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**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

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Case No. 2021-CP-10-2661  
Appellate Case No. 2024-001312

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Jason Loy Harn.....Respondent,

v.

Mary Nicole Reavis f/k/a Mary Nicole Harn.....Appellant.

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**INITIAL BRIEF OF APPELLANT**  
**MARY NICOLE REAVIS**

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January 28, 2025.

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### **STATEMENT OF ISSUES ON APPEAL**

- I. THE MASTER ERRED IN FAILING TO GRANT APPELLANT’S DECLARED RIGHT OF FIRST REFUSAL TO PURCHASE RESPONDENT’S INTEREST IN THE PROPERTY, PURSUANT TO S.C. CODE ANN. §15-61-25.
- II. THE MASTER ERRED IN FINDING GIVEN THE FACTS AND CIRCUMSTANCES OF THE CASE THAT IS WAS APPROPRIATE TO DIVIDE THE PROPERTY IN KIND.
- III. THE MASTER’S FINDINGS OF FACT FOR DETERMINING THE PROPERTY SHOULD BE DIVIDED IN KIND AS ORDERED, LACKED EVIDENTIARY SUPPORT. THE RESULT IS INEQUAL, UNFAIR AND INJURIOUS TO APPELLANT.
- IV. THE MASTER ERRED IN REQUIRING APPELLANT TO POST A BOND PURSUANT TO S.C. CODE ANN. § 18-9-170.
- V. THE MASTER ERRED IN ADMITTING INTO EVIDENCE AND NOT STRIKING PLAINTIFF’S EXHIBIT 11 AND TESTIMONY REGARDING SETTLEMENT NEGOTIATIONS AND MEDIAITON.

### **STATEMENT OF THE CASE**

Respondent Jason Loy Harn (“Respondent” or “Jason”) and Appellant Mary Nicole Reavis, formerly Mary Nicole Harn (“Appellant” or “Nicole”) are brother and sister (collectively hereinafter “Siblings”) and the only children of Loy William Harn (“Father”). In 1990 Father purchased forty-six acres containing a house, a barn, a pond and other complementary structures with an address of 1506 Highway 45, McClellanville, SC 29458 (“Property”) (Ord., P. Ex.1). Father and his children used the Property as a weekend home during father’s lifetime (Trl Trans). In January of 2002 Father passed away. As a result of Father’s estate being probated, Appellant and Respondent each received and half interest in all of Father’s valuable real and personal property including a jewelry store business and multiple real properties including the Property, which was deeded to Appellant and Respondent by deed of distribution dated May 14, 2003 (Ord., P. Ex.1, Trl Trans). Appellant and her husband James Reavis (“Jami”) were dating at the time and married the next summer (collectively the “Reavis”) (Trl Tr 286). After Father passed Respondent

began residing in the Property (Trl Tran). Appellant testified that Respondent had exclusive use of the Property from 2003 to 2013 (Trl. Tran 185). Appellant testified that since 2003 her husband Jami would bring his landscaping crew from his landscaping business out to the Property couple times a year to do landscaping work and maintenance on the Property (Trl Tran.). Respondent testified that Jami would bring is landscaping crew out to landscape the Property once a year (Trl Trans 137-138). The Parties testified Jami did maintenance work of the Property septic tank and/or septic field at times (trl Trn). In 2014 Respondent married his wife Keenan Harn (“Keenan”) (Trl Tran 172) (collectively the “Harns”) (collectively all four people are hereinafter the “Parties”). Keenan testified Respondent never lived in the Property after they married in 2014 (Trl Tran 171). Appellant testified she never went to the Property after her Father’s passing until 2015 (Trl Tran 185). From 2003 to 2009 the Siblings owned and operated the jewelry store business together and the taxes for the Property were paid through the jewelry store business. In 2009 Appellant agreed to sell her half interest in the jewelry store business to Respondent and Appellant testified thereafter for six and a half or seven years Respondent made monthly payments to Appellant pursuant to their agreement regarding Respondent’s purchase of Appellant’s interest in the jewelry store (Trl Tr 185-90). The Siblings both testified that in the time period from 2009 to 2016, Respondent would subtract amounts from the monthly payments he made to Appellant to account for the Property taxes (Trl Trn). Respondent testified that from 2016 to present Appellant paid the Property taxes in full at least once maybe twice (Trl Trn.129-131+). The Charleston County Tax Property Record Receipts within the Record evidence the Reveis paid the taxes in 2017 and 2021 (D ex 6; Trl Transc). The Parties testified that the Reavis paid for property insurance for the Property for multiple years (Trl Trn). Respondent testified that he never paid for Insurance on the Property (Trl 129-131). Appellant testified she and her brother had an agreement some years that she and Jami

would pay for the Property insurance and Respondent would pay for the Property taxes (Trl Trn). Appellant testified and evidence in the record reflects that in or around 2017 or 2018 the Siblings agreed to use the Property on a every other week basis where on Sibling and their family would have exclusive use of the Property for a week and then the other sibling wood (Trl Tran 185+; D Ex.9) In October of 2019 Respondent and his wife rented a home in McClellanville which they have continually maintained as their personal residence since that time (Trl Tran). The Parties testified that during Covid in 2020 Appellant and her family and Keenan and her children resided in the Property. In September of 2020 Jami purchased the 19-acre adjoining lot on the south west boundary of the Property (“Jami Lot”) with the intent of building on it (Trl Trn). The easement providing ingress and egress access to the Property runs through the Jami Lot. A number of disputes between the Parties resulted in the Harns ceasing to reside in the Property in the end of 2020 (Trl Tran.). Appellant and her family have resided in the Property as their primary residence since they originally moved into the Property in 2020. In or around the beginning 2021, the Parties came to an agreement on how to divide the property between as evidence by the surveys dated April and October of 2021 (Trl Tran; P Exs 3-6), whereby the Property would be divided into two tracts of roughly 23 acres a piece with Respondent receiving Tract 1 the “L” shaped tract around the perimeter of the Property and the National Forest and Appellant receiving Tract 2 containing the house, pond, and Hangar Barn adjoining Jami’s lot (Trl Trn; P EXs 3-6). It was also agreed at that time that Appellant would pay respondent additional financial consideration for receiving the tract with the house (Trl Trn). It is undisputed that the Parties had an agreement to divide the Property in 2021, how, when, and why that agreement fell apart is disputed amongst the Parties (Trl Trn). Respondent filed this action in June of 2021, seeking partition and requesting the court subdivide the Property into two distinct tracts. Respondent sought service of Appellant by

publication and petitioned to have Appellant held in default on January 6, 2022 (1/6/22 Mtn defau). Shortly, thereafter Appellant learned for the first time that Respondent had file this action over six months earlier (Trl Tran; D Ex. 10) (case index; Trl Trn; D 4). In January of 2022, an incident involving Respondent resulted in Appellant subsequently obtaining a restraining order against Respondent (Trl Trn). On March 16, 2022, Appellant filed an answer and counterclaim asserting her right of first refusal to purchase Respondent's interest in the Property pursuant to S.C. CODE ANN. §15-61-25 (3/16/22 ans). In March of 2022 the Harns purchased a 1 acre lot near the school in the town of McClellanville with the intent of building upon said lot (Trl Tran). The Siblings mediated this matter in June of 2022 (1/17/23 Memo Opp Sett). On October 4, 2022, Respondent filed a Motion to Compel Settlement (mtn sett). October 6, 2022, Respondent filed a Motion to Amend the Complaint, asserting that Hurricane Ian which passed through the area on September 30, 2022, had caused damage to the roof of the home on the Property (Mtn Amend; Trl Trn). January 17, 2023, an Order to Denying Respondent's Motion to Compel Settlement and granting Respondent's Motion to amend the complaint was filed (1/17/23 Ord). On January 27, 2023, Respondent filed an amended complaint (1/27/23 am comp.) Appellant filed an answer and counterclaim to the amended complaint on March 8, 2023 (am. Ans) Appellant filed a motion to appoint an appraiser and motion for continuance of trial on April 14, 2023 (Mtn App; Mtn Contin; Nikki Aff 4/14/23). On April 18, 2023, a trial hearing was held before the Honorable Mikell R. Scarborough, which was paused and then resumed by hearing on April 26, 2023. At the conclusion of the trial hearing On April 26, 2023, the Master requested the parties provide in more information and undertake further actions prior to his entering a final order (Trl Trn). Over a year later on June 27, 2024, the Master filed the Order of Partition (Ord Part). July 8, 2024, Appellant filed a motion to reconsider the Order (7/8/24 Mtn Recon). July 12, 2024, an Order denying Appellant's Motion

to Reconsider was filed (7/12/24 Ord.) August 9, 2024, Appellant filed this Notice of Appeal (Not. App). August 14, 2014, Respondent filed a Motion for Bond with the lower court. (Mtn Bond). On October 2, 2024 Appellant filed a memorandum in opposition to the motion for bond and emailed a courtesy copy to the Court (10/2/24 Memo Opp bond). On October 2, 2024, a hearing on Respondent's Motion for Bond was held before the Master. On October 9, 2024, the Master filed an order require Appellant to Post a bond in the amount of \$50,000.00 (Bond Ord). On October 19, 2024, Appellant filed a Motion to Reconsider the Order of Bond (Mtn Rec Bon). On October 24, 2024, the Master filed an denying Appellant's Motion to Reconsider (Ord 10/24/24) On November 13, 2024, Appellant Posted the Bond (filed 11/13/24 Bond). On November 13, 2024, Appellant filed an appeal of the Order of Bond. On November 18, 2024, this Court issued a correspondence consolidating the appeals.

