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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

RECORD ON APPEAL

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STANLEY ROBERTS AND DIANA MENDHEIM INDIVIDUALLY
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IN THE COURT OF COMMON PLEAS.
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GEORGIA HARRISON, et al,
Plaintiffs,

vs.

CIVIL ACTION NUMBER
2020-CP-07-02301

STEPHANIE LORRAINE KIRKLAND et al,
Defendants.

-----/

The video conference hearing in the
above-entitled cause, taken pursuant to Notice
and agreement, before the Honorable Judge Dukes
and Naomi McCracken, Court Reporter and Notary
Public, on the 6th day of January 2022,
commencing at or about the hour of 3:00 p.m.

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(NO EXHIBITS)

1 THE COURT: Welcome back,
2 everybody, to 2020-CP-07-02301,
3 Harrison, et al. versus Kirkland, et
4 al. I got that caption. This is a
5 series in -- or another -- I don't even
6 know what number -- in an ongoing
7 series of hearings and nonhearing
8 conference calls and Webexes having to
9 do with the sale of this property.

10 And maybe, just before we begin,
11 the plaintiff can just bring me up to
12 speed on kind of where we are and
13 what's happened since the last time we
14 were together. Then I'm happy to hear
15 from anybody who wants to be heard.
16 We've got plenty of time, so...

17 MR. TAYLOR: Judge, thank you so
18 much. This is Tom Taylor on behalf of
19 the petitioning plaintiffs. Chet
20 Williams is also with us and will
21 probably also assist me in
22 presentation.

23 To bring the Court up to speed,
24 Your Honor, by order dated October 20th
25 of 2021, the Court set forth certain

1 procedures for the petitioning
2 defendants to have a time, pursuant to
3 the statute, of not less than 60 days
4 to tender their amounts of money to buy
5 out the plaintiffs.

6 The Court set that date for
7 December 22nd, 2021 at 5:00 p.m. And
8 you may recall, Your Honor, that right
9 before this, there were some
10 discussions in a previous status
11 conference of exactly how the money
12 would be tendered. Mr. Houston, on
13 behalf of his defendants, was concerned
14 about not having a wire transfer
15 portal.

16 So the lawyers all worked together
17 with Clerk Roseneau. We actually
18 established -- the Clerk established a
19 bank account for this particular case,
20 and that information was provided to
21 Mr. Houston well before the December
22 22nd date so that his purchasing
23 defendants could, in fact, tender their
24 money in a timely matter by December
25 22nd at 5:00 p.m.

1 For the Court's information, it
2 has now been confirmed through written
3 communication by the Clerk of Court
4 that no monies were deposited by any of
5 the defendants or anyone else into to
6 the bank account by 5:00 p.m. on
7 December 22nd, 2021, or at any time
8 thereafter until we sit here today.

9 So, Your Honor, pursuant to that
10 order, which is a self-actuating, the
11 Court had ordered, on October 20th,
12 that if no -- if none of the monies
13 were paid in by the defendants, then
14 the -- if the defendants failed to
15 timely pay their apportioned price,
16 then the property that is the subject
17 of this action shall be partitioned by
18 sale at a purchase price of not less
19 than \$9.1 million.

20 And, we, Your Honor, to remind the
21 Court, have an existing contract of
22 sale that is due to close on March the
23 22nd of 2022, and we are proceeding
24 forward towards that closing.

25 Additional deposits have been made to

1 protect all of the petitioners and the
2 defendants.

3 And, Your Honor, we believe very
4 strongly that this deal is going to
5 close on March 22nd, and I'd ask for
6 Chet to perhaps advise the Court a
7 little bit more on any other financial
8 matters that are important.

9 MR. WILLIAMS: Well, not so much
10 the financial matters, but I would
11 point out, Your Honor, that the October
12 20th order also authorized the
13 plaintiffs to either accept or ratify
14 any contract for the sale of the
15 property for not less than \$9.1
16 million. That's what we're proceeding
17 on right now. Like Mr. Taylor said, we
18 have a firm contract with a closing
19 date of March 22nd, and we're working
20 towards that end.

21 MR. TAYLOR: That's where we
22 stand, Judge.

23 THE COURT: Okay. Thank you very
24 much.

25 MR. WHITE: I would add one thing.

1 THE COURT: Yeah.

2 (Cross-talk.)

3 MR. WHITE: You said that the
4 price has increased from that, do you
5 want to mention that, or no?

6 MR. TAYLOR: Chet?

7 MR. WILLIAMS: Yeah. Well, the
8 last contract extension, I think Your
9 Honor's aware, increased the purchase
10 price of the original 9.1 offer to
11 \$9,750,000. And the Sixth Amendment
12 also required that the purchaser
13 deposit an additional \$50,000 as an
14 earnest -- additional earnest money
15 deposit within three days after the
16 time period had run for the defendants
17 to deposit their funds, and that
18 \$50,000 has been posted.

19 THE COURT: Okay. Thank you.

20 MR. TAYLOR: Your Honor, just to
21 remind the Court, I know Mr. Houston is
22 ready to go. But just to remind the
23 Court, Judge, you had heard testimony
24 earlier on two different appraisals,
25 and you have already entered -- and the

1 order does set the fair market value of
2 not less than \$9.1 million.

3 So the fact of the matter is that
4 the petitioning plaintiffs, and Andre
5 White, who is their agent, have been
6 working very hard and we are now at a
7 \$650,000 premium on top of what
8 apparently the fair market value of the
9 property may be, to which will be to
10 the benefit of everyone participating
11 in this as long as we move forward and
12 get it closed before any real estate
13 bubble changes.

14 THE COURT: There's always that
15 risk, isn't there?

16 Okay. Thank you. Thank you very
17 much.

18 Mr. Houston, I'm happy to hear
19 from you, sir.

20 MR. HOUSTON: Okay. I wanted to
21 let the air clear first, and what I'd
22 like to do is state the following for
23 the record, Your Honor.

24 Number 1, this is an action to
25 clear title and the defendant's

1 position is, is that title is only
2 cleared when the court can issue a fee
3 simple title to the property. The
4 defendants -- the plaintiffs, in their
5 complaint, state that there had been
6 two prior court title actions brought
7 on this property. And they've had to
8 start this third action, which is the
9 present one we are involved with,
10 because there have been successive
11 un-probated estates.

12 And, in addition to that, there
13 have -- some estates that have been
14 brought in foreign sister states, but
15 no ancillary administration has been
16 done on those estates in South
17 Carolina, particularly in Beaufort
18 County where the property is, the
19 status of the property.

20 Without having a clear title to
21 the property, the defendants have been
22 prohibited in going through with their
23 sale of the property. They have the
24 money available, but they cannot
25 transact a sale without being able to

1 use, as collateral, the fee simple
2 title to the property.

3 The second thing is that a
4 misrepresentation was made to the Court
5 -- or let me use a little bit more
6 euphemism. An accurate account or
7 report of what the statute requires was
8 not rendered to the Court. It was our
9 understanding that the -- the -- what
10 was reported to the -- what was
11 represented to the Court was that the
12 defendants had to perform in 60 days.
13 The statute does not require that. As
14 a matter of fact, 60 days is only the
15 minimum time set by that statute.

16 So the legislative intent was that
17 the time allotted to complete a sale by
18 the defendant is -- who don't desire to
19 sell -- is a discretionary matter. And
20 60 days is not the statutory
21 requirement, that is only the minimum
22 requirement.

23 So this was not properly brought
24 to the Court's attention at the time
25 the Court issued its order saying that

1 the defendants had to perform within 60
2 days.

3 So predicated on the fact that on
4 the one hand, the plaintiffs have not
5 pursued the case far enough for the
6 Court to decree that they had the fee
7 simple title in conjunction with the
8 fact that the statute allots more than
9 60 days to complete the sale of the
10 property, you cannot complete a sale on
11 a residential property in 60 days, and
12 here we're talking about raw property
13 and we're talking about several million
14 dollars. So to require the defendants
15 to complete this transaction without
16 having a fee simple title to the
17 property to serve as collateral is
18 unconscionable.

19 And so for that reason, we have
20 requested the Court, by motion, to give
21 us an extension of time of 45 days to,
22 one -- to do two things, one, to have a
23 hearing so that we can establish who
24 the exact heirs are and what their
25 percentage interest is. Okay?

1 The chart produced by the
2 plaintiffs when they started this
3 action, though it may have been
4 accurate, it's now not completed
5 because of the change in the deaths of
6 the parties who are members of the
7 various wings of the family.

8 So the plaintiffs have been trying
9 to require the defendants to perform
10 within this time period, and our
11 position of that is that it's
12 unconscionable and it's inequitable.

13 The further thing is, the Court
14 considered the fact, in balancing the
15 equities, that the price offered by the
16 plaintiffs had increased by \$500,000.
17 All right? Now, they haven't produced
18 a copy of these contracts. All they
19 did -- you know, they reported, said
20 that this is in existence, we've done
21 this, we've done this. But they have
22 not produced, for our examination, any
23 copies of these contracts.

24 Nevertheless, the defendants have
25 offered to meet and put an additional

1 amount of money for the plaintiff heirs
2 so that they will not be prejudiced in
3 any manner. So we have met with this
4 balance of the equity proposition that
5 came forth at the last hearing.

6 So, you know, the situation is
7 (indiscernible) right now. We can pay
8 the plaintiffs the larger amount of
9 money and in a shorter period of time.
10 And if counsel is representing the
11 plaintiffs rather than the -- other
12 than (indiscernible), I don't see
13 why -- why they are adverse to that.
14 I yield the floor back to you, Your Honor.

15 THE COURT: Just a quick question,
16 Mr. Houston. I mean, it sounds like
17 what you're asking me to do is
18 reconsider an order from October. I
19 mean, is that sort of the sum and
20 substance of it, right? I mean --

21 MR. HOUSTON: That is correct,
22 Your Honor. Because that order was
23 stepped in during the time that the
24 defendants were transferring
25 representation. And that had been --

1 MR. WILLIAMS: If I may, Your
2 Honor. If I may, Mr. Houston had
3 entered his appearance a month before
4 that order was entered.

5 THE COURT: I remember we went --
6 I think, Mr. Houston, if you look back,
7 you were probably part of it, then.
8 But here's my problem. 59(E) --
9 essentially, I have no jurisdiction to
10 modify that order once ten days has
11 elapsed. I think that's pretty solid
12 law on 59(E). So I don't really have
13 -- even if I thought it was a good
14 idea, I don't have authority to change
15 that order, that's a -- that's an order
16 that's gone beyond the ten days. And
17 there's -- I don't have jurisdiction to
18 modify that order, even if I --

19 MR. HOUSTON: We can include it
20 under 62(B).

21 THE COURT: Well, here's -- we've
22 been talking about these deadlines --

23 MR. HOUSTON: The other thing, you
24 said, this is not a final order.

25 THE COURT: We've been talking

1 about these deadlines forever, and I
2 had suggested, Mr. Houston, I think at
3 one point, come up with a significant
4 nonrefundable deposit. You know, the
5 plaintiff accurately says, "Look, this
6 economy may go on for years or this may
7 be 2009-2010 all over again.

8 You know, we -- this thing may
9 turn around overnight. This buyer may
10 go away and this sale may be a lost to
11 your clients and the plaintiffs. And I
12 can't remember what the percentages
13 are, but I can't be --

14 MR. TAYLOR: Your Honor --

15 THE COURT: -- blind to the
16 percentages --

17 MR. TAYLOR: -- the defendants
18 have 1.17 percent interest in the land.
19 The petitioners have 98.9 percent
20 interest in the land.

21 THE COURT: Yeah, and I've got --
22 that's not the only factor, of course,
23 but I've got to consider that. And so
24 here is what appears to be a solid
25 contract in a, maybe, shaky economy. I

1 don't know. Maybe the economy's rock
2 solid and it's going to go on forever.
3 I have no idea.

4 But I know that I've seen this
5 before. I've seen these property
6 values shoot up before, and overnight,
7 they plummet. And maybe we're there,
8 maybe we're not. You know, maybe we're
9 in 2007, not 2009 again right now. I
10 don't know.

11 But I've got to worry about the
12 98 percent, and that's why a while
13 back, I said, see if your clients want
14 to make a significant, you know,
15 nonrefundable deposit. And if they can
16 close, great. If not, boom, that money
17 gets sent straight to the heirs.
18 98 percent of it, of course, would
19 go -- not to your clients, but --

20 MR. HOUSTON: Your Honor, we're
21 capable of doing that if,
22 simultaneously, we can get an order
23 saying that the title is cleared.
24 We'll provide plaintiffs these funds to
25 put in -- in that deposit. I think it

1 was discussed before, like something
2 like 10 percent.

3 THE COURT: I've never heard that
4 offer. But, again, it may be to far
5 down the road for that. And I think
6 you're -- the buyers might be on the
7 line, and I don't know whether or not
8 they've agreed to put up almost \$2
9 million nonrefundable money.

10 MR. HOUSTON: That's why I have
11 them here today, Your Honor. And, you
12 know, they can speak for themselves,
13 with the Court's permission.

14 But one thing we would --
15 contingent on that proposition, though,
16 is that during the same the time, the
17 title to the property be -- be
18 completely cleared. We haven't had a
19 hearing -- we haven't had a hearing on
20 that issue in this matter.

21 You know, everything has just been
22 by what had been stated in the
23 complaint, but there haven't been any
24 witnesses, there haven't been any
25 cross-examinations --

1 THE COURT: Here's -- here's what
2 I know, Mr. Houston, there's a ready
3 and willing buyer to take the property
4 as it is for significantly above fair
5 market value. I would like --

6 MR. HOUSTON: We don't have the
7 contract, Your Honor.

8 THE COURT: I would like -- well,
9 will you agree to share the contract?

10 MR. WILLIAMS: Oh, absolutely.
11 He's never asked for a copy of it. But
12 absolutely, we're willing to share
13 that.

14 THE COURT: Okay. All right.
15 Well, there you go. I mean, that's --
16 I mean I've heard about it over and
17 over again. I've never heard there was
18 a question about it, so...

19 Otherwise, I would've said,
20 "Please, share it with Mr. Houston."
21 This is the first I've heard that you
22 didn't have it, but it sounds like it
23 would be shared.

24 MR. WILLIAMS: Mr. Houston -- may
25 I take a moment and try and address

1 some of the points Mr. Houston's
2 raised?

3 THE COURT: Go ahead. Please.

4 MR. WILLIAMS: The quiet title
5 issues, Mr. Houston either isn't aware
6 of or wants to ignore the Court's May
7 21, 2021 order that quieted title in
8 all the owners and determined their
9 percentage interests. Now, Your Honor,
10 you yourself, in prior hearings, have
11 pointed out that, well, if you had to
12 stop a partition action or a quiet
13 title action every time there is a
14 death, you'd never get finished with
15 these things.

16 And I think you, Your Honor, have
17 agreed that you have the authority,
18 when push comes to shove, to go ahead
19 and sign the deed to convey title to
20 the property, to who the buyer is, and
21 we can hold any funds that are for the
22 open estates in escrow pending the
23 resolution of those estates. There is
24 no issue with title to the property.

25 And I also would point out that

1 Mr. Houston's aware of these open
2 estates, yet he has done nothing
3 whatsoever to try and open those
4 estates and probate them, he's only
5 used them as a cudgel to try and get
6 more time out of this.

7 With respect to his issue about
8 the 60 days, the October 20th order
9 actually gives the defendants 63 days
10 in order to post their money. So it's
11 not much more, but it is more than 60
12 days.

13 And the new contract that
14 Mr. Houston talked about, it's not a
15 firm contract. There is a due
16 diligence period of 45 days within
17 which the purchaser can walk away and
18 take all their deposit back. So it's
19 not a sure thing. We're ready to move
20 forward with the deal.

21 And, Tom, I'd ask you to add
22 anything else here.

23 MR. TAYLOR: Your Honor, if I may,
24 I want to make sure you understood the
25 last part of what Chet just said,

1 because when he says "The new deal,"
2 he's not talking about the extension,
3 the Sixth Amendment that we just had,
4 he's talking about the proposal that
5 Mr. Houston has made in his paperwork
6 seeking the extension.

7 And it's critically important that
8 the Court understand that while
9 Mr. Houston and the defendants have
10 been repeatedly invited by the Court to
11 make a substantive offer to us,
12 instead, they have chosen to simply put
13 in the paperwork here that we'd like
14 45 days, but we have the right to walk
15 away from it at any time.

16 And if the Court was to grant
17 that, then all you'd be doing, Your
18 Honor, would be adding 45 days on to
19 the 60 that has originally run when
20 there was no effort by any of the
21 defendants to pay into the court, their
22 petitioning money.

23 I remind the Court, Judge, that if
24 even one of them had paid their portion
25 in in a timely manner, that would've

1 automatically given them another 20-day
2 extension in which do this.

3 The real problem here, Your Honor,
4 is that Mr. Sis -- excuse me --
5 Mr. Houston continues to phrase the
6 statutes that are at issue as if this
7 was a -- basically, a competition to
8 find the best developer to pay. That's
9 not what this is, Your Honor. The --
10 the vast majority of the landowners
11 have, in good faith, worked for several
12 years to get this Rotunda contract in
13 effect.

14 We then did exactly what we should
15 have done, we brought the correct suit.
16 The defendants were joined, and
17 everybody understood the ramifications
18 of the Pinckney Act and it gave them
19 the opportunity to buy into it if they
20 wanted to control the property.

21 But, Judge, this is not that a --
22 a statute that is there for the
23 purposes that Mr. Houston is asserting.
24 They don't have the right to stop the
25 people who have worked so hard and who

1 have a good deal in hand simply by
2 repeatedly arguing that they've got to
3 have clear title, because that's not in
4 the books here.

5 This Court has the ability to
6 transfer the deed, as the Court has
7 discussed beforehand. Our purchasers
8 are ready to move forward with the deed
9 quality that the Court normally and
10 routinely issues. And the defendants
11 have had their time. They were well
12 advised of it. There was certainly no
13 orders slipped into the Court, and I
14 take offense at the wording of that
15 earlier.

16 The Court had this and had a long
17 conference before the Court signed the
18 October 20th order, which was reviewed
19 and approved by all counsel of record,
20 including Mr. Houston.

21 MR. HOUSTON: Your Honor, if I may
22 respond to that.

23 Number one, as I said before, we
24 have not been provided with this
25 alleged contract with Rotunda. Now, we

1 don't know if there's any language in
2 that contract that they agreed to buy
3 the property as is, which leaves the
4 door open that they can easily back out
5 on the same basis that we're setting
6 before the Court now as a problem, and
7 that is the horse has been -- the cart
8 has been before the horse.

9 The 60-day period shouldn't have
10 started until Court was able to declare
11 that there is fee simple title. To
12 require the defendants to purchase the
13 property when the proceeding has not
14 reached (indiscernible) yet where the
15 Court can issue an order certifying fee
16 simple title to the property is
17 untenable. And it's commercially
18 unfeasible, which raises to the level,
19 as I said before, of unconscionability.

20 You know, they're making
21 representations, but we haven't seen
22 the Rotunda contract, and I -- I doubt
23 if there is any developer who's going
24 to sign a contract saying we will buy
25 the property as is for several million

1 dollars.

2 THE COURT: Well, my understanding
3 is --

4 MR. HOUSTON: They want you to
5 believe --

6 (Unreportable cross-talk.)

7 MR. HOUSTON: -- have ever
8 produced the contract.

9 THE COURT: Mr. Houston, you
10 haven't asked for the contract. But I
11 understand that you're going to -- you
12 may already have it. Mr. Williams is
13 sending it to you. But the phrasing of
14 that contract has never been an issue
15 before right now.

16 MR. HOUSTON: Well, he's giving me
17 the representation now that they're
18 willing to buy it without fee simple
19 title.

