THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable Mikell R. Scarborough

Appellate Case Tracking No. 2016-001298
Trial Court Case No. 2015-CP-10-00939

Vivian B. Cromwell, Susan Prioleau Simmons, Ruth Nelson Gadsden, Robert Blake Brisbane and Mildred Chapman, Plaintiffs

v.

Alberta Brisbane, Jeanie Geathers, LeRoy Brisbane, Francena B. Lawton, James B. Watson, Helen Davis, Rosalee Simmons, LaVerne Hamilton, Minerva Gadsden, Daniel Simmons, Jr., Mary Mosely, Horace Robinson, Jr., James Robinson, Henry Robinson, Avis D. Robinson a/k/a Avis Robertson, Dora Robinson, Jamie Williams, Desiree Williams, Mark Williams, Grace Ettison, Dannion Jordan, Ronald Williams, William Drayton, Keith Drayton, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Alethia Gillian, Samuel Brown, Jeannette Brown, Arthur Brown, Antonio Brown, Dwayne Brown, Polly Brown, Keith Brown, Kenny Brown, Dexter Brown, Marie Brown, Starcia Stewart, James L. Brown, Jr., Glen Brown, Ernestine Brown, Veronica Brown, Calvin Brown, Jr., Harold Brown, Jr., Mary Anne Brisbane, Harvey Brisbane, Jr., Danny Bolds, Raymond Bolds, Michael Bolds, David Bolds, Carolyn Logan, Mary Jane Brown, Miriam Grant a/k/a Muriel Grant, Edward Grant, Jr., Gilbert Grante, Perry Grant, Junata O'Kieffe, Martha Lions, Margie Marine, Gurtha Forrest, Gloria Gibbs, Christopher Gathers, John D. Heyward, Allen Mitchell, Jr., Tiffany N. Daley, Michael S. Mitchell, Allen Mitchell, III, Frederica Coleman, Dorothy Boykin, Lavinia Brisbane, Clarence Brisbane, Jr., Betty Brisbane, Fred Brisbane, Evelyn Palmer, Mary Brisbane, Carl Brisbane, Carlotta Bickham, George Brisbane, Elias Brisbane, Maxine Brisbane, Evan Brisbane, Jesse Simmons, Jr., Odell White, Christina Hartfield, Sarah Mitchell, Arthur Albert Mitchell, Suzanne Mitchell, Olethia Gadsen, Wand Mitchell Harley, Arthur Mitchell, Jr., Benjamin Mitchell, Barbara Johnson, Diane B. Samuel, Kathy L. Nelson, Thelma E. Nelson, Carolyn Singleton, LaMotta Nelson, Rodney Nelson, Jerome Hopkins, Joseph Hopkins, Jr., Tracy Hopkins, Lottie Brown, Sylvia Johnson, Raymon Brown, Ronald Brown, Bernard Frasier, Barry Frasier, Kelvin Frasier, Marie Richardson, Delores Richardson, William Richardson, Robert Heyward, Katina Heyward, Valorie Heyward, Karvin Dotson, Youlonda Brisbane,

Kermit Brisbane, Meka Brisbane, Jermaine Brisbane, Peggy Nelson, Joseph Elliott, Cynthia Elliott, Jackie Elliott, Net Elliott, Stephanie Elliott, Rodney Elliott, Nancy Brisbane, William Albert Brisbane, Jr., Bernard Brisbane, Gary Brisbane, Bonnie Brisbane, Jametta Brisbane Hamilton, Elizabeth Hamilton and Rosetta B. Brown, John Doe, adults and Richard Roe, infants, Insane persons, incompetents and persons in the military Service of the United States of America, being fictitious Names designating as a class any unknown person or Persons who may be an heir, distribute, devisee, legatee, Widower, widow, assign, administrator, executor, Creditor, successor, personal representative, issue or Alienee of James Brisbane, James Brisbane, Jr., James Brisbane, III, Jimmy Brisbane, Emily Brown, Harvey Brisbane, Rosa Robinson, Henrietta Brisbane Geathers, Laura Geathers, Geneva Grant, Viola Heyward, Henrietta Bolds, Estelle Nelson, Swackie Brisbane, Wilhemenia Young, Roxanne Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Alberta Graham, Joseph E. Hopkins, Emily Brown, Steve Brown, Steve Brown, Jr., Roger Brown, James LeRoy Brown, Harold Brown, Theodore Heyward, Theodore Heyward, Jr., Mary E. Mitchell, James Heyward, Clarence Brisbane, Swackie Brisbane, Jr., Susan Richardson, Janie Simmons a/k/a Janie Richardson Brisbane, Ruby Mitchell, Jesse Simmons, William Nelson, Ruth Hopkins, Thomas Brown, Wilhemenia Frasier, Helen Brown Allen, Albertha Lee Richardson, Louise Heyward, Herbert Lee Heyward, Loretta Brisbane, Gail Davis, William Nelson, Jr., Edward Grant, Sr., Eartha Lee Elliott, William Albert Brisbane, Betty Manigault, Steven Christopher Brown And Rosetta Brisbane all of whom are deceased, and any or all other persons or legal entities, known and unknown, claiming any right, title, interest or estate in or lien upon the parcel of real estate described in the Lis Pendens and Complaint herein filed, Defendants,

