THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2021-CP-10-02661
Appellate Case No. 2024-001312

Jason Loy Harn.....Respondent,

vs.

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

RESPONDENT'S FINAL BRIEF

Mt. Pleasant, South Carolina

May 29, 2025

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STATEMENT OF THE CASE

This matter arises out of a partition action between a brother, the Respondent, and his sister, the Appellant.

On June 8, 2021, Jason Loy Harn filed a Lis Pendens with the Clerk of Court for Charleston County (ROA 34) The Lis Pendens mistakenly stated that the real property at issue is located in Spartanburg County and would be subject to quiet title action after tax sale. *Id.*

On the same day, the Mr. Harn filed a Summons and Complaint for a Partition in Kind against his sister asking the Court to partition forty-six acres of land they owned near McClellanville, South Carolina, as Co-Tenants. (ROA 30) The Complaint set forth that the Appellant and Respondent are each owners of an undivided one-half (1/2) interest in the property as a result of inheritance from their father's estate. (ROA 30) (ROA 605) Mr. Harn has requested from the outset of this matter that the property be portioned in kind. (ROA 30)

On August 8, 2021, Mr. Harn filed an Amended Lis Pendens naming the correct county and advising that he was seeking a partition. (ROA 35)

Mr. Harn attempted service on his sister by process server unsuccessfully. (ROA 36) On the same day, he filed an Affidavit of Due Diligence in Support of a Petition for Order Allowing Service by Publication (ROA 37) (ROA 40) The Honorable Julie J. Armstrong, Clerk of Court, granted the Order of Publication on September 2, 2021. (ROA 1) According to the Affidavit of Publication filed September 29, 2021, the public notice ran in the *Charleston City Paper*, on September 8, 15, and 22, 2021. (ROA 40)

On January 6, 2022, Mr. Harn filed a Petition of Default and Affidavit of Default as more than thirty (30) days had passed since the service by publication. (ROA 41)

On January 11, 2022, the1 Honorable Jennifer B. McCoy granted petition by way of her Order of Default and Reference, referring the matter to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County. (ROA 3)

Ms. Reavis made a notice of appearance on February 25, 2027. (ROA 44)

Judge Scarborough entered a Scheduling Order on February 28, 2022 (ROA 5) The Scheduling Order required a mediation of the matter by May 31, 2022, with Todd Manley. *Id.*

On March 16, 2022, Ms. Reavis filed her Answer and Counterclaim (ROA 45) The Counterclaim stated that Ms. Reavis wished to exercise her right of first refusal to purchase the property pursuant to S.C. Code Ann. §15-61-25. *Id.* She also claimed to have "advanced

and incurred expenses for the Property" including taxes, insurance, repairs, improvements, maintenance and other costs inconsistent with the pro rata ownership obligations of the property. *Id.* She claimed those sums should be set off against any purchase price of her brother's interest. *Id.*

Mr. Harn filed his reply to the counterclaim in his Answer to Counterclaim on Apil 14, 2022. (ROA 49)

On June 23, 2022, the parties participated in mediation with Todd Manly (ROA 51) That same day, the mediator reported that the case had fully settled to be followed by a voluntary dismissal to be filed by the "closing of house". *Id.*

The parties agreed to the following at the mediation:

1. This settlement resolves all issues and causes of action between the parties through June 23, 2022;
2. Upon the payment of the sum of $650,000.00 by Jason Harn to Nicole Reavis, Jason shall become the sole owner of the real estate at 1506 Highway 45, McClellanville, South Carolina, 29458, and shall be solely responsible for all costs associated therewith.
3. Jason Harn shall pay the sum of $650,000.00 on or before September 23, 2022.
4. Nicole Reavis shall vacate the subject real estate by the time of the payment of $650,000.00
5. The parties shall sign all necessary deeds and documents to effectuate the terms of this Stipulation.
6. Each party shall pay his/her attorney's [sic] fees and costs associated with this action.
7. Case Number 2021-CP-10-2661 shall be dismissed with prejudice after the closing on the subject real estate.