20 THE COURT: Well --

21 MR. HOUSTON: To get it in the
22 record.

23 MR. TAYLOR: Your Honor --

24 MR. WILLIAMS: Look. Hold. Hold.
25 Look. Look.

1 Your Honor, hold on. I never made
2 any sort of representation that Rotunda
3 was willing to buy it without fee
4 simple title. What I said was that you
5 have the authority to execute and
6 deliver a deed which will deliver a fee
7 simple title.

8 THE COURT: And that would be true
9 for any buyer, quite frankly, and
10 always has been. That's not new.
11 We've spoken about that. That would've
12 been any buyer.

13 MR. HOUSTON: All right. And,
14 Your Honor, what we're doing, we're
15 asking the Court to make a ruling that
16 was for open estates, that the parties
17 still have fee simple title to the
18 property vested in the people who the
19 plaintiff have listed in the actions as
20 the heirs.

21 (Unreportable cross-talk.)

22 THE COURT: -- right. I mean, we
23 had a whole -- in fact, I think that's
24 what Mr. Williams and Mr. Taylor were
25 just talking about, is -- and we

1 discussed that back in October. The
2 Court has the authority to issue an
3 order and the money would be escrowed
4 for those people. That's why we
5 discussed, at length, the fact that
6 people die during these actions
7 regularly.

8 And I've got one going on -- I
9 have several that have over 150 people.
10 And, of course, just the law of
11 averages, someone is going to die and
12 you can't stop the whole thing and wait
13 for them to do probate. And so that --

14 MR. HOUSTON: Your Honor, that
15 order didn't -- that order didn't --

16 THE COURT: I --

17 MR. HOUSTON: -- protect the
18 defendants, that the Court would
19 protect them if they tendered the money
20 and that the Court would oversee the
21 distribution to any defendants who --
22 who -- who made a merge out of these
23 probate proceedings. That protection
24 wasn't afforded to my clients.

25 THE COURT: No. But it's the same

1 for everyone.

2 MR. HOUSTON: It wasn't -- it
3 wasn't an order to that effect. The
4 only order to the effect was, you have
5 60 days to pay the money. But there
6 was no reservations or other further
7 protective clauses in the order to
8 protect my clients against unknown
9 claims.

10 MR. TAYLOR: Your Honor,
11 Mr. Houston reviewed and approved that
12 order before it was signed, and if he
13 wanted those sorts of matters in there,
14 then he could've addressed them at that
15 point.

16 THE COURT: Yeah. I mean, we've
17 been around and around about this, and
18 I get it, Mr. Houston, you're --

19 MR. HOUSTON: We did, yes. But
20 we're also very perplexed about the
21 Court issuing a master's deed. And the
22 question was whether either a master's
23 deed would convey fee simple property.
24 So we did have a lengthy discussion,
25 but some of these items were still left

1 up in the air unresolved.

2 MR. WILLIAMS: Your Honor, if I
3 may.

4 Not the last hearing that's --
5 when was at the -- the Savannah hearing
6 board, the hearing before that, I asked
7 Charles, Mr. Houston, if he would like
8 me to contact one of my title insurance
9 carriers to see if they would insure
10 title based on a fee from you, from the
11 Court.

12 I met with Mr. Houston the next
13 day and I made the offer again, and he
14 said, "No. Don't do that right now."
15 So I haven't done that.

16 MR. HOUSTON: I'll say, Your
17 Honor, I don't recall saying, "Don't do
18 that."

19 THE COURT: Months ago, didn't we
20 have Mr. Johnson along who was
21 available to write title insurance
22 under the circumstance for anybody --

23 (Unreportable cross-talk.)

24 MR. HOUSTON: -- Your Honor.

25 THE COURT: We did.

1 MR. HOUSTON: He had -- he asked
2 them to order at that particular time
3 that he appeared, and he --

4 (Unreportable multiple
5 cross-talk.)

6 MR. HOUSTON: He didn't
7 affirmatively -- affirmatively respond
8 to your question on that issue of can
9 title insurance be procured.

10 THE COURT: Actually, I thought
11 the two of you were going to get
12 together and he was -- because my
13 understanding was he wanted to know a
14 little bit more about it, but he
15 thought he'd have no problem writing
16 title insurance under those
17 circumstances. But, I mean, that was
18 six months ago. You know, that was a
19 long time ago. And this thing has just
20 gone on and on and on.

21 No. I mean, I can't put at risk,
22 98 percent of the owners of this
23 property for the 2 percent. And, under
24 these circumstances, under the totality
25 of the circumstances, the 2 percent are

1 going to be compensated quickly, and
2 more. When you're being -- when this
3 much money is out there, having it
4 closed sooner rather than later -- and
5 this one is certainly further along the
6 line than the new one, Mr. Houston,
7 that you're pushing, is worth
8 something. Is it --

9 MR. HOUSTON: Your Honor, I don't
10 know how you can reach that conclusion.
11 I'd say we're further -- we're further
12 around because my clients are ready to
13 put the money in the pot right now --

14 THE COURT: They should've done it
15 before --

16 (Unreportable cross-talk.)

17 THE COURT: They should have done
18 it by the deadline.

19 MR. HOUSTON: Yeah, but by the
20 deadline, who -- who is going to put in
21 \$10 million when they can't get good
22 title to the property and they're
23 not --

24 (Unreportable cross-talk by
25 multiple speakers.)

1 MADAM COURT REPORTER: Hold on.
2 You are all talking over each other and
3 I would respectfully ask you not to do
4 that. This is your record.

5 THE COURT: And I would
6 respectfully ask the same. Thank you,
7 Ms. McCracken, I appreciate that.

8 So we have an October order,
9 nobody's moved to reconsider that.
10 It's an unappealed order and it set
11 forth this timeline, and now I'm being
12 asked to change the timeline on a
13 significant deal that's been worked on
14 for years that is the preference of
15 98 percent of the ownership.

16 I'm just not going to do it. I'm
17 not going to change it. You know,
18 we've been -- there have been ample
19 opportunities, Mr. Houston. And I know
20 you've tried hard. I'll give you
21 points for that. But this -- I'm not
22 going to modify my previous order
23 and --

24 MR. HOUSTON: But, Your Honor, was
25 that -- was that a final order or that

1 was just an interim order? Because a
2 final order hasn't been issued in this
3 case.

4 THE COURT: That was an order on
5 posting the money and proceeding with
6 the sale, with the contract. And
7 that's what is going to happen, you
8 know? And -- and, Mr. Houston, you
9 know what, if that deal falls
10 completely apart, if that never
11 happens, you're still there. And maybe
12 -- maybe it won't happen. I don't
13 know. But nothing's closed until it's
14 closed, anybody that's ever done real
15 estate knows that.

16 But right now, let's follow that
17 path.

18 MR. HOUSTON: But will you
19 consider an interim -- another interim
20 order where my clients would post bond
21 for an extension?

22 THE COURT: I don't -- I'm not
23 going to extend anything. If they want
24 to post bond and be a back-up contract
25 or something, I'm happy to hear

1 whatever proposal you've got.

2 MR. HOUSTON: But, Your Honor, I
3 think, again, for the record, that's
4 inequitable, that we would have to take
5 the back-up position because the
6 plaintiffs had to move this case along
7 far enough where the Court can certify
8 title.

9 THE COURT: Just --

10 (Unreportable cross-talk.)

11 MR. HOUSTON: -- where --

12 THE COURT: Mr. Houston --

13 MR. HOUSTON: -- where the other
14 parties still have protected claims.

15 THE COURT: Mr. Houston, you had
16 the option to be in first position.
17 You waived that option when you missed
18 the deadline. So now you're in second
19 position, if you want to be. But you
20 had the option to be in first position.

21 MR. HOUSTON: Yeah, but that
22 option -- Your Honor, what I'm saying,
23 though, that option was an empty one.
24 I mean, to expect somebody to put in
25 several million dollars and they can't

1 get a fee simple title to the property,
2 that's throwing money to the wind, and
3 that's economically not feasible.

4 THE COURT: Well, sadly, that was
5 -- I don't know if I would characterize
6 it the same way you just did, but the
7 terms and the deadlines and the dates
8 were in the October order, which was
9 unappealed and no one asked to
10 reconsider, and was reviewed by you and
11 your client, so we're stuck with that.

12 And the opportunity to be in first
13 position was waived by failure to post
14 the appropriate amount of money at the
15 appropriate time. You know, that's the
16 way it is. You know, I'd love to make
17 everybody happy, but I can't do that.

18 And so what we're going to do is
19 try to protect the rights of all of the
20 heirs, the 98 percent and the 2 percent
21 and get them as much money as possible
22 and as quickly as possible. And it
23 seems like that's the deal that we've
24 already discussed that's been going on
25 for two years. So I don't know what

1 else we need to do. I think that
2 resolves the issue.

3 To the extent that there are
4 motions to reconsider out there, I'm
5 going to deny them. I think I saw,
6 scrolling through here, there were two
7 of them filed, but -- and I'm going to
8 deny those motions. And I assume the
9 buyer -- the primary buyer will proceed
10 ahead and y'all let me know what the
11 schedule is.

12 MR. TAYLOR: Your Honor, we will.
13 And, of course, we are always open to
14 Mr. Houston if his other people want to
15 come in and talk to the 98 percent
16 petitioning people, we can do that
17 directly. But we would appreciate and
18 do appreciate the Court's assistance
19 today.

20 THE COURT: Yeah. Mr. Houston,
21 that's always a possibility, if y'all
22 want to get together and see if y'all
23 can resolve this in some form or
24 fashion.

25 MR. HOUSTON: Well, Your Honor,

1 like I said at the very beginning, we
2 raised the price so that the -- the --
3 the plaintiffs clients would receive
4 the higher amount. We added \$500,000,
5 from the 9.1 to the 9.75.

6 MR. TAYLOR: Your Honor, if I may?

7 MR. BRANNEN: Your Honor, can I
8 speak, please?

9 THE COURT: Tell me who you are,
10 Mr. Brannen.

11 MR. BRANNEN: Yes, sir. I
12 represent Singerman Real Estate, who is
13 the financial partner that the heirs
14 are bringing in, and my client is the
15 one that's putting up the \$900,000,
16 whatever the purchase price is to
17 purchase the property.

18 We were brought in. I know you
19 guys have been working on this a long
20 time. I'm a real estate guy, I'm not a
21 litigation guy, but I think the intent
22 of the statute is to protect the heirs,
23 and the heirs can buy the property.

24 You know, I think that's a strong
25 argument to counteract the fact that

1 there's a contract to buy that doesn't
2 involve any of the heirs. And that's
3 what we're trying -- we were asked to
4 put up the \$900,000, and in looking at
5 the title, we thought we couldn't do
6 that without being able to confirm that
7 the title is good, because even the
8 Court can't issue a master's deed, the
9 Court has the jurisdiction of the
10 required (undiscernible) core pieces
11 case.

12 The estates that are out there
13 that a master's deed might not -- might
14 not give the title, so we needed time
15 to do that. We offered to do that with
16 45 days, we can put up the 900,000
17 immediately. But the other funding
18 remains to be determined.

19 THE COURT: Okay. Thank you for
20 that. And I had read Mr. Houston's
21 filings, which included what you just
22 said. And, you know, I wish y'all had
23 been around a year ago or a year and a
24 half ago and then perhaps you and Mr.
25 Taylor and Mr. Williams could have sat

1 down and flipped a coin and figured out
2 how to do it.

3 But here we are at the end, and I
4 understand the reasoning behind
5 protecting the heirs. I understand the
6 Pinckney Act. I also understand that
7 I've got 98 percent of the heirs that
8 need protecting as well as the
9 2 percent. And we -- I've done
10 everything I can think of while
11 protecting 98 percent, not blowing
12 their deal, to try to let the 2 percent
13 move ahead. And I can't think of
14 anything else without doing significant
15 risk to the 98 percent at this point in
16 the game.

17 So I appreciate your input, and
18 thank you.

19 MR. WILLIAMS: Your Honor, if I
20 may assist the record, I have e-mailed
21 the contract with -- through the Sixth
22 Amendment to Mr. Houston. If he
23 reviews it, he'll see that Rotunda has
24 wait -- their due diligence period has
25 run, they have acknowledged that, and

1 they have no bounds, that I'm aware of,
2 to be able to cancel that contract.

3 THE COURT: Okay. Well, even more
4 so than -- you know, we probably need
5 to proceed with this and hope it's
6 beneficial for all. I mean, the fact
7 is, we tried. We bring this up and
8 extended it, extended it, extended it.

9 But at this point, I'm very
10 worried about doing harm based on
11 this -- this is a deal that's been out
12 there for while, and who knows what
13 this economy will do.

14 And so to the extent I have
15 motions to reconsider to modify, I'll
16 deny it because I have no jurisdiction
17 in parts of them. Otherwise, I'll deny
18 it because I don't think it's equitable
19 to continue to move this down the road.

20 MR. TAYLOR: Will you do your own
21 form or do you want us to prepare
22 something?

23 THE COURT: If y'all want to
24 prepare something short and not crazy
25 and long and -- not that it would be

1 crazy, but something that's fairly easy
2 to understand, that would be great.
3 Probably better than a form in this
4 situation. So thank you, I'd
5 appreciate that.

6 MR. TAYLOR: Judge, I will do it.
7 I'll circulate it to Mr. Houston and
8 have it to you very shortly.

9 THE COURT: Okay. And,
10 Mr. Houston, I think -- Did Mr. Houston
11 leave? I see a window there. But if
12 he's still there, Mr. Houston, why
13 don't you get together with the
14 plaintiffs and who knows what
15 opportunities are still available to
16 work out. I want everybody to get
17 along.

18 Mr. Houston, are you still there,
19 sir?

20 MR. HOUSTON: Yes, I am.

21 THE COURT: Okay. Good. I was
22 just saying, why don't you, if you get
23 an opportunity, perhaps get with
24 Mr. Williams and Mr. Taylor, see what
25 y'all can sort out. All right?

1 MR. HOUSTON: What I understand,
2 Your Honor, then there'll be no further
3 proceedings in this particular action,
4 there'll be no further testimony, no
5 hearings, nothing to resolve that quiet
6 title issue?

7 THE COURT: We usually have a
8 final order once we have the dollars.
9 The net dollars, of course, will be
10 determined by the HUD statement, to
11 allocate that. And ordinarily, we will
12 have some sort of an opportunity for
13 the signature of deed.

14 So there may very well be some
15 administrative type orders that -- to
16 try to divide the money up according to
17 the percentages and all that. And as
18 you, of course, pointed out, we've got
19 a couple of people who have just
20 recently passed away. That money, of
21 course, will probably need to be paid
22 into the court in their names and
23 that'll have to be sorted out.

24 But I think those might be the
25 only -- I'm happy to hear -- to be

1 corrected if I'm wrong or if anyone can
2 think of anything else that needs to be
3 done.

4 MR. TAYLOR: Judge, there is an
5 order in the file quieting title 100
6 percent already.

7 THE COURT: No, I was talking
8 about further -- Mr. Houston asked
9 about any further orders or hearings.

10 (Unreportable cross-talk by
11 multiple speakers.)

12 MR. TAYLOR: -- reference to
13 quieting title.

14 MR. HOUSTON: Your Honor, that
15 order just set forth the names and
16 identifies of the heirs, it did not
17 quiet the title in them.

18 THE COURT: Okay.

19 MR. HOUSTON: And then -- again,
20 that has reopened since then.

21 THE COURT: Okay. Well --

22 MR. HOUSTON: So we are right back
23 where we were before they started the
24 lawsuit. And I think that that interim
25 order, I don't know if that was an

1 appealable order.

2 THE COURT: I don't know. It's a
3 heck of a file here.

4 MR. HOUSTON: You'd have to find a
5 59(E) after this order.

6 THE COURT: All right. Well,
7 thank y'all very much. And, you know,
8 we will need to have a further order
9 on -- once we know the exact dollars
10 and that sort of thing, I know we'll
11 have to have that sort of an order.

12 As to the balance of it, I've got
13 no answer to your -- to your question
14 at this time, Mr. Houston, but I
15 appreciate it.

16 MR. HOUSTON: Well, will you have
17 an order in response to my motion?

18 THE COURT: It'll be essentially
19 -- I think you had maybe stepped away,
20 but Mr. Taylor volunteered to do a --
21 essentially a Form 4, but not on a Form
22 4 sheet, just a simple order.

23 MR. TAYLOR: And I will circulate
24 it, of course, Mr. Houston, to you.

25 THE COURT: Okay.

1 MR. HOUSTON: Because we're --
2 we're considering a writ of supersedeas
3 so that we can have this reviewed, but
4 not an appeal, which would take much
5 longer.

6 THE COURT: Okay. Well -- all
7 right. Well, thank y'all very much and
8 have a great day and a wonderful
9 weekend. Bye-bye.

10 (Whereupon, the Hearing was
11 concluded at 3:46 p.m.)
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

DORCHESTER COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

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

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina

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

GEORGIA HARRISON, et al,
Plaintiffs,

vs.

CIVIL ACTION NUMBER
2020-CP-07-02301

STEPHANIE LORRAINE KIRKLAND et al,
Defendants.

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The video conference hearing in the
above-entitled cause, taken pursuant to Notice
and agreement, before the Honorable Judge Dukes
and Naomi McCracken, Court Reporter and Notary
Public, on the 11th day of February 2022,
commencing at or about the hour of 1:35 p.m.

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I N D E X

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OPENING REMARKS AND STIPULATIONS ----- 5

CERTIFICATE ----- 56
(NO EXHIBITS

1 THE COURT: Good afternoon. We're
2 here on 2020-CP-07-02301. And we're
3 here today on the 11th of February on a
4 defendant's motion for reconsideration
5 filed January 31st, 2022. And
6 Mr. Houston is here representing those
7 movants.

8 And, Mr. Houston, I am happy to
9 hear from you, sir. Try to speak more
10 towards wherever the microphone is
11 because I don't know about everybody
12 else, but I was having a little bit of
13 difficulty hearing a second ago.

14 I'm happy to hear from you, sir.

15 MR. HOUSTON: Can everyone hear me
16 fine? Very well.

17 THE COURT: Better.

18 MR. HOUSTON: As we begin this
19 hearing, what I want to (indiscernible)
20 on is that we have requested this
21 hearing to obtain in a more --

22 (Disturbance on videoconference)

23 MADAM COURT REPORTER: I'm sorry.
24 I cannot hear.

25 THE COURT: Yeah. Could you hold?

1 Whoever's got that phone, if y'all
2 would -- everybody just take a second,
3 perhaps, to silence the phones.

4 And, also, if you could mute your
5 own microphone. You could always
6 unmute it if you need to be heard or to
7 object or speak or anything like that.
8 But that's the oval button on most
9 people's screens on the bottom on the
10 left. If you hit that, then it doesn't
11 make any noise for us, so...

12 So, anyway, I apologize for the
13 interruption there, Mr. Houston.

14 (Telephone disturbance.)

15 THE COURT: Something's going on.
16 I don't know who that is, but if y'all
17 could mute that, that would be great.

18 Ordinarily, I get a blue box
19 around where the noise is coming from,
20 but for some reason today I'm not
21 getting it so I can't tell where that's
22 coming from.

23 All right. Hopefully we got that
24 resolved.

25 And, Mr. Houston, if you could

1 speak up just a little bit because I
2 think we still have a bunch of people
3 unmuted and it's causing a little bit
4 of a problem.

5 So my apologies for the
6 interruption. Go ahead, please, sir.

7 MR. HOUSTON: What we are
8 requesting, Your Honor, is the Court's
9 response to the issues that have been
10 raised. There have been multiple
11 issues and the last order of the Court
12 seemed like an umbrella denial so that
13 everyone is left, "Well, we know that
14 most of it was denied, but why?" And,
15 you know, was it the judgment on this
16 issue or the judgment on this issue.
17 What was the Judge's big issue on this
18 particular issue? We would like to
19 know.

