, which denied the Defendants/Appellants' September 7, 2022 Motion filed in the Master In Equity's Court entitled "Defendants' Motion For Stay And Waiver Of Supersedeas Bond Or In The Alternative A Nominal Bond Pending Appeal." The new Notice of Appeal also seeks review of Judge Dukes' Order dated March 8, 2023 that denied the Defendants Motion For Reconsideration of the Court's November 7, 2022 Order. Those two (2) Orders are the only Orders on appeal currently before this Court.

A careful review of the Defendants' September 7, 2022 Motion For Stay And Waiver Of Supersedeas Bond Or In The Alternative A Nominal Bond Pending Appeal, shows that the Defendants' motion sought an Order "staying the enforcement and suspending" the October 20, 2021 Order that was the subject of the earlier, dismissed, Appeal No. 2022-000277, and made two legal arguments:

1. "The interest of justice would be better served if this court would retain jurisdiction under Rule 241(d)(1), SCARC [sic] to rule upon the Appellant's motion for supersedeas and stay rather than the lower court."
2. "Though Rule 241(b)(3) SCRAP [sic] states that 'Judgments directing the execution of conveyances' is an exception to the general rule stated in Rule 241(a) SCACR; the Appellant will show that specific conditions precedent as set forth in Rule 241(b) SCACR have not been met."

See Motion For Stay And Waiver Of Supersedeas Bond Or In The Alternative A Nominal Bond Pending Appeal. Record on Appeal, pp.____.)

Judge Dukes' Order of November 7, 2022 also addressed the then-pending Plaintiffs' Amended Motion For Master's Deed Conveying Ownership Interests Of All Owners Of Property To Rotunda Land & Development Group, LLP, as was filed on March 14, 2022. By that motion, the Plaintiffs sought an Order "containing a Master's Deed conveying the ownership interests of all owners in the Property that is the subject of this action, to Rotunda Land & Development Group, LLC for the contract price of Nine Million, Seven Hundred Fifty Thousand ($9,750,000.00) Dollars, with said proceeds to be distributed to all owners on a percentage basis as is set forth in this Court's Order of May 21, 2021, provided that the percentage interests of all those Owners who have died during the pendency of this action or prior, "shall be deposited with the Clerk of Court following closing, for safekeeping pending a petition to this Court by a judicially-recognized Estate representative with authority to accept funds on behalf of the Estate."

In Judge Dukes' Order of November 7, 2022 (which is the only substantive Order before this Court in this Appeal No. 2023-000438), the Court noted that the Court of Appeals had earlier (in case 2022-000277) denied the Appellants' Motion for a Stay on June 23, 2022 on the basis that Judge Dukes' Order of October 20, 2021 was a judgment directing the sale or delivery of possession of real property. Judge Dukes then went on to note that "[t]his Court is charged with the responsibility in this case of protecting the collective interests of all of the property owners within the dictates of South Carolina law, and this Court cannot, and will not, take any action that benefits the interests of the owners of a small percentage interest in the Real Property to the detriment of the owners of the vast lion's share percentage interest in the Real Property." The Court went on to state that "I must try to protect the best interests of both the Plaintiff and the

Defendant owners in this volatile financial time, by denying the Defendants' Motion For Stay and granting the Plaintiffs' Motion for Issuance of Master's Deed."

The Court's Order of November 7, 2022 then goes on to provide that "Mr. Finger, on behalf of Rotunda, having advised the Court that Rotunda will accept a deed from the Plaintiffs for their collective undivided interest in the Real Property, this Court will execute and deliver a Master's Deed conveying title, including the Defendants' collective undivided interest in the Real Property, to the Real Property to Rotunda or its assignee, pursuant to the contract between Rotunda and the Plaintiffs upon presentation of the draft Master's Deed to be prepared by the Plaintiffs' counsel. The Plaintiffs are authorized to move forward with the closing of the sale of the Real Property pursuant to the Rotunda contract, as amended, for $9,750,000 and the Defendants shall each receive their proportionate share of the purchase price of the net Sellers' proceeds as computed by their ownership interests set forth in the Consent Order of May 21, 2021."