And Associated Developers, Inc. and Nordic Group, LLC, Intervenors,

Of Which Associated Developers, Inc. is the Respondent,

And of which Nordic Group, LLC is the Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Whether the Master-in-Equity erred in directing the sale of certain heirs property, the subject of a quiet title and partition action, to Intervenor-Respondent Associated Developers, Inc. ("Respondent") for the amount of $560,000.00 when the trial court was informed by the parties that Intervenor-Appellant Nordic Group, LLC ("Appellant") had entered into an agreement with Defendants to purchase the property for the same amount and where Appellant further increased its purchase amount to $650,000.00 during the hearing and executed its amended agreement prior to the filing of the relevant Master's Decree.

STATEMENT OF THE CASE

Plaintiffs originally filed a Complaint on or about February 13, 2015 seeking to clear title, an accounting, and approval of a contract to sell the subject property, further identified as Charleston County Tax Map System numbers 340-01-00-050 and 340-01-00-011 located on James Island, South Carolina (the "Property"). In their Complaint, Plaintiffs sought to partition and sell the Property to Respondent for the amount of $455,000.00 in accordance with a purchase agreement entered into between Plaintiffs and Respondent. See Complaint, p. 5 (R. p. 53). During the initial hearing in December 2015, the parties revealed to the trial court that two purchase agreements were pending to purchase the Property, one from Respondent ($455,000.00) and one from Appellant ($560,000.00), and the trial court scheduled a hearing on May 3, 2016 to address valuation of the Property. See Transcript of Hearing dated May 3, 2016, p. 4, ln. 7 – p. 5, ln. 16 (R. pp. 127–128).

Respondent moved to intervene on or about February 5, 2016 and Appellant moved to intervene on or about March 4, 2016. See Respondent's Motion for Intervention filed February 5, 2016 (R. pp. 59-65); Appellant's Motion to Intervene filed March 4, 2016 (R. pp. 66-71). The trial court allowed both Respondent and Appellant to intervene based on the existence of their respective pending offers to purchase the Property. See Order Granting Respondent's Motion for Intervention filed April 27, 2016 (R. pp. 11-12); Order Granting Appellant's Motion to Intervene filed April 27, 2016 (R. 13).

The trial court held a hearing on May 3, 2016 on the issue of valuation. See Transcript of Hearing dated May 3, 2016, p. 4 ln. 7-10 (R. p. 127). At the conclusion of the hearing, Judge Scarborough, by oral decree, directed that the sale of the Property be performed in accordance with an amended purchase agreement between Plaintiffs and Respondent in the amount of $560,000.00. Transcript of Hearing dated May 3, 2016, p. 63, ln. 17-21 (R. p. 142). The trial court then memorialized this decision through a Form 4 order. See Form 4 Order of Judge Scarborough, filed May 5, 2016 (R. p 14). In response, Appellant submitted a Motion to Reconsider, Alter or Amend and supporting affidavits of Defendants. See Appellant's Motion to Reconsider, Alter or Amend, filed May 16, 2016 (R. pp. 90-102); Affidavit of Sheneatha Brisbane (R. pp. 112-113); Affidavit of Germaine Brisbane (R. pp. 114-115). Appellant further submitted an affidavit of counsel and a copy of Appellant's executed amended purchase agreement for the Property reflecting an increased purchase amount of $650,000.00. See Affidavit of James A. Bruorton, IV and Exhibits filed June 3, 2016 (R. pp. 103-111).