20 And so, therefore, this is the
21 underlying basis for the motion for
22 reconsideration. It's just to make a
23 ruling on these particular issues
24 rather than just a general denial of
25 the --

1 THE COURT: Uh-oh. We lost
2 Charles.

3 MR. TAYLOR: It looks like it,
4 Your Honor.

5 THE COURT: This is a problem.
6 Okay. We'll give him a minute to come
7 back. Hopefully -- sometimes you lose
8 the whole thing and you don't realize
9 you're gone.

10 So, Charles, if you can hear us,
11 you're gone. You may have to log back
12 in.

13 MS. JACKSON: You may want to stop
14 the video. Okay. I got it.

15 Your Honor, I'll also attempt to
16 send him a text message in case he
17 doesn't know that we lost him.

18 THE COURT: Great. Thank you so
19 much.

20 MR. WILLIAMS: Your Honor, I'll
21 try to give him a call, too.

22 THE COURT: Ms. Jackson, I see
23 you're trying to talk but you're muted.

24 MS. JACKSON: Sorry. Yes. Your
25 Honor, I was just suggesting, from a

1 technical standpoint, once he's back
2 on, perhaps giving him permission to
3 reduce his video to just audio, that
4 will expand his bandwidth if that's the
5 issue.

6 MR. WILLIAMS: Your Honor, I'm on
7 the line with his mobile phone and I
8 can hear him talking as if he's still
9 on, but he can't -- he apparently is
10 not hearing me.

11 THE COURT: Oh. So he thinks he's
12 still on and arguing?

13 MR. WILLIAMS: It sounds that way,
14 yes.

15 THE COURT: Uh-oh. Hopefully
16 he'll figure it out in a second.

17 But wow. I like your thinking,
18 though, on the bandwidth thing. I
19 didn't know that was the case. So,
20 yes, we can, after getting him back,
21 we'll just do audio only and --

22 MS. JACKSON: Right.

23 THE COURT: I didn't realize he
24 was just using his phone. I didn't
25 look at the background of where he was.

1 He in the car or something?

2 MS. JACKSON: So the bandwidth is
3 compromised whether he dials in on his
4 computer or on the cell phone. He
5 still runs the same risk if the
6 connection is already spotty.

7 THE COURT: Okay. Well, I defer
8 to your superior computer knowledge
9 because I know nothing about this
10 except which of these buttons to push.
11 So thank you. And that -- whatever
12 your request is, it's granted, and
13 we'll try that way, if we can get word
14 to him to give it a shot.

15 MS. JACKSON: I'll explain it to
16 him. He just needs to reduce at the
17 bottom to the stop the video piece once
18 he's back on. So I'll try to give him
19 those instructions.

20 THE COURT: All right. Perfect.
21 Thank you. Thank you. Thank you.

22 MADAM COURT REPORTER: If you
23 don't mind, Judge, if we could have him
24 start right at the very beginning
25 again.

1 THE COURT: I think that's wise.

2 Well, if this just falls apart, I
3 mean, I've got some time Monday.

4 MS. JACKSON: He may have to look
5 at Monday. I will certainly let him
6 know. And for anyone else that runs
7 into this technical issue, if you'd
8 just stop the video piece of it, you
9 can usually continue with audio.

10 THE COURT: Okay. That's good to
11 know.

12 Yeah. I'm lucky because the
13 county has, like, hyper-fast whatever
14 and I'm plugged directly into it, so...

15 MR. TAYLOR: It seems like when he
16 stops talking, he'll realize that no
17 one else is engaged.

18 Can you see if still talking?

19 MR. WILLIAMS: I can hear him.
20 He's still talking.

21 THE COURT: All right.

22 MR. TAYLOR: Your Honor, may I ask
23 a quick question of Ms. Jackson?

24 MS. JACKSON: Yes.

25 MR. TAYLOR: You are a lawyer, who

1 do you represent in the matter?

2 MS. JACKSON: Yes. So we
3 represent the defendant group as to the
4 development piece of it. So we're
5 development counsel, that's why we've
6 not entered an appearance, but that's
7 our piece of the puzzle.

8 MR. TAYLOR: When you're talk
9 about the defendant group, you mean the
10 defendants who are represented by
11 Mr. Houston?

12 MS. JACKSON: Exactly, yes. We
13 have common clients.

14 MR. TAYLOR: Thank you, ma'am.

15 MS. JACKSON: Yes.

16 THE COURT: Let's start looking at
17 the calendar here real quick just in
18 case.

19 Actually, Tuesday or Wednesday --
20 Tuesday afternoon or tea time Wednesday
21 looks better for me than Monday.

22 MS. JACKSON: Your Honor, I'm
23 happy to follow up with Charles,
24 continue trying, that way we don't take
25 Court's time to continue trying to

1 reach him, let him know about the
2 technical issues and that we need to
3 get back on the calendar for Tuesday or
4 Wednesday.

5 If that's convenient for the
6 Court, I can continue, that way we
7 don't monopolize the Court's time
8 waiting.

9 THE COURT: Yeah. I just hate --
10 I mean, I'm okay because I had this
11 scheduled. I guess y'all did, too.
12 But I just know that people having to
13 bill their clients by the hour. They'd
14 rather bill one time than one and a
15 half times, so...

16 MS. JACKSON: Right.

17 THE COURT: You know, I mean, it's
18 1:46. Let's give it another four or
19 five minutes and see --

20 MS. JACKSON: Sure.

21 THE COURT: -- if he comes on.
22 And, if not, then -- well, let's start
23 talking times real quick.

24 So Tuesday afternoon, I've got
25 free, 2:00 to 5:00.

1 MS. JACKSON: Okay.

2 THE COURT: How do y'all look if
3 we were to just -- same everything?
4 Obviously, we'd send back out a new
5 invite because WebEx makes us, but 2:00
6 to 5:00 --

7 MR. WILLIAMS: Your Honor, there's
8 a town council meeting that starts at
9 4:00 that I'd like to either watch or
10 attend.

11 MR. TAYLOR: Your Honor? Judge,
12 excuse me. You may remember, you had a
13 case schedule to try that had myself
14 involved and it was going to be a
15 three-day trial with Mr. Lizzi from
16 Charleston which you continued about
17 two weeks ago. And we put in some
18 depositions for those two days and they
19 are going to very long, but they really
20 need to stay on the calendar for those
21 two days, if they can.

22 THE COURT: That's why I have the
23 time. Okay. All right. Well, that
24 makes sense. I've already filled up
25 half of it. Let's see. All right.

1 Well, let me get back on the calendar
2 then.

3 MS. JACKSON: So, then, Mr.
4 Taylor, it sounds like we need look at
5 Thursday; is that right? Tuesday and
6 Wednesday you're in depos?

7 MR. TAYLOR: Those depos are
8 actually Tuesday through Thursday.
9 Monday or Friday, either one of those
10 days would be good, Judge, anytime.

11 THE COURT: I can do -- I've got
12 something that's 1:30 to 5:00 and it
13 going to take every minute of that.
14 I've also got a rule to show cause at
15 10:00 that looks like it's a debtors
16 exam style so it'll probably take an
17 hour, we'll call it. So I've got from
18 11:00 to 1:30 if I bring a candy bar to
19 eat. We can certainly do that. We
20 could do 11:00 to 1:30 on Monday. We
21 know that Tuesday, Wednesday, Thursday
22 are out. Friday -- Friday's not good.

23 And then skipping to the next
24 week, the 21st is a holiday. I have
25 the entire afternoon of the 22nd, which

1 is, of course, a week from this
2 Tuesday.

3 How do y'all look for that.

4 MR. HOUSTON: Hello?

5 (Unreportable simultaneous
6 speakers.)

7 MR. WILLIAMS: Nobody has heard
8 what you had to say, Judge.

9 THE COURT: Oh. You lost me, too?

10 MR. WILLIAMS: You're no longer on
11 the call.

12 THE COURT: I'm no longer on the
13 call?

14 MR. WILLIAMS: I was talking to
15 Charles.

16 THE COURT: My goodness. This
17 whole thing is just falling apart.

18 MR. TAYLOR: Your Honor, I'm good
19 for either of those times that you just
20 said.

21 THE COURT: Well, let's see if we
22 can get Charles back real quick. Maybe
23 we can salvage it.

24 If not, how does everybody look
25 for the afternoon of the 22nd?

1 MS. JACKSON: It's wide open for
2 me.

3 MR. WILLIAMS: Me, too, Judge.
4 Judge, I was just asking about February
5 22nd, what -- I just talked to Charles
6 and I told him what to do. I told him
7 to cut off the call to WebEx and rejoin
8 it.

9 THE COURT: All right. Then we'll
10 then we'll try with the stop video
11 engaged.

12 You know, two years ago when all
13 this started, I kept meaning to get a
14 headset and I've never gotten one.
15 I've got to get one of these days. I
16 heard that helps a lot.

17 MR. WILLIAMS: I use it all the
18 time on the telephone. It really does
19 help. I can go walk outside in the
20 parking lot talking with this one.

21 THE COURT: That's good.

22 MR. WILLIAMS: I can't hear
23 Charles anymore. I think I'm still on
24 with him. My call is still active on
25 his mobile phone, but I can't hear

1 anything.

2 THE COURT: Well, that's bad, if
3 it's still active.

4 MS. JACKSON: Right.

5 MR. WILLIAMS: He was -- we was on
6 the WebEx on his computer so that
7 doesn't -- I did it on the mobile
8 phone. It doesn't do anything there.

9 THE COURT: Oh, okay. Okay.
10 Good. We'll give it another minute or
11 so and then --

12 MR. WILLIAMS: Give me a moment,
13 let me call him back.

14 THE COURT: Okay.

15 Something just happened to the
16 boxes. Oh, wait. Charles is back.

17 MS. JACKSON: Charles, can you
18 hear us?

19 MR. HOUSTON: Yes, I can.

20 MS. JACKSON: You should stop
21 video if you start having problems with
22 capacity.

23 MR. HOUSTON: Say that again?

24 MS. JACKSON: Stop the video.

25 MR. WILLIAMS: Yes, Charles. Our

1 recommendation is that if look down at
2 the bottom -- there you go. You still
3 show up there.

4 THE COURT: All right. Charles --

5 MR. HOUSTON: I don't see myself,
6 but that's doesn't -- that's over here.

7 THE COURT: Right. We think your
8 internet, I guess, is too slow or
9 something, so...

10 All right. Since we can't see
11 your mouth move, it actually makes it,
12 at least for me, a little bit more
13 difficult to hear. So do the best you
14 can as far as getting close to the
15 microphone.

16 Now, we lost you pretty much at
17 the beginning, so why don't we just
18 start over with whatever --

19 MR. HOUSTON: If at any point I'm
20 not heard, would you just do this, Your
21 Honor, and I'll know you are having
22 difficulties?

23 THE COURT: Well, I can't see what
24 you're doing, but you mean something
25 like this, so --

1 MR. HOUSTON: If you'll just hold
2 up your hand, that indicates to me that
3 I'm not being heard.

4 THE COURT: All right. I can
5 certainly do that.

6 MR. HOUSTON: I'll start from the
7 beginning.

8 THE COURT: All right.

9 MR. HOUSTON: What we're saying,
10 Your Honor, is -- what I quickly said
11 was we are requesting the Court to
12 address each issue that we have
13 presented in this proceeding. The only
14 thing that we have received from the
15 Court is a blanket denial of all of the
16 motions and all of the issues within
17 the motions. So, therefore, we are
18 left without knowing why.

19 What is the Court saying what is
20 the reason, et cetera. Did the Court
21 consider this matter at all? So this
22 is the underground -- underrun reason
23 we have requested this motion for
24 reconsideration.

25 There are also other areas of law

1 that we want to bring up in this motion
2 to be addressed by the Court, also.
3 The remaining points pertaining to
4 these issues is one, the procedural
5 issues.

6 One, that there has not been an
7 evidentiary hearing in this matter
8 where sworn testimony has been taken of
9 witnesses. The only thing we've had is
10 just a series of orders, basically
11 consent orders, where the attorneys
12 have stipulated to certain findings.
13 This is not proper because I don't know
14 the genealogy of the family and I
15 cannot either affirm or deny that this
16 is true.

17 What the law requires is to have
18 sworn testimony where members of the
19 family come in and they testify under
20 oath that this is our genealogy.
21 Without that, the Court doesn't have
22 any evidentiary basis upon which to
23 make a ruling as to the chain of title,
24 and also who is within the chain or
25 comes under the umbrella of the chain.

1 The other point we're making is
2 that it was unjust for the defendants
3 to be required to pay several million
4 dollars within 60 days, and is without
5 the benefit of receiving a fee simple
6 title to the property. It's our
7 position that any transaction for the
8 sale of the property implies that the
9 seller will have fee simple title,
10 marketable title to the property. In
11 this instance, they don't have it and
12 they knew they didn't have it.

13 And the other thing was, there was
14 nothing in the prior order stating who
15 would make the conveyance to the
16 defendants. How can you have a
17 contract to sell property if there's no
18 provision as to when you're going to
19 receive the deed or who's going to
20 prepare and sign off on the deed so
21 that you, the buyer, require all of the
22 outstanding interest in the property?
23 You know, at best, the only thing my
24 clients were receiving was a quick
25 claim deed. And that's in evidence.

1 We think that it was justified and
2 fair that we should have received an
3 extension of time of 45 days within
4 which the Court would have an
5 opportunity to cure this defect, i.e.
6 primarily by having an evidentiary
7 hearing where the family members could
8 come in and testify to the genealogy of
9 the family.

10 This would cure the problem of all
11 those four open estates, would be to
12 have the family come in and testify
13 under oath on the record that these are
14 the family members, this person died
15 and these are the people who were their
16 relatives at the time -- or heirs at
17 the time of their death. We don't have
18 that in the record, but we could've
19 gotten that in the record within the 45
20 day period so that we could've closed
21 on the property.

22 The other point we're making is
23 that the plaintiffs knew that the
24 property was heirs titled, even though
25 the Court has not, as yet, made its

1 determination, as required by the
2 Pinckney Act, to find that it is titled
3 property. In their prayer for relief,
4 they don't even ask the Court to
5 declare that that is heirs titled
6 property because they knew that they
7 wanted to complete this sale and that
8 they wanted to do this before all of
9 this could be accomplished. So they've
10 taken the shortest route in trying to
11 obtain their objectives, and this is
12 unfair to the defendants.

13 The other issue is, is that under
14 the balance of the equities, what the
15 defendants want to do with the property
16 is to retain an ownership interest in
17 it, and this is exactly in line with
18 the legislative purpose before the
19 enactment of the -- for the
20 Pinckney Act.

21 So those -- those are the germane
22 issues that we would want the Court to
23 consider and rule upon. There are
24 others, but I think they have been
25 pretty well covered in the respective

1 briefs of both the plaintiffs and the
2 defendants.

3 THE COURT: Thank you so much,
4 sir.

5 Mr. Taylor? We may have just lost
6 Mr. Taylor, or Mr. Williams.

7 MR. WILLIAMS: It looks like
8 Taylor is back there.

9 THE COURT: He's back. Okay.
10 Good.

11 MR. WILLIAMS: Mic's off. You're
12 muted. No, you're frozen.

13 THE COURT: Oh, great. We
14 probably should've grabbed the 22nd and
15 called it a day.

16 Tom, are you --

17 MR. WILLIAMS: Tom, are you with
18 us, there?

19 You're muted. There you go.

20 MR. TAYLOR: Can you y'all hear me
21 okay now, Judge?

22 THE COURT: Yes. You may want to
23 try Ms. Jackson's trick, through. I
24 know you went through all the trouble
25 to put a tie on, but just so we don't

1 lose you again.

2 MR. TAYLOR: Judge, from my end, I
3 was getting some breakup on Charles.
4 But have you call on Chet and I to now
5 to respond, Your Honor?

6 THE COURT: I did, yes.

7 MR. TAYLOR: All right. Judge,
8 I'm stopping my video. I hope that
9 gives me a little more clarity.

10 THE COURT: It has. It has.

11 MR. TAYLOR: All right. Judge,
12 thank you.

13 Your Honor, we filed a memorandum
14 in opposition to set this motion for
15 consideration last night. I hope you
16 have had the opportunity to see it and
17 that you will take a look at it.

18 Within that memo, Your Honor, we
19 respectfully tried to draw the Court's
20 attention to the fact that this is a
21 motion for reconsideration under
22 apparently mostly Rule 60. It is not
23 an opportunity and should not be an
24 opportunity to re-argue all of the
25 background of the case. The Court has

1 ruled.

2 And to address just several of the
3 views that Mr. Houston raised, Your
4 Honor.

5 First of all, I want to make sure
6 I remind the Court that there have been
7 actually -- there's been testimony
8 taken in this matter before Mr. Houston
9 was substituted for Mr. Vaux, but back
10 when we were discussing the valuation
11 of the property, there were appraisals
12 submitted to the Court and there were
13 hearings held concerning that.

14 But, Judge, most importantly, the
15 May 21st order of this Court, which was
16 a consent order -- May 21st, 2021,
17 which was a consent order signed off on
18 by all of the plaintiffs and all of the
19 defendants legally and specifically set
20 forth all of the undivided interest in
21 the real property specifically to each
22 of the parties.

23 There is no question, Judge,
24 whether that has already been resolved
25 by consent, Your Honor, which is even

1 more important. And the issue that
2 continues to be raised by Mr. Houston,
3 which we argue is inappropriate, that
4 there may be some need to hold another
5 hearing for a genealogical series of
6 testimonies and things like that,
7 Judge, quite simply, that was agreed to
8 almost a year ago by all parties.
9 There is no dispute as to the ownership
10 of each of these.

11 Judge, we do -- and we've all
12 talked about it several conferences
13 before -- know that there are going to
14 be deaths in any cases like this where
15 there are a lot of different heirs that
16 have owned the property. That doesn't
17 address the issue of what they owned
18 because that will only be addressed by
19 the probate court and given to those
20 descendants.

21 But, Your Honor, again, all of the
22 ownership issues in this case have been
23 resolved. The quiet title aspect of
24 this case was resolved by consent of
25 all the defendants, a written consent

1 order submitted.

2 Judge, the second part that
3 Mr. Houston continues to talk about a
4 good bit, I understand the equitable
5 argument and the Court has indicated
6 its understanding of the equitable
7 argument, that it is tough to get
8 financing on a project like this from a
9 minority ownership.

10 Judge, I will remind you again
11 that the defendants who are now holding
12 up or attempting to hold up the
13 contract closing that is scheduled to
14 close in March own less than 2 percent
15 of the land. It is the remaining 98
16 percent of the owners who are in the
17 plaintiffs area who are trying to move
18 forward before the Fed kills this real
19 estate market and lets us close on this
20 -- this transaction, which I think
21 everybody agreed two appraisals was a
22 really nice price for the property.

23 But, Judge, to get back to the
24 point I wanted to make, Mr. Houston is
25 simply in error when you argue that it

1 is up to the Court or the plaintiffs to
2 somehow give a -- what would amount to
3 a general warranty deed in South
4 Carolina to the defendants so they can
5 go get their financing. That's simply
6 not the law.

7 The Pinckney Act does not require
8 that, nor does any established case law
9 or statutory law in South Carolina
10 require it. The statute is very clear.
11 An argue, defendants have the
12 opportunity to buy out the ownership
13 interest of the plaintiffs. They're
14 not actually getting a deed, Your
15 Honor, they're simply buying out the
16 ownership interest of the plaintiffs
17 pursuant to the statute.