#### **STANDARD OF REVIEW**

“A partition action is an equitable action and, as such, we may review the evidence to determine facts in accordance with our own view of the preponderance of the evidence.” *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989). “This Court reviews all questions of law de novo. Review of the trial court's factual findings, however, depends on the whether the underlying action is an action at law or an action in equity. In an action at law, the trial court's factual findings will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial court's findings. In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence. However, this broad scope of review does not require this Court to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses.” *Fesmire v. Digh*, 385 S.C. 296, 302-03, 683 S.E.2d 803 (Ct. App. 2009)

## ARGUMENT

### **I. THE MASTER ERRED IN FAILING TO GRANT APPELLANT'S DECLARED RIGHT OF FIRST REFUSAL TO PURCHASE RESPONDENT'S INTEREST IN THE PROPERTY, PURSUANT TO S.C. CODE ANN. §15-61-25.**

“In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes. If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced.” *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26 (2003) “In interpreting a statute and a rule of civil procedure we follow the cardinal rule that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute or rule. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Marichris, LLC v. Derrick*, 384 S.C. 345, 352-53, 682 S.E.2d 301 (Ct. App. 2009) (citations omitted). “The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. Our supreme court has held that a statute shall not be construed by concentrating on an isolated phrase. It is well settled that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result.” *Oulla v. Velazques*, 427 S.C 428, 441, 831 S.E.2d 450 (Ct. App. 2019).

S.C. Code Ann. §15-61-25 is titled “Right of first refusal of joint tenant or tenant in common to purchase property prior to partition; procedure” and states:

(A) Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the

case. The nonpetitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.

(B) In the circumstances described in subsection (A) of this section, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers, as the court shall approve, appointed for that purpose by the court. The appraisers appointed pursuant to this section shall make their report in writing to the court within thirty days after their appointment. The costs of the appraisers appointed pursuant to this section shall be taxed as a part of the cost of court to those seeking to purchase the interests of the joint tenants or tenants in common petitioning to sell their interest in the property described in the petition for partition.

(C) In the event that the petitioning joint tenants or tenants in common object to the value of the interests as determined by the appointed appraisers, those joint tenants or tenants in common shall have ten days from the date of filing of the report to file written notice of objection to the report and request a hearing before the court on the value. An evidentiary hearing limited to the proposed valuation of the interests of the petitioning joint tenants or tenants in common shall be conducted, and an order as to the valuation of the interests of the petitioning joint tenants or tenants in common shall be issued.

(D) After the valuation of the interest in property is completed as provided in subsection (B) or (C) of this section, the nonpetitioning joint tenants or tenants in common seeking to purchase the interests of those filing the petition shall have forty-five days to pay into the court the price set as the value of those interests to be purchased. Upon the payment and approval of it by the court, the court shall execute and deliver or cause to be executed and delivered the proper instruments transferring title to the purchasers. *S.C. Code Ann. §15-61-25.*

In this case Appellant in her March 16, 2022, answer and counterclaim states:

15. That the Property is incapable of division in kind.

16. That Defendant has and is entitled to exercise a right of first refusal to purchase Plaintiff's interest in the Property pursuant to South Carolina Law. S.C. CODE ANN. §15-61-25.

17. That Defendant intends to exercise her right of first refusal to purchase Plaintiff's interest in the Property, subject to Defendant's claims for set off.

18. That Defendant has the financial ability to purchase Plaintiff's interest in the Property. (Ans)

March 8, 2023, Appellant filed her amended answer and counterclaim to Plaintiff's amended complaint, wherein she again stated:

11. That Defendant has and is entitled to exercise a right of first refusal to purchase Plaintiff's interest in the Property pursuant to South Carolina Law. S.C. Code Ann. §15-61-25.

12. That Defendant intends to exercise her right of first refusal to purchase Plaintiff's interest in the Property.
13. That Defendant has the financial ability to purchase Plaintiff's interest in the Property.
14. That, upon information and belief, the Property is incapable of division in kind.
15. That partition in kind is not appropriate under the present circumstances given the animosity between the parties, the existence of a restraining order for Defendant against Plaintiff, and that ingress and egress access to the Property if partitioned in kind would require Plaintiff to use an easement over land owned by Defendant's husband. (Am Ans)

On April 14, 2023, Appellant filed a motion for continuance of trial as well as a motion to requesting the Master appoint an appraiser, stating:

5. This case is set for trial on April 18, 2023.
6. However, Plaintiff and Defendant have been unable to agree on an appraiser. Moreover, Plaintiff will not agree an appraisal should be done at all.
7. Plaintiff currently has an appraisal, but this has not been provided to Defendant and her counsel.
8. Because the value of the property is integral to this trial and the parties' positions, going into trial without an appraisal completed is premature.
9. Defendant filed a Motion to Appoint Appraiser contemporaneously with this Motion.
10. As such, the Court should continue the Trial Hearing for a later date and time after an appraiser has been appointed and appraisal o[f] the Subject Property has been completed. (4/14/23 Mtn cont; Mtn App)

At the beginning of trial the Master and Appellant's counsel state:

THE COURT: I know that there were a couple of motions outstanding that we needed to take up before we start, but let me just start with this. This case is a '21 case. It's been before the Court for a while. I issued a scheduling order in March of last year. We were looking at going to trial sometime after August. I got the message that the parties had settled the case at mediation, and then there was a issue that came up about whether or not the settlement had actually been consummated, and we had a hearing. ruled there was no settlement. So we're back to where we are with the trial. And so we scheduled it -- I can't remember -- sometime earlier this year. We scheduled it for today. I did get from Mr. McGee a motion for a continuance on the basis that he did not have an appraisal to submit, and I sort of dealt with that yesterday by denying the motion. Mr. McGee, I don't know that you have to have an appraisal. Might be of benefit. Your client, as an owner of the property, is entitled to render her opinion as to value. That's one of the exceptions we have.

MR. MCGEE: Well, Judge, specifically the motion was based on the statute on 15-61-25. And the defendant here is the non petitioning party in the partition action,

and the statute specifically states that the Court will appoint an appraisal once the notice is provided. The notice was provided that she intended to purchase the petitioner's interest in the property.

THE COURT: When was that given?

MR. MCGEE: That was given March 8 of this year.

THE COURT: Was that sent to the Court?

MR. MCGEE: That was sent to the Court in the answer.

THE COURT: In the answer? Well, we got an issue about the answer. But go ahead.

MR. MCGEE: And so that was given -- well, Judge, even under the statute, even an issue with the answer, 15-61-25 (a) provides whether default has been entered against them or not, certainly that notice is effective regardless of the timeliness of the answer. We're going to get into the timeliness of the answer but the notice was given. And so once that notice was given pursuant to the statute in subsection B, if the -- in the event the parties cannot reach an agreement as to the price, I'm quoting this, the value of the interest or interest to be sold shall be determined by one or more competent real estate appraisers as the Court shall approve appointed for that purpose by the Court, and once that appraiser is appointed then that appraiser gives a report in writing to the Court within days after their appointment and then there's a process ten days after that report for either of the parties to object to that value in that report. And then I think the parties can come in and request a hearing, come in with their own appraisers and argue about that value. So that's the problem we have today, Judge, is we're here on a partition action and none of us have complied with the statute. I can't get opposing counsel to agree that we need an appraiser, so I have requested that several times. The response was we got an appraisal and they said on March 14th they would give me their appraisal. I don't have it yet as I sit here today. And really it doesn't matter because we have an appraiser, too, and there's an issue about whether he could appear virtually today, and I know Your Honor would not be happy with that request. But we can come in with our own appraisers and argue about that, but ultimately we have to follow this statute. And so that's what the motion really --

THE COURT: Let me stop you there. All right. So when I issued a scheduling order in March -- actually it was in February of '22, the expert was listed as NA, not applicable, and y'all must have waived it....