(ROA 691)

Jason Harn, Nicole Reavis, and Jeffrey T. Spell, attorney for Mr. Harn, signed the Mediation Stipulation *Id.* Justin McGee, the attorney for Ms. Reavis, never signed the Mediation Stipulation. (ROA 691)

Unfortunately, that closing never happened.

On October 4, 2022, the Plaintiff filed a Motion to Compel Settlement (ROA 70) In that motion, the Plaintiff informed the Court that he attended two closings on September 23, 2022, and September 27, 2022 to consummate the agreement reached at mediation and agreed to additional terms in a Hold-Over Agreement that was requested by but never accepted by, Mrs. Reavis. (ROA 70) (ROA 73) (ROA74)

On October 6, 2022, Mr. Harn moved to amend the Complaint. (ROA 75) The Amended Complaint set forth additional facts regarding Mrs. Reavis's failure to close on the property. *Id.* The causes of action in the Amended Complaint were for specific performance, breach of contract, and nuisance.

Judge Scarborough heard the Motion to Compel Settlement and Motion to Amend on January 17, 2023.

In opposition to the Motion to Compel Settlement, Mrs. Reavis relied on the fact that her counsel did not sign the Mediation Stipulation, making it enforceable pursuant to Rule 43(k) SCRCivP. Judge Scarborough agreed but allowed the amendment of the Complaint. (ROA 7) He also ordered that the parties once again mediate the matter with Todd Manley. *Id.*

Mr. Harn filed his Amended Summons and Complaint on January 27, 2023. (ROA 52) The first cause of action asserted was for partition pursuant to S.C. Code Ann. §15-61-10, seeking to partition "preferably in kind" with a fair market value having been established of $650,000.00 per the Mediation Stipulation. *Id.* The second cause of action was for nuisance. *Id.* Service was made upon Mrs. Reavis's counsel via the Court's Notice of

Electronic Filing (NEF) on January 27, 2023. (ROA 60)

On February 20, 2023, Mr. Harn filed an Affidavit of Default as no responsive pleading had been filed by Mrs. Reavis within fifteen (15) days. (ROA 58) Mr. Harn filed a Motion for an Order of Default Judgment on March 8, 2023 (ROA 95) That same day, Mrs. Reavis filed her Answer to Plaintiff's Amended Complaint and Counterclaim (ROA 62) Her counterclaim, again, was for a right to purchase her brother's interest in the property claiming a partition in kind was not appropriate. *Id.*

Four days before trial, on April 14, 2023, Mrs. Reavis filed a Motion to Appoint Appraiser. (ROA 88) She also filed a Motion for a Continuance supported by an Affidavit. (ROA 91) The Court denied the Motion (ROA 128)

The trial of the matter took place beginning on April 18, 2023. (ROA 110) At the beginning of the trial, Judge Scarborough denied the motions for an appraisal and for a continuance. *Id.*

The Court also heard Mr. Harn's motion for default at that time. (ROA 120) Judge Scarborough denied the motion and allowed the Answer and Counterclaim of March 8, 2023. (ROA 132)

The trial also took place on April 26, 2023 (ROA 369)

The Court issued its Order Granting Partition on June 27, 2024. (ROA 10)

On July 8, 2024, Mrs. Reavis moved to have Judge Scarborough alter or amend the Order. (ROA 97). Judge Scarborough denied that motion by Order dated July 12, 2024. (ROA 18)

This appeal followed.

While this matter was pending before this Court, on August 14, 2024, the Plaintiff filed a Motion for Bond pursuant to S.C. Code Ann. §18-9-170 and Rule 241(b)(4) SCACR. (ROA 100)

On October 2, 2024, the Court conducted a hearing on the Respondent's motion for a bond pursuant to S.C. Code Ann. §18-9-170 and Rule 241(b)(4) SCACR. The Court granted that motion on October 9, 2024. (ROA 21) The Appellant was required to post a bond in the amount of Fifty Thousand ($50,000.00) and No/100 Dollars by November 9, 2024. *Id.* On October 19, 2024, the Appellant moved to have that order reconsidered. (ROA 102) The Master in Equity denied that motion by Order filed October 24, 2024. (ROA 24) The day before the bond was due, the Appellant moved for an extension of time to comply (ROA 107). On November 13, 2024, the Appellant filed her bond six days out of time. (ROA 596) Judge Scarborough ruled the motion to extend the time to file the bond was moot accordingly. (ROA 27)