18 It's not incumbent upon the
19 plaintiff nor the Court to guarantee
20 them any particular type of warranty
21 deed, general, special or otherwise,
22 they are simply buying out the interest
23 of those individuals whose interest has
24 been established by the May 21st, 2021
25 order of this Court.

1 Judge, I would also note for the
2 record that there is an argument within
3 the defendant's memorandum in support
4 of this motion that there was some type
5 of potential issue concerning service
6 of process on Keita White. And, Judge,
7 I pointed out in my memo that that was
8 never raised in the answer, the
9 defendant's answer.

10 There's never been any type of
11 motion before the Court concerning
12 service of process or service. And,
13 that, therefore, has been waived under
14 Rule 12(H). There's also no evidence
15 in the record whatsoever that indicates
16 there was not proper service. But, in
17 any event, it has been laid, the
18 defendant's answer, the general answer,
19 and you moved on.

20 Your Honor, we ask the Court, and
21 I'd like to ask Chet if he had anything
22 further, maybe.

23 But we'd ask the Court to deny the
24 motion for reconsideration. You know,
25 Mr. Houston basically started by

1 saying, we want to know what the judge
2 was thinking. And, you know, Judge, I
3 can appreciate that, but we've all
4 tried more cases to understand that
5 sometimes in an order, you're not
6 necessarily going to get everything and
7 every explanation that you want.

8 The law here has been met. The
9 defendants had 60 days in which to fund
10 -- actually, they had 63 days in which
11 to buy out the plaintiffs' interest.
12 And not during -- at any time of that
13 63 days was there any type of motion
14 made for an extension. It wasn't until
15 after the 5:00 p.m. deadline had fallen
16 on December 22nd that a motion was
17 filed for additional time.

18 But even then, Your Honor, it was
19 not filed with any type of deposit or
20 anything like that that would show the
21 Court that there was actually any
22 reasonable basis for holding up this
23 contract. Which, again, Judge, you've
24 indicated a number of times that you
25 understood our great concern about this

1 real estate market collapsing at some
2 point in time.

3 And given what happened yesterday
4 with interest rates, I think we're all
5 looking again at that. And I ask the
6 Court to deny the motion to reconsider
7 so that we can go on and get this
8 contract closed.

9 And I'd like to ask the Court if
10 Chet has -- my partner has any
11 additional input?

12 MR. WILLIAMS: Yes, I would, if I
13 may, Your Honor.

14 The recent history of this is that
15 the defendants did not timely pay into
16 the registry of court, the amounts that
17 were required to purchase the
18 plaintiff's interest. And on -- I
19 believe it was December 22nd of 2021,
20 Mr. Houston filed three motions, a
21 motion for relief of judgment, which
22 you denied, and several others.

23 And those motions were resolved on
24 June 20, 2021 when you viewed those
25 basically as a motion to reconsider.

1 But they were not timely filed. And,
2 in that case, I don't know that the
3 Court owes the defendants any sort of
4 detailed explanation. If you're moving
5 that the -- that they weren't timely
6 filed if you're told that they weren't
7 timely filed.

8 And with respect some of the title
9 issues, you know, at Mr. Houston's
10 request, we went through a lengthy
11 publication process to see if there
12 were any other folks out there who
13 might claim an interest in the
14 property, Maria Partner was the
15 guardian, no one came forward.

16 Mr. Houston still keeps arguing,
17 well, maybe there's somebody else out
18 there. But if there is, the time for
19 them to enter their claims has long
20 since passed. And defendants' actions
21 now are doing nothing but hindering the
22 possible sale of the property in March,
23 which will be to everybody's detriment.

24 Thank you, Your Honor.

25 MR. HOUSTON: Your Honor, can I be

1 heard?

2 THE COURT: Yes, sir. Please, go
3 ahead.

4 MR. HOUSTON: In response, he said
5 something about capabilities. The
6 defendants are more financially capable
7 of carrying this thing through
8 immediately than the plaintiffs. We
9 have no -- nothing in the record about
10 the plaintiffs' physical -- physical
11 capacity.

12 The defendants have reduced that,
13 so the argument -- our argument would
14 be stronger, that if time is the
15 important factor, we are ready to do it
16 now. The only thing we're requesting
17 is a good deed, and somebody won't give
18 us a deed. I mean, it's ridiculous to
19 have somebody just deposit several
20 million dollars in court and never know
21 when they're going to receive a deed or
22 who's going to make the deed.

23 And where the Act may lack
24 specificity, that's where the court of
25 equity can step in and fill in the

1 blanks. Your Honor, the Pinckney Act
2 may not cover every minute detail, but
3 we're -- as long as the Court does not
4 act contra to the intent and purpose of
5 the Act, the Court itself, as a court
6 of equity, can step in and fill in the
7 dots.

8 And the dots need to be filled in
9 in this particular way when we're
10 talking about an advance of \$7 million
11 for some property. What's more likely
12 to happen is, they're going to try to
13 complete their transaction and then
14 come back later on and say, let's
15 finish the case and now get our client
16 a good title to this property.

17 What they're trying to do now is
18 just defeat our right of first refusal
19 because no one is going to buy this
20 property, even their client, unless
21 they can eventually get a fee simple
22 title to it. How are they going to be
23 able to resell the property or develop
24 the property if they don't have the fee
25 simple title?

1 This is somewhat like a -- like a
2 trick, you know, give it to us now, but
3 we know you're right but then we want
4 to complete our deal and get you out of
5 the picture, then we'll come back to
6 the court and then straighten out the
7 title. That's not equitable.

8 MR. WILLIAMS: Your Honor, may I?

9 THE COURT: Wait for Mr. Houston
10 to finish, then I'm happy to hear from
11 you. Mr. Houston, were you finished
12 with your thoughts?

13 MR. HOUSTON: Yeah.

14 THE COURT: Okay.

15 Go ahead, please, Mr. Williams.

16 MR. WILLIAMS: Thank you, Your
17 Honor.

18 The Pinckney Act -- I would call
19 this use of the Pinckney Act doesn't
20 require any sort of fee through anybody
21 and the end result of whatever happens
22 in the Pinckney Act is accomplished by
23 way of your order. If you enter an
24 order that recognized the many times
25 when Mr. Houston refers to us trying

1 defeat his right -- his client's right
2 of first refusal, they defeated that
3 themselves when they let the time
4 period run without depositing their
5 money.

6 But I would suggest to you that
7 the end result of the Pinckney Act in a
8 case like this is an order from this
9 Court who says who owns the title and
10 what happens. And if it's a sale to
11 our client, then that would be
12 accomplished by an order from you or a
13 deed signed by you.

14 And I think Mr. Houston is just
15 trying to cloud your views in order to
16 continue to try and keep his client's
17 foot in the door, and that's not at all
18 what the Pinckney Act calls for.

19 MR. HOUSTON: The Pinckney Act
20 specifically calls for that, it calls
21 for the family members who want to
22 maintain possession in the interest in
23 the property. This the (indiscernible)
24 of the Pinckney Act. So we're directly
25 on point for what we're trying to do.

1 The second thing is, you know, and
2 I'll give you an analogy. A couple
3 went to inquire to the family court for
4 a divorce, and they say, you know,
5 we've been separated for over a year.
6 But the court's still not going to
7 grant them an order until the court
8 hears some sworn testimony from them.

9 And this is, to use that analogy,
10 the same problem we have here. We
11 don't have any sworn testimony in the
12 record, so that a stranger looking at
13 it, that they can feel comfortable that
14 their client 100 percent interest and
15 there are no other outstanding interest
16 to the property.

17 MR. WILLIAMS: Your Honor, isn't
18 that the purpose of the publication?

19 MR. HOUSTON: Yes, you did -- you
20 did cure that.

21 MR. WILLIAMS: Then it's cured and
22 we're past --

23 MR. HOUSTON: -- after you did the
24 notice, you did cure that. But then --
25 and this goes back to the

1 jurisdictional question that the judge
2 said when he didn't have jurisdiction
3 because he had issued a final order.
4 Well, how could you have a final order
5 when you still have publications going
6 on?

7 MR. WILLIAMS: That was after --
8 that was after the publication was
9 completed, Charles.

10 THE COURT: Let me -- let me do
11 this. Let me let y'all just finish
12 your thoughts rather than go back and
13 forth on this.

14 So, Mr. Houston, did you have any
15 other thoughts on that? I'm happy to
16 hear them and then I'll turn it back
17 over to either Mr. Williams or
18 Mr. Taylor.

19 MR. HOUSTON: What I want to say
20 is that the October order was not the
21 final order in this proceeding.

22 THE COURT: I mean, I'll have to
23 -- this is a heck of a file, but --

24 (Unreportable cross-talk.)

25 THE COURT: -- stop any orders.

1 MR. HOUSTON: -- final order
2 because there has not.

3 THE COURT: Let me -- let me ask a
4 quick question, though, Mr. Houston. I
5 guess what I'm trying to figure out is
6 the lay -- we had so much motions, so
7 many hearings, the order that you have
8 filed this motion on was the result of,
9 in part, a motion for reconsideration
10 because that was the one where there
11 had been the order saying post the
12 money with the clerk, and that order
13 had sat there for however long.

14 And the -- of course, then the
15 time it was not possible for your
16 clients, for whoever reason, they
17 didn't post the money. So then you
18 sought reconsideration of that order
19 and an extension. An order was issued
20 from that motion to reconsider, and
21 now, this, at least at first blush,
22 looks like a motion to reconsider the
23 order from the reconsideration motion
24 that we previously heard.

25 MR. HOUSTON: Your Honor, there

1 were two orders, one -- or two motions,
2 one for relief.

3 THE COURT: Right.

4 MR. HOUSTON: Okay? And the other
5 one was for reconsideration.

6 THE COURT: But the motion for
7 relief had to do with issues that had
8 been decide months, if not a year ago,
9 in which motions for reconsideration
10 were not filed within the ten days.

11 I guess what I'm trying to do,
12 since you brought up jurisdiction, is
13 try to figure out -- I've got to piece
14 it all together, I guess, with a
15 calendar, because, as you all very well
16 know, once the ten days has run, then a
17 motion for reconsideration would be
18 improper for me to rule on.

19 MR. HOUSTON: But the question is
20 whether or not that was the final
21 order. That's what we're addressing to
22 the Court. That wasn't the final order
23 ending the case.

24 THE COURT: Well, on a particular
25 issue, it might be, but -- but I don't

1 know. You know, I'll have to look at
2 it and I'm sure y'all will look at it
3 after this, and try to sit down with a
4 calendar because I don't think anyone
5 can argue with the fact that this has
6 been a fairly complicated situation.

7 Now, I do have to point out,
8 Mr. Houston, that you've continually
9 said that your clients need a fee
10 simple title to move forward, but, I
11 mean, I don't think anyone has ever
12 argued with the proposition that
13 whoever buys this is going to get the
14 same title.

15 If the plaintiffs get it right
16 now, they're getting whatever the title
17 is right now. If they feel like
18 they've got to move forward at some
19 point and further clear the title, so
20 be it. Let them file it.

21 MR. HOUSTON: That's not -- that's
22 not the law, Your Honor. The law is,
23 in South Carolina, that any time you
24 have a sale, it implies the giving of
25 warranty deed.

1 MR. WILLIAMS: But there's no
2 contract. (Indiscernible) contract
3 situation.

4 MR. HOUSTON: I'm putting money --
5 several million dollars in court to
6 purchase a percentage interest is not
7 considered a contract?

8 MR. WILLIAMS: No, sir, it's not.
9 You do it pursuant to the statute.

10 THE COURT: Yeah. I don't
11 disagree with the proposition that one
12 set of heirs is entitled to buy the
13 other set out under certain
14 circumstances. And I don't -- you
15 know, I mean, the fact is, property
16 changes hands with special warranty
17 deeds, quick claim deeds, masters
18 deeds, you know, everyday.

19 You know, every transaction is not
20 going to be a fee simple title, that
21 would shut real estate down, at least
22 in South Carolina. But, yes, if you
23 contract with someone and your
24 obligation is to transfer a fee simple
25 title, then, yes, then you transfer fee

1 simple title. But that's not the
2 situation we're talking about.

3 MR. HOUSTON: Wasn't the Court's
4 order to the effect that upon the
5 production of the money, that there
6 would be a transfer of interest from
7 the plaintiffs' interest in the
8 property to the defendants?

9 THE COURT: Yep. In interest.
10 Yep.

11 MR. HOUSTON: Okay. And in South
12 Carolina, isn't a transfer by interest
13 by deed?

14 THE COURT: Mr. Houston, we can go
15 round and round about this, but I
16 just -- I've got to respectfully
17 disagree with your proposition that
18 there's some requirement of fee simple
19 title in every transaction. That's
20 just --

21 MR. HOUSTON: Well, if it's not,
22 that's because of special arrangements
23 that are agreed between the parties.
24 But we haven't agreed to receive
25 anything. That's for the fee simple

1 title.

2 THE COURT: Who would we give it
3 to?

4 MR. HOUSTON: We said we'd buy the
5 property as is and then clear the title
6 later on, that -- that would be more in
7 line with their particular reason at
8 the moment. But we didn't enter into
9 that agreement that we would take less
10 than the fee simple title to the
11 property. And we suggest it requires
12 that the warranty deed be given.

13 THE COURT: I don't know the
14 agreement you're talking about. What
15 agreement are you talking about?

16 MR. HOUSTON: The right of first
17 refusal. I'm talking about that
18 agreement.

19 MR. WILLIAMS: But there is no
20 agreement. It's all statutory in
21 nature and it's all pursuant to the
22 statute. There's no agreement, and
23 what the Pinckney Act says is that if
24 the defendants buy out the plaintiffs,
25 they get whatever interest the

1 plaintiffs may have.

2 MR. HOUSTON: All right. How do
3 you buy out --

4 MR. WILLIAMS: That's it.

5 MR. HOUSTON: How do you buy out
6 real estate interest in South Carolina?
7 By deed.

8 MR. WILLIAMS: It can be done by
9 way of a court order.

10 THE COURT: Well, let's do this.

11 (Unreportable cross-talk).

12 MR. HOUSTON: -- deed.

13 THE COURT: Let's do this because
14 I think we can probably go round and
15 round about this all day, but -- and I
16 think I understand both of your
17 opinions on it.

18 Was there anything else,
19 Mr. Houston, other than that issue that
20 you wanted to be heard on?

21 MR. HOUSTON: There are some
22 others, but they were all mentioned in
23 our respective briefs, Your Honor.

24 THE COURT: Okay. So let me
25 ponder some of this. I mean, if y'all

1 wanted to send follow-up briefs based
2 on the argument, that's fine. Just
3 make sure the other side gets them.

4 I mean, honestly, part of my
5 concern is whether or not a motion for
6 reconsideration at this stage would be
7 timely, and maybe it is, maybe it
8 isn't, I don't know, I've got to sort
9 of pick through it. But I'd be happy
10 to hear y'all's further thoughts on
11 that.

12 And then certainly, I'll look into
13 Mr. Houston's assertion that the
14 Pinckney Act requires fee simple title
15 transfer. I don't see that in the
16 statute, but I read statutes all the
17 time and see things that I haven't seen
18 before, so who knows. But I'm happy to
19 hear anything else y'all want to let me
20 know in the a brief on that.

21 Anything else from anybody on any
22 part of this?

23 MR. HOUSTON: Your Honor, just one
24 final thought, and that is the final
25 order ends the case, and this case

1 hadn't been ended.

2 THE COURT: Well, of course, as
3 you know, many quiet title and
4 partition actions go on until the
5 administrative portion, which has to do
6 with dispensing of the funds and that
7 sort of thing.

8 The pertinent parts, I think, were
9 ruled on, the quiet title and the
10 partition. But there's still some
11 administrative things that have to be
12 done. I won't disagree with you,
13 there.

14 MR. HOUSTON: No order has been
15 issued from the Court granting the
16 prayer for relief to certify the
17 plaintiffs.

18 MR. TAYLOR: It certainly has --
19 it certainly has been. Excuse me.

20 THE COURT: Yeah, I think y'all
21 are going to have to agree to disagree
22 on that. I think it probably has, but
23 I'll look.

24 MR. WILLIAMS: If I may, if you go
25 back and read the order from October,

1 it says -- that's the order that gives
2 the defendants the time to deposit the
3 money into the court. It also says
4 that if the defendants do not timely
5 make their deposit, then the plaintiffs
6 are authorized to proceed with the sale
7 of the property for the purchase price
8 of not less than \$9.1 million.

9 That has already been ruled on.
10 It's over and done with. It's the law
11 of the case.

12 MR. HOUSTON: Because that
13 would've been considered a final order
14 at that particular time, then we
15 could've taken the appeal --

16 THE COURT: I don't know. Might
17 have to --

18 MR. WILLIAMS: We have a
19 difference of opinion on that. But it
20 is -- it is in the record.

21 MR. HOUSTON: All right. That
22 part is in the record, yes. I -- I --
23 the order is in the record. That's
24 part's in the record.

25 THE COURT: All right.

1 MR. HOUSTON: We agree on that.

2 THE COURT: Always good to get
3 some agreement.

4 MR. TAYLOR: Your Honor?

5 THE COURT: Yes, Mr. Taylor.

6 MR. TAYLOR: Judge, I want to make
7 sure that I understand what the Court
8 is asking for.

9 Are you asking us, sir, to brief
10 further issues or just saying if there
11 are additional things that we want to
12 bring to your attention, we should?
13 And by when should we have that, Judge?
14 Because as we've indicated earlier,
15 we're rapidly coming up to the closing
16 that we anticipate coming to the Court
17 to, I believe, alert them one more time
18 as to that closing date.

19 Correct, Chet?

20 MR. WILLIAMS: Yes.

21 THE COURT: If I said one week,
22 would that give y'all -- and Mr.
23 Taylor, I understand you've got
24 depositions next week. But if I said
25 if you -- optional, of course, but if

1 y'all wanted to be heard further on the
2 issues, specifically that we've
3 discussed today, I'll give you that
4 option to have something in on or
5 before sort of midday next week,
6 Friday.

7 Is that -- is that do-able?

8 MR. TAYLOR: Yes, sir. I mean,
9 we'll get it done, Judge. And Chet and
10 I will discuss, you know, whether we
11 are going to submit further. I think
12 my brief may have covered most of the
13 points. But I just wanted to make sure
14 that you are not, sir, waiting on us on
15 a specific point, and I'm not hearing
16 that.

17 THE COURT: Not -- not really.

18 Mr. Houston, does that work for
19 you, sir?

20 MR. HOUSTON: Yes. I think to
21 brief the Court and each other on our
22 respective positions on the issue, I
23 think what you're asking for right now
24 is the jurisdictional issue, and if
25 that's the one that you would like for

1 us to address.

2 THE COURT: That's definitely part
3 of it, yes, sir.

4 MR. HOUSTON: Then that opens it
5 up again.

6 THE COURT: Well, it's as open as
7 y'all want it to be, but those are the
8 questions, I guess, I've got.

9 You know, I mean, on the motions
10 to reconsider, the filing date, the
11 date, that sort of thing. You know,
12 the last thing I would want to do is
13 issue an order on a motion to
14 reconsider, have y'all spend three
15 years waiting around in Columbia to
16 have the court say, well, wait a
17 minute, now, Dukes didn't have
18 authority to issue any kind of an order
19 because this ten days ran on such and
20 such date.

21 That's sort of a waste of
22 everybody's time, so I want to make
23 sure I get that right. And that
24 appears to be an issue, so I'm happy to
25 hear from y'all.

1 Obviously, please serve the other
2 side with anything that's sent to us.
3 Please don't send it directly to me.
4 Please send it to Heather or Jarred and
5 they'll get it to me. But of course,
6 with copies to the other side.