THE COURT: So let me start with this proposition. Usually what I do in a partition case is I cover the bases for partition. So this is like a 46, 50 acre tract of land. There's two owners. I don't understand how there could not be a potential for a partition in kind, i.e, the division of the property. So unless the parties say they're going to waive that, that's the first step in the partition process. There's three types of partition. There's partition in kind. I don't think there's any question but you can subdivide this property, but that's one issue. The next step in the process is the allotment. Mr. McGee, as I read your pleadings, that's what you seek in this particular case. You want to buy out the interest of the other party.

MR. MCGEE: Correct.

THE COURT: The amount that you pay is called owelty. You will pay the owelty to purchase the property. That does get into a valuation issue. Okay? And then finally, there's a partition by sale. I think this case was originally pled that way but

the pleadings were amended at some point in time. It's a three-step process here. But this Court has never appointed an appraiser except in those instances when probably the valuations are so far apart that I want to get a third appraisal...

THE COURT: All right. Okay. All right. So under 15-61-25 in a partition action, the defendant in the action is allowed to purchase the interest of the property whether or not default has been entered against them. I'm going to find that the answer in counterclaim which was filed on March 8, 2023 should be allowed for good cause and that's Mr. McGee's inability to get on to the AIS system. So I'm going to allow the answer in counterclaim under Rule 55 (c). I think the pleadings have previously been joined. The only thing I saw different is this nuisance claim, and it would appear to me that's going to come to light during the trial of the case as I said before. Also in that pleading, the property cannot be partitioned in kind, and I would say that's going to be a very strong, difficult burden for you to overcome, Mr. McGee, but I'll give you that opportunity. And I'm not going to try the easement case, but you can raise the issue if you like and we can talk about that during the course of the trial. So anything further? Any other motion we can take up before we commence?...

THE COURT: Very good. All right. Is the plaintiff ready to proceed?...

THE COURT: You want to make a short opening? I would be happy to hear from you...

THE COURT: Okay. Mr. McGee?

MR. MCGEE: Like Mr. O'Kelley said, you've been aware of this case for a while and we've had some arguments already this morning. It is the defendant's position that they have a right of first refusal to purchase this property. The statute says the Court shall provide for the joint tenants in common who are interested in purchasing the property the right to do that. It's a right of first refusal. That's what they're attempting to do. The petition in kind is problematic for a number of reasons. There are easement issues and access issues. More importantly, there are peaceful existence with each other issues. So you will hear a whole lot of testimony about their inability to even be neighbors to each other....(Trans p4-27)

The S.C. Code Ann. §15-61-25, by its plain unambiguous terms restricts the buyout remedy to non-petitioning parties, irrespective of whether the petitioning cotenant requested partition in kind or partition by sale. Importantly the plain unambiguous language of the statute does not make this buyout right contingent upon the determination of a court that the property is not susceptible to division in kind. An analogous result to the statutory mandate is found in *Zimmerman v. Marsh*, one of the most routinely referenced South Carolina Supreme Court partition cases. In *Zimmerman*, which was decided just prior to the implementation of the statute, the court overturned the master's

order of partition by sale and held that non-petitioning parties' request to purchase the petitioning party's interest in the property, by allotment, should have been granted by the master. *Id.*

In this case in March of 2022, the Appellant first noticed and declared an election to declare her right to purchase Respondent's interest in the property pursuant to the statute. Appellant did so again in her March 8, 2023, answer and counterclaim. April 14, 2023, Appellant again noticed the court and Respondent of her election under the statute in her motion to appoint an appraiser (Mtn App.). Appellant began trial by requesting she be afforded her right to purchase Respondent's interest in the Property under the statute, and expressing Appellant's sincere belief, given the contentious relationship between the Parties, that division of the Property in kind is not an appropriate remedy. The Master expressly stated that prior to Appellant being allowed declare her election to purchase Respondent's interest in the Property, the Master would first require Appellant to overcome what he declared to be a stringent burden of showing the Property could not be divided in kind (Tran. p.23).

The plain unambiguous terms of the statute do not require, Appellant to first evidence th partition in kind is not a reasonable dispute resolution to the matter, prior to Appellant's election to purchase ripening. *See* S.C. Code Ann. §15-61-25(A). It was an error for the Master require Appellant initially overcome the alleged burden of showing partition in kind inapplicable to the matter before allowing Appellant to undertake her affirmative election to purchase Respondent's interest in the Property. It was also an error deny Appellant's affirmative election to purchase Respondent's interest in the Property pursuant to the clear and unambiguous terms of S.C. Code Ann. §15-61-25.

## **II. THE MASTER ERRED IN FINDING, GIVEN THE FACTS AND CIRCUMSTANCES OF THE CASE, THAT IS WAS APPROPRIATE TO DIVIDE THE PROPERTY IN KIND.**

“The court [ ] has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties.” *S.C. Code Ann.* §15-61-50. “The partition procedure must be fair and equitable to all parties of the action. When the court determines a partition cannot be fairly and equally made, the court may order a sale of the property and a division of the proceeds according to the rights of the parties.” *Zimmerman v. Marsh*, 365 S.C. 383, 386, 618 S.E.2d 898 (2005). “This Court has previously stated that partition in kind is favored when it can be fairly made without injury to the parties. Furthermore, equitable considerations such as the length of ownership and sentimental attachment to property may be considered in a partition action, but the pecuniary interests of all of the parties is the determining factor in deciding whether to require a judicial sale or to allow a partition by allotment.” *Campbell v. Jordan*, 382 S.C. 445, 451, 675 S.E.2d 801 (Ct. App. 2009).

In this case, as will be discussed in much greater detail below, Appellant and the Parties in general presented testimony to the court which evidence that despite the size of the Property the individual factors unique to this case including equitable factors, support and finding that a partition in kind in this matter cannot be done fairly and without injury to Appellant and Respondent. Issues relevant to this consideration include issues of ingress and egress access; a history of negative physical and emotions interactions between the parties; and the necessity to determine a value calculation for a property that has unique factors including but not limited to

wetlands, National Forest access and a house which all Parties testified is not valuable and in disrepair which neither Appellant nor Respondent have a desire to possess (Trl Tran; D Exs 1-5, 9-13; P Ex 1-6, 17-18).. The Master erred in determining at the outset that the Property must be divided in kind and that doing so as ordered was not unfair or injurious to Appellant.

**III. THE MASTER’S FINDINGS OF FACT AND LAW IN DETERMINING THE DIVISION OF THE PROPERTY IN KIND LACK EVIDENTIARY SUPPORT. THE RESULT IS INEQUAL, UNFAIR AND INJURIOUS TO APPELLANT.**

“An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Thompson v. Swicegood*, 430 S.C.648, 661, 845 S.E.2d 920 (Ct. App. 2020). “The partition procedure must be fair and equitable to all parties of the action.” *Campbell* at 451.

The Property is roughly 46 acres located in rural area outside of Charleston. The area is zoned one house per 10 acres. The Property is bordered on two sides by the Francis Marion National Forest. The Master ordered after a future survey is conducted Appellant should be deeded a division of the Property to be identified as Tract II a rectangle lot located on the southwest corner of the Property to contain roughly 13 acres of land (Ord.; D Ex. 13; Trl Tran; P Exs. 3-6, 17-18). Tract II is comprised of roughly 4.5 acres of unbuildable lowland wetlands; an existing easement for the benefit of Respondent running through the center Tract II spanning roughly a .25 or .3 of an acre; the house which all Parties testified they did not want and was in poor condition; a pond on the boundary line of Tract I measuring roughly .1 acre; and a small horse barn or shed in poor condition which bears little to no value. Tract II is bordered to the south by the 18 acre private parcel of Mr. Reavis; to the southeast by Bootsie Way a private HOA road; to the east by Respondents’ Tract I, to the north by Respondents Tract I; and to the northwest by a private third-party parcel containing roughly 45 acres (D Exs. 12-13; Trl Tran; P Exs. 3-6, 17-18).