The above is an accurate recitation of the actions of the lower court and Orders currently on appeal in 2023-000438.

STANDARD OF REVIEW

The standard of review is that of interpreting a statute (herein the Clementa C. Pinckney Uniform Partition of Heirs' Property Act) and thus is at law. "Statutory interpretation is a question of law...." Barton v. S.C. Dep't of Prob. Parole & Pardon Servs., 404 S.C. 395, 413, 745 S.E.2d 110, 120 (2013). Additionally, "[t]he determination of legislative intent is a matter of law." Wehle v. S.C. Ret. Sys., 363 S.C. 394, 402, 611 S.E.2d 240, 244 (2005). "This [c]ourt reviews all questions of law de novo." Lollis v. Dutton, 421 S.C. 467, 477, 807 S.E.2d 723, 728. "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction

of errors of law." Temple v. Tee-Fab, Inc., 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). "The [c]ourt will not disturb the trial court findings unless they are found to be without evidence that reasonably supports those findings." *Id.* at 600, 675 S.E.2d at 415. Because the resolution of this matter turns on the interpretation of the Clementa C. Pinckney Act Uniform Partition of Heirs' Property Act (S.C. Code Annot. Section 15-61-310 *et. seq.*), the appropriate standard of review for this case is that for the interpretation of a statute, which is an action at law.

ARGUMENT

The Respondents, as their initial argument, urge this Court to dismiss this appeal in toto as having been improperly filed from interlocutory orders.

The appealability statute, S.C. Code Annot. Section 14-3-330, states:

> [T]he Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions,...and final judgments from such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment, review any intermediate order or decree necessarily affecting the judgment not before appealed from....

South Carolina case law has established what constitutes an interlocutory appeal. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. Adickes v. Allison & Bratton, 21 S.C. 245 (1884). Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993). Judge Dukes' Order denying the Defendants/Appellants' Motion for a Stay was clearly interlocutory in that the denial of the stay simply meant the process set forth under the Pinckney Act would continue toward the sale of the Real Property. And likewise, that portion of the November 7, 2022, Order that stated the Court "will execute and deliver a Master's Deed" was clearly interlocutory

in that it contemplated a future event on behalf of the Court—the actual execution and delivery of a Master's Deed—which had not been accomplished on the date the Appellants/Respondents elected to prematurely file this appeal.

Specifically reserving the argument that this appeal should be dismissed because it seeks review of two interlocutory orders, the Respondents hereinbelow address each of the arguments set forth in the Appellants' Brief:

As to Appellants' First Designated Issue On Appeal

The Appellants herein list their first designated issue on appeal as: "Does South Carolina Law allow a party to avoid statutory jurisdictional prerequisites required by S.C. Code Annot. § 15-61-310, *et seq.* of the Clemente C Pinckney Act by simply entering a consent order?" Then they state: "Defendants seek a ruling that the court's May 21, 2021 Order is void, set aside and of no further effect." See p. 17 of Appellant's Brief.

Neither of the two Orders from which the Appellants herein appeal, relate to nor gave rise to, this first "Designated Issue on Appeal" and thus, this argument should be rejected without further consideration. The November 7, 2022, Order under appeal in this action denied the Defendants'/Appellants' Motion in the Master in Equity court for a Stay and granted the Petitioners'/Respondents' Motion for Issuance of Master's Deed. Record on Appeal, p. ___. The other Order under appeal herein is Judge Dukes' March 8, 2023 Order, declining to reconsider or change the November 7, 2022 substantive Order.