7 So -- all right. As always, as I
8 say in every case I'm ever involved in,
9 I would urge y'all to sit down and see
10 if there's any resolution in this. I
11 always thought that if anybody can
12 settle even one family court child
13 custody action, then pretty much any
14 real estate action can be settled.

15 So there may be some way to
16 resolve everyone's concerns here and I
17 would urge y'all to at least try to
18 talk between now and the next time we
19 talk and see if there's any way to do
20 anything to bring this to a happy
21 handshake conclusion.

22 So anything else for this record?

23 MR. TAYLOR: Not from the
24 plaintiffs, Judge.

25 MR. WILLIAMS: No, sir.

1 MR. HOUSTON: Thank you, Your
2 Honor.

3 THE COURT: All right. Thank
4 y'all so much.

5 Y'all enjoy the weekend.

6 (Whereupon, the Hearing was
7 concluded at approximately
8 2:29 p.m.)
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

DORCHESTER COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

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

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina

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53:25 54:9,17	33:19			
55:4,5	29926 2:21			
y'all's 48:10	29928 2:7			
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Young 3:8	15:12 32:15			
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STATE OF SOUTH CAROLINA, COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III,
STANLEY ROBERTS, and DIANA
MENDHEIM, individually and as
agent and attorney in fact,
Plaintiffs,

v.

STEPHANIE LORRAINE KIRKLAND,
GARY LAMONT KIRKLAND, KEITA
NICOLE WHITE, CHERYL KIRKLAND,
WILLIAM CHARLES KIRKLAND,
PAULETTE KIRKLAND, PAUL T.
ALLBRIGHT, CHRISTOPHER KIRKLAND
AND SHAWN KIRKLAND,
Defendants.

Civil Action No.
2020-CP-07-02301

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VIDEOCONFERENCE HEARING

DATE: Thursday, September 15, 2022
TIME: 11:03 a.m. EDT/10:03 a.m. CDT
BEFORE: Honorable Marvin H. Dukes III
LOCATION: Remote Proceeding
Dallas, TX 75201
REPORTED BY: Sophie Caudle, Notary Public
JOB NO.: 5466494

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON, WILLIAM S. HARRISON,
III, STANLEY ROBERTS, AND DIANA MENDHEIM:

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1 A P P E A R A N C E S (Cont'd)
2 ON BEHALF OF DEFENDANTS STEPHANIE LORRAINE KIRKLAND,
3 GARY LAMONT KIRKLAND, KEITA NICOLE WHITE, CHERYL
4 KIRKLAND, WILLIAM CHARLES KIRKLAND, PAULETTE KIRKLAND,
5 PAUL T. ALLBRIGHT, CHRISTOPHER KIRKLAND, AND SHAWN
6 KIRKLAND:

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8 The Houston Law Firm, L.L.C.
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10 Hilton Head, SC 29926
11 chouston@houstonlawfirm.net
12

13 ALSO PRESENT:

14 Andre White
15 Barbara J. Harrison, Plaintiff (by
16 videoconference)
17 Earsa Jackson, Esquire, Clark Hill PLC (by
18 videoconference)
19 Georgia Harrison, Plaintiff (by videoconference)
20 Kay White (by videoconference)
21 Mark Jones (by videoconference)
22 Robert Young (by videoconference)
23 Rose Hampton (by videoconference)
24 Tyrone Hodges (by videoconference)
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E X H I B I T S

NO.	DESCRIPTION	ID/EVD
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Plaintiff:

(None marked.)

NO.	DESCRIPTION	ID/EVD
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Defendant:

(None marked.)

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P R O C E E D I N G S

THE COURT: Good morning. We're here in 2020-CP-07-02301. This is Harrison et al. vs. Kirkland et al. And this matter was scheduled for 10:30 a.m. today, the 15th of September for all outstanding motions. We're getting a little bit of a late start. It's 11:03 a.m. We had some difficulty trying to get Mr. Houston on. And Mr. Houston has decided to proceed audio only, and we can hear him just fine. And so we'll proceed that way.

Now I've got all outstanding motions. I see one motion. That is Defendants' Motion for Stay and Waiver of Supersedeas Bond or in the Alternative, a Nominal Bond Pending Appeal.

And, Mr. Houston, I'm happy to hear from you, sir.

MR. HOUSTON: Well, there are two motions, I think, Your Honor.

THE COURT: Okay.

MR. HOUSTON: The defendants have a motion, which you just identified. And I think also the plaintiffs had filed a motion for a master's deed, which I think is also on the agenda for today, if I'm correct.

THE COURT: Thank you for that

1 clarification. I should have noted that we're
2 actually having trouble with the CMS system right now,
3 so I have to open each individual document. I can't
4 scroll anymore. So I see that as well.

5 Let me ask, though: I would assume,
6 based on the nature of the motions, it makes some
7 sense to hear the defendants' motion first. Do the
8 parties agree on that? Otherwise, I ordinarily hear
9 motions, as y'all know, in the order in which they
10 were filed. Is there any --

11 MR. TAYLOR: Well, Your Honor, we would
12 agree that Mr. Houston's motion being heard first
13 would be appropriate.

14 THE COURT: Okay. Thank you so much.
15 All right then, Mr. Houston. I am
16 happy to hear from you, sir.

17 MR. HOUSTON: Okay. The first thing I
18 want to point out to the Court, Your Honor, is that we
19 have a duty to be candid and honest with the Court in
20 writing our briefs and in the factual representations
21 we make to the Court. And in that light, I give
22 reference to the brief filed yesterday evening by the
23 defendants citing the controlling statute pertaining
24 to the granting of a stay and supersedeas, which was
25 an error and very misleading. The statute that is

1 controlling is basically 16-6-270. Hold on. I'm
2 going to make sure I'm giving you the right number.
3 This is very small print coming off of
4 the -- otherwise, the ones that the defendants had
5 cited in their brief pertains to money judgments, and
6 that's not the category of our particular case. We're
7 not involved with a money judgment. We're
8 involved -- which I think that the statute they quoted
9 was I think 240. And the controlling one is 270.

10 And that is an order, you know, for the
11 sale of property in which the standards apply
12 different and the supersedeas bonds are much lower.
13 Under 270, basically the only bond that is required is
14 a bond to cover any waste to the land. And since this
15 is undeveloped property, you know, there can be no
16 damage done to it. No one is using it or occupying it
17 or having any activity upon the property. So the
18 property would be preserved in its natural state
19 during the pendency of the appeal.

20 And the formula that the statute sets
21 forth is the difference between the present value or
22 use of the property at this time compared with what it
23 would be at the time the appeal process would have
24 been resolved and completed. So here, we're dealing
25 with raw land, so we're only dealing with a nominal or

1 really no supersedeas bond at all. The --

2 THE COURT: I'm listening, sir. Keep
3 going.

4 MR. HOUSTON: Okay. The second point I
5 want to bring to the Court's attention is that the
6 order itself is vague, and the plaintiffs have not
7 conformed to it. This order was issued back in
8 October. And in January, I believe, the defendants
9 requested an additional amount of time to complete the
10 contract. This is September 2022. And as yet, there
11 has been no announcement that a valid contract exists.
12 And your order speaks to a valid contract. And since
13 there is no valid contract, that makes the order
14 voidable.

15 Additionally, the order didn't put any
16 definitive time frame in it, which it should have.
17 But in any event, back in January, they asked for
18 additional 60 or 90 days, and they weren't able to
19 produce. So we're being asked to post a bond on an
20 order, and the order itself is not concrete as to its
21 terms.

22 MR. FINGER: This is Terry Finger. At
23 the risk of interrupting, there is a valid contract
24 between my client, Rotunda Land Company, and the
25 plaintiffs. It is still in existence. We have been

1 waiting, ready, willing, and able to close. We just
2 keep -- every time we get close, there's another
3 appeal or another motion or something like that. But
4 there is a contract in place between the parties that
5 are referenced earlier in these transactions.

6 MR. TAYLOR: And copies had been
7 delivered to Mr. Houston prior.

8 THE COURT: Okay. All right. Thank
9 you.

10 Mr. Houston, go ahead and finish if you
11 would, please.

12 MR. HOUSTON: What is the date of the
13 contract? We've never been provided a complete
14 contract. The only thing we've heard of is that
15 requested another extension.

16 THE COURT: Do y'all have the date of
17 the contract?

18 MR. TAYLOR: Chet, can you help me with
19 that?

20 THE COURT: -- muted.

21 MR. TAYLOR: Turn your volume on,
22 Chester.

23 MR. WILLIAMS: Yeah. Your Honor, I'm
24 looking at a copy of an e-mail that I sent to
25 Mr. Houston on January 6 of this year that had a copy

1 of the fully executed contract attached to it.

2 THE COURT: Okay. Thank you.

3 MR. WILLIAMS: And --

4 MS. JACKSON: And, Your Honor, if I may
5 add, I think that what was provided had an expiration
6 date or a deadline by which to close. And I believe
7 that he's referring to documentation of an extension
8 of that deadline.

9 MR. WILLIAMS: Correct. And there have
10 been several extensions. And at this point, though,
11 there is a valid contract out there. Neither the
12 buyer nor the seller have taken any action to put the
13 other in default. And both the buyer and the seller
14 agree that there's a valid contract.

15 THE COURT: Okay. Thank you.

16 Mr. Houston, go ahead and --

17 MR. HOUSTON: Okay.

18 THE COURT: Yes, sir.

19 MR. HOUSTON: I'm raising the question
20 of the validity of a contract that they have come to
21 court and say, "This is the contract that's signed."
22 You know, for all we know, at some time, they may have
23 had a tentative contract that's now void.

24 THE COURT: Well, they have both sides
25 to the contract on this call, and they claim the

1 contract still exists. But -- go ahead.

2 MR. HOUSTON: That's lawyer's talk.
3 That's not producing the document.

4 MR. FINGER: Am I being accused of
5 misrepresenting my client?

6 MR. HOUSTON: You know, all we
7 concerned, they could say they have a verbal contract.

8 THE COURT: Okay. Well -- everybody
9 hold up a second. So I assume there's no objection to
10 sending Mr. Houston the latest contract extension if
11 he doesn't already have it. But that might resolve
12 that issue if it is an issue.

13 But so, Mr. Houston, go on with your
14 motion if you would, please, sir.

15 MR. HOUSTON: All right. But that's
16 the other point. The third point, Your Honor -- the
17 other matter. But those are the two salient points.
18 Plus the other points I've outlined in our brief. But
19 those are the two salient points that I want to bring
20 to the Court's attention now. One, we received it
21 under the incorrect statute, and that 270 controls as
22 the standard there. And the other one is that the
23 question about whether or not there is a valid
24 contract to substantiate the Court's order.

25 THE COURT: Okay. All right. Thank

1 you so much, sir.

2 MR. HOUSTON: -- says that they compel
3 it. They can enter the contract if they have it. If
4 they have it, come forth with the contract.

5 THE COURT: Okay.

6 MR. WILLIAMS: Well, that's simply not
7 true, Charles -- in March. It's the same contract.

8 THE COURT: Y'all hold on one second.
9 Let me make sure Mr. Houston is finished, and then
10 I'll be happy to hear the opposition to his motion.

11 So, Mr. Houston, anything else, sir?

12 MR. HOUSTON: Well, Your Honor, yes.
13 What I would say is that if they don't want to show
14 the contract to us -- which they should -- but that
15 they at least show it to you that they have a valid
16 contract and not a contract -- and not a contract
17 dependent upon the logic contingencies.

18 MR. WILLIAMS: If I may, Your Honor.

19 Charles, did you not get that e-mail
20 that I sent you in January with the copy of the
21 contract attached to it?

22 MR. HOUSTON: I may have, but I don't
23 have it in front of me. It's not been filed of
24 record.

25 MR. WILLIAMS: Well, it didn't bounce

1 back to me, so I have to assume that you got it. So
2 you do have the contract. So --

3 MR. HOUSTON: I'm not denying that you
4 sent me something. Right. But what I'm saying is --

5 MR. WILLIAMS: -- that we hadn't
6 provided it to you.

7 THE COURT: Yeah. We're making it
8 really difficult for our court reporter who's trying
9 to --

10 MR. WILLIAMS: I apologize.

11 THE COURT: -- take down everyone's
12 voices at once.

13 But let me do this: Mr. Houston, I
14 want to make sure you've told me everything you want
15 to tell me. Is there anything else, sir?

16 MR. HOUSTON: Well, we're talking,
17 basically, about a reasonable supersedeas bond. And
18 what we request is that the requirement of supersedeas
19 be waived or, if it can't be waived, let just some
20 nominal amount be established under the provisions of
21 the section 70 of that. I think it's 16-12-70 statute
22 dealing with appeals.

23 THE COURT: All right. Thank you.

24 MR. HOUSTON: If it's not granted, the
25 defendants will suffer irreparable harm and with the

1 potential, you know, that the appeal could be
2 dismissed as moot.

3 THE COURT: All right.

4 MR. HOUSTON: Yeah. The plaintiffs
5 have shown no prejudice. They have made the argument
6 about the economic factor, but that's frivolous.
7 You're talking about a development that's probably ten
8 years to twelve years into development. And basically
9 whatever the economic environment may be at the
10 moment, that's subject to change. And we're looking
11 at an extended period of time. I know my clients have
12 budgeted at least 75 million for the development of
13 this property. So where the stock market is today or
14 might be within the next few days, that is irrelevant
15 and not even taken into consideration for someone
16 who's going to make a major development. I mean,
17 everything on Hilton Head that's been built was
18 usually planned during bad times, so by the time they
19 built it, the good times are there. So I think that
20 their argument is misplaced and frivolous and carries
21 no substantial weight for consideration.

22 THE COURT: All right. Thank you so
23 much, sir. I appreciate it.

24 MR. HOUSTON: I also give reference
25 to --

1 THE COURT: Oh, go ahead.

2 MR. HOUSTON: -- all the other points I
3 made in my brief. But for the brevity of time, I
4 don't want to dwell on each one at that particular
5 moment, Your Honor. But I'll ask you to read the
6 brief and take those other factors in consideration.

7 THE COURT: Thank you so much, sir.

8 All right. I'm happy to hear anything
9 in opposition.

10 MR. TAYLOR: Your Honor, good morning.
11 Tom Taylor on behalf of the petitioning plaintiffs.
12 Judge, first, to deal with the issue of the contract,
13 let me be as clear as possible: I, with 38 years of
14 experience in front of -- Chet Williams, who is also
15 here on behalf of the plaintiffs, and Terry Finger
16 have affirmatively represented to the Court this
17 morning that there is a valid and existing contract
18 between Rotunda and the plaintiffs for the sale of
19 this property at \$9,750,000. That contract has been
20 previously provided to Mr. Houston. Copy of it will
21 be provided to Mr. Houston within an hour of this.

22 And, Your Honor, I draw the Court's
23 attention to the fact that in his motion, there is not
24 a word contending that there is not a valid contract
25 in existence. I have no idea where this issue came

1 from this morning. And certainly we could have
2 provided it prior to this had there been an issue
3 raised about it. But it is in existence, and it is
4 valid from both perspectives.

5 And, Mr. Finger, I'd ask you to confirm
6 that.

7 MR. FINGER: That's correct,
8 Your Honor.

9 MR. TAYLOR: All right. Judge --

10 MR. HOUSTON: My point is that they
11 have a contract, but it may not be a contract for a
12 complete sale. When is the closing date? Does the
13 contract specify a closing date?

14 THE COURT: Why don't we do this? I
15 understand that the contract is to be e-mailed to you,
16 Mr. Houston. And I'll let you tell me whatever else
17 you want to tell me once Mr. Taylor finishes. Why
18 don't we just try to keep it back and forth rather
19 than all at once? It makes it --

20 MR. HOUSTON: Well, Your Honor, I'm not
21 the person who's going to be the finder of fact.
22 E-mailing it to me doesn't accomplish anything. I
23 think that basically it should be submitted for your
24 review to see if it's a current and exercisable
25 present contract or if it's just a contract with the

1 intent to purchase with a lot of contingencies
2 contained in the contract.

3 THE COURT: Would y'all copy me with
4 the contract when you copy Mr. Houston again with it,
5 please? So --

6 MR. WILLIAMS: Your Honor, I've just
7 sent it to Mr. Houston. I've copied you. I've copied
8 Heather. I've copied Ms. Jackson. I've copied
9 Mr. Taylor. I've copied Mr. Finger. And --

10 MR. HOUSTON: Thank you for that.

11 MR. WILLIAMS: -- it does provide for a
12 closing date, I think, on March 22nd. However,
13 because of the defendants' actions in this
14 matter -- the dilatory actions of the
15 defendant -- we're not in a position to close yet.
16 We're waiting -- well, we are as long as Judge Dukes
17 grants our motion to sign a master's deed. Then we'll
18 be able to close. And neither party has taken any
19 action steps to put the other party into default.

20 THE COURT: Okay. Thank you so much.

21 All right. Mr. Taylor, go on, please.

22 MR. TAYLOR: Your Honor, thank you.

23 Your Honor, focusing on the motion at
24 hand -- Mr. Houston's motion which is entitled Motion
25 for Stay and Waiver of Supersedeas Bond -- we filed a

1 memorandum yesterday afternoon. Mr. Houston has
2 discussed it. Your Honor, this entire issue has
3 already been decided. As the Court is aware,
4 Mr. Houston has filed the notice of appeal with the
5 Court of Appeals, and that was filed on March the 9th
6 of 2022. On March the 17th of 2022, Mr. Houston filed
7 a motion pursuant to Rule 241(a), asking the Court of
8 Appeals to declare an automatic stay. And by order of
9 June 23, 2022, the Court of Appeals denied that motion
10 and stated specifically that the relief sought
11 required the posting in writing with two sureties
12 guaranteeing the property will not be wasted while the
13 appeal is pending. The Court of Appeals has
14 already -- and then -- asked for a reconsideration of
15 that. And after another two months, the Court of
16 Appeals denies the motion for reconsideration. The
17 Court of Appeals judge has already ruled that pursuant
18 to Rule 241, there is no automatic stay in this
19 matter, and that if there is going to be one,
20 Mr. Houston has to apply on behalf of his clients for
21 a supersedeas, and then this Court will decide what
22 that supersedeas, if it should be granted, should also
23 be bonded off with.

24 And, Your Honor, we would maintain very
25 strongly, as we have in every hearing that has been

1 held of this matter, that the continuing delays on the
2 sale of this land put at risk very much the \$9,750,000
3 price, which, Your Honor, I would remind the Court, is
4 a benefit to not only the plaintiffs, but to the
5 defendants because everyone is going to share in this
6 sale price pursuant to the previously agreed-upon and
7 court-ordered ownership percentages. There's nothing
8 about that that is in question anymore. The only
9 question is, how long are we going to delay until we
10 sell this land?

11 Your Honor, the motion is controlled by
12 Rule 241. Mr. Houston has talked a little bit about
13 the code. Because he raised that in his motion, I
14 attempted to address it for the Court's benefit.
15 Judge, what he is talking about is Section 18-9-130,
16 which I quote in my brief. And Mr. Houston talked
17 about 18-9-17, which may arguably be the more
18 appropriate code section to look at. But provides in
19 the same light, Judge, that a surety has to be taken
20 out to affirm that there is no waste committed on the
21 land. And, Judge, we don't know of anything that
22 could be more wasteful to all the people involved in
23 this process than to have a \$9,750,000 contract, which
24 was executed at the time when land sales were probably
25 40 to 50 percent higher than they are right now, given

1 what has occurred with the real estate and stock
2 market. And we urge the Court to deny the motion for
3 any type of nominal bond and to grant the motion only
4 upon a ordering and a rendering of a bond of
5 \$9.75 million in order to secure this property and to
6 secure the contract until the Court of Appeals can
7 rule upon the matter.