The Master ordered, after a future survey is conducted, Respondent should be deeded a division of the Property to be identified as Tract I a flag lot located on the eastern and northern portions of the Property to contain roughly 33 acres. The total percentage of Tract I land comprised lowland wetlands is less than the total percentage of Tract II land comprised of lowland wetland (D Exs. 12-13; Trl Tran; P Exs. 3-6, 17-18). Tract I contains roughly 8 acres of unbuildable lowland wetlands; and a large barn the parties call the “Hangar” which other than the house is the only other structure of noteworthy struct of value on the Property. Tract I has roughly 2,400 linear feet of property line frontage on the Francis Marion National Forest. (D Exs. 12-13; Trl Tran; P Exs. 3-6, 17-18)

**1. The Master Erred in Fairly Weighing Multiple Considerations and Factors When Determining how to Divide the Property into Two Parcels.**

“An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *Thompson v. Swicegood*, 430 S.C.648, 661, 845 S.E.2d 920 (Ct. App. 2020). “The partition procedure must be fair and equitable to all parties of the action.” *Campbell* at 451. The Master’s Order of partition in kind is not supported by record of evidence before the Court. The Master erred in fairly weighing multiple considerations and factors when determining how to divide the Property including but not limited to the following:

- A. Evidence of the Siblings and their families desires;
  - i. Previous proposals of subdivision by the parties;
  - ii. Appellant greatest desired outcome is to be deed land, a fair amount of acreage;
  - iii. Appellant’s sentimental attachment to the Property; and
  
- B. The value of acreage as ordered to be divided in the future;
  - i. Testimony that buyers desire large tracts of land in this area;
  - ii. The Master’s calculation of acreage value;
  - iii. The value difference between buildable high ground and lowland wetlands;
  - iv. The added value of having property bordering the National Forest;

- v. The local 10 acre minimum zoning restrictions impacts on future subdivision of the Tracts by the parties for their children; and
- C. The Master Erred in Factoring in the 18 Acres Mr. Reavis Owns on an Adjacent Lot When He Determined the Acreage Division of the Property in This Matter;
- i. by taking into consideration the acreage of Mr. Reavis' adjacent and totally separate parcel, when determining the acreage subdivision of the Property;
- D. The foreseeable negative impacts the new property line boundaries will have on the Parties ability to live peacefully as neighbors in the future;
- i. issues of harassment;
  - ii. issues of access and easement location;
  - iii. close proximity of the property line between the Hangar and the House;
- E. The value of the structures;
- i. the house;
  - ii. the large barn "Hangar"
  - iii. the small barn/horse shed

#### The Parties Stated Desired Outcomes

The Master's Order fails to fairly weigh and address the desires of Appellant verse those of Respondent. The Parties testified in or around 2021, they all came to an agreement on how to divide the Property acreage in roughly equal amounts as evidenced by surveys (Trl Trans, P. Ex. 3-6). After agreeing to an equal division of the acreage as depicted in Plaintiff's Exhibit 4, the Parties agreed Appellant would receiving Tract II with all the structures on the Property, Appellant would pay Respondent \$110,000.00, which the Parties determined to be a fair value for the structures which all need repair. (Trl trans) (hereinafter "21 Subdivision Agreement"). The Parties disagree on why, when and how the 21Subdivision Agreement fell apart, but they do not dispute that at the time it represented an agreement to subdivide the Property which they had all agreed was fair. (Trl Trans)

The Order finds all the Parties testified they did not want the house and that the house was in poor condition (Ord; Trl Trans). Respondent testified in 2003 "the house was vacant...and wasn't really taken care of, and we both used it for recreational purposes." (Trans. 65). Respondent

testified “[t]he house is very poor. It’s completely run down. I wouldn’t consider it livable.” (Trans p74). Appellant testified “I mean, I would think that the house is not –I would say it was made for a weekend house. It was made for my dad to go up there on the weekends. It’s not anything extravagant. My guess would be \$200,000 at most.” (Tran 206). Appellant responding to the Master’s questions addressed her sentimental attachment to the land rather than the house stating:

[Master]...you testified last time of a great desire to retain something that your father had left you. Okay? But I’m hearing today that that does not include the house. Is the house part of that? What is it that you really want?...  
[Appellant] What is most valuable to me is the land. (Trl Tran 407)

Appellant testified that given the choice between being awarded the house or being awarded more land Appellant would choose to have more land. Moreover, she and her husband testified to a desire and ability to pay money to account for being awarded the structures in equalize the division. Appellant expressed that such an outcome would be greatly preferred if she was to be awarded the house as opposed to an alternative of being awarded the house and receiving a much smaller tract of land (Trl Tran). Mr. Reavis testified that he and his wife could agree to divide the Property in the manner set forth in the of survey for the 21 Subdivision Agreement. Mr. Reavis testified that to a means and ability to pay \$200,000.00 to Respondent for equalizing and offsetting Appellant being awarded house, structures, and the roughly 23 acres identified as Tract II on Plaintiff’s Exhibit 4. (P Ex. 4; Trl Trans).

By contrast Respondent testified to a belief the Property division should result in Appellant being awarded the house, nobody wants, and an acre or two of land. The remaining, forty plus acres of land should be awarded to Respondent (Trl Trans). Mrs. Harn testified she felt Respondent should be awarded 33 acres including all the property bordering National Forest and all property just north of the pond including the Hangar barn. She asserts Appellant should be awarded receive the house and 13 acres of mostly lowland wetlands as roughly depicted as a re-envisioned Tract II

drawn upon Plaintiff's Exhibit 18 (P. Ex. 18). However, Mrs. Harn testified in exchange for Respondent receiving 20 acres more than Appellant, Appellant should not have to pay Respondent additional monies to equalize the division of the Property (Transc).

The Master at the conclusion of trial states a belief the acreage should be divided equally between two tracts which should more or less result in a similar tract division to that depicted in Plaintiff's Exhibit 4, save for potential minor boundary line deviations as contemplated by Parties in their testimony. The Master goes on to state a surveyor to finalize these minor deviations with a future survey which will depict the final subdivision of the Property into two tracts. The Master further states that since Appellant will be awarded Tract II, containing the house and structures, Appellant will have to pay respondent to equalize the division, an amount the Master contemplates would likely be subsequently after further review to be roughly \$200,000.00, but "I'm not 100 percent convinced on that. Let me look at the numbers." (Trl Tran). In contrast to the Master's statements from the bench, the Master Order of partition awards Respondent 33 acres as suggested by Mrs. Harn. However, unlike Mrs. Harn's suggestion that in such a circumstance no further monies should change hands, the Master's Order contemplates awarding Respondent nearly \$93,000.00 in the future in addition awarding Respondent 33 acres. The 33 acres containing most of the high ground, the Hangar and all of the property bordering the National Forest (Order, P Ex. 18; Trl Tran.). The Master erred in fairly weighing Appellant and Respondents stated desired outcomes. The Order directs a futures unequal subdivision of the Property, which conflicts with the Master's own contemporaneous thoughts and determinations at trial. The Master's Order of Partition is unfair, impartial, and injurious towards Appellant.

#### Acreage Value of the Two Tracts

The Master's findings as to the value of the two divided tracts is unsupported by the evidence in the record. The Master erred in weighing factors to determine the value of the raw land acreage of Tract I and Tract II. The Master calculated the value of each acre on the Property uniformly to be \$11,400.00 or in terms of total site value in acres \$525,000.00 (Ord.) By contrast on April 18, 2023 Respondent's Appraiser Wyman testified a uniform value calculation per acre of \$8,152.17 (Site Value \$375,000.00) (P EX 2). On April 26, 2023 Wyman amended her previous testimony testifying to an increased opinion of the value per acre, increasing to \$8,695.65 (Site Value \$400,000.00) (P Ex. 17). Appellant's Appraiser Smith opined the cost per acre for the Property was \$9,791.00 (Site Value \$450,000 (Trl Tran.; D Ex. 12). Additionally, the Master questions Mr. Reavis: "Mr. Reavis, what did you pay for the 18 acres next door when you bought in September '20? [Mr. Reavis] \$150,000.00. [Master] So something less than ten an acre? [actual cost per acre \$8,333.33] [Mr. Reavis] Yes, sir. [Master] All right. And it looks like you got some wetlands on that. How much is that? [Mr. Reavis] About five acres." The Master erred in ordering a value per acre determination of \$11,400.00, which is an value per acre greatly in excess the opinioned testimony and evidence in the record. The determination is an error. (Ord; Trl Trn; P2; D12).

