

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
John K. DuBose, III, Special Referee

Case No. 2011-CP-28-0073
Appellate Case No. 2014-001012

Albert H. Hough, individually, and as Personal Representative
of the Estate of Harold W. Hough and as Personal Representative
of the Estate of Elizabeth P. Hough; George J. Hough; and
Angela Hough, Plaintiffs/Respondents

v.

Richard Wesley Hough, Joel Pitts Hough and
Mary Louise Robinson, Defendants

Of whom

Richard Wesley Hough is Appellant

And of whom

Joel Pitts Hough and
Mary Louise Robinson are Respondents.

MEMORANDUM OF APPELLANT RICHARD HOUGH
REGARDING ISSUE OF APPEALABILITY

RECEIVED

MAY 23 2014

SC Court of Appeals

At the request of this Court, Appellant Richard Hough submits this memorandum regarding whether the trial court's Order on Plaintiffs' Motion to Strike Defendant Richard Hough's S.C. Code Ann. § 15-61-25 Notice ("Order Striking Notice") is immediately appealable. Appellant Richard Hough asserts that the Order Striking Notice is immediately appealable and that this Court should consider the substance of this appeal.

RELEVANT PROCEDURAL HISTORY

The parties are siblings and co-owners of approximately 1,260 acres of undeveloped real property in Kershaw County. In January 2011, Plaintiffs/Respondents initiated an action seeking partition in kind of the real property. Following numerous motions and hearings, trial in the partition matter was scheduled to begin on May 12, 2014.

Ex. 1, Amended Notice of Trial.

On May 2, 2014, Appellant Richard Hough filed and served a letter ("Notice of Interest to Purchase") informing the trial court of his interest in purchasing the other parties' interests in the real property.

Ex. 2, Notice of Interest to Purchase, dated May 2, 2014. Appellant Richard Hough filed and served this Notice of Interest to Purchase

pursuant to S.C. Code Ann. § 15-61-25. Section 15-61-25(A) provides a non-petitioning joint tenant or tenant in common the opportunity to purchase the real property if the interested party files notice with the court no later than 10 days prior to the trial date.

On May 5, 2014, Plaintiffs/Respondents served a Motion to Disallow or Strike Defendant Richard Hough's Section 15-61-25 Notice of Interest in Purchasing Property, and for Expedited Hearing ("Motion to Disallow Notice of Interest to Purchase"). **Ex. 3**, Motion to Disallow Notice of Interest to Purchase, served May 5, 2014. The Plaintiffs/Respondents asserted in their motion that the Notice of Interest to Purchase was untimely. *Id.* Appellant Richard Hough filed a Memorandum in Opposition to Plaintiffs/Respondents' Motion to Disallow Notice of Interest to Purchase. **Ex. 4**, Defendant Richard Hough's Memorandum in Opposition to Plaintiffs' Motion to Disallow or Strike Defendant Richard Hough's § 15-61-25 Notice of Interest in Purchasing Property. The trial court immediately scheduled a hearing and heard Plaintiffs/Respondents' motion on May 6, 2014. **Ex. 5**, Tr. of Hrg. p. 2.

On May 7, 2014, the trial court filed its Order on Plaintiffs' Motion to Strike Defendant Richard Hough's S.C. Code Ann. § 15-61-25 Notice ("Order Striking Notice"). **Ex. 6**, Order Striking Notice, filed May 7, 2014. In its Order Striking Notice, the trial court held that Appellant Richard Hough's Notice of Interest to Purchase was timely filed and served. *Id.* Nevertheless, the trial court ruled *sua sponte* that Appellant Richard Hough's Notice of Interest to Purchase had no effect on the partition proceedings because, in the trial court's determination, non-petitioning parties do not have the right to purchase the property in actions for partition in kind. *Id.* Respondent Richard Hough timely filed this appeal of the trial court's Order Striking Notice.

ARGUMENT

Appellate jurisdiction is governed by S.C. Code Ann. § 14-3-330, which provides the following two grounds by which a trial court order is immediately appealable:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case **involving the merits in actions** commenced in the court of

common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a **substantial right** made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or **discontinues the action**.

S.C. Code Ann. § 14-3-330 (emphasis added).