8 THE COURT: Now I've got --

9 MR. HOUSTON: -- interrupt --

10 THE COURT: All right, Mr. Houston.

11 MR. HOUSTON: In response -- again,
12 Counsel is citing the wrong statute. It's this 170
13 that controls the situation. This is not a judgment
14 for the payment of money. If this were a judgment for
15 the payment of money, what Counsel is proffering to
16 the Court would be correct. But Counsel knows, being
17 a learned lawyer, that this is not the nature of what
18 we are involved with -- order to sell property. Okay?

19 The second thing is, we have not
20 engaged in any dilatory practice. We have exercised
21 every right we have under the law because of the
22 deceitful manner in which the plaintiffs' counsel have
23 proceeded with this case. Not only with the due
24 process violation, but also with not proceeding to
25 permit the granting of a deed to the defendants when

1 they were requested to exercise their right of first
2 refusal.

3 The second thing is, they had no
4 intentions of going through with this action. They
5 said that this was an action to quiet title. But they
6 had no intent to take it that far. And they knew at
7 the inception of the action that there were four
8 outstanding estates. And so what their game plan was,
9 was to just take it as far as getting a order to sell,
10 and I don't know how they're going to close on any
11 quitclaim deed. But even if they do close on a
12 quitclaim deed, then what they're going to do is going
13 to bring another quiet title action, and then that
14 quiet title action alleged that my defendants have
15 already conveyed their interest in the property. And
16 that's deceitful. You know, when they said that
17 they're bringing an action to quiet title, that
18 actually stops my defendants from doing that. If we
19 have wanted to create a title, we wouldn't have been
20 able to do so because there was an action pending.

21 So the counsel for the plaintiffs have
22 not pursued this matter in good faith by not
23 proceeding to complete the cause of action that they
24 instituted. You know, that they stopped at the
25 halfway mark. So you know, to accuse of us any

1 dilatory practice is misplaced.

2 MR. WILLIAMS: If I may, Your Honor.

3 THE COURT: Go ahead, please, sir.

4 MR. WILLIAMS: Mr. Houston simply is
5 absolutely wrong in his assertion that there were four
6 open estates at the time of the consent order that
7 quieted title. At that point, all of the co-owners of
8 the property were living and alive. It's only because
9 of the defendants' dilatory actions through this that
10 four open estates are now out there. But, Your Honor,
11 you've addressed that before, and the way you handled
12 that is the property is sold; any amounts that are due
13 to those estates go into the registry of the court
14 until the estates are probated; they can then be
15 distributed from there.

16 THE COURT: Thank you.

17 MR. TAYLOR: Your Honor --

18 MR. HOUSTON: Your Honor, that consent
19 order is a subterfuge. Even in a criminal case, you
20 can't convict the defendant on just a confession; you
21 have to have some other collateral evidence. And in
22 this situation, they tried to substitute a consent
23 order in lieu of having an evidentiary hearing. And
24 because even the consent order, everybody couldn't
25 consent to it because some people had died.

1 MR. TAYLOR: Your Honor. Tom Taylor.

2 MR. HOUSTON: So that was another
3 subterfuge and misrepresentation of a nature.

4 MR. WILLIAMS: And I take offense at
5 being inferred -- not inferred -- absolutely stated
6 that we are doing anything underhand.

7 THE COURT: Thank you.

8 Mr. Taylor, you had something you
9 wanted to add.

10 MR. TAYLOR: Yes, sir, Your Honor.
11 Your Honor, for the record, all of this discussion
12 about the topics that Mr. Houston is now throwing out
13 there is inappropriate in this motion. Mr. Houston
14 can make those arguments if he likes to the Court of
15 Appeals via his appeal, but they are inappropriate at
16 this point.

17 And biting my tongue as hard I can,
18 Judge, I want to again say I take great offense at
19 this. And I know, Judge, you don't want to hear this,
20 but, Your Honor, Mr. Vaux representing the defendants
21 a year and a half ago consented to the ownership
22 because everyone knew that it was the right thing to
23 do. And there is a court order as to that in the
24 file. And to just be marching the law and throwing
25 out these allegations of deceit on behalf of me and

1 Chet and our plaintiffs is just factually wrong, and
2 it's just morally wrong --

3 MR. HOUSTON: You know -- in any case
4 in the history of South Carolina jurisprudence where a
5 consent order is accepted in lieu of a
6 statutory-required evidentiary hearing.

7 MR. TAYLOR: That's just bizarre to
8 even say.

9 MR. WILLIAMS: Yeah. I suggest that
10 there's been jurisprudence that says you can't do it.

11 THE COURT: Well, let's do this: I'm
12 going to try to read the statutes y'all have given me,
13 try to figure out what "waste" means, look at all of
14 this, and try to let y'all know something. I know
15 it's gone on forever. I see something popped up. I
16 guess somebody sent me the contract a minute ago. I
17 hadn't looked at it yet, of course.

18 MR. WILLIAMS: I did, Your Honor.

19 THE COURT: But I'll take a look at all
20 of it. This is the case -- and I got several of these
21 cases, of course, that sometimes run into one another
22 in my mind. But, Mr. Houston, your clients represent
23 what percentage ownership of the whole?

24 MR. TAYLOR: One point one percent.

25 MR. HOUSTON: Your Honor, the

1 percentage doesn't have anything to do with equitable
2 rights.

3 THE COURT: I'm sorry. I didn't hear
4 that, sir.

5 MR. HOUSTON: I said percentages has
6 nothing to do with equitable rights. And so far, if
7 we want to make comparisons, we've offered more money
8 than their alleged contract calls to pay --

9 THE COURT: My question didn't have
10 to --

11 MR. HOUSTON: -- communicated -- let me
12 finish, please.

13 THE COURT: Go ahead, please, sir.

14 MR. HOUSTON: This wasn't communicated
15 to their clients. Their clients don't know that we
16 took more -- that they would see more money under our
17 offer than they would under this present contract.

18 MR. WILLIAMS: Your Honor, the
19 contract --

20 MR. HOUSTON: -- the essence of what
21 I'm saying is percentages doesn't mean anything. The
22 thing that should be considered is, what is the
23 maximum benefit to the greatest number of people? And
24 the contract that the money amount offer we offered
25 would be, whether or not we're just a small minority

1 or not.

2 MR. WILLIAMS: Your Honor, please.

3 Your Honor --

4 MR. HOUSTON: -- well, minority doesn't
5 come into the equation.

6 MR. WILLIAMS: Yeah --

7 THE COURT: Charles, you tell us when
8 you're finished because it sounds like you're
9 finished, and then you'll start again. So tell me --

10 MR. HOUSTON: I'm finished on that
11 point.

12 THE COURT: Okay. Thank you so much.

13 MR. HOUSTON: You were raising the
14 thing about the percentage.

15 MR. WILLIAMS: If I may, Your Honor.
16 This contract that Mr. Houston keeps talking about
17 isn't signed. It never has been signed. And it
18 provides for, as I recall, a new 180-day due diligence
19 period within which the prospective buyer can cancel
20 the contract.

21 The Rotunda contract that's in place
22 right now, the addenda to the contract state that the
23 due diligence periods have already run, they can't
24 cancel the contract anymore under it, and the title
25 examination periods have run. Mr. Finger, of course,

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1 will want to update title from the last -- but there
2 are no more contingencies left in the Rotunda
3 contract.

4 The contract that Mr. Houston keeps
5 talking about that doesn't actually exist because it's
6 never been signed has all sorts of contingencies in it
7 during which period of time the buyer can just walk
8 away and leave all of the owners of the property
9 holding a bag full of nothing. Thank you.

10 MR. TAYLOR: Your Honor --

11 MR. HOUSTON: Counsel, it wasn't --

12 MR. TAYLOR: Your Honor --

13 MR. HOUSTON: It wasn't offered as a
14 contract. It was an offer.

15 MR. WILLIAMS: But you keep saying
16 "contract," Charles.

17 MR. HOUSTON: No. I said we made an
18 offer.

19 MR. WILLIAMS: No. You said
20 "contract."

21 MR. HOUSTON: -- that exceeds
22 what -- let me clarify that: I said that the
23 defendants made an offer that, if it were accepted,
24 would be a greater benefit to the heirs than what they
25 would receive on the proposed contract with Rotunda.

1 MR. WILLIAMS: If it in fact ever
2 closed, which it very well might not do.

3 MR. HOUSTON: Well, you know, that
4 could be applicable on both sides.

5 MR. WILLIAMS: No. Because on the
6 Rotunda side, all the due diligence periods have run.

7 THE COURT: All right. Let's do this
8 rather than y'all arguing back and forth. I
9 appreciate the spirited banter. But let me ask y'all
10 a practical question here with regard to Mr. Houston's
11 motion: If in fact I were to set a bond, and if in
12 fact we had a downturn in the economy, which is -- the
13 economy goes up; it goes down. It's been up; I mean,
14 common sense dictates, it will be down at some point.
15 When? How much? Who knows? Wish I knew. But nobody
16 really knows that. But it would be inconceivable that
17 this property would drop to zero. It certainly is
18 conceivable -- I think we all probably remember
19 2008/2009 when things fell to 50 percent of their
20 previous value in Beaufort County. I'm sure it was
21 worse in other places. I guess if I were to
22 say -- because I don't think a nominal bond protects
23 against waste. And "waste" is, I believe, the
24 applicable word if I use 170, as Mr. Houston wants me
25 to do, which may very well be exactly right. But that

1 doesn't mean that number is zero. And it doesn't mean
2 the number is the entire value of the property.

3 MR. HOUSTON: Your Honor, if I may
4 interrupt. I think the --

5 THE COURT: Sure.

6 MR. HOUSTON: -- statute does say that
7 the bond would cover any, I think, diminution in
8 value.

9 THE COURT: Right. And so we've got a
10 value right now of the contract price of nine million
11 whatever. If the value is diminished by operation of
12 the economy, by comet hitting Hilton Head, by, you
13 know, anything, then there's a diminution of value.
14 The question is, what is that diminution of value?
15 Nobody really knows that. Again, it's not going to
16 zero. I mean, unless somebody discovers that the
17 place is a toxic waste dump or something, and I'm sure
18 that's already been explored. So is it going to
19 50 percent? Is that a safe bet? I don't know. I
20 don't know the answer to that. I don't know if y'all
21 have any thoughts. Again, I don't think it goes to
22 zero. But if the economy drops, it certainly goes
23 below nine. Any thoughts on that?

24 MR. HOUSTON: Well --

25 MR. TAYLOR: Your Honor --

1 MR. HOUSTON: -- Your Honor, they've
2 already assumed that risk in a sense that they said
3 that they're ready to go to contract now. So if the
4 economy drops, they're buying property that the value
5 could go down three months from now.

6 THE COURT: Property buying's a risky
7 undertaking. I'll grant you that.

8 MR. WILLIAMS: Yeah. Your Honor, I
9 think one of the real risks here is that if you do
10 grant the supersedeas and the bond is posted, then
11 there's a chance that Rotunda walks away. And then
12 the bottom drops out, and next time we go to sell the
13 property, instead of nine million seven fifty,
14 someone's only willing to offer four million --

15 THE COURT: Exactly. That's --

16 MR. WILLIAMS: -- the risk. Yes.

17 THE COURT: That's the risk. And I
18 think that's one of the things "waste" means:
19 Diminution of value. I just don't know what that
20 number is. I mean, again, historically, I think most
21 of us on the thing here remember the last recession
22 and the amount things dropped, which was a lot. But I
23 don't --

24 MR. HOUSTON: But, Your Honor --

25 THE COURT: Go ahead, sir.

1 MR. HOUSTON: Your Honor, during this
2 recession, the price of property on Hilton Head has
3 gone up 35 percent.

4 THE COURT: -- well, we're not in a
5 recession yet. But you know, and so I don't know. If
6 I knew --

7 MR. WHITE: Judge Dukes --

8 THE COURT: -- I'd be living on a yacht
9 in the Med, you know, calling into my broker. But
10 it's --

11 MR. WHITE: Well, Judge Dukes, that's
12 why it goes to the point that you should assume that
13 it's zero; right? Because there could be no potential
14 market at all. Like, we shouldn't say that
15 it's -- you can't determine --

16 THE COURT: I appreciate your input,
17 Mr. White, and I appreciate your expertise. But I
18 think there's always a market, again, unless there's
19 something like an oil spill or --

20 MR. WHITE: Well, no. I was just
21 saying, it's not a market that you can predict; right?
22 So, therefore --

23 THE COURT: Oh, absolutely. Yeah --

24 MR. WHITE: Therefore, we have a market
25 that has been set. So you assume that we would lose

1 the entire market. Right? You don't assume 50, 30.
2 You assume that it's either you have the market now,
3 or you have no market. So the value is 9.75, and
4 that's where we're at today. So we're at risk of
5 losing all of it.

6 MR. TAYLOR: Your --

7 MR. WHITE: We can --

8 MR. TAYLOR: Your Honor --

9 MR. WHITE: We can transact on that.
10 We can't transact on a future value that no one knows.

11 THE COURT: You and I may have to agree
12 to disagree on --

13 MR. WHITE: Okay.

14 THE COURT: -- this property would go
15 to zero. You know, there'd be some takers at a
16 dollar, I can tell you.

17 MR. TAYLOR: Your Honor.

18 THE COURT: Yes.

19 MR. TAYLOR: Your Honor, if I may just
20 one second. Judge, I think that it would be
21 appropriate to take a step and to talk for a second
22 about the overall historic aspect of why this
23 supersedeas bond statute rule is in place. And what
24 it is in place for, Judge -- I know I don't need to
25 remind the Court, but I like to remind everybody -- is

1 that the legislature and the court system came
2 together and said, once a full Circuit Court trial has
3 been set and once it has gone through and once a order
4 has been entered, then it is presumed, until
5 overturned, that that order is correct. And in order
6 to secure that, we're going to post a high bond
7 requirement because if someone who loses in Circuit
8 Court wants to continue on and delay things by two
9 more years, then they must go and bear the burden of
10 the responsibility of insuring that.

11 And such I assume -- and speaking on
12 behalf of the plaintiffs, I agree that there's very
13 little chance that property would go to zero. But it
14 is within this Court's discretion -- and I would urge
15 the Court to err on the side of protecting all of the
16 property owners, including Mr. Houston's people, and
17 require at least a 50 percent amount, Judge, which
18 would be \$4,850,000. Because to do anything less than
19 that and require them to not put anything substantial
20 will only continue to encourage the behavior of
21 stopping everything they can by filing every single
22 motion they can. With the respect that I have for
23 Mr. Houston after many years of knowing him, there's
24 no other way to put it but that that is the strategy
25 in this case. And clearly, that is exactly what they

1 intend to do is try to wait this out until such time
2 as somebody offers to make a deal with them. And it's
3 not right.

4 Judge, you've heard the evidence.
5 You've entered your order. And if they want to put a
6 stay on this case and stop us from completing the
7 sale, they need to put up a serious bond.

8 THE COURT: Okay. All right. I think
9 I got the big picture.

10 MR. HOUSTON: Your Honor.

11 THE COURT: Yes, sir. I'll give you
12 one quick, final word, Mr. Houston. Mr. Houston?

13 MR. HOUSTON: Okay. Another factor
14 that, in this statutory scheme that the legislature
15 has provided for has been also the financial posture
16 of the party seeking the supersedeas bond. You know,
17 if a defendant is well-heeled, in the statute which
18 Counsel had cited before, they're required to pay more
19 than the maximum. But if they don't fall in that
20 category, the statutory scheme is that they would pay
21 a lower amount because the Court looks at the welfare
22 of the person who is required to put up the
23 supersedeas bond.

24 MR. TAYLOR: Judge, you can't tell me
25 that I'm absolutely wrong on the statute --

1 MR. HOUSTON: So --

2 MR. TAYLOR: -- rely on.

3 MR. HOUSTON: -- just taking an
4 arbitrary calculation between full and zero and set it
5 at 50 is basically not appropriate. There's no sound
6 basis that the property would, within the course of a
7 year and a half, diminish from the present appraised
8 value down to zero --

9 THE COURT: I don't think it's going to
10 zero. I don't disagree with you there.

11 MR. HOUSTON: And I don't think it's
12 going to go to half. There's no --

13 THE COURT: I would've said that --

14 MR. HOUSTON: -- drop 50 percent in
15 value. If anything, it's going to go up.

16 THE COURT: You know, historically,
17 there are plenty of drops. But --

18 MR. HOUSTON: -- you know, because of
19 its uniqueness, the value is going to go up. There is
20 no more waterfront property on Hilton Head.

21 THE COURT: All right. Well, let me do
22 this. Y'all have given me stuff to consider, and I've
23 got something after this. And I've got to deal with
24 that and some other things. But I will try to get
25 back with y'all by the end of the day Monday with

1 something on this. I know that time is of the essence
2 for all parties. And --

3 MR. WILLIAMS: And there's still one
4 other outstanding motion there, Your Honor.

5 MR. TAYLOR: Your Honor, I realize,
6 Your Honor, that you need to move forward. Judge, can
7 we just --

8 THE COURT: It was the flip side of the
9 other motion; right? It's either grant a supersedeas,
10 set a bond, or issue the master's deed; right? I
11 mean, I'm happy to hear it. But I mean, it's --

12 MR. WILLIAMS: That's a fair way
13 to -- yes.

14 MR. TAYLOR: Judge, I don't mean
15 to -- I don't mean to take up your time. If you will
16 just review the motion filed on March the 14th of 2020
17 requesting it. You're exactly right, Your Honor.
18 That is the position.

19 THE COURT: Okay. I mean, I don't mean
20 to shortchange --

21 MR. HOUSTON: Your Honor --

22 THE COURT: It's a coin flip; right? I
23 mean, it's one or the other.

24 MR. TAYLOR: Yes, Your Honor.

25 THE COURT: All right. Any --

1 MR. HOUSTON: Your Honor, before you
2 rule on that other motion in reference to the master's
3 deed --

4 THE COURT: Yes, sir.

5 MR. HOUSTON: -- I will have a
6 memorandum in to you probably by tomorrow or next day.
7 But the salient point I want to make in reference to
8 that is that there's no statutory provision granting a
9 Master in Equity authority to grant a master's deed in
10 an action to quiet title, which this one is. Now
11 there is one code section --

12 MR. WILLIAMS: No.

13 MR. HOUSTON: -- under the section of
14 partitioning that does permit that. But that's only
15 when the action is just for partition. So here, where
16 the action is to quiet title, there are other
17 procedural requirements that have to be met. And
18 there's nothing under this section that gives any
19 authority to a Master in Equity to issue a master's
20 deed. You know, most of the times in partition
21 action, the parties may have a fee simple title
22 already. Or it's just a matter dividing -- making a
23 physical division of the land. But this is an action
24 to quiet title in which a further finding has to be
25 made --

1 THE COURT: Okay.

2 MR. HOUSTON: -- on the action to quiet
3 title, there's no statutory authority for the Master
4 in Equity to grant a master's deed.

5 MR. TAYLOR: And, Your Honor --

6 THE COURT: Go ahead.

7 MR. TAYLOR: -- our position is, that's
8 just wrong, that the Pinckney Act clearly provides
9 that, once the statutory scheme has gone through, once
10 the minority owners have been given the opportunity to
11 purchase the majority owners' interest out and that
12 time has past, which it undoubtedly has here, that the
13 only way to then implement the Pinckney Act scheme is
14 for the judge to enter and be willing to sign the deed
15 as we have asked. And we would, once again,
16 Your Honor, ask the Court to do that.