This Court should also decline consideration of this "Designated Issue on Appeal" because, although the Appellants set forth differing arguments asserting that there "were multiple prerequisite jurisdictional requirements that were not satisfied" early in the case, the gravamen of

the "First Designated Issue on Appeal" is that the May 21, 2021 Order of Judge Dukes (a Consent Order), was in error. That Order was never appealed and thus is the law of the case. Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009), citing C.J.S. Appeal and Error Section 991 (2008), and Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003). *See also* In re Morrison, 321 S.C. 370, n.2, 468 S.E.2d 651 n.2 (1996)(noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal.)

No motion to alter or amend was timely filed as to Judge Dukes' Order of May 21, 2021, and no appeal was timely taken from that Order. However, these same Defendants/Appellants did file an appeal to this Court on March 9, 2022, appealing Judge Dukes' Orders of September 15, 2021; October 20, 2021; January 20, 2022 and March 7, 2022. That appeal, assigned Appeal No. 2022-000277, was dismissed on March 15, 2023. The Appellants therein filed three (3) Initial Briefs in that case, one filed on October 17, 2022; one filed on November 2, 2022; and one filed on November 14, 2022. In their first filed Initial Brief of October 17, 2022, these Appellants noted the May 21, 2021 Order in their Statement of the Case, (see unpaginated page number 7), but they did not address it in their arguments in that brief. However, in their second-filed Initial Brief in 2022-000277 on November 2, 2022, these Appellants made these specific arguments almost verbatim ("South Carolina law does not allow a party to avoid statutory prerequisites by Section S.C. Code Ann. Section 15-61-310, *et seq.* known as the Clemente C Pinckney [sic] Act by simply entering a Consent Order?" (See page 16 of the Amended Initial Brief of November 2, 2022.) And then again, in their third-filed Amended Initial Brief in 2022-000277 on November 14, 2022, these same Appellants made the identical argument as to the May 21, 2021 Order at pages 16-18.

Appeal No. 2022-000277 was dismissed on March 15, 2023 and a remittitur issued on April 5, 2023. The May 21, 2021, Order is the law of case. *See also* Cooper Tire & Rubber Co. v. Perry et al., 261 S.C. 538, 201 S.E.2d 245 (1973), and Watkins v. Hodge, 232 S.C. 245, 101 S.E.2d 657 (1958)(refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal.)

Should this Court choose to reach the merits of Argument No. 1, the Respondents assert that a plain reading of the Pinckney Act specifically allowed Judge Dukes to enter the May 21, 2021 Order and the Appellants provide no legal argument that it does not. The single case cited by the Appellants in their first argument, Byrd v. McDonald (incorrectly cited by Appellants as "Byrd v. Johnson") 417 S.C. 474, 791 S.E.2d 200 (2016), actually holds the exact opposite of the proposition posited by the Appellants in their Brief and affirms the Circuit Court's jurisdiction over partition actions. Although the Appellants assert that Byrd holds "When there are pending probate matters, the probate court has subject matter jurisdiction relating to partition of property," (Brief at pp. 18-19), the Court of Appeals actually held in Byrd: "We find the probate court lacked subject matter jurisdiction over the partition action." The Court of Appeals went on to note that the circuit court was vested with jurisdiction over partition actions under S.C. Code Annot. Section 15-61-50. *Id.* at 480-481.

As to Appellants' Second Designated Issue On Appeal

The Appellants list their second designated issue on appeal as: "When statutory jurisdictional prerequisites are not complied with, do any subsequent orders of the Court retain any validity or become null and void for lack of subject matter jurisdiction?" However, the Appellants then proceed in their Brief at page 21, to make as their "Argument 2," an argument that the Court's

Order dated October 20, 2021, was not a final order and they do mention anything about jurisdictional prerequisites not being complied with. Thus, the Respondents respectfully urge the Court to not to consider the Appellants' "Argument 2" as it was not set forth in the Statement of Issues on Appeal. SCACR 208(b)(1)(B).