In this case, the trial court's Order Striking Notice is immediately appealable on these two grounds.

1. The Order Striking Notice involves the merits.

The trial court's denial of Appellant Richard Hough's right to purchase the real property is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(1), which provides that intermediate orders are immediately appealable if the decision is one "involving the merits." "To involve the merits, an order 'must finally determine some substantial matter forming the whole or a part of some cause of action or defense.'" *Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005); *see also Ex parte Capital U-Drive-It*, 369 S.C. 1, 7, 630 S.E.2d 464, 467 (2006).

In this case, Appellant Richard Hough's Notice of Interest to Purchase is not only a defense to the Plaintiffs' partition action, but such notice would also implicate a change in the procedure and determinations to be made by the trial court. On the one hand, partition is generally controlled by Rule 71, SCRCP, and S.C. Code Ann. §§ 15-61-10 through 20 and 30 through 110. On the other hand, a non-petitioning party's purchase of the property follows a separate procedural path, which path is set forth in S.C. Code Ann. § 15-61-25(A) through (E).

In addition, the result of a partition in kind is very different than a purchase by Appellant Richard Hough. Under the procedure provided for by S.C. Code Ann. § 15-61-25, Appellant Richard Hough has the right to pay a court-determined purchase price into court and have title in the property conveyed to him. Following that procedure would result in Appellant Richard Hough owning all of the property.

The trial court's Order Striking Notice, denies Appellant Richard Hough this right and forces the proceeding to follow the path for partition in kind. The end result of a partition in kind is that each party will take title to only his or her proportionate share of the real

property. S.C. Code Ann. § 15-61-50. Thus, because Appellant Richard Hough has been denied the right to take title to all of the real property, the trial court's Order Striking Notice has finally determined a "substantial matter forming the whole or a part of some cause of action or defense" and such decision necessarily involves the merits of the case. The Order Striking Notice is, therefore, immediately appealable.

2. The Order Striking Notice affects a substantial right and discontinues the action.

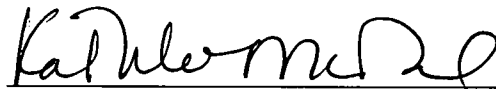
Although it is yet to be determined in this appeal, it is Appellant Richard Hough's position that the right of a non-petitioning party to purchase the property subject to a partition action is a substantial right conferred by statute. S.C. Code Ann. § 15-61-25.

As stated by our supreme court, "An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14-3-330(2)(a)." *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012). As in *Neeltec*, the trial court's Order Striking Notice ends Appellant Richard Hough's efforts to obtain sole title to

the real property. Thus, the Order Striking Notice should be immediately appealable.

CONCLUSION

Based upon the foregoing, Appellant Richard Hough requests that this Court determine that the Order Striking Notice is immediately appealable.



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**ATTORNEY FOR APPELLANT
RICHARD HOUGH**

May ²³__, 2014

Columbia, South Carolina

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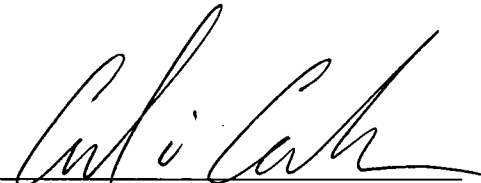
PROOF OF SERVICE

I certify that I have served the Memorandum of Appellant Richard Hough Regarding Issue of Appealability on all parties by depositing a copy of it in the United States Mail, postage prepaid, on May 23, 2014 and addressed as follows:

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Pro se Defendant/Respondent



Carli Cochran

May 23, 2014
Columbia, South Carolina

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EXHIBIT LIST

Exhibit 1: Amended Notice of Trial

Exhibit 2: Notice of Interest to Purchase, dated May 2, 2014

- Exhibit 3: Motion to Disallow Notice of Interest to Purchase, served May 5, 2014
- Exhibit 4: Defendant Richard Hough's Memorandum in Opposition to Plaintiffs' Motion to Disallow or Strike Defendant Richard Hough's § 15-61-25 Notice of Interest in Purchasing Property
- Exhibit 5: Transcript of Hearing, page 2
- Exhibit 6: Order Striking Notice, filed May 7, 2014