

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

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

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Albert H. Hough, individually, and as Personal Representative  
of the Estate of Harold W. Hough and as Person 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.

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**INITIAL REPLY BRIEF OF APPELLANT**

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November 19, 2014

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**ATTORNEYS FOR RESPONDENTS**

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**TABLE OF AUTHORITIES**

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*Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011)..... 2

*Grier v. AMISUB of South Carolina*, 397 S.C. 532, 725 S.E.2d 693 (2012).....2, 3

*Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)..... 2

**OBJECTION TO RESPONDENTS' DESIGNATION OF MATTER  
TO BE INCLUDED IN RECORD ON APPEAL**

In their Corrected Designation of Matter to be Included in the Record on Appeal,

Respondents seek to include the following items:

1. Standing Order in All Partition Actions issued by the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, dated December 20, 2007;
2. Deposition of Albert Hough, p. 6 and 7;
3. Deposition of Angela Hough, p. 11 and 12; and
4. Deposition of Richard Wesley Hough, p. 10.

Appellant objects to the inclusion of these items on the basis that the South Carolina Appellate Court Rules prohibit their inclusion. In particular, Rule 209(b), SCACR, provides that “the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c) ].” As to what may properly be included in the Record, Rule 210(c), SCACR, states, “The Record shall not, however, include matter which was not presented to the lower court or tribunal.”

In this case, the items listed above proposed by Respondents to be included in the Record on Appeal were not presented to the lower court or tribunal at any time during the procedure before the special referee. Thus, they should not be included in the Record on Appeal. Furthermore, this Court should require Respondents to remove from their Final Brief of Respondents any statements relying upon citation to the materials that should be excluded from the Record on Appeal.

statute is unambiguous and we are confined to what the statute says, not what it ought to say, for we have no right to modify a statute's application "under the guise of judicial interpretation." See *Coker v. Nationwide Ins. Co.*, 251 S.C. 175, 182, 161 S.E.2d 175, 178 (1968). In other words, when a statute is clear on its face, it is "improvident to judicially engraft extra requirements to legislation" just because doing so may further the intent behind the statute. See *Berkebile v. Outen*, 311 S.C. 50, 55–56, 426 S.E.2d 760, 763 (1993).

*Id.* at 540, 725 S.E.2d at 698. As in *Grier*, regardless of the policy arguments presented by Respondents, this Court should be confined to the language of S.C. Code Ann. § 15-61-25(A) and should not narrow the broad language of this section to prevent Appellant from exercising his right of first refusal.

### **CONCLUSION**

Based upon the foregoing, Appellant reiterates its request that this Court reverse the trial court and determine that Appellant, as a nonpetitioning party to an action for partition in kind, has a right of first refusal to purchase the property under Section 15-61-25(A) of the South Carolina Code.

Respectfully submitted,



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November 19, 2014  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

NOV 19 2014

**SC Court of Appeals**

John K. DuBose, III, Special Referee

Case No. 2011-CP-28-0073

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.

**CERTIFICATE OF COUNSEL**

I hereby certify that the Initial Reply Brief of the Appellant filed and  
served on November 19, 2014 complies with Rule 211(b), SCACR.



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November 19, 2014

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

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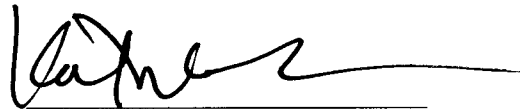
PROOF OF SERVICE

I certify that I have served the Initial Reply Brief on Joel Pitts Hough and Mary Louise Robinson by depositing a copy of it in the United States Mail, postage prepaid, on November 19, 2014 and addressed as follows:

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November 19, 2014

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November 19, 2014

**(Via Hand-Delivery)**

The Honorable Jenny Abbott Kitchings  
Court of Appeals Clerk of Court  
1015 Sumter Street  
Columbia, South Carolina 29201

**RE: Albert H. Hough, individually, and as the Personal Representative of the Estate of Harold W. Hough and as the Personal Representative of Elizabeth P. Hough, George J. Hough and Angela Hough v. Richard Wesley Hough, Joel Pitts Hough and Mary Louise Robinson  
Case No.: 2011-CP-28-0073  
Appellate Case No.: 2014-001012  
Our Case Number: 11127.003**

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Initial Reply Brief of the Appellant and Proof of Service in the above-referenced matter. Please file the originals and return the clocked-in copies to my courier.

I am by copy of this letter serving all parties with this document.

If you have any questions or need anything further regarding this matter, please do not hesitate to contact me at my office.

With kind regards, I am

Sincerely,

CALLISON TIGHE & ROBINSON, LLC

A handwritten signature in black ink, appearing to read "Kathleen", with a long, sweeping underline.

Kathleen McDaniel

KMM/cnc  
Enclosure

cc: B. Michael Brackett, Esquire (Via U.S. mail w/ enclosure)  
M. Scott Rankin, Esquire (Via U.S. mail w/ enclosure)  
Mary Louise Robinson (Via U.S. mail w/ enclosure)