The Master, though inquiring as to the locations of the wetlands on the Property, failed to take into consideration said locations when determining a fair and equal division of the Property. At trial the Master questioned Mr. Reavis extensively about the locations of the wetlands (Trl Tran). The Master also questioned Mrs. Harn as the Property wetlands (Trl. Tran.). Appellant's Appraiser Smith testified in response to counsel's questioning as follows:

Q. Okay. So this appraisal of value is actually based – your appraisal of value is based on upon the assumption that all of the acres in the subject property are high acres?

A. That's correct.

Q. Okay. And is it now your understanding that the acreage in the subject property is not all high acres?

A. It is not all high acres, that's true.

Q. Do you have an opinion as to what the difference in value would be of a highland acre in this area versus a wetland acre in this area?

A. Yeah, there's certainly a difference in the value. It's hard to put a firm number on that. But there's –wetland value is fairly unusual land, so it's significantly less in value. (Trl Tran. p. 277)<sup>1</sup>

Near the close of trial Mrs. Harn suggested Tract II should be reduced from 23 acres to 13 acres, as roughly depicted by the drawing on Plaintiff's Exhibit 18 (Trl Tran pp 411-421, D. Ex. 13; P. Ex. 18)<sup>2</sup>. In responding to that proposal Mr. Reavis testified: "Q. Okay. And what problems exist or are created if we adopt this [Mrs. Harn's] proposal...and why would that not be a fair resolution? A. [Mr. Reavis] There is going to be a lot of problems created. I mean, number one – and all we would have is half of the field. The pond and the rest of the whole side would be wetlands. All we would have left is wetland (Trl Tran. 426; D. Ex. 13; P. Ex. 18)." The Master orders Appellant to be awarded the 13 acres as suggest by Mrs. Harn and roughly drawn on Plaintiff's Exhibit 18. As stated by Mr. Reavis and testified to by Mrs. Harn, this is a division of the Property awarding Appellant the house and otherwise mostly wetlands, including roughly one acre wetlands to the southeast of the house on the boundary line with Bootsie Way (Trl Tran 411-21; P. Ex. 18; D. Ex. 13), roughly 3 acres of wetlands to the southwest on the property line with Mr. Reavis' tract (Trl Trans; D. Ex. 13), and roughly 1 acre on the northwest of what will be property line with Tract I (Trl Trans; D. Ex. 13). Taking into consideration the easement and the pond, only 50% of Tract II's land is useable high ground. By contrast Tract I contains roughly 25

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<sup>1</sup> Respondent's Appraiser Wyman also testified her appraisal assumed all of the Property was high ground.

<sup>2</sup> Plaintiff's Exhibit 18 does not accurately depict how far east the eastern property line of Tract II would have to extend in order encompass 13 acres all located south of the Hangar Barn. The result would be that Tract II, would encompass nearly the entirety of the southern boundary lines of the existing Property boundaries including roughly 1 acre of wetlands located to the southeast of the house along the property line with Bootsie Way. Said wet land was not originally included in Tract II as depicted in Plaintiff's Exhibit 4.

out of 33 acres of useable high ground, which constitutes 76% of the acreage of Tract II. The Master erred in failing to take into consideration the locations of the wetlands on the Property when ordering the division of the Property. Further the Master failed to consider the disparity in value between wetlands and high ground when he issued said Order.

The Master erred in ordering the division of the Property without properly valuing the distinct attributes of portions of the Property in the context of the value typical buyers in the area place upon those unique attributes of the Property. Respondent's Appraiser Wyman testifies buyers in this local market are looking for acreage with privacy, access to wildlife and property located on the Francis Marion National Forest is greatly valued (Trl Tran). She also testifies the local zoning restrictions allow only 1 house per ten acres. The Reavis and the Harns each have multiple children. The Parties testified to looking at the Property as an opportunity leave these tracts to their children and/or further subdivide the tracts in the future. The Master even acknowledges the import of this at trial (Trl Trans.) However, Tract II at only 13 acres is does not possess the potential for further subdivision. By contrast Tract I awarded to Respondent, could be subdivided into 3 future lots with the opportunity to build three separate houses. The distinction is noteworthy.

Additionally, with regard to the Property bordering the national forest which the appraiser testified increasing its value, both Appellant and her husband testified to the importance of being awarded a portion of the Property bordering national forest. They testified it affords because privacy, ensures no future development on that property line, and allows greater access to wildlife. (Trl Trans.). The Master's failure take into consideration these factors when ordering the division of the Property results in an unequal, impartial division of the Property, to the benefit of Respondent and resulting injury to Appellant.

The Master Erred in Factoring in the 18 Acres Mr. Reavis Owns on an Adjacent Lot When He Determined the Acreage Division of the Property in This Matter.

The Master stated:

I was trying to make some sort of practical consideration because Mr. Reavis has got 18 acres right next door. So they end up going about the same amount of acreage, taking out the fact that Mr. Reavis has paid for that separately. But they end up with the same amount of acreage. And the Reavis get a house and 30-some-odd acres and the plaintiff is just getting some 30-odd acres.

There's some issues about wetlands and whether or not they're favorable or non favorable, whether they have got ducks and where the deer are coming from. All that stuff came up during the trial. That is a little bit less of a concern to me. (Bond hearing Trans. P. 20)

Taking the acreage of Mr. Reavis' adjoining parcel into consideration when ordering the division of the Property between Appellant and Respondent results in an unjust division which benefits Respondent and it was an abuse of discretion and error to do so.

The Master erred in failing to factor in the foreseeable negative impacts the new property line boundaries will have on the Parties ability to live peacefully as neighbors in the future.

In issuing Order of Partition the Master failed to appropriately weigh the negative impact the newly created boundary lines between the two divided tracts will have on access, neighborly interaction, and likely hood of future interaction all of which will likely be determinantal or injurious to the Parties. In contrast to the division of the Property contemplated in the Order, the 21 Subdivision Agreement, exemplified by Plaintiff's Exhibit 4, established property line boundaries which likely would lead to less interaction between the Parties. The 21 Subdivision Agreement would likely result in the home site locations of Tract 1 and Tract II being a distance away from one another. The 21 Subdivision Agreement placed all structures including the house and Hangar barn within Tract II, in part because structures are located in close proximity to one another. The testimony of the Parties evidences an agreed upon intent for the future home site location of Tract one to be a distance from the house and these structures, which would naturally result in less regular interaction between the Parties in the future. However, the Master's Order

establishes a new boundary line between Tract I and Tract II in between the house and Hangar barn. The Order places the property boundary line which divides the northern Tract I from the southern Tract II within mere feet of the Hangar Barn. This boundary line will more than likely result in regular future interaction between the Parties, which Appellant and Mr. Reavis both testified would be foreseeably result in more frequent interactions in future between the Parties. Appellant and Mr. Reavis both testified to their honest belief detrimental, injurious and harassing interactions between the Parties. (Trl Tran; P Exhibits 8,9,10; D Exhibits 4, 5 & 10, 14).

Additionally, the Order does not address or resolve the present easement access for Tract I which travels directly across the middle of Tract II, right in front of the house (Ord, P Ex 17; D2). The 21 Agreement addressed this issue by relocating the easement access to the southern border of the Property and erasing the easement as it currently sits on Tract II. (Tran; P Ex 3,4,5,6). The record evidences is a long history of negative and harassing interactions directed by Respondent to Appellant and her family<sup>3</sup>, which have resulted in a present an existing restraining order, restraining Respondent from interacting with Appellant (Trl Tran; P Exhibits 8,9,10; D Exhibits 5 & 9 &10, Police Incident Report). Appellant testified “I believe that we, my brother and I, would need – we don’t need to pass each other. He needs to have his own way in. I just think there’s been too many issues and it will cause issues.” (Trl Tran. 398). Mr. Reavis testified:

“Q. Okay. And what problems exist or are created if we adopt this proposal[Mrs. Harn’s 33-13 acre property division which the Court adopted in its Order]...and why would that not be a fair resolution?

A. [Mr. Reavis] There is going to be a lot of problems created...It would put him in the hangar in our yard. I mean, there’s no way to build a fence that looks anything planned between the pond and the hangar. I mean, it would completely just destroy the look of either property, and it would put us right in each other’s backyard

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<sup>3</sup> Appellant proffered Defendant’s Exhibit 5 a copy of a text message between Respondent and Jami where Respondent threatens to kill Jami. The Master erred in excluding the exhibit from evidence, through it was allowed to be proffered for impeachment purposes.

literally with no escape, which is why we came up with these lines in the first place to keep ourselves separated with privacy.

Basically at the back of that field where the hangar is and then there's a wood line and then there's some space that would be between and then his property would start, so we would have a natural buffer. If we do this, we're just throwing everybody in the wolves den." (Trl Trans. 427)

The Master erred failing to given sufficient weight to the issue of regular interaction which would negatively impact the Parties, when determining where the boundary lines between the two tracts should divide the Property.

#### The value of the structures

The Master's findings of value calculations in determining the division of the Property errs in calculating the value of the structural improvements upon the Property namely the house and the hangar barn, and then correctly assessing the value of those structural improvements to the Tract that the specific structural improvement was awarded to. The Master's findings as to the value of the two tracts to be created by the Order of Partition is not supported by the evidence in the record as to the value of the two tracts and the structures upon each.

The Master failed to consider the value of the Hangar Barn and assess that value to Tract I when determining how to equalize the tract values in the Order. The Parties testified that the only structure beside the house which has value is what they call the "Hangar Barn", which testimony in the record shows already had electricity running to it (Trl Trans). Respondent indicated a desire to receive the Hangar barn in the division (Tran). Respondent's Appraiser Wyman assessed structural improvement value of \$25,000.00 (Tran; P. Ex 17).

Additionally, the Master erred in determining the value of the house based upon conflicting evidence in the record. All Parties testified the home was in a state of disrepair from decades of being used as a weekend cabin. The appraisals and appraiser testimony reflects that the housing

comparables used to determine structural value were in better condition than that of the house on the Property. Appellant's appraiser Smith testified he had to significantly depreciate the value of the house and structure when comparing them to the other comparable structures sited in his appraisal. The Master's finding as to the value of the home and structures and assessment of those values to each respective tract the structures sit upon is not supported by the evidence in the record, which resulted in the Master ordering an unequal division of the Property.

In conclusion the Master's findings and value calculations for the division of the Property are unsupported by the record. The Master finds the value of the Property in total is \$900,000.00, which is the same as Respondent's Appraiser's value. The Master failed to weigh the fact the Appellant's appraiser valued the property at roughly \$100,000.00 less than that. In *Zimmerman*, the Supreme Court found the master erred in determining the value of the property, when weighing the value of the different appraisals presented to the court. The Supreme Court noted in that case that an equitable determination would have been for the master to average the value of the various appraisals submitted by the opposing parties when the master was making value calculations for the property. The value disparity between the appraisals in *Zimmerman* concerns significantly less money than the value disparity of the Appraisals presented in this matter. Here, the Master adopted the Respondent's appraisal value of \$900,000.00 when determining value in his Order. The Master erred in value the Property as such when the evidence of Appellant's submitted appraisal value of significantly less than \$900,000.00. *Id.* at 387.

**2. The Master Erred in Order Appellant to Pay Respondent as Setoff Contributions Respondent Allegedly made to the maintenance and upkeep of the Property. The Master Further Erred in Failing to Factor In Appellant's Contributions to Maintenance and Upkeep of the Property when making Setoff Findings.**

"The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the

parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties.” *S.C. Code Ann.* §15-61-50. “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. The general rule is that a joint tenant who, at his own expense, places permanent improvements upon the common property, is entitled in a partition suit to compensation for the improvements whether the co-tenants assented thereto or not. In the absence of consent the amount of compensation is estimated by and limited to the amount by which the value of the common property has been enhanced. *Thompson*, at 661-62 (citing: *Ackerman v. Heard*, 287 S.C. 626, 629 340 S.E.2d 560 (Ct. App. 1986) (“Compensation is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another. In the absence of consent, which we did not have in the case before us, the amount of compensation is estimated by and limited to the amount by which the value of the common property has been enhanced”); *See also Few v. Few*, 242 S.C. 433 131 S.E.2d 248 (1963) (“Compensation in money or by allotment of the improved portion of the common property to the improving tenant "is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent one tenant from becoming enriched at the expense of another.” (citations omitted)).

“The rule appears well settled in this state that the right of a cotenant in possession of the common property to be reimbursed for improvements made by him, or in the partition to have the portion of the land improved by him allotted to him, is exceptional, and to maintain it the improving tenant must establish: (1) That he was in possession under an honest belief of ownership; or (2) that to disallow his claim would be inequitable; and (3) that the allowance would result in no inequity to the interests of his co-tenants... The general rule is that a joint tenant who, at his own expense, places permanent improvements upon the common property, is entitled in

a partition suit to compensation for the improvements whether the co-tenants assented thereto or not... In passing on a claim for contribution arising out of the erection of improvements, all the circumstances of the case should be taken into consideration. Where it appears that the co-tenant making the improvements has acted in good faith, without design to injure or exclude his cotenants, and that the improvements are permanent and useful or necessary to the enjoyment of the property, the court may allow him the amount which represents the increase in the value of the estate, and not alone the amount of their actual cost. A similar principle applies where it is shown that the improvements amount to nothing more than restorations or betterments that any co-owner might be expected to join in making. But it is clear that improvements made solely for the purpose of increasing the occupying tenant's business, or with the design of causing the other tenants to abandon their interests in the property by reason of the expense, will not be allowed." *Shumaker v. Shumaker*, 234 S.C. 421, 425-26, 108 S.E.2d 682 (1959) (citations omitted).

At the end of the trial the master stated his intentions to for a future ruling and gave instructions to the Parties for further actions to be taken by the parties before he issued an Order.

The Master states:

I do think somebody is going to have to get the house, and I really think y'all's partition in kind was good except for the access issue was a problem and the value was a problem in that I didn't think 110,000 was legitimate. That may have been good two years ago, but what we're hearing now is probably more like \$400,000...So what I want to do I think is I am going to award –there's two or three things that need to happen for this proposal to work. Okay? And that's going to take both parties working together to get that done. So one of the things is that if the Harns are going to get what is described as the L-shaped tract 1, they're going to need to join Bootsie Way...This proposal I'm looking at is basically taking the 45 acres and cutting it in half is what I'm seeing here. That gets you access to it...But I think that the proposal is done with some exchange of funds is probably pretty darn fair, and so that's what I've been wrestling with. As much as I'd like to move the lines [15 feet or so] as y'all have indicated, I think we could move those lines around...So I would take away the access from the easement from Highway 45 if you can get approval through the Landry Farms HOA to use their road. Get you access there. Have you abandon the right to use the access from 45...And then I would propose that all of those buildings be part of tract 2. Gives you a clean slate on tract 1 to do whatever you want...I would like to keep the [acreage] ratios about the same...Okay. Have to get a surveyor to do that [move the lines 15 feet or so in equal amounts so the ratios stay the acreage ratio stay the same]...Kind of giving everybody some homework...So then there's a question of how much remuneration should be paid. Y'all had some numbers in here the other day. My starting point would be somewhere close to half of the 400,000, but I'm not 100 percent convinced of that. Let me look at my numbers...Property taxes – we split the

property equally, should be split evenly. I know insurance was paid over here, so I've got that...*Well, here's what I need to do before I set the numbers is I would need to get a full accounting of what's been done. If y'all go the tax assessor's office they will give you a bill that says who paid what. That was somewhat in dispute for a while...* And so one of my concerns really has been to make sure that there is an asset that y'all can pass on to the next generation, and that's what you want to do. Okay? And that had something to do with the size of the lots and who is there and who is where. (Trans)

In contrast to the Master's thoughts at end of the trial, the Master's Order makes distinctly more inequitable and unjust findings resulting in jury to Appellant. The Order awards Appellant only 13 of the 46 acres and the house without the Hangar Barn. The Order does not resolve the issue of access or the easement for access to Tract I. The easement continues to travel through the center of Tract II right in front of the house past the house creating ample opportunities for future conflicts between the Parties. Further, though not awarding equal acreage to the Appellant and awarding her the burden of having to account for the house, which all parties testified they did not want, the Master also assessed Appellant the obligation to pay \$92,900.00 to Respondent to equalize the property values and setoff alleged contributions made by Respondent. The evidence in the record does not support the final setoff awarded to Respondent regarding, contributions for taxes, insurance, and maintenance and upkeep of the Property.

Respondent's Complaint filed June 8, 2021, asserts a single cause of action for partition in kind. The action does not seek an award of monetary damages, recoupment, set-off, or any form of monetary relief for funds Respondent alleges to have expended in relation to the Property (complaint). Appellant filed an answer and counterclaim on March 22, 2022 asserting:

16. That Defendant has and is entitled to exercise a right of first refusal to purchase Plaintiff's interest in the Property pursuant to South Carolina Law. S.C. CODE ANN. §15-61-25.
17. That Defendant intends to exercise her right of first refusal to purchase Plaintiff's interest in the Property, subject to Defendant's claims for set off.
18. That Defendant has the financial ability to purchase Plaintiff's interest in the Property.

19. That Defendant has advanced and incurred expenses of the Property, including but not limited to the payment of taxes, insurance, repairs, improvements, maintenance, and other necessary costs attributable to the Property, with such payments being made in a manner inconsistent with the parties' respective pro rata ownership and obligations to the Property, and that the amount of such expenses incurred and paid by Defendant should be set off against any purchase price for Plaintiff's interest.

20. That, alternatively, Defendant is entitled to a partition by open market sale after appraisal (3/22//22 ans)

April 14, 2022, Respondent filed a reply to Appellant's counterclaim asserting: "Plaintiff admits that should the parties not reach an agreement *as to the sale of the Plaintiff's interest to the Defendant*, then the property should be sold on the open market and the proceeds from such sale be split between the parties at the direction of an Order of this Court." It is noteworthy Respondent again did not allege that he had incurred expenses for payment of taxes, insurance, improvements or repairs to the Property. (Reply) On January 23, 2023, Respondent filed an amended complaint requesting the Master "order a partition of this property, preferably in kind, or by purchase of the other tenant in common, pursuant to S.C. Code Ann. §15-61-10, et seq.<sup>4</sup>

The Master finds in Paragraph 28 of the Order:

in order to equalize the values of the property the Court has determined, based upon the appraisal figures submitted, that the per acre price of the property is \$11,400 per acre. In order to equalize the respective values given the award of the house to Defendant, the Court finds that Defendant shall make a financial contribution to the Plaintiff in the amount of \$73,500. This figure represents the respective values of the property as partitioned. (Ord.).

In Paragraph 21 of the Order the Master states "I find that the Plaintiff is entitled to seek contribution for the payment of taxes as he testified that he has paid for taxes for all but two of their 20 years of ownership." In Paragraph 29 of the Order the Master finds:

[B]ased upon the contributions that Plaintiff has made to keep the property maintained and the taxes paid, even since removing himself from the property and

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<sup>4</sup> The Respondent's Amended Complaint also asserts a cause of action for nuisance, however the Order does not award damages to Respondent for nuisance.

maintaining it while in use by Defendant, the Court finds Plaintiff is entitled to be reimbursed for half of the costs paid over the years. In Plaintiff's Exhibit 13, Plaintiff presents his costs and damages incurred: \$1,550 for appraisals, \$5,250 in surveys, \$5,000 in new roof materials, and \$27,000 for nine years of property taxes, for a total of \$38,800. Plaintiff's half portion of those expenses equals \$19,400. Accordingly, the Plaintiff is to be awarded the total amount of \$92,900 as the sum owed to equalize the property values in this partition action. A judgment against Defendant's interest may issue if this sum is not paid (or arrangements made to pay this sum) within six months of the final approved subdivision of the property into two lots (Ord).

The evidence in the record conflicts with the Master's findings in regard to taxes. The evidence reflects that from 2003 to 2009 the Property taxes were paid as expenses of the jewelry store which during that time was jointly owned by the Siblings (Trl Tran). Testimony in the record establishes that from roughly 2009 to 2016 Respondent was making monthly payments Appellant for his purchase of her interest in the jewelry store and during that time Respondent would subtract from those payments to Appellant the value of Appellants fifty percent obligation to pay the Property taxes (Trl Tran). The evidence of record establishes Appellant paid the taxes in full in 2017 and 2021<sup>5</sup> and Respondent even begrudgingly admitted this in his testimony (D Ex 6.; Trl Trn). The record further supports that a finding that as of April of 2023 during the trial the Property taxes were past due and unpaid at that time (trl tran). Therefore the record contains only inferences that Respondent may have made tax payments in 2018, 2019, 2020, and 2022, which is not nine years. Nor does the Master in his findings credit Appellant for the evidence in the record that Appellant made of tax payments on the Property as well as Respondent. Additionally, there is evidence in the record to support a finding that Appellant and Respondent had an agreement in some years that Respondent would be responsible for payment of the taxes for the Property and Appellant would be responsible for Payment of the insurance for the Property. The evidence in the record is

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<sup>5</sup> The tax receipt shows an over payment of taxes in these years, which left a balance this should have been considered by the Master.

uncontroverted in establishing that Appellant not Respondent incurred the cost of Property insurance without receiving any contribution from Respondent. However, the Master in awarding Respondent setoff contributions to be paid by Appellant never gives Appellant credit for the years of insurance payments and utility bills Appellant paid for the Property without Respondent's contribution (trl trn; D ex 7-9; Ans; Am Ans) Appellant plead that she was entitled to setoff for financial contributions she made to towards the maintenance and upkeep of the Property. The Master erred in failing to factor in the financial contributions Appellant made towards insurance and taxes when the Master made awarding setoff funds to Respondent. The Master erred in awarding Respondent \$27,000.00 for payment of taxes without contribution from Appellant, when the record does not reflect evidence for such a finding. The Master erred in not requiring Respondent to account for not contributing to the Property Insurance payments made by Appellant (Ord.)

The Master also erred in awarding Respondent "costs and damages incurred: \$1,550 for appraisals, \$5,250 in surveys, \$5,000 in new roof materials" when the record does not present credible evidence that these damages were incurred by respondent and/or are appropriate damages to be awarded for set off contribution in a partition action.

First, the half of \$5,000.00 damages award for roofing materials does not constitute an expense incurred by a joint tenant for improvements actually made to the house as contemplated by the court in *Thompson*. Respondent and/or Mrs. Harn testified that they never took possession of these roofing materials which remain in the possession of their contractor; they testified that they may be entitled to reimbursement for the alleged expenses paid to their contractor for roofing materials because the materials where never delivered to Respondent and were never installed upon the house on the Property. Finally, Respondent did not present any credible reliable evidence

within the record to support a finding Respondent actually incurred this amount. The only evidence before the court is a hearsay testimony and a hearsay accounting document which Mrs. Harn testified, she created before trial. Respondent did not present any evidence of a check, credit card statement, invoice or receipt showing that Respondent incurred and paid this amount for roofing materials (Trl Tran; P Ex. Account). By contrast there is evidence in the record that Appellant and/or her husband incurred expenses in the form of materials and labor costs for maintain the landscaping, repairing and/or replacing the septic tank, repairing the Hangar barn, patching the house roof, and constructing and repairing fences, all over the courses of twenty years. However, the Master did not factor any of these property maintenance expenses incurred by Appellant into the Master's findings regarding financial contributions to the Property by the Parties for the cost of maintenance of the Property for purposes of making findings as to awards of setoff. It was an error and abuse of discretion for the master to award Respondent these set off damages and costs while not weighing the costs incurred by Appellant (Trl Tran).

As to appraisal damages and costs. Both parties submitted appraisals however, the Master did not take that into consideration when awarding Respondent appraisal costs. Additionally, appraisal fees for an expert appraiser are incidental to the case and therefore not appropriate to be awarded as a money judgment. See *State v. Cooper*, 342 S.C. 389, 399, 536 S.E.2d 870 (2000). Regarding the award to Respondent of half of \$5,250.00 survey fee there is not credible reliable evidence within the record support a finding Respondent actually incurred this amount. The only evidence before the court of this is a hearsay accounting document which Mrs. Harn testified she created before trial. Respondent did not present any evidence of a check, credit card statement, invoice or receipt showing that Respondent incurred and paid this amount for survey fees (Trl Tran; P Ex. Account).

In conclusion the Master erred in awarding damages and costs to Respondent to be paid by Appellant for set off contributions to the maintenance of the Property because the record does not provide evidentiary support for the Master's findings. Additionally the Master also erred in failing to take into consideration contributions which Appellant made to the maintenance of the Property when making findings as to awards of set off costs and damages.