STATEMENT OF FACTS

Jason Loy Horn and Mary Nicole Reavis f/k/a Mary Nicole Harn inherited the Property in question from their father's estate by a Deed of Distribution of Mary Alice Harn as the Personal Representative of the Estate of Loy William Harn dated May 14, 2003, and recorded May 16, 2003, in Book A449 at Page 457 in the Office of the Register of Deeds for Charleston County (ROA 605) The Property is located at 1506 Highway 41 in McClellanville, consisting of almost forty-six acres (ROA 605) (ROA 610)

The Property is more particularly described as follows:

> ALL that certain piece, parcel, or tract of land containing forty-five (45.96) acres, more or less, situate, lying and being near McClellanville, in St. James
>
> Santee Parish, County of Charleston, and being more particularly described on a plat entitled "Plat of a 45.96 acre tract located near McClellanville, St. James-Santee Parish, Charleston Co., SC" surveyed by Harold J. LeaMond, P.L. & L.S., dated April 7, 1970, and recorded in Plat book Z, Page 119, in the office of the Clerk of Court for Charleston County, reference to which plat is hereby made for a more full and complete description
>
> Being the same party conveyed to Mary Nicole Harn, a one half (1/2) undivided interest and Jason Loy Harn, a one half (1/2) undivided interest by Deed of Distribution from Mary Alice Harn as Personal Representative of the

Estate of Loy William Harn dated January 29, 2002, and recorded May 16, 2003, in Book A449 at Page 457 in the Office of the Register of Deeds for Charleston County

TMS No. 762-00-00-074

(the "Property") (ROA 605)

Mr. Harn and Mrs. Reavis are brother and sister and are tenants in common as to the Property. (ROA 10). Their father, Loy William Harn, obtained title to the Property in 1990, by deed of Charles A. Felder dated February 19, 1990, and recorded February 20, 1990, in Book X190 at Page 834 in the Office of the Register of Deeds for Charleston County. (ROA 605) The Deed of Distribution transferred to title to Jason Harn and Mary Nicole Harn, who subsequently married James Reavis, and is now known as Mary Nicole Reavis. (ROA 11)

Both Mr. Harn and Mrs. Reavis used the Property primarily for recreational purposes after inheriting for dirt biking, hunting, peaceful weekends. (ROA 174-175) The Property was to be their father's retirement residence. (ROA 175) additionally, there is shooting range on the property which was used in the past for concealed weapons permit training. (ROA 182)

At one point, Mr. Harn and his sister had tried to divide the property between them. (ROA 642) There were to be two tracts, one of which was L-shaped, and both were going to be 23 acres each. (ROA 176) The attempt to divide the property was in 2021. (ROA 180) (ROA 645)

There has never been a problem with access to the Property. (ROA 180) There are two easements to access the Property: one being a private right of way from Highway 45 to the parcel and the other a second overlapping easement with rules attached about timber and obstructions. (ROA 177) (ROA 180) (ROA 643-645) One easement was from Victor Lincoln and one easement was from International Paper. (ROA 177-178) The International Paper easement does not run all the way to Highway 45 (*Id.* at ROA 178) The easement to

get to Highway 45 now crossed land owned by James Reavis, Mr. Harn's brother-in-law. (ROA 183) Mr. Reavis owns acreage abutting the subject Property. (ROA 193)

The parties lived together on the property during the Covid 19 pandemic, but the Reavises attempted to oust Mr. Harn and his family from the property since Mr. Harn and his family moved out of the property. (ROA 12) The parties used the Property like a timeshare with one week on and one week off. (ROA 255) In 2020, the Parties did get along and used the Property together. (ROA 317-318).

Mr. Harn testified that he and his family surrendered the house to his sister and her family soon after that time (ROA 176) He also testified he thought the house on the Property needed repairs which he was prepared to make and which roof repairs his brother-in-law blocked. (ROA 183) Mr. Harn presented evidence at trial of the deplorable condition of the house, the lack of maintenance, patches to the roof, trash in the yard. (ROA 184-187) (ROA748) (ROA 750) (ROA761)) Mr. Harn also testified that his brother-in-law has used the property for his landscaping company as well as a "dump site" . (ROA 187-188) (ROA 192) (ROA 197) Mr. Reavis piled construction debris on the property as well. (ROA 191-192) The whole place was trashed and littered according to Mr. Harn. (ROA 193) The barns on the Property were also trashed. (ROA 195)

The parties formerly established the fair market value of the property by an agreement dated June 23, 2022, signed by the parties, in the amount of Six Hundred Fifty Thousand ($650,000.00) Dollars. (Agreement, ROA 691) (ROA 203) (ROA 210) Even with that agreement in place, the Appellant refused to consummate the sale and the partition action continued. (ROA 12) (ROA 691) (ROA 200)[1]

Mr. Harn testified that he was willing to have the Property partitioned in kind. (ROA

[1] Mrs. Reavis claimed that she did not close due to her husband's drug use and fear of not having a place to live. (Tr. Vol 1, p. 243)

212) Mrs. Harn testified similarly. (ROA 285)

Anne Wyman testified at trial as to the value of the Property. (ROA 138-168) Mr. Harn's appraiser, (ROA 496) Ms. Wyman was admitted as an expert without objection. (ROA 140-141) Her original appraisal was done in 2022. (ROA 610) Using comparable sales and comparable properties, Ms. Wyman originally valued the Property at $900,000.00. Ms. Wyman updated her appraisal and still came up with a value of $900,000.00 for the property (ROA 496). Ms. Wyman determined that the value of the site alone is $375,000.00. The value of the structures on the site she determined to be $476,000.00, minus $74,894.00 in depreciation. (ROA 167)

Ms. Wyman also agreed that $650,000.00 for a one half interest would be in line with her appraised value. (ROA 168)

Mrs. Reavis's own appraiser, Bartlett Smith, determined the property to be worth Eight Hundred Seven Thousand and No/100 ($807,000.00) Dollars. (ROA 267)

The Court looked at both appraisals and found Ms. Wyman's figure to be correct. (ROA 10)

Mrs. Reavis's husband, who does not own the property, testified at trial. (ROA 455) In fact he often acted as though he owned the property, clearing the land. putting up fences, using the property as a lay down yard. (ROA 463-464) He also hunts on the property. (ROA 471) He never obtained permission from Mr. Harn for any of this work or to hunt on the property. (ROA 463-464) Mr. Reavis acknowledged that his brother-in-law paid his wife for her interest in the family jewelry business. (ROA 468) Mr. Reavis admitted that he and his family have lived at the property since the Covid pandemic in 2020, rent free. (ROA 472) (ROA 477-478)

STANDARD OF REVIEW

A partition action is an equitable action and, as such, this Court may review the evidence to determine facts with its own view of the preponderance of the evidence. *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989).

ARGUMENT

I. THE MASTER IN EQUITY PROPERLY RULED THAT THIS PARTITION WOULD BE A PARTION IN KIND WHERE THERE ARE TWO OWNERS OF PROPERY WHERE THERE WAS NO WAIVER OF PARTION IN KIND AND THE PROPERTY AT ISSUE IS EASILY DIVIDED BETWEEN THE TWO OWNERS AS THE NON-PETITIONING PARTY FAILED TO PROVE THAT THE PROPERTY COULD NOT BE PARTITIONED IN KIND PURSUANT TO S.C. CODE ANN. §15-61-50 WHICH PROVIDES FOR MAKING A PARTITION IN KIND AND DID NOT EXERCISE HER RIGHTS PER S.C. CODE ANN. §15-61-25

Partition in kind is the favored method of partition where it can be made without injury to the parties. *Campbell v. Jordan*, 382 S.C. 445, 675 S.E.2d 801 (Ct. App. 2009) As Judge Scarborough noted, "So let me start with this proposition. Usually what I do in a partition case is 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. (ROA 117-118) By ordering an in kind partition, the Master in Equity fairly considered and balanced the equities with a survey to be done and the land to be divided in a manner that will effect the partition. Both Parties submitted proposals for partition in kind. (ROA 11) Now, Mrs. Reavis claims that to be inequitable and unfair.

The Master in Equity cited *Zimmerman v. Marsh*, 365 S.C. 383, 618 S.E.2d 989 (2005) as one of the cases he relies upon for guidance in partition actions. In that case the Master in Equity for Georgetown County found that the property was not able to be portioned in kind due to its "size, shape, and location". *Id.* The Master in Equity found that due to significantly disparate appraisals, the court could not partition by allotment, citing *Pruitt v. Pruitt*, 289 S.C. 411, 380 S.E.2d (Ct. App. 1989) In *Zimmerman,* the Supreme Court

determined that the Master in Equity erred in finding a partition by allotment could not be made where a partition in kind was not possible. Statutorily, partition in kind should be the first form of partition in kind is favored over allotment which is favored over a sale. S.C. Code Ann. §15-61-50; *Campbell v. Jordan,* 382 S.C. 445, 675 S.E.2d 801 (Ct. App. 2009); *Cox v. Frierson*, 316 S.C. 469, 451 S.E.2d 1994 (partition by allotment preferred over sale)

Judge Scarborough correctly determined that an in kind partition would be in the best interest of all the parties. The pecuniary interest of the parties is the determining factor in deciding which form of partition should take place. *Campbell v. Jordan*, 382 S.C. 445, 675 S.E.2d 801 (Ct. App. 2009). As in *Campbell v. Jordan, id*, Judge Scarborough determined that the Property could be split between the parties with a new survey to be conducted to divide the property. At trial, Mrs. Reavis and her counsel agreed with the questions by the Court regarding a proposed division in kind. (ROA 503-05). Mrs. Reavis explained to the Court that there were past discussions with proposed new plats and new surveys dividing the property between herself and her brother. *Id.*; (P's Ex. 4) A price of $110,000.00 was to have been paid by Mrs. Reavis to her brother. *Id.* Mrs. Reavis testified and agree that with a division, she also would have liked for her brother to access his portion via another method and have his own way in . *Id* at 398. She cannot now claim that she does not want a partition in kind when she agreed to it at trial. There was no objection to Judge Scarborough's determination that an in kind partition would be best for the parties. (ROA 548-552). In fact during those discussions regarding the lines to be drawn to divide the Property and their location, Mrs. Reavis's counsel stated that "[t]hat's not objectionable". (ROA 552).

Mrs. Reavis is now stating that which she did not argue for at trial. Mrs. Reavis allegedly wanted allegedly buy out her bother's interest, and pay the owelty under a theory of allotment. (ROA 118).

Further, Mrs. Reavis is wrongfully claiming that she was not given her statutory right of first refusal per S.C. Code Ann. §15-61-25 where she did not comply with the statute. That Code Section states:

> (A) Upon the filing of a petition for real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common 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**

S.C. Code Ann. §15-61-25 (emphasis added).

Mrs. Reavis never notified the Court of her desire to purchase her brothers' interest prior to the trial of the case. Instead, she claims that her answer and counterclaim was sufficient notice , but that is not in compliance with the statute. Judge Scarborough addressed that issue at the beginning of the trial by (ROA 114-16). There was a Scheduling Order entered in the matter in February 2022. (ROA 5, 116). There was never any notice given. The case was set for trial for April 18, 2023. There was no notice provided by April 8, 2023. The plain, unambiguous language of the statute provides that notice must be given to the Court ten days prior to trial. Even if there had been, to paraphrase His Honor, it is hard to understand how there could not be a partition, i.e., the division of the property.

II. BASED UPON THE HISTORY OF THE PROPERTY, THE PARTIES USE OF THE PROPERTY, THE PROPERTY, AND THE ACREAGE OF THE PROPERTY, THE MASTER CORRECTLY DETERMINED THAT THE PROPERTY SHOULD BE DIVIDED IN KIND

At trial, the parties agreed that the Property could be divided. As testified to by Mr. Harn and Mrs. Reavis, they both agreed to the division of property. The question is where it should be divided. Mr. Harn's Exhibit 5 showed a proposed division of the Property, which ultimately Mrs. Reavis would not sign or agree to sign and have recorded. (ROA 10, 643). The Property is easily and readily divisible as shown on that Exhibit 5. *Id.* The Court correctly found that the 46 acres could be divided fairly and even altered the proposed

division in order to "equalize the value of the property to each party" *Id.*

The Court properly awarded proposed Tract 2 to Mrs. Reavis, which continues the house, in which she resides. (ROA 10). The Court also gave the garage/shed to Mr. Harn. *Id.* Mr. Harn would receive 33 acres and Mrs. Reavis would receive 13 acres. *Id.* That was based on the Court's determination as to the costs and expenses paid by the Harns. The Court "showed its work" on Page 6 of the Order, which shows the Court's discretion.

III. THE MASTER PROPERLY FOUND THE DIVISION OF THE PROPERTY BASED UPON THE ACREAGE, THE HISTORY OF THE PROPERTY, THE EXPENSES PAID BY THE RESPONDENT FOR YEARS, AND THE OUTCOMES BY THE COURT ARE SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL INCLUDING ORDERING THE APPELLANT TO REIMBURSE THE RESPONDENT AND TO PAY THE RESPONDENT FOR THOSE EXPENSES

The Master properly considered equitable considerations in support of the outcome in his Order Granting Partition. *Campbell v. Jordan,* 382 C.C. 445, 675 S.E. 2d 801 (Ct. App. 2009). There was great discretion given by Judge Scarborough in making that determination. There was no abuse of discretion and his findings were supported by both evidence and law. *Thompson v. Swicegood*, 430 S.C. 648, 845 S.E.2d 920 (Ct. App. 2020) The Master correctly determined that there was a "question of remuneration" to be determined. (ROA 554). There was sufficient evidence presented that Mr. Harn was owed money for "rent, loss of use" and other expenses. *Id.* Mr. Harn's testimony was that after he had to leave the Property, he was forced to pay rent elsewhere. *Id.* at 445. The Court also found that Mrs. Reavis interfered with Mr. Harn's quiet enjoyment of the Property. (ROA 10).

The testimony offered was that the Mrs. Reavis failed to pay the taxes, upkeep, and maintenance of the property and that her husband used the property for which he paid no rent. (ROA 10, 463-64). Mr. Harn has paid the taxes on the Property for all but two (2) years of ownership. (ROA 241). Mrs. Keenan Harn, Jason Harn's wife, prepared the figures presented to the Court and testified to them at trial. (ROA 261).

The Court correct concluded that Mr. Harn is entitled to contribution for payment of taxes for all but two (2) of the years of his ownership of the Property. (ROA 10).

The Court awarded the following costs:

1. $1,550.00 for appraisals
2. $5,250.00 for surveys
3. $5,000.00 for roofing materials
4. $27,000.00 for nine years of property taxes, half of which is $19,400

This resulted in an award to Mr. Harn of $92,900 as the sum owed to equalize the Property, which has a value of $11,400 per acre. The Court also equalized the values given the award of the house on the property to Mrs. Reavis so that she was required to make a financial contribution in the amount of $73,500. The house is worth $375,000.00 and $148,200 worth of land which totals $523, 200. Mr. Harn receives land valued at $376,200. The difference of $147,000.00 divided in half equals to $73,500.00. (ROA 10).

Mrs. Keenan Harn, Jason Harn's wife, prepared the figures presented to the Court. (ROA 261). The Court agreed with her calculations, which is not an abuse of discretion where Mrs. Harn testified as to those numbers, as did her husband.

IV. THE MASTER PROPERLY REQUIRED THE APPELLANT TO POST A BOND PURSUANT TO S.C. CODE ANN.§18-9-170 AND RULE 241(b)(4) SCACR WHERE THE ORDER GRANTING PARTION CONCERNS THE SALE OR DELIVIERY OF POSSESSION OF REAL PROPERTY

The Master in Equity properly required that a bond be posted in this matter in order to stay the execution of the judgment pursuant to S.C. Code Ann. §18-9-170 and Rule 241(b)(4) SCACR. The Respondent moved before the Master in Equity on August 14, 2024, to have the Appellant post a bond in order to stay the execution of the Order Granting Partition while this matter is before this Court. (ROA 100). The Court granted the motion properly. (ROA 21). The Order Granting Partition is a judgment directing delivery of possession of real

property. (ROA 10). As provided in S.C. Code Ann. § 18-9-170, a matter directly the delivery or sale of real property under appeal cannot be stayed unless the appellant provides a written undertaking with two sureties. The Court partitioned the property and ordered that title be conveyed pursuant to the Order, which constitutes the delivery of real property per the statute. *See also C-Sculptures, LLC v. Brown*, 393 S.C. 27, 709 S.E.2d 705 (Ct. App. 2011)(execution of judgment for sale or delivery of property shall not be stayed unless party against whom judgment is issued obtains a bond). His Honor property ruled that S.C. Code Ann. § 18-9-170 applies to this matter concerning the delivery of real property. It is a black and white issue.

That the Appellant and Respondents are Co-Tenants has nothing to do with the statutory and Appellate Rule requirement that a bond be posted in order to stay the Order Granting Partition. The Co-Tenancy of the parties was established by the Deed of Distribution granting them the property in question. A partition action is to break up that Co-Tenancy. The Order Granting Partition would not have been stayed pending this appeal without the posting of a bond since title and delivery was ordered by the Order Granting Partition.

V. THE MASTER PROPERLY CONSIDERED THE COURSE OF DEALINGS OF THE PARTIES IN A COURT SITTING IN EQUITY HAD PREVIOUSLY HEARD A MOTION TO COMPEL SETTLEMENT, WHICH HE DENIED, BUT WHICH SETTLEMENT AGREEMENT HAD SET THE VALUE OF THE PROPERTY

The Master in Equity properly admitted the Plaintiff's Exhibit 11, being the Mediation Agreement signed by Mr. Harn, Mrs. Reavis, and Mr. Harn's counsel but not signed by Mrs. Reavis's counsel on June 23, 2002. The Court had seen this Exhibit in the Motion to Compel Settlement which the Court denied. The Master in Equity admitted the Exhibit 11 over the objection of Mrs. Reavis for the purpose of establishing what was an agreed upon fair market value at the time. (ROA 200-03). Mrs. Reavis agreed. (ROA 351). The Exhibit was not offered to prove the underlying claims, but, instead to show evidence that would have

otherwise been discoverable. Notes. Rule 408 SCREvid. Mr. Harn and Mrs. Reavis both agreed at that time, June 23, 2002, that $650,000.00 was a fair price for Mrs. Reavis's interest in the Property. That was the use of Exhibit 11 at trial as admitted by Judge Scarborough. That the agreement was not enforceable under Rule 43(k) SCRCivP does not render it inadmissible for another purpose. As His Honor noted, "I've allowed Exhibit 11 because both parties signed it and it has a set prince in there of 650,000 as agreed-upon price" (ROA 209). There was no prejudice in the Court considering Exhibit 11 where each party also presented testimony from an expert appraiser, the Court considered both appraisals, and ruled the property with improvements was worth $900,000.00, which is more than the $650,000.00 agreed upon as shown in Exhibit 11.

CONCLUSION

For the foregoing reasons, the Respondent request that this Court uphold the Order Granting Partition of June 27, 2024, and require that the bond posted by the Appellant be made payable to the Respondent for having to defend this frivolous appeal.

Mt. Pleasant, South Carolina

May 21, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2021-CP-10-02661
Appellate Case No. 2024-001312

Jason Loy Harn.....Respondent,

vs.

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

CERTIFICATE OF COUNSEL
PURSUANT TO RULE 211 (b) SCACR

I certify that the Respondent's Final Brief and that it is in compliance with Rule 211 (b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical errors and misspellings.

Mt. Pleasant, South Carolina

May 21, 2025

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