17 MR. WILLIAMS: Yeah. And if I may,
18 Your Honor --

19 MR. HOUSTON: No, you're not going
20 to --

21 MR. WILLIAMS: Mr. Houston --

22 MR. HOUSTON: No, you're not going to
23 find any language to that --

24 MR. WILLIAMS: If I may --

25 MR. HOUSTON: -- Act.

1 THE COURT: Okay. Hold on one
2 second -- Mr. Williams is talking. Then I'm happy to
3 hear from you, Mr. Houston.

4 MR. HOUSTON: Go ahead and proceed,
5 Chet. Go ahead and proceed.

6 MR. WILLIAMS: Your Honor, Mr. Houston
7 simply is wrong. This is an action to do two things:
8 It was initially filed to quiet title and to partition
9 the property. The quiet title was solved back in May
10 of last year. That issue was resolved, and all we're
11 dealing with now is the partition. And clearly in the
12 context of partition, you have the ability to issue a
13 master's deed to resolve that partition. Thanks.

14 THE COURT: All right. Well, let's do
15 this: Charles, you said --

16 MR. HOUSTON: Your Honor. Your Honor,
17 there is -- title property was not resolved. It still
18 is title property.

19 THE COURT: Okay. Well, let's do this.
20 Charles, I understand -- you wanted to draft something
21 and said you'd get it in today or tomorrow. Is that
22 right?

23 MR. HOUSTON: Yes. Right.

24 THE COURT: Okay. And then I'm sure
25 the other side would like a quick response to that,

1 which I assume I'd get before --

2 MR. HOUSTON: But this is a
3 rebuttal -- this is a rebuttal to their brief. That's
4 what it is.

5 THE COURT: Oh, okay. Well, let's do
6 this.

7 MR. HOUSTON: While you may not have
8 seen it yet, but yesterday evening, they submitted a
9 memorandum in support of their motion. And I was
10 going to --

11 MR. TAYLOR: That's not right, Judge.
12 The memorandum was only an opposition to Mr. Houston's
13 motion. It did not address the master's deed because
14 he has not objected to that before right now.

15 THE COURT: Why don't we do this,
16 Mr. Houston? You're going to send me something on the
17 master's deed authority, and I understand that --

18 MR. HOUSTON: Correct.

19 THE COURT: -- the other side will
20 submit something solely on that particular topic --

21 MR. TAYLOR: Yes, sir.

22 THE COURT: -- in response. I had said
23 I'd try to get something done by Monday afternoon.
24 Why don't we see if y'all can get me whatever you're
25 going to get in response to whatever Mr. Houston's got

1 Monday if you can. And then I'll try to deal with
2 this Tuesday or Wednesday or so. But as soon as
3 possible. All right. Anything else we can do for
4 this record then?

5 MR. TAYLOR: Not on behalf of the
6 petitioners, Judge.

7 MR. WILLIAMS: Thank you, Your Honor.

8 THE COURT: Thank you.

9 All right. Mr. Houston, anything else,
10 sir?

11 MR. HOUSTON: I think that much more
12 could be said, but I think enough has been said with
13 the time we have allotted, Your Honor. And I think
14 that both sides have been able to convey to you their
15 salient arguments.

16 THE COURT: All right. I appreciate
17 it. As usual, in any case that's contested, I always
18 encourage the parties to see if there's some way to
19 get together and resolve the whole thing. If not, I
20 understand completely. And I will await Mr. Houston's
21 memo and then the response to that and try to get on
22 it as quickly as possible. Y'all have a --

23 MR. HOUSTON: And also --

24 THE COURT: Yes, sir.

25 MR. HOUSTON: Your Honor, you also said

1 you would review the sufficiency of this alleged
2 contract.

3 THE COURT: That was sent to me, and I
4 will take a look at it. So thank you so much.

5 All right. Y'all have a good day.
6 Thank you so much.

7 (Whereupon, at 11:50 a.m. EDT/
8 10:50 a.m. CDT, the proceeding was
9 concluded.)
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CERTIFICATE OF DEPOSITION OFFICER

I, SOPHIE CAUDLE, the officer before whom
the foregoing proceedings were taken, do hereby
certify that any witness(es) in the foregoing
proceedings, prior to testifying, were duly sworn;
that the proceedings were recorded by me and
thereafter reduced to typewriting by a qualified
transcriptionist; that said digital audio recording of
said proceedings are a true and accurate record to the
best of my knowledge, skills, and ability; that I am
neither counsel for, related to, nor employed by any
of the parties to the action in which this was taken;
and, further, that I am not a relative or employee of
any counsel or attorney employed by the parties
hereto, nor financially or otherwise interested in the
outcome of this action.

September 27, 2022



SOPHIE CAUDLE
Notary Public in and for the
State of Texas

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CERTIFICATE OF TRANSCRIBER

I, EMILY LOFING, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

September 27, 2022



EMILY LOFING

[& - amounts]

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

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GEORGIA HARRISON, et al.
Plaintiff,

**CIVIL ACTION NUMBER
2020-CP-07-02301**

STEPHANIE LORRAINE KIRKLAND, et al.

Defendant.

-----/

The Motion Hearing, in the above-entitled cause, taken pursuant to Notice and agreement, before Honorable Judge Marvin H. Dukes, and Naomi McCracken, Stenographic Court Reporter and Notary Public, at the Beaufort County Magistrate's Courthouse, 102 Ribaut Road, 2nd Floor, Beaufort, South Carolina, on the 24th day of February 2023, commencing at or about the hour of 10:32 a.m.

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5 **REPORTER'S NOTE: ALL EXHIBITS**
6 ARE RETAINED BY THE COURT.

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1 THE COURT: Good morning, then.
2 We're here in 2020-CP-07-02301. This
3 is Harrison, et al. versus Kirkland, et
4 al. This matter that we have scheduled
5 for today is a motion for
6 reconsideration filed November 17th,
7 2022.

8 And, Mr. Houston, I am happy to
9 hear from you, sir.

10 MR. HOUSTON: Yes, Your Honor.
11 Good morning to you, again.

12 Your Honor, this is some
13 manifesting justice going on here with
14 this case. And -- but first I'd like
15 to take -- address a matter not
16 contained within our motion. It has to
17 do with ongoing efforts pursuant to
18 your request that we try to settle this
19 cases, if possible.

20 THE COURT: I always say that. I
21 always hope it happens. Yes, sir.

22 MR. HOUSTON: Here's the problem
23 I'm having, I'll be forthright with it.
24 And that is that one counsel is wearing
25 two hats. He's representing the



1 interest of the developer and of the
2 heirs.

3 Before this case was instituted,
4 all of the communications were between
5 plaintiffs and Attorney Chet Williams.
6 It was only after the contract with
7 Rotunda was first executed that then
8 Attorney Taylor was brought in to
9 institute this lawsuit. All right?
10 Every -- and you always say follow the
11 money.

12 THE COURT: I don't know if I say
13 that. But it's frequently said, yeah.

14 MR. HOUSTON: Every motion,
15 memorandum that has been filed has been
16 filed by Attorney Taylor. Attorney
17 Williams hasn't filed a motion other
18 than just putting his name on whatever
19 Tom filed.

20 MR. TAYLOR: Pardon me. I object
21 to this because I don't know what we're
22 doing. This apparently is not a part
23 of the motion for reconsideration. We
24 were given no notice of this. I don't
25 know if it's an actual claim of some



1 type. But it sounds to me like, Your
2 Honor, that it's just a generalized
3 recitation of events. And, certainly,
4 if he's going to get into settlement
5 discussions, that's not appropriate for
6 this Court or the record.

7 THE COURT: Mr. Houston, there's
8 some merit, certainly, with what
9 Mr. Taylor just said. We're not really
10 supposed to -- I'm supposed to
11 encourage them, and as you've
12 suggested, I have.

13 MR. HOUSTON: Right. Right.
14 And --

15 THE COURT: I hope it happens.

16 MR. HOUSTON: But we have been
17 trying to follow it. But this is a
18 fiasco. And I want -- because -- there
19 was a motion filed before the Supreme
20 Court trying to get sanctions for me
21 saying that I was litigious. But only
22 pursuing my client's interest because
23 of all of these obstacles, artificial
24 and real, that we've had to confront.

25 And one is, I think I'm -- made an



1 offer that goes directly to the heirs,
2 but it has to be filtered through
3 Rotunda before it gets to the heirs.

4 (Crosstalk.)

5 THE COURT: Hold on a second,
6 Mr. Houston. Let's do this, we've got
7 a motion scheduled that we probably
8 ought to hear and get that on the
9 record. If there are issues that need
10 to be taken up other than that motion,
11 we can either see if by consent we can
12 deal with them today or we can schedule
13 a time to deal with them.

14 And I'm happy to hear from you,
15 I'm not cutting you off, I'm just -- my
16 understanding is this is something new.

17 MR. HOUSTON: I prefaced my remark
18 saying this didn't pertain to the
19 motion directly. All right?

20 THE COURT: You did, that's true.
21 I wasn't sure if you were going to talk
22 about something filed in the wrong
23 place.

24 MR. HOUSTON: No, no. I just want
25 to ask Attorney Taylor if he'd state



1 for the record that he hasn't received
2 any compensation from the developer who
3 he represents some cases in this case.

4 THE COURT: Well, why don't we do
5 this, rather than getting into issues
6 that weren't noticed or scheduled or
7 anything like that, y'all might just
8 want to have a conversation after this
9 since you're all in the same building.
10 But that's not -- none of that is
11 before me today.

12 I share in your desire to settle
13 the case. But why don't we do this, I
14 think it's a little unfair to make
15 statements like that without sort of an
16 opportunity to respond. But I'm not --

17 MR. HOUSTON: I thought we'd keep
18 it informal, Your Honor, I didn't want
19 like -- that he could just --

20 THE COURT: Sure. Why don't y'all
21 talk after this. If y'all can agree
22 that whatever you can agree to, that
23 would suit me just fine. If you feel
24 something needs to be filed and heard,
25 you know, we'll deal with that also.



1 But why don't we do this, let's
2 try to deal with -- I don't know if you
3 feel like you need to address this now
4 or we can just deal with it later.

5 MR. WILLIAMS: Your Honor. Who
6 was your question addressed to,
7 Mr. Houston? Who was your question
8 about getting paid by Rotunda addressed
9 to, me?

10 MR. HOUSTON: No.

11 MR. WILLIAMS: Okay. To Tom?

12 MR. HOUSTON: Correct.

13 MR. TAYLOR: Your Honor, only for
14 the record because of what Mr. Houston
15 just said, I want to make it clear and
16 the record will so indicate, there has
17 never been a motion filed on behalf of
18 the plaintiffs and respondents in the
19 Supreme Court concerning sanctions.

20 We did, in fact, ask Mr. Houston
21 and his clients to be sanctioned in
22 response to their filing a petition for
23 a writ of mandamus. But we did not
24 file any separate motion.

25 THE COURT: All right. Well, and,



1 again, that's --

2 MR. TAYLOR: Yes, sir.

3 THE COURT: -- Columbia and not
4 me.

5 MR. FINGER: On behalf of Rotunda,
6 Terry Finger.

7 I called Mr. Houston about two
8 weeks ago and asked him if his clients
9 had any interest in Rotunda try to
10 sweeten the pot a little bit and he
11 indicated they had no interest. So
12 discussions were had as recently as two
13 weeks ago.

14 THE COURT: Okay. And I don't
15 know what sort of authority you have
16 today, y'all have, if y'all want to
17 talk after this, stranger things have
18 happened. You know, cases that look
19 like they can't be settled get settled
20 all the time.

21 MR. WILLIAMS: Just to make it
22 clear, the reason why Mr. Taylor is
23 involved in this litigation is because
24 I'm not Rule 5(B) qualified.

25 THE COURT: Okay.



1 MR. WILLIAMS: So I can't appear
2 as sole lead counsel. It used to be
3 Rule 5(B), I don't know what it is now.

4 THE COURT: 400 or something.

5 MR. WILLIAMS: But I can't appear
6 as lead or sole counsel at a hearing or
7 a trial on merits, which is why I
8 always have to have someone like
9 Mr. Taylor here to hold my hand.
10 That's his role in this.

11 THE COURT: All right. Well,
12 maybe that will settle the issue. If
13 not, I would suggest y'all talk after
14 the fact. And, again, it sounds like
15 the communication lines, perhaps, are
16 open with regard to settlement. The
17 numbers or something, y'all would have
18 to discuss and see what you can do.

19 But I appreciate it. So why don't
20 we move on.

21 MR. HOUSTON: Your Honor, let me
22 ask you this.

23 THE COURT: Sure.

24 MR. HOUSTON: What's the format
25 that you would like for me to follow



1 with the presentation of our motion?

2 There are about 15 different issues

3 I've raised in the motion. Some of

4 them can be combined because they

5 basically touch upon the same issue,

6 just you know, shades of differences?

7 THE COURT: Are you talking in the
8 way of response, whether or not I would
9 like to hear number one and then hear
10 the response and then back to you for
11 number two?

12 MR. HOUSTON: Right.

13 THE COURT: I'll let you structure
14 it in any order you want, in any
15 grouping you want. And then I'll leave
16 it to -- Mr. Taylor, would you be --
17 want to wait until the end and respond
18 to the whole thing or respond point by
19 point?

20 MR. TAYLOR: Your Honor, I think
21 it would be best to respond at the end,
22 if that would be okay with you.

23 THE COURT: Okay. So just take
24 your time, go through the whole thing.
25 And then we'll do it that way.



1 MR. HOUSTON: Okay. Very well,
2 Your Honor.

3 Your Honor, the first things that
4 we would like for the Court to give us
5 a ruling upon is the first, second,
6 third, which is tied into the 13th
7 paragraph of the motion.

8 THE COURT: Okay. Hold on one
9 second.

10 Quick question: Does the blue
11 notebook contain the motion or not?

12 MR. TAYLOR: Yes, sir. It does,
13 your Honor.

14 THE COURT: Okay.

15 MR. TAYLOR: We'll find it, Judge.

16 MR. FINGER: 68, I believe, Your
17 Honor.

18 THE COURT: 58?

19 MR. FINGER: 68.

20 MR. TAYLOR: 68, Your Honor.

21 THE COURT: 68. Okay.

22 That will be a little easier for
23 me than scrolling, so I'm just going to
24 put this aside.

25 Please repeat that page and



1 paragraph for me again, Mr. Houston.

2 MR. HOUSTON: Paragraphs 1, 2, 3,
3 and 13. They are all tied in together.

4 THE COURT: Okay. Got it.

5 MR. HOUSTON: All right. What we
6 would ask the Court to rule upon is the
7 fact that, one, which the statute
8 requires, is that the administrators or
9 the personal representatives of those
10 four -- or three or four estates were
11 not joined as parties through this
12 action and that they are necessary
13 parties.

14 And, basically, the failure to do
15 so would be subject to a 12(B)7 motion
16 to dismissal and, therefore, the Court
17 doesn't have jurisdiction of the matter
18 or the absence of the necessary
19 parties.

20 The next one is Number 6 and 7.
21 The statute requires the Court or the
22 master to make a determination whether
23 it is titled property. And that is
24 necessary because there are other
25 sections which are predicated upon that



1 particular finding. And in this
2 particular action, a finding of fact as
3 to the status of the title has not been
4 made by the Court.

5 And in connection with that Number
6 7, we're asking if the present status
7 of the title to the property would be
8 considered marketable title.

9 Number 8 is the situation where
10 the defendants were allowed only 60
11 days in which to tender the purchase
12 price of the property, that it was
13 nonrefundable and they were to deposit
14 the money into Court, nonrefundable,
15 and without any provision made of them
16 receiving the deed to the property. No
17 further warranty deed would be provided
18 to them.

19 And the fact that they weren't
20 goes to the issue of unconscionability
21 and also whether or not they should
22 have been granted an extension of time
23 that was requested for 45 days in which
24 to tender the money under some other
25 circumstances pertaining to the title.



1 The other one is -- pertains to
2 the fact that they were only given 60
3 days under those conditions to tender
4 the money in the Court.

5 THE COURT: Are we still on Number
6 8? I'm sorry. Are we still on Number
7 8?

8 MR. HOUSTON: Yes.

9 THE COURT: Okay. I'm sorry. Go
10 ahead, please.

11 MR. HOUSTON: We'll be moving on
12 to the -- to Number 10, which is
13 already -- I mentioned in eight, and
14 that was there was no deed in
15 preparedness for them to receive when
16 they deposited the money into the Clerk
17 of Court.

18 In conjunction also with the
19 request for the 45-day extension, we
20 raised the equal protection clause
21 because we were only allowed 60 days
22 whereas the other party provided 91
23 days for the plaintiffs to get their
24 contract together. Okay.

25 Number 11 is the one we really



1 want to dwell on.

2 In Number 11, Your Honor -- I'll
3 wait for you.

4 THE COURT: I've got it. Go
5 ahead.

6 MR. HOUSTON: In Number 11, we ask
7 this question, Your Honor: By what
8 authority -- and this is what we
9 actually want the Court to state for
10 us -- by what authority does the Court
11 have to compel an heir to sell their
12 interest in property to the other heirs
13 and where the other heirs have already
14 contracted to sell their interest to a
15 third party?

16 Our position is that this is
17 unconstitutional and there's no
18 authority for it and that it
19 defranchises the heir's property rights
20 as to the price and the disposition
21 they want to make of their interest.
22 And without the Court having any
23 authority to convey their interest,
24 there is a statute, Statute 15.61.400,
25 that says it is mandatory, when there's



1 a factual situation of this nature,
2 that the remedy is and the course the
3 Court is supposed to follow is to sell
4 the property at public auction.

5 And this is what the plaintiffs --
6 the defendants desire to do. We do not
7 believe that we have to be bound by the
8 purchase price that the other
9 plaintiffs contracted to sell their
10 interest to. If they want to go ahead
11 and buy the other plaintiffs' interest
12 out, we have no objections to that. It
13 will just be Rotunda standing in their
14 place.

15 But we have the statutory right to
16 not have to convey our interest to
17 Rotunda or the other heirs. But the
18 statute gives us the constitutional
19 right to dispose of our interest
20 because it is an action, you know, to
21 partition interest at public auction.

22 And whoever the highest bidder is,
23 let's say subject to -- as long as the
24 bid is above the -- what has been
25 determined by the clerk to be the fair



1 market value, that's the procedure the
2 Court should follow.

3 So basically, our position is,
4 Your Honor, you know, a lot of these
5 matters have been discussed
6 previously. But we've never had a
7 definitive answer from the Court. So
8 by this motion, without taking away the
9 Court's authority to amend its motion,
10 which it can do, we're asking just for
11 a ruling on these particular issues.

12 So when we -- if we necessarily go
13 to an appeal, the appellate court will
14 clearly understand what the position of
15 this Court was on those particular
16 issues rather than just a statement
17 saying the Court just denied it.

18 But we particularly call to the
19 Court's attention that Statute
20 15.61.400 which we rely upon.

21 Thank you, Your Honor.

22 THE COURT: Thank you so much,
23 sir.

24 I'm happy to hear from you.

25 MR. TAYLOR: Your Honor, good



1 morning. Tom Taylor and Chet Williams
2 on behalf of the plaintiffs.

3 Your Honor, with all respect to
4 Mr. Houston, the plaintiffs suggest
5 strongly that each and every one of the
6 arguments that was just articulated by
7 Mr. Houston have been made repeatedly
8 in this case prior. Specifically, Your
9 Honor, these arguments -- these exact
10 arguments were made on our hearing
11 dates of September 15th, 2022 and
12 September the 22nd, 2022 when I will
13 remind the Court that Mr. Houston's
14 original motion for stay and for
15 supersedeas, as was filed on September
16 7th, 2022, was heard.

17 And the Court will recall, during
18 the course of that extended first video
19 conference on September 15th,
20 Mr. Houston articulated each and every
21 one of the exact same points, and you
22 can simply compare the motion from
23 September 7th to the motion for
24 reconsideration currently pending
25 before the Court and you will see they



1 are almost identical in nature.