#### **IV. THE MASTER ERRED IN REQUIRING APPELLANT TO POST A BOND PURSUANT TO S.C. CODE 18-9-170**

If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment; and in case the land shall be unimproved land, then in any action or proceedings now pending or hereafter begun in any of the courts of this State the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal. *S.C. Code Ann. §18-9-170*

“There are well-established principles applicable to co-tenancy which control the controversy and require affirmance of the judgment, under the evidence adduced at the trial. A cotenant has the right, in common with his cotenants, to the possession of the property owned in common, so ordinarily the possession by one cotenant is the possession of all. The latter ceases when the exclusive possession of a cotenant becomes adverse to the right of possession by the other cotenant

or cotenants; but the hostile character of the possession must be such as to amount to an ouster of the other cotenant or cotenants and must be clearly and unmistakably established by the evidence. While the possessor need not give express notice of the hostility of his possession to the other or others, the nature of it must be brought home, as it has been said, to the other owner or owners". *Watson v Little*, 224 S.C. 359, 364 79 S.E.2d 384 (1953). "Section 18-9-170 of the South Carolina Code (1985) indicates if the judgment appealed from directs the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless the party against whom judgment is entered obtains a bond with two sureties guaranteeing the property will not be wasted during the pendency of the appeal." *C-Sculptures LLC, No.3 v Brown*, 393 S.C. 27, 32, 709 S.E.2d 705 ( Ct. App. 2011) (citing *Gerald v. Gerald*, 31 S.C. 171, 182, 9 S.E. 792, 796 (1889) ("This language [found in the predecessor to section 18-9-170] shows that the intention was to embrace appeals from judgments of foreclosure, for that is a judgment directing the sale of real property...."))

In this case Master erred in finding the Order of partition was an order directing the delivery of possession of real property within the meaning of Section 18-9-170, because the Siblings have been and remain titled and deeded tenants in common in possession of the Property as co-tenants. The Order of Partition contemplates that final order of partition will be issued dividing the property into two distinct lots. Until that time the Siblings remain cotenants of one property who both under law are viewed to be in possession of the property, therefore no demand to deliver possession of real property order in the Order of Partition. The Order specifically finds that ouster has not occurred. There is evidence in the record that Respondent continually and regularly enters upon and accesses Property up to the present (Trl Trn; Bond Hearin Trn; Mtn Recon Bond; Memo Opp Bond). Since the Partition Order does not direct Appellant to deliver to Respondent possession of

real property then the Master erred in ordering that Section 18-9-170 required Appellant to post a bond to stay execution of the order on appeal. Additionally, the purpose of the statute is to prevent a respondent not in possession or control of the real property from suffering waste, and as Appellant has noted to the Master, Respondent remains in possession, control, and continues to access the Property save for the house and therefore is not a position to suffer waste during the pendency of the appeal as contemplated by Section 18-9-170. The Order of Partition contemplates that in the future the Property will be finally subdivided into distinct parcels or tracts of land and Respondent at that time shall receive what was identified roughly as Tract I on Plaintiff's Exhibit 18. At present Respondent has full access, possession, and control over Tract I, and the evidence in the record shows that Respondent regularly accesses Tract I in contrast to the Master's findings in the Order of Partition.<sup>6</sup> With regard to the house the Order of Partition, in no way could be conceived as contemplating that in the future Appellant would be required to deliver possession of the house to Respondent and as such any issues of waste as contemplated in 18-9-170 are not applicable to any interest Respondent has in the house during the pendency of the Appeal. (Trl Trn; Bond Hearin Trn; Mtn Recon Bond; Memo Opp Bond).

The Court erred in finding in the Bond Order, that the Partition Order ordered and issued a presently collectible and enforceable money judgment of \$92,900.00 awarded to Respondent and currently due to be paid by Appellant to equalize property values, when the Partition Order states "A judgment against Defendant's interest may issue if this sum is not paid (or arrangements made to pay this sum) within six months of the final approved subdivision of the property into two lots."

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<sup>6</sup> The Master erred in finding in the Order of Partition that Appellant has interfered with Respondent's right to quiet enjoyment of the Property because again Appellant and Respondent are tenants in common. If anything the record shows that if Appellant was entitled to quiet enjoyment of the Property exclusive of Respondent's rights, Respondent is the one who has repeatedly violated Appellant's rights to repeated bad acts regarding the Property over the year (ord.; Trial Trn)

(Ord). The Court has not issued a final order of subdivision of the Subject Property as such a money judgment to equalize the value of the subdivided lots has not ripened. The Partition Order does not order or issue a money judgment to Respondent which is at present is enforceable by Respondent against Appellant personally or Appellant's interest in the Property.

The Court erred in finding that a \$50,000.00 bond was necessary to be paid by Appellant to protect Plaintiff's interest in the Subject Property to prevent Plaintiff interest from suffering waste during the pendency of the Appeal when no bond would be necessary, but if such a bond was necessary, which Appellant specifically denies, but in such hypothetical case a an amount significantly less than \$50,000.00 would protect Plaintiff's interest in the property from suffering waste during the pendency of the appeal. Respondent testified he see ne need in insuring the Property (Trl Tran), Respondent maintains access to the Property (Trl Tran; Bond hearing Tran; Respondent maintains title to the Property as a Tenant in Common; Respondent was awarded a future division of the Property which would not contain the house; Respondent testified he did not have an interest in owning or possessing the house; and Section 18-9-170 does not mandate that Appellant be required to post a bond to protect Respondent's interest in alleged setoff damages Appellants alleged failure to contribute equally to the Property maintenance expenses. For all the reasons the Master erred in ordering Appellant to post a \$50,000.00 bond to stay the execution of the Partition Order during the pendency of this appeal pursuant to the terms of S.C. Code Ann. §18-9-170.

**V. THE MASTER ERRED IN ADMITTING INTO EVIDENCE AND NOT STRIKING PLAINTIFF'S EXHIBIT 11 AND TESTIMONY OF REGARDING SETTLEMENT NEGOTIATIONS AND MEDIAITON**

The Master in Paragraph 17 of the Order finds: The fair market value for the property was previously set at \$650,000.00<sup>7</sup> as evidenced by an agreement, signed by the parties on June 23, 2022. (Plaintiff Ex. 11). The Defendant agreed to sell her half-interest in the property to the Plaintiff; however, the agreement was never consummated and this lawsuit continued.” (Ord) “South Carolina's Rule 408, SCRE, is identical to the federal evidentiary rule, and it provides that evidence of offers of compromise or the acceptance of offers is generally inadmissible; further, evidence of conduct or statements made in compromise negotiations is likewise not admissible..” *SC Human Affairs Com'n v. Zeyi Chen*, 430 S.C. 509, 525, 846 S.E.2d 861 (2020). The court admitted Plaintiff’s Exhibit 11, over Appellants’ objections (Trl Tran). Plaintiff’s Exhibit 11 is a mediation settlement agreement the Master previously ordered to be unenforceable in this matter (Ord denying mtn enforce settle; memo opp sett; mtn compel settl). Thereafter the Master relief upon Plaintiff’s exhibit 11 to make factual findings as to an alleged agreed upon value of the Property in June of 2022. Additionally, the Master erred in admitting and not striking testimony regarding the substance and settlement and mediation negotiations over Appellant’s objections (Trl Tran).

### **CONCLUSION**

Appellant Mary Nicole Reavis, respectfully asks this Court to reverse the lower court’s findings of fact and law in the Order of Partition regarding the division of the property in kind and award of equalization and setoff costs and damages to Respondent. Appellant and requests this make legal determination that Appellant is entitled to purchase Respondent’s interest in the Property pursuant to S.C. CODE ANN. §15-61-25 and remand this matter back to lower court to

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<sup>7</sup> A finding that Appellant and Respondent agreed the fair market value of the Property in total was \$650,000.00 in June of 2022, is completely in error and unsupported by any evidence in the record including Plaintiff’s Exhibit 11.

conduct further proceedings therewith. Appellant requests that this court make a legal finding that the Order of Division of the Property in Kind was unjust and unfair to Appellant and the Master erred in dividing the Property in kind in the manner ordered. Appellants, Request that this court make a legal determination that the Master erred in awarding setoff and equalization damages, costs and/or funds to Respondent to be paid by Appellant. Appellant requests that this court make a legal determination that the Master erred in Admitting Plaintiff's Exhibit 11 into evidence. Appellant requests that this court make a determination that Master erred in allow testimony as the substance of settlement and mediation negotiations over Appellants objections to the testimony. Appellant requests that this court reverse the Master's Order requiring Appellant to post a bond make a determination that the Master erred in ordering Appellant to post a \$50,000.00 bond pursuant to S.C. Code Ann. 18-9-170.

RESPECTUFLY SUBMITTED,

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