Should this Court be inclined to consider the merits of Argument 2, the Respondents again, as above, point out that the October 20, 2021 Order was never timely appealed from, no Motion to Alter or Amend was timely made, and thus it is also the law of the case. For the sake of judicial economy, the Respondents refer the Court to their argument above concerning the Respondents' "Argument 1," and crave reference to the citations therein. And further, as with the Appellants' Argument 1 above, the exact same argument (literally) was made in the Appellants' November 2, 2022 and November 14, 2022 "Amended" Initial Briefs filed in Appeal No. 2022-000277, which was dismissed on March 15, 2023. Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009) (citations omitted).

In addition, as noted above in response to Argument No. 1, nothing about either the issue set forth in the Statement of Issues on Appeal, No. 2, nor argued in the body of the brief as Argument 2, relates to nor arises from either of the two Orders under appeal in this case.

As to Appellants' Third Designated Issue On Appeal

The Appellants list their third designated issue on appeal as: Does an oxymoron of meaning exists to classify the order of the Court dated October 20, 2021, as a final order when (1) a provision within the order calls for the publication of the summons and complaint; (2) no form for order

accompanied to state that the order ended the case; (3) where the complaint stated a cause of action to quiet title had been brought and was never withdrawn and for which the Defendant answered and participated in the action relying upon the relief being granted as prayed for in the complaint; and (4) the order purportedly concluded the proceeding without having the prerequisite evidentiary hearing?

In response to Argument No. 3, the Respondents again, as above, point out that the October 20, 2021, Order was never timely appealed from and thus is the law of the case. For the sake of judicial economy, the Respondents refer the Court to their argument above concerning the Respondents' "Argument 1 and Argument 2," and crave reference to the citations therein. And further, as with the Appellants' Arguments 1 and 2 above, the exact same argument (literally) was made in the Appellants' November 2, 2022 and November 14, 2022 "Amended" Initial Briefs filed in Appeal No. 2022-000277, which was dismissed on March 15, 2023. Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009) (citations omitted).

In addition, as noted above in response to Arguments No. 1 and 2, nothing about an "oxymoron of meaning" existing to "classify the order of the Court dated October 20, 2021 as a final order," relates to nor arises from either of the two Orders under appeal in this case. And further, no such argument was ever made to the lower court and the Appellants are thus precluded from raising it herein. "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000). "Error preservation

requirements are intended "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." I'On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

As to Appellants' Fourth Designated Issue On Appeal

The Appellants list their fourth designated matter on appeal as: Was the Lower Court in error upon ruling that it lacked jurisdiction to hear the Defendants' Motion For Reconsideration of its Order of October 20, 2021 necessitating the Appellate Court now rule upon the matters set forth in said motion?

In response to Argument No. 4, the Respondents again, as above, point out that the October 20, 2021, Order was never timely appealed from and thus is the law of the case.

But by this fourth argument, the Appellants are now seeking this Court's second review of two additional Orders that these Appellants have already placed before this Court in an earlier appeal (2022-000277) that has been dismissed. Argument 4 basically asserts that Judge Dukes' Orders of January 20, 2022 (denying the Defendants/Appellants' December 22, 2021 "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 as filed December 22, 2021; the Defendants/Appellants' January 5, 2022 Supplemental Motion for Relief of Judgment and For Extension of Time to Tender Purchase Price Under First Right of Refusal; and the Defendants/Appellants' January 5, 2022 Amended Supplemental Motion for Relief of Judgment and For Extension of Time To Tender Purchase Price Under Right of First Refusal) was also in error. In that Order, Judge Dukes stated: "The October 20, 2021 Order in this case, which set a

date of December 22, 2021 for the Defendants to pay their apportioned prices in to the Court, was not appealed nor was a timely Motion to Alter or Amend pursuant to Rule 59 SCRCP filed. Therefore, the October 20, 2021 Order is final and I am without jurisdiction to reconsider or amend that Order, even if I desired to do so." Record on appeal at p.____.

For the sake of judicial economy, the Respondents refer the Court to their argument above concerning the Respondents' Arguments 1,2 and 3," and crave reference to the citations therein. And further, as with the Appellants' Arguments 1, 2 and 3 above, the exact same argument (literally) set forth in Argument 4, was made in the Appellants' November 2, 2022 and November 14, 2022 "Amended" Initial Briefs filed in Appeal No. 2022-000277, which was dismissed on March 15, 2023. Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009) (citations omitted).

In addition, as noted above in response to Arguments No. 1,2 and 3, nothing about the October 20, 2021 Order (nor the January 20, 2022 Order)," relates to nor arises from either of the two Orders under appeal in this case.

As to Appellants' Fifth Designated Issue On Appeal

The Appellants list their fifth designated issue on appeal as: "Other than the specific limited authority granted to a Master In Equity ("Master In Equity") by South Carolina Code of Laws §14-11-10 *et seq.,* does a Master In Equity have the judicial authority to convey land that is the *in rem* subject matter in an action to quiet title?"

As with the Appellants' Arguments 1,2,3 and 4 above, the exact same argument (literally) was made in the Appellants' November 2, 2022 and November 14, 2022 "Amended" Initial Briefs filed in Appeal No. 2022-000277, which was dismissed on March 15, 2023. Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009) (citations omitted).

And further, no such argument was ever made to the lower court and the Appellants are thus precluded from raising it herein. "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000). "Error preservation requirements are intended "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." I'On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). The Orders currently under appeal (of November 7, 2022 and March 8, 2023) relate to the Respondents/Appellants' September 7, 2022 Motion For Stay and Waiver of Supersedeas Bond Or In The Alternative A Nominal Bond Pending Appeal and the Plaintiffs/Respondents March 14, 2022 Amended Motion For Master's Deed.

The Defendants/Appellants did not raise the issue of the Master's authority to convey the land to the lower court in their Motion For Stay and Waiver of Supersedeas Bond. Thus, the issue is not properly before the Court.

Should this Court determine to reach the merits of Argument No. 5, the Respondents refer the Court to the specific authority granted Judge Dukes under South Carolina Code Annot. Section 15-61-50 and the Pinckney Act, S.C. Code Annot. Section 15-61-310 et. seq. "The Court of

common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more parties upon their accounting to the other parties in interest for their respective shares or in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." Section 15-61-50. "If the court does not order partition in kind or partition by allotment under subsection (A), the court shall order partition by sale pursuant to Section 15-61-400 or, if not cotenant requested partition by sale, the court shall dismiss the action. Further, SCRCP 71(e) specifically vests the circuit court or the Master in Equity with authority to act on partition complaints. The Plaintiffs/Respondents herein specifically prayed for partition of the property by sale in their initial Complaint (Record on Appeal p. _____) and the lower court (the Master in Equity) was empowered under the South Carolina Code of Laws and the South Carolina Rules of Civil Procedure, to partition the property by sale.

As to Appellants' Sixth Designated Issue On Appeal

The Appellants list their sixth designated issue on appeal as: "Assuming arguendo that a Master in Equity has the authority to convey land in an action to quiet title, does the judicial doctrine of *stare decisis* and the fifth and fourteenth amendments of the US Constitution and the guarantee of equal protection under the fourteenth amendment of the United States Constitution and Article 1§3 of the SC Constitution prohibition against the taking of property without due compensation require the Master In Equity to withhold conveying the property when the Defendants were in the process of exercising their right of first refusal and afterwards agree to convey the land to facilitate the Plaintiffs purported contract of sale?" This specific wording is

lifted from the Appellants' earlier filed Amended Initial Briefs dated November 2, 2022 and November 14, 2022 in appeal number 2022-000277, which was dismissed on March 15, 2023.

However, in their actual argument on this designated issue at p. 30, the Appellants rephrased it to urge: "An unconscionable requirement imposed by court in order to exercise right of first refusal is a violation of Defendants' Due Process rights," and then proceed to again challenge the October 20, 2021, Order that properly allocated the percentage rights and costs to the Defendants to purchase (under the Pinckney Act) the ownership interests of the Plaintiffs/Respondents. Within that October 20, 2021, Order, Judge Dukes specifically found that "[n]one of the nine Defendants tendered or attempted to tender his or her portion of the purchase price to acquire the Plaintiffs' undivided ownership interests in the Real Property pursuant to the provisions of the Pinckney Act as set forth in S.C. Code Annot. Section 15-61-371(E), by the December 22, 2021 deadline. (See this Court's Order of January 2022). The portion of the Court's Order of October 20, 2021 providing that the property shall be partitioned by sale at a purchase price of not less than $9,100,000.00, thus became automatically effective." Record on appeal at p.____.

Judge Dukes complied with the requirements of the Pinckney Act in specifically setting forth the amount of money the Defendants were required to pay to buy out the Plaintiffs' interest. The Respondents' counsel admitted on the record that none of the Respondents had tendered payment to the Clerk of Court by the December 22, 2021 deadline. There was no evidence presented to the Master, nor is there any evidence presented to this Court, that "the Appellants produced adequate evidence of their financial capability to purchase the property." Appellants' Brief in this appeal, p. 31. The Master was not in error and did not abuse his discretion "as a matter

of law" when he set the conditions for the Defendants' buyout of the Plaintiff's interest; he was simply following the strict dictates of the Pinckney Act and the legislative intent.

Despite the citations to two cases discussing unconscionability in the formation of contracts, there is no citation by the Appellants of any case law holding that Judge Dukes' adherence to the Pinckney Act procedures was unconscionable. Nor is their any citation to case law that would support an argument that the Pinckney Act's terms amounted to a violation of the Defendants' Due Process rights. The analysis in South Carolina as to substantive due process challenges to state statutes such as the Pinckney Act, is: "Whether it bears a reasonable relationship to any legitimate interest of government." R.L. Jordan Company, Inc. v. Boardman Petroleum, Inc., 338 S.C. 475, 527 S.E.2d 763 (2000). This modern rule gives great deference to legislative judgment on what is reasonable to promote the public welfare when reviewing economic and social welfare legislation. *Id.* at 477. "Legislation is not overturned unless the law has no rational relationship to any legitimate interest of government. *Id.* The Pinckney Act's clear intent is to offer minority owners of Heir's Property the ability to purchase the ownership interests of other co-owners in a rational, deliberate process that Judge Dukes followed strictly, and that legislation certainly bears a reasonable relationship to a legitimate interest of our state government.

In further response to Argument No. 6, the Respondents again, as above, point out that the October 20, 2021, Order that allocated the percentage purchase numbers was never timely appealed from and thus is the law of the case. And no attack on the Pinckney Act as being a denial of Due Process was raised and ruled upon by Judge Dukes, and thus, the Appellants herein are precluded from raising it now.

In addition, as noted above in response to Arguments No. 1,2 and 3, nothing about the October 20, 2021 Order that set the buyout numbers (nor the January 20, 2022 Order), relates to nor arises from either of the two Orders that are properly under appeal in this case.

As to Appellants' Seventh Designated Issue On Appeal

The Appellants list their seventh designated issue on appeal as: "Were the terms issued by the Court in the October 20, 2021 Order for Defendants to exercise their "right of first refusal" as provided by the Clementa C. Pinckney Act economically and pragmatically unconscionable given Defendants were required by said Order to deposit $8,993,359.10 with the Court without any provisions being made for the property to be conveyed to them and without warranty of title and without provisions for the deposit to be applied to the purchase price of 9.1 million and no provisions for the refunding of the purchase price thus effectively eliminating the Defendants' exercise of their right of first refusal (a property right) and constituting a taking a property right as guaranteed by Article 1 § 3 of the SC Constitution and the enumerated amendments of the U.S. Constitution been infringed upon by having been denied due process of law and the equal protection of the laws in this proceeding?" However, the Appellants then proceed to argue a different matter at p. 32 of their Brief as Argument 7: "If court grants partition by sale of Heir Property, Property must be sold on open market, sealed bid or auction, not by a pre-packaged contract.

Once again, the Appellants are arguing against Judge Dukes' October 20, 2021 Order, which is the law of the case because it was never timely appealed. And as with the Appellants' Arguments 1,2,3 and 4 above, this basic argument was made in the Appellants' November 2, 2022 and November 14, 2022 "Amended" Initial Briefs filed in Appeal No. 2022-000277, which was

dismissed on March 15, 2023. See Argument 7 in the November 2, 2022 Amended Brief and the same in the November 14, 2022 Amended Brief in appeal no. 2022-000277. Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009) (citations omitted).

And further, no such argument was ever made to the lower court and the Appellants are thus precluded from raising it herein. "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000). "Error preservation requirements are intended "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." I'On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). The Orders currently under appeal (of November 7, 2022 and March 8, 2023) relate to the Respondents/Appellants' September 7, 2022 Motion For Stay and Waiver of Supersedeas Bond Or In The Alternative A Nominal Bond Pending Appeal and the Plaintiffs/Respondents March 14, 2022 Amended Motion For Master's Deed.

The Defendants/Appellants did not raise the issue of the Master's authority to convey the land to the lower court in their Motion For Stay and Waiver of Supersedeas Bond. Thus, the issue is not properly before the Court.

Should this Court determine to reach the merits of Argument No. 7, the Respondents refer the Court to the specific authority granted Judge Dukes under South Carolina Code Annot. Section 15-61-50 and the Pinckney Act, S.C. Code Annot. Section 15-61-310 *et. seq.* "The Court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in

common to make partition in kind or by allotment to one or more parties upon their accounting to the other parties in interest for their respective shares or in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." Section 15-61-50. "If the court does not order partition in kind or partition by allotment under subsection (A), the court shall order partition by sale pursuant to Section 15-61-400 or, if not cotenant requested partition by sale, the court shall dismiss the action. The Plaintiff's/Respondents herein specifically prayed for partition of the property by sale in their initial Complaint (Record on Appeal p. _____) and the lower court (the Master in Equity) was empowered under the South Carolina Code of Laws and the Rules of Civil Procedure, to partition the property by sale.

As to Appellants' Eighth Designated Issue On Appeal

The Appellants' eighth designation of issue on appeal is: "Did Master's Deed entered by Court May 24, 2023 contravene the Pinckney Act and deprive Respondents of due process of Law?" The Appellants then argue that the Defendants were "deprived" of a "right of first refusal" amounting to a "Due Process violation" and a "Violation of Equal Protection." See Brief at p. 39.

First and foremost, as is made clear in the Court's Orders of October 20, 2021, and January 20, 2022, the Defendants were not deprived of any rights; they were, in fact, specifically notified of their 60-day period to buyout the Plaintiffs' ownership interests. The Defendants simply chose not to do so, and have never, as of the date of the filing of the Appellants' Brief in this case, tendered their buyout amounts to the Court.

Further, the Appellants again argue at p.39 that the Master's issuance of a Master's Deed, amounts to a "wrongful taking of property rights" and is violative of the due process of law and

equal protection of the law provisions of "Article 1 Sections 3 and 13 of the SC Constitution and the Fifth and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. Section 1983?" See pages 39-40 of the Appellants' Brief. As to the allegations that the Pinckney Act violates Due Process, please accept the Respondents' arguments posited above in response to Appellants' identical argument no. 7.

And further, no such argument was ever made to the lower court and the Appellants are thus precluded from raising it herein. "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000). "Error preservation requirements are intended "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." I'On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). The Orders currently under appeal (of November 7, 2022 and March 8, 2023) relate to the Respondents/Appellants' September 7, 2022 Motion For Stay and Waiver of Supersedeas Bond Or In The Alternative A Nominal Bond Pending Appeal and the Plaintiffs/Respondents March 14, 2022 Amended Motion For Master's Deed.

Should this Court determine to reach the merits of Argument No. 8, the Respondents refer the Court to the specific authority granted Judge Dukes under South Carolina Code Annot. Section 15-61-50 and the Pinckney Act, S.C. Code Annot. Section 15-61-310 *et. seq.* "The Court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more parties upon their accounting to the other parties in interest for their respective shares or in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the

sale of the property and the division of the proceeds according to the rights of the parties." Section 15-61-50. "If the court does not order partition in kind or partition by allotment under subsection (A), the court shall order partition by sale pursuant to Section 15-61-400 or, if not cotenant requested partition by sale, the court shall dismiss the action. "The Plaintiff's/Respondents herein specifically prayed for partition of the property by sale in their initial Complaint (Record on Appeal p. _____) and the lower court (the Master in Equity) was empowered under the South Carolina Code of Laws, to partition the property by sale.

Further as to certain of the allegations made in the Appellants' Argument 8, Respondents object to and ask the Court to ignore, those allegations made by the Appellants at pp. 41-42 of their Brief, concerning proceedings occurring at the circuit court level *after* the Appellants filed this appeal on March 13, 2023. There is nothing in the record nor properly before this court concerning any of those actions.

As to the highly generalized allegations made in Argument no. 8 that the Pinckney Act is unconstitutional, Respondents assert that an appellate court in South Carolina must presume an act is constitutional unless its "repugnance to the constitution is clear and beyond a reasonable doubt." Doe v. State, 421 S.C. 490, 501, 808 S.E.2d 807, 813 (2017). The general presumption of validity can be overcome only by a clear showing the act violates the constitution. *Id.*

Article 1, section 3 of the South Carolina Constitution prohibits the denial of equal protection of the law. Success on an equal protection claim "requires a showing that similarly situated persons received disparate treatment. *Id.* at 504, 808 S.E.2d at 814. In this case, there is no evidence that any other Heirs Property owners or claimants are receiving disparate treatment.

Indeed, there cannot be any argument of disparate treatment because the Act's provisos apply equally to all individuals claiming an interest in Heirs' Property.

As to Appellants' Ninth Designated Issue On Appeal

The Appellants list their ninth designated issue on appeal as: Is Master's Deed void as a matter of law because it fails to establish definite deadline to close on sale of property to third party purchaser? However, the Appellants did not brief this issue and thus it is abandoned. Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal. Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006)(holding an issue listed in the statement of issues on appeal but not addressed in briefs is abandoned.)

As to Appellants' Tenth Designated Issue On Appeal

The Appellants list their tenth designated issue on appeal as: Did Court err in failing to order sale of the property on open market, sealed bid or auction? However, the Appellants did not brief this issue and thus it is abandoned. Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal. Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006)(holding an issue listed in the statement of issues on appeal but not addressed in briefs is abandoned.)

As to Appellants' Eleventh Designated Issue On Appeal

The Appellants list their eleventh designated issue on appeal as: Did Master In Equity exceed jurisdictional authority by issuing Master's Deed conveying Defendants' interest in property against their consent in violation of section 15-61-400 of the Pinckney Act which requires

open market sale, sealed bid or auction upon ruling to partition heir property? However, the Appellants did not brief this issue and thus it is abandoned. Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal. Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006)(holding an issue listed in the statement of issues on appeal but not addressed in briefs is abandoned.)

CONCLUSION

For the reasons set forth above, the Respondents pray this Court dismiss or deny the appeal.

Respectfully Submitted,

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