2 Mr. Houston then asked for an
3 extension of time to further brief
4 certain issues that arose during the
5 September 15th video conference and the
6 Court gave him an additional week to.
7 On September 22nd, 2022, we reconvened,
8 Your Honor, and you heard further
9 arguments from Mr. Houston concerning
10 these exact same issues.

11 The Court then issued its order of
12 November the 7th, 2022 which Your Honor
13 does, in fact, address each and every
14 one of these points in the Court's
15 preferred method of doing so.

16 Mr. Houston then filed, on
17 November the 17th, a pending motion for
18 reconsideration.

19 Your Honor, on behalf of the
20 petitioners, we ask that the Court deny
21 the motion for reconsideration.

22 And, very briefly, Your Honor, I
23 would point out that the motion for
24 reconsideration as it is styled is, of
25 course, a motion to alter or amend



1 judgment under Rule 59(E). I have
2 provided the Court with a brief that
3 sets forth the applicable legal
4 standard for consideration.

5 I think the Court probably agrees
6 that there are only three circumstances
7 in South Carolina where such a motion
8 is appropriate to be acted upon. And
9 the first is to accommodate an
10 intervening change and controlling law,
11 which Mr. Houston does not assert
12 occurred.

13 The second is to account for new
14 evidence unavailable at trial. And
15 even though, Your Honor, the motion
16 states that there is new evidence to be
17 considered, there was no affidavit,
18 there was no transcript, there was
19 nothing even argued this morning about
20 any new evidence that is risen since
21 then. So certainly, the second
22 provision where new evidence had been
23 discovered that was unavailable at
24 trial occurs.

25 And then thirdly, to correct a



1 clear error of law or prevent
2 manifested justice. Mr. Houston's
3 argument this morning is premised upon
4 the wording that there is a manifest
5 injustice about to occur. And I would
6 ask the Court to please remember, Your
7 Honor, that we have also addressed this
8 very issue several hearings before.

9 Mr. Houston has made other
10 accusations against the lawyers for the
11 plaintiffs in the case about conflicts
12 of interest and things such as that.
13 And, Your Honor, the Court has
14 consistently ruled, after hearing the
15 evidence that was presented, that there
16 has been none.

17 The only thing that has occurred
18 in this case, which is now over two and
19 a half years old, is that the owners of
20 less than 1.2 percent of this property
21 has successfully delayed the conclusion
22 of this case by two years in order to
23 try extract a higher percentage than
24 they are due under the terms of the
25 Pinckney Act.



1 Mr. Houston, today, argues that
2 there are other statutes that are
3 applicable and that somehow their due
4 process rights have been denied. Your
5 Honor, we remind the Court that this
6 Pinckney Act was specifically put in
7 place just for this type of situation
8 where there are basically minority
9 owners of a property who contend that
10 they are not getting a sufficient
11 amount of money. And it gives them the
12 opportunity to come in and buy out the
13 interest of the majority owners.

14 Your Honor, there's never been a
15 factual assertion made in this case
16 that every issue of the case has been
17 handled above board and properly from
18 the appraisals that were initially
19 brought forth to the 65-day window that
20 the minority owners were given in order
21 to tender money.

22 I remind the Court, without going
23 through the substance of it, Judge,
24 that there was not a penny brought
25 forward by any of the minority owners



1 towards this, no money ever made, took
2 any action in order to try to bring
3 forth and buy out the interest of the
4 majority owners, even though their
5 rights to do so were certainly
6 protected.

7 Your Honor, this case, which was
8 appealed in March of last year, 11
9 months ago to the Court of Appeals and
10 from which the Court of Appeals' denial
11 of Mr. Houston's motion for supersedeas
12 was appealed to the Supreme Court,
13 which turned that down and sent it back
14 down with knowledge, Your Honor, and I
15 believe you probably read the order
16 from the Supreme Court, that it was
17 certainly the Supreme Court's
18 indication that this should be
19 continued to conclusion as soon as
20 possible.

21 Your Honor, we are here today, and
22 I listened carefully to what
23 Mr. Houston argued, there are no new
24 issues that have been brought forth.
25 The only thing, Your Honor, that I feel



1 is probably necessary to respond to was
2 the allegation that I understood that
3 somehow we were given 90 days to get a
4 contract in order.

5 Judge, I don't have any idea what
6 that is supposedly about. Nothing like
7 that has occurred within this case.
8 The petitioners were given -- the
9 defendants were given their Pinckney
10 Act time to come forward. They
11 declined to do so. They have never, to
12 this day, Your Honor, via any motion to
13 reopen or otherwise, come forward to
14 this Court with anything that lacks --
15 that has any semblance of being an
16 actual good faith effort to buy out the
17 majority owners' interest.

18 I will, in anticipation of what
19 Mr. Houston may say, remind the Court
20 that although there have been
21 assertions made in hearings, Judge,
22 that there was some contract in effect
23 between these 1.1 percent owners and a
24 certain third party that would
25 potentially pay more money, the Court



1 has never been provided with such.

2 The only thing we got and that the
3 Court has seen, is a one-page piece of
4 paper that purportedly says, from this
5 third party, they've got some financial
6 integrity. There has never been a
7 contract brought forward. There's
8 never been anything shown to this Court
9 that would in any way, shape, or form
10 lead anybody to believe that there
11 actually is this opportunity to get a
12 better price for it.

13 And, in any event, Your Honor, we
14 have a binding contract with Rotunda
15 that we need to honor or else we will
16 be sued for breach of contract. The
17 Rotunda people, through Terry, have
18 worked with us. They have, actually,
19 Your Honor, increased the price that
20 they are going to pay by 600 -- excuse
21 me. Yes, \$650,000. That money is
22 ready and we are ready to close today.

23 Your Honor has already ruled on
24 the issue of the master's deed. And in
25 response to Mr. Houston's argument, I



1 would certainly remind the Court that
2 there are preliminary instances where
3 this Court has, because of someone's
4 refusal to execute a deed, either
5 assigned to the Court Clerk, the right
6 to sign the deed, or this Court has, in
7 fact, signed master's deeds prior.

8 Your Honor, this entire case
9 really comes down to the effectuation
10 of Pinckney Acts intent. And, Your
11 Honor, these petitioners have followed
12 it scrupulously. We have come before
13 this Court on motion after motion after
14 motion that has delayed the closing for
15 more than two years. And we are
16 prepared, Your Honor, to move forward
17 and some as far as -- Chet may have one
18 other thing to add, Your Honor.

19 But, in sum, we basically feel
20 that the motion to alter or amend
21 currently pending before the Court does
22 not in any way show any of the three
23 standards. These arguments have been
24 made before. And we ask the Court to
25 deny the motion to reconsider and move



1 forward with the closing, which we are
2 prepared to do fairly soon.

3 Chet, anything else?

4 Your Honor, I'd be glad to answer
5 any questions you have.

6 THE COURT: I'll give you the last
7 word.

8 MR. HOUSTON: I want to put a
9 witness on the stand.

10 THE COURT: I'm sorry?

11 MR. HOUSTON: I want to put a
12 witness on the stand.

13 THE COURT: Well, this is a motion
14 to reconsider. We don't --

15 MR. HOUSTON: Well, it was
16 (indiscernible) before if there was any
17 testimony.

18 THE COURT: Let me hear from them
19 real quick.

20 MR. FINGER: Your Honor, if I
21 could I draw your attention to page 54
22 of the documents that Tom Taylor has
23 given you in the notebook. And that is
24 the order that's seeking
25 reconsideration. I think there's some



1 pretty key indications in that order
2 that should short circuit this entire
3 argument.

4 In the middle of page 54, it says,
5 the Court notes that the October 21st,
6 2021 order was not appealed nor was a
7 timely motion to alter or amend the
8 final regarding that order. That order
9 is the law of the case now, period.
10 This is where we are. He's trying to
11 undo something.

12 The next paragraph, again, is
13 key. None of the nine defendants
14 tendered or even attempted to tender a
15 portion of the purchase price.

16 Your Honor, my client has been
17 sitting, waiting to move forward on
18 this matter. It should have closed
19 about two years before I was even
20 involved. Actually, I was involved in
21 with Kent -- the Court. But they
22 didn't appeal. And before that order,
23 there were two or three consent orders
24 that everybody agreed to, and there was
25 no appeals from any of them.



1 So we've been to the Court of
2 Appeals twice. I've been sitting on
3 the sidelines watching. I think twice,
4 maybe three times. And then the
5 Supreme Court. Each time they said no,
6 there's no stay. You don't have any
7 standing. You don't have any grounds.
8 Move forward.

9 And that's what I'm asking the
10 Court to issue an order on today.

11 THE COURT: Thank you so much.

12 MR. FINGER: Thank you.

13 THE COURT: Mr. Houston, I'll give
14 you the last word.

15 MR. HOUSTON: All right. Your
16 Honor, the question about the
17 financials and our ability to follow
18 through, this is what I have a witness
19 to testify to. He's with the
20 development company.

21 THE COURT: We don't have -- I'll
22 tell you what, I'm happy to hear from
23 counsel as to --

24 MR. TAYLOR: Your Honor, we object
25 to that. The September 15th hearing



1 which the Court was accepting evidence
2 upon was the appropriate place for
3 this. If there was going to be any
4 evidence tendered as such and we would
5 object to any evidence being tendered
6 via a witness at a motion to
7 reconsider. It would be grossly
8 inappropriate.

9 THE COURT: That would be very
10 unusual. I mean, the fact is, the
11 Court now gives judges the right to
12 have reconsideration motions held
13 without a hearing at all, just on the
14 documents.

15 MR. HOUSTON: He mentioned the
16 issue about presenting new evidence in
17 his remarks.

18 THE COURT: What is the new
19 evidence?

20 MR. HOUSTON: The new evidence is
21 evidence about the financial integrity
22 of SRE, which he said isn't in the
23 record.

24 THE COURT: Well, I think what he
25 said was nobody, in a timely manner,



1 ever presented anything. You want to
2 now present it today.

3 MR. HOUSTON: No, there is
4 financial statements in the record
5 already concerning SRE. I have the
6 developer that wants -- wants to hear
7 from them on their financial integrity
8 and their ability to follow through,
9 which counsel has said they doubt they
10 have the ability.

11 And this developer has multiple
12 more money than Rotunda. So he's --
13 he's put in accusations that -- and
14 inferences to the Court that our
15 clients don't have a developer with
16 financial integrity. He made that
17 argument before the Court.

18 THE COURT: I didn't think --
19 (Crosstalk.)

20 THE COURT: I'll allow him to tell
21 me exactly what he said if he wants to
22 make that and --

23 MR. HOUSTON: Ask the court
24 reporter, she can read it back to you,
25 Your Honor.



1 THE COURT: Mr. Taylor.

2 Hold on a second, Mr. Houston.

3 Do you have thoughts on this or?

4 MR. TAYLOR: Yes, sir. Your
5 Honor, all I did was mention that in
6 Mr. Houston's motion, he made certain
7 accusations, the one that we're here
8 about today. He requested that
9 there -- he said there was new evidence
10 and I simply tried to address that and
11 point out, Your Honor, there is no new
12 evidence.

13 As Mr. Houston just said, he has
14 already placed into evidence what he
15 contends is some proof of this back in
16 the September 15th hearing date, a one
17 sheet piece of paper which the Court
18 reviewed and said that's not really any
19 type of agreement. That's really
20 nothing that matters here.

21 Judge, we again would strenuously
22 object to any new evidence coming in.
23 This is a motion to reconsider the
24 Court's November 7th, 2022 order, and
25 it would be, again, very inappropriate



1 to begin to even entertain this. It's
2 not new evidence.

3 Mr. Houston is seeking to buttress
4 the record by putting something in or
5 assumedly another motion that we will
6 then be fighting in the Court of
7 Appeals. But we believe, Your Honor,
8 that the Circuit Court is ready,
9 hopefully, to wrap this up and to
10 finish this case so that hopefully the
11 deal can still be salvaged and closed.

12 THE COURT: Thank you so much.

13 So, Mr. Houston, this would be a
14 supplement to whatever was put in
15 before because there's already a
16 document. But, I mean, supplementing
17 the record at a 59(E) or 60 motion is
18 not the way we usually do these things.

19 MR. HOUSTON: He opened the door.
20 He mentioned something about producing
21 new evidence.

22 THE COURT: Well, I mean, he was
23 reading, I think, from your motion.

24 But let's do this. I think it
25 would be inappropriate for me to accept



1 such testimony. The record is
2 preserved that you have offered this
3 testimony. And --

4 MR. HOUSTON: May we proffer it
5 outside?

6 THE COURT: I don't know if that's
7 appropriate. If the Court of Appeals,
8 at some point, or the Supreme Court
9 feels I should have listened to this
10 evidence, they'll let us know. But I
11 don't know if that alone, proffered
12 evidence, would change the course of
13 this case.

14 So they're not going to decide in
15 Columbia, well, he's worth 10 million
16 or 100 million or whatever, therefore
17 we're going to reverse or remand or
18 something like that. I don't see that
19 happening. I don't really think a
20 profer is the right way to do it.

21 Again, you're well preserved on
22 the record that you wanted to
23 supplement the record, the previous
24 record, and give more details about
25 this particular developer's financial



1 wellbeing.

2 MR. HOUSTON: Okay.

3 THE COURT: I mean, that's --
4 that's what you're offering.

5 MR. HOUSTON: Here's the rest of
6 our position, Your Honor. The Court
7 may very rarely not, in some instances
8 it should, but this is the Court's
9 responsibility. It may amend this
10 order. It may leave this order
11 intact. The only thing that we're
12 really pushing the Court for is just a
13 ruling on why the Court ruled the
14 manner in which they did.

15 You know, why the Court decides
16 that it was not necessary to join the
17 personal representatives of the as the
18 four different estates. Why the Court
19 had all the parties before it when the
20 publication of process wasn't made
21 until after consent order had been
22 entered in.

23 You know, they're anxious to move
24 ahead but they're anxious to move ahead
25 in the wrong way. They don't want to



1 comply by the statutory requirements
2 but they want the Court to give them
3 their relief. And they used the
4 incorrect statutory procedures to the
5 detriment of my clients.

6 You know, we're not proceeding, as
7 you said. I wish we were proceeding
8 strictly under the Pinckney Act rather
9 than the contract with Rotunda as
10 counsel inadvertently said. You know,
11 we're proceeding under the Pinckney
12 Act. We're not proceeding under their
13 contract. And we're relying upon the
14 Pinckney Act and its statutes and the
15 manner in which it says that this
16 procedure is suppose to proceed.

17 And there's so many -- it's
18 riddled with irregularities, and what
19 we're asking the Court to do right now
20 is just because, you know, when you're
21 taking an appeal, the thing that the
22 Court of Appeals wants is, was the
23 question presented to the Court. If
24 the question wasn't presented to the
25 Court, they can't consider it.



1 So this is why we presented the
2 question to the Court, so that the
3 Court could consider it and make a rule
4 upon it, you know. The Court can say,
5 well, we're waiving the jurisdictional
6 requirements because we just feel like
7 it or whatever reason the Court may
8 consider.

9 But we just put it on the record
10 so when we go up for an appeal, the
11 Court of Appeals has a proper record
12 before them, Judge.

13 THE COURT: Thank you so much,
14 sir. I appreciate it.

15 All right. Y'all gave me a whole
16 notebook of some stuff to read and some
17 argument. And so I will take a look at
18 it.

19 I understand for all parties, time
20 is of the essence. I'll try to get to
21 it as soon as I can. If you haven't
22 heard from me in about ten days, I
23 wouldn't be offended if you'd call
24 Heather and say, why has he not gotten
25 to this yet? And I'll let y'all know



1 something.

2 And anything else for this record?

3 MR. TAYLOR: Yes, Your Honor.

4 Your Honor, on behalf of the
5 plaintiff petitioners, we are handing
6 up and ask the Court to consider the
7 master -- a proposed master's deed.
8 The Court has seen a version of this
9 before. We have now worked with
10 Rotunda's counsel and we have a final
11 version of it.

12 (Whereupon, Plaintiff's Exhibit
13 Number 1 was marked for
14 identification.)

15 MR. TAYLOR: I'm handing one to
16 the court reporter for the record, Your
17 Honor. And if you don't mind, sir,
18 I'll hand one up around here for the
19 Court's consideration.

20 The petitioners ask that the
21 Court, in conjunction with considering
22 the pending motion before it, also
23 consider, as you had said, Your Honor,
24 in the November 7th order, that you
25 would be prepared to move forward with



1 the signing of a master's deed upon
2 presentation, and we have presented
3 same now.

4 THE COURT: All right. I'll tuck
5 it into the notebook here.

6 And I would presume that, without
7 even looking at it, that Mr. Houston
8 would object to me reviewing the same,
9 perhaps not reviewing the same, but
10 executing the same without notice.

11 All right. Anything else for this
12 record?

13 That will conclude today's -- oh,
14 I'm sorry.

15 MR. TAYLOR: Your Honor.

16 THE COURT: You got up so slowly,
17 I didn't catch it.

18 MR. TAYLOR: I'm sorry, Your
19 Honor. Because of what you just said,
20 we do not consider that this would be
21 without notice, Your Honor.

22 The November 7th order was an
23 order from two motions. One was
24 Mr. Houston's motion for stay in
25 supersedeas. The other was a competing



1 motion for the master to sign the
2 master's deed. So if you'll review the
3 November 7th order, Your Honor, you
4 will see that that motion has already
5 been brought before the Court and
6 tendered earlier.

7 And we are just simply trying to
8 comply with the court's November 7th
9 order by tendering the master's deed.
10 It's not without notice, Your Honor.

11 THE COURT: I understand. What I
12 meant was Mr. Houston will not simply
13 get a denial, if there is a denial, of
14 the 59(E) motion and a copy of the deed
15 in the mail. That would seem to be
16 unfair.

17 So I will let the parties know on
18 how I rule on his motion and let the
19 parties know if this happens again,
20 this is subject to me ruling one way or
21 the other.

22 MR. TAYLOR: Yes.

23 THE COURT: But let the parties
24 know that it would be my intent to sign
25 the deed, if it happens.



1 MR. TAYLOR: Thank you. Judge, we
2 understand.

3 MR. HOUSTON: Your Honor, may we
4 respond to this deed?

5 THE COURT: You may. Keep in
6 mind, I'm not even looking at it. So
7 if you wanted to respond in writing --

8 MR. HOUSTON: Yeah. Because here
9 I'm concerned that if the Court --
10 first, whether or not the Court can
11 issue a warranty deed. And then if the
12 Court doesn't issue a warranty deed, if
13 it may expose my clients to some future
14 action by somebody --

15 THE COURT: This one says master's
16 deed so -- but -- so take a look at it
17 and if you've got some issues on it --
18 look, again, I -- other than just
19 looking at the front, when you said
20 warranty deed, I was like, I think he's
21 right, I'm not going to sign a deed
22 that says warranty deed. I'm going to
23 sign a deed that says master's deed.
24 So -- but you're correct, I'm not going
25 to sign a warranty deed. But take a



1 look at it.

2 MR. HOUSTON: Because -- and it
3 also has some recitals in here that are
4 still in litigation.

5 THE COURT: Okay. Well, take a
6 look. Give me your comments. I'll be
7 happy to at it.

8 Anything else, then? Third try in
9 the record, here.

10 Anything else for the record?

11 MR. TAYLOR: Not from the
12 plaintiffs, Your Honor.

13 THE COURT: That will conclude the
14 record for today.

15 (Hearing concluded at 11:13 a.m.)

16

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

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

Naomi McCracken

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina



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May 07 2024

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.

May 6, 2024

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