The trial court held a hearing on June 7, 2016 to consider Appellant's Motion to Reconsider, Alter or Amend. After hearing counsel's arguments, Judge Scarborough denied Appellant's motion, finding that the trial court was under no obligation to consider Appellant's higher purchase amount offered at the valuation hearing of May 3, 2016 and thereby rejecting Appellant's executed amended purchase agreement for the higher purchase amount of $650,000.00. See Transcript of Hearing dated June 7, 2016, p. 16 ln. 14- p. 18 ln. 23 (R. pp. 149-150). Appellant thereafter filed its Notice of Appeal appealing the Form 4 Order of Judge Scarborough directing the sale of the Property and the corresponding Master's Decree. Notice of Appeal filed June 16, 2016 (R. pp. 122-123). On the same date, the Master's Decree clearing title to the Property and approving partition by sale was filed. Master's Decree filed June 16, 2016 (R. pp. 16-42). In order to restrain the parties from selling the Property to Respondent during the pendency of this appeal, Appellant filed a Motion for Temporary Restraining Order and Preliminary Injunction. After a hearing on Appellant's motion, the trial court granted the motion by converting it to a petition for *supersedeas*. Order Granting Appellant, LLC's Petition for *Supersedeas* filed August 8, 2016 (R. pp. 44-48).

STATEMENT OF FACTS

Plaintiffs, representing the interests of five landowners, sought to quiet title and sell the heirs Property, subject of this appeal, to Respondent pursuant to a purchase agreement between Respondent and Plaintiffs for the amount of $455,000.00. Complaint (R. pp. 49-54). At the initial December 2015 hearing, determining the ownership interests of the numerous heirs involved, the trial court was presented with a purchase agreement for the Property from Appellant in the amount of $560,000.00, representing a

higher amount than contained in Respondent's purchase agreement. See Transcript of Hearing dated May 3, 2016, p. 4, ln. 7 – p. 5, ln. 16; p. 6 ln. 6-17 (R. pp. 127-128). The Court accordingly scheduled a hearing to obtain testimony on the value of the Property for the purpose of partition and ultimately a sale based on S.C. Code Ann. § 15-61-25. See Transcript of Hearing dated May 3, 2016, p. 4 ln. 7-10; p. 6 ln. 6-17 (R. p. 127-128).

On May 3, 2016, the valuation hearing was held before Charleston County Master-in-Equity, Mikell R. Scarborough. See Transcript of Hearing dated May 3, 2016, p. 4 ln. 7-10 (R. p. 127). The trial court and parties accepted and stipulated as to Appellant's appraisal in the amount of $560,000.00 and received testimony concerning Appellant and Respondent's respective purchase agreements for the Property, both for the amount of $560,000.00. Transcript of Hearing dated May 3, 2016, p. 18 ln. 12 – p. 19, ln. 5; p. 63 ln. 17 – p. 64 ln. 4 (R. p. 131; p. 142). Prior to the hearing, Respondent had increased its offered purchase amount from $455,000.00 to $560,000.00 in order match Appellant's purchase price. See Transcript of Hearing dated May 3, 2016, p. 13 ln. 24 – p. 14 ln. 2 (R. p. 130).

At the hearing, Appellant, through its counsel, agreed to amend its purchase agreement and increase the amount of consideration paid to the landowners to $650,000.00. See Transcript of Hearing dated May 3, 2016, p. 4 ln. 20-24; p. 59, ln. 5-24 (R. p. 127; p. 141). During examination by Defendant's counsel, Respondent's representative, Christopher K. Phillips, Jr., stated it would not increase its purchase price for the Property above the amount of $560,000.00. See Transcript of Hearing dated May 3, 2016, p. 32 ln. 13 – 25 (R. p. 134). The trial court further received testimony from Respondent that it had included certain provisions in its amended agreement to protect

graves located on the Property as part of its anticipated development and during the hearing Respondent's counsel stated that it would remove all but one contingency that allowed Respondent 30 days for the identification of the number of gravesites located on the Property following a subsurface survey of the Property. Transcript of Hearing dated May 3, 2016, p. 58, ln. 14 – p. 59, ln. 4 (R. p. 141). In response, Appellant agreed to incorporate the same provisions into its agreement to purchase the Property but further agreed to reduce the due diligence period from 30 to 15 days and incorporating a shorter closing period from 15 days from the completion of the due diligence period. Transcript of Hearing dated May 3, 2016, p. 59, ln. 5 – ln. 24 (R. p. 141).

The trial court also heard from Clarence Brisbane, one of the landowners and Defendants in the case. During questioning from Judge Scarborough, Mr. Brisbane testified that he was opposed to the sale of the Property to Respondent and believed the landowners were entitled to an amount greater than the $560,000.00 offered by Respondent. Transcript of Hearing dated May 3, 2016, p. 41, ln. 24 – p. 42, ln. 13 (R. p. 137). Despite receiving this testimony and Appellant's higher purchase amount for the Property, Judge Scarborough directed the sale of the Property for the lower amount, $560,000.00, to Respondent, pursuant to its amended purchase agreement with Plaintiffs. Transcript of Hearing dated May 3, 2016, p. 63, ln. 17 – p. 64, ln. 13 (R. p. 142).

Appellant responded by filing a Motion to Reconsider, Alter or Amend and further filed supporting affidavits of Defendants and counsel in support of its motion. Appellant's Motion to Reconsider, Alter or Amend (R. pp. 90-102). The affidavits of Defendants Germaine Brisbane and Sheneatha Brisbane, timely submitted prior to Appellant's motion hearing, both evidenced their opinion, as landowners, that the trial

and effect a partition by sale of the Property to Respondent pursuant to a purchase agreement between Respondents and Plaintiffs for the amount of $455,000.00. Complaint (R. pp. 49-54).

Under S.C. Code Ann § 15-61-10,

> All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments

S.C. Code Ann. § 15-61-10. S.C. Code Ann. § 15-61-25 sets forth the procedure in partition actions. § 15-61-25 specifically provides that the value of the property subject of the partition action shall be determined through agreement of the parties or through an appraiser. See S.C. Code Ann. § 15-61-25. If there are any disagreements, an evidentiary hearing limited to the proposed valuation of the interests of the petitioning parties shall be conducted. Id. In the event that the non-petitioning joint tenants or tenants in common fail to pay the purchase price as set in this section, the court is allowed to proceed according to the undefined traditional practices in partition sales. S.C. Code Ann. § 15-61-25(E).

It is undisputed that the proper course of action in this matter was a sale by partition of the subject real property. In this action there was a disagreement on the proposed valuation of the interest involved. Thus, an evidentiary hearing was held on May 3, 2016 to establish the value of the Property. The statute does not require any further action at the valuation hearing.

I. THE TRIAL COURT'S APPROVAL OF RESPONDENT'S PURCHASE AGREEMENT WAS IN ERROR.

The May 3, 2016 hearing did not require the trial court to take any action in

court should approve Appellant's contract to purchase the Property for the higher sales price. Affidavit of Sheneatha Brisbane ¶¶ 4-5 (R. pp. 112-113); Affidavit of Germaine Brisbane ¶¶ 4-5 (R. pp. 114-115). Defendants Germaine and Sheneatha Brisbane also opined that the approval of Appellant's purchase agreement for the higher amount was in their pecuniary interests as landowners entitled to a portion of the sales price. Id. at ¶ 6. Appellant further timely submitted the affidavit of its counsel, James A. Bruorton, IV. Affidavit of James A. Bruorton, IV (R. pp. 103-111). As an exhibit to Mr. Bruorton's affidavit, Appellant presented the trial court with a copy of the fully executed purchase agreement between Defendants Germaine and Sheneatha Brisbane and Appellant reflecting the amended sales price of $650,000.00 that was verbally offered by Appellant during the valuation hearing. Affidavit of James A. Bruorton, IV, Exhibit A; See id. (R. pp. 96-111). Transcript of Hearing dated June 7, 2016, p. 6 ln. 17- p. 8 ln. 12 (R. p. 147). Further, Respondent brought to the June 7, 2016 hearing, an Amended Purchase Contract that reflected the removal of all contingencies except the gravesite survey, thereby matching Respondent's amended purchase agreement with Plaintiffs, with the exception of the sales price. Transcript of Hearing dated June 7, 2016, p. 7 ln. 12-22 (R. p. 147).

The trial court heard Appellant's Motion to Reconsider, Alter or Amend on June 7, 2016. After hearing from counsel for Defendants, Respondent and Appellant, Judge Scarborough ruled that because the May 3rd hearing addressed valuation and the parties agreed to Appellant's appraised amount of $560,000.00 for the Property, the trial court was not obligated to consider Appellant's increased purchase amount verbally offered during the hearing and as memorialized and submitted into evidence prior to Appellant's

motion hearing. See Transcript of Hearing dated June 7, 2016, p. 16 ln. 14 – p. 18- ln. 23 (R. pp. 149-150).

STANDARD OF REVIEW

Declaratory judgment actions are neither legal nor equitable, and therefore, the standard of review depends on the nature of the underlying issues. Campbell v. Marion County Hosp. Dist., 354 S.C. 274, 279, 580 S.E.2d 163, 165 (Ct. App. 2003). Auto-Owners Ins. Co. v. Hamin, 368 S.C. 536, 540, 629 S.E.2d 683, 685 (Ct. App. 2006). A partition action is an equitable action, heard by a judge alone and, as such, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. Wilson v. McGuire, 320 S.C. 137, 140–41, 463 S.E.2d 614, 616 (Ct. App. 1995) (citing Anderson v. Anderson, 299 S.C. 110, 382 S.E.2d 897 (1989)). The Supreme Court recognized in Anderson that the party seeking a partition by sale carries the burden of showing partition in-kind is neither practicable nor expedient. Id.

ARGUMENT

This action was brought pursuant to Section 15-53-10 et seq., Code of Laws of South Carolina, 1976, as amended. Under the South Carolina Uniform Declaratory Judgment Act, "[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30. Because the Property is heirs property, this action was brought by the Plaintiffs for the purpose of causing the trial court to quiet title

and effect a partition by sale of the Property to Respondent pursuant to a purchase agreement between Respondents and Plaintiffs for the amount of $455,000.00. Complaint (R. pp. 49-54).

Under S.C. Code Ann § 15-61-10,

> All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments

S.C. Code Ann. § 15-61-10. S.C. Code Ann. § 15-61-25 sets forth the procedure in partition actions. § 15-61-25 specifically provides that the value of the property subject of the partition action shall be determined through agreement of the parties or through an appraiser. See S.C. Code Ann. § 15-61-25. If there are any disagreements, an evidentiary hearing limited to the proposed valuation of the interests of the petitioning parties shall be conducted. Id. In the event that the non-petitioning joint tenants or tenants in common fail to pay the purchase price as set in this section, the court is allowed to proceed according to the undefined traditional practices in partition sales. S.C. Code Ann. § 15-61-25(E).

It is undisputed that the proper course of action in this matter was a sale by partition of the subject real property. In this action there was a disagreement on the proposed valuation of the interest involved. Thus, an evidentiary hearing was held on May 3, 2016 to establish the value of the Property. The statute does not require any further action at the valuation hearing.

I. THE TRIAL COURT'S APPROVAL OF RESPONDENT'S PURCHASE AGREEMENT WAS IN ERROR.

The May 3, 2016 hearing did not require the trial court to take any action in

awarding a particular contract over another. South Carolina's Partition Statute does not require a sale of the Property at the valuation hearing. See S.C. Code Ann. § 15-61-25. Instead, the hearing's purpose is to simply establish a value for the Property. Although this action did not involve a public sale by auction, two competing developers, Appellant and Respondent, were present in Court as Intervening Parties. Approving one intervening contract over another constituted a judicial sale.

Both Appellant and Respondent stood ready, willing and able to purchase the subject Property with limited contingencies. Both Respondent and Appellant had contracts to purchase the Property. Transcript of Hearing dated May 3, 2016, p. 4, Ln. 12 – 24 (R. p. 127). At the start of the May 3, 2016 hearing, it was represented to the trial court that Respondent was prepared to increase its purchase price to match the purchase price offered by Appellant. Thus, at the start of the valuation hearing, Respondent's contract with the landowners was for $455,000.00. Respondent, through the course of the valuation hearing, was allowed to enter an amendment to its contract increasing the offered purchase price to $560,000.00, matching Appellant's contract proposal. The trial court, through partition, ultimately made a selection of one contract over the other, similar to a judicial sale.

In judicial sales, all sales must be made on free, fair and competitive bidding. Ex parte Keeler, 185 S.C. 283 (1937). At the valuation hearing, counsel for the parties stipulated to the value of the Property based upon an appraisal that had been prepared on behalf of the Appellant and presented to the trial court prior to the hearing. See Master's Decree ¶ 76 (R. p. 15). Appellant's appraiser estimated that the Property was worth $560,000.00. Based upon the appraisal, Respondent proposed to the trial court and was

allowed to submit a Second Amendment to its original contract removing closing contingencies and increasing the offer to purchase to $560,000.00. See Decree ¶ 76 (R. p. 15). The trial court notes that all contingencies were removed from Respondent's contract; however, Respondent's representative acknowledged that a contingency still remained based upon suitability of the Property after the performance of a gravesite survey.

In response to Respondent's increased contract amount of $560,000.00, Appellant, through its counsel, increased its proposed purchase price of the Property to $650,000.00. Rather than recognize the increased value to the landowners presented by Appellant, the trial court failed to approve Appellant's contract. Instead, the trial court approved Respondent's contract because no one from Appellant's firm appeared in Court other than counsel and Respondent's contract was subjectively deemed in the trial court's discretion to be more of a certainty than Appellant's proposed contract offer. The trial court noted that had Appellant's $650,000.00 contract offer been presented in writing at the May 3, 2016 hearing, it may have decided differently. The $650,000.00 written offer was before the trial court prior to the issuance of the final Masters Decree. Affidavit of James A. Bruorton IV (R. pp. 103-104); Masters Decree (R. pp. 16-42). Appellant's $650,000 offer was memorialized and submitted to the trial court prior to Appellant's motion to reconsider hearing, which demonstrated all of the material terms of the agreement between Appellant and the landowners. Affidavit of James A. Bruorton IV (R. p. 103).

At the time Appellant's written contract was presented, the trial court was not foreclosed from accepting the $650,000.00 contract it claimed it could not accept on May

3, 2016 because it was not in writing. Further, Appellant presented affidavits to the trial court from two separate landowners asking that it approve the sale of the Property to Appellant for the $650,000.00 sales price. Appellant removed all existing contingencies from its contract, except the same grave site survey contingency that remained in Respondent's purchase agreement. Transcript of Hearing dated June 7, 2016, p. 7, ln. 12-22 (R. p. 147). Thus, at the June 7, 2016 hearing on Appellant's motion to reconsider, Respondent and Appellant's contract terms were on equal playing field, with Appellant's contract representing $90,000.00 in additional consideration for the landowners. Transcript of Hearing dated June 7, 2016, p. 7, ln. 15-18 (R. p. 147).

The landowner-heirs in this matter were not unified in their preference of one contract to purchase the Property. When asked, Mr. Clarence Brisbane, an heir to the Property, stated that he wanted more money in the contract. Transcript of Hearing dated May 3, 2016, p. 41, ln. 24- p. 42, ln. 13 (R. p. 137). Germaine Brisbane and Sheneatha Brisbane both signed the written $650,000.00 contract with Appellant. Affidavit of James A. Bruorton IV (R. p. 103-104); Affidavit of Germaine Brisbane (R. p. 114-115); Affidavit of Sheneatha Brisbane (R. p. 112-113). The trial court chose to accept Respondent's contract because it believed Respondent's contract was more of a sure thing and because Respondent had expended money performing due diligence on the Property. Such action by the trial court is an abuse of its discretion and disregards the pecuniary interest of the Parties.

After hearing the arguments of counsel at the June 7, 2016 Motion to Reconsider hearing, the trial court chose to follow its initial ruling based on the premise that it disfavored the manner in which Appellant had gone about the whole process. May 3,

2016 hearing Transcript p. 63 ln. 22 – p. 64 ln. 4 (R. p. 142). Its subjective basis in approving Respondent's purchase agreement rather Appellant's agreement is outside of the factors that should be considered by the trial court in determining whether to approve a contract and has no bearing on the legitimacy of any contract presented.

The trial court went as far as to say that if Appellant wanted to purchase the property from Respondent for the offered $650,000.00 it certainly could. "[Appellant]'s got a solution ... They can go to Associated and buy their contract if that's what they want to do. That's what the market does. That's what happens all the time." June 7, 2016 Transcript p. 16 ln. 22 – p. 17 ln. 1 (R. pp. 149-150). Suggesting Appellant pursue a purchase of the Property from Respondent after Respondent has purchased the Property from the landowner-heirs for a lesser price, is in complete disregard of the pecuniary interest of the landowner-heirs and applicable principles of law concerning partition actions. The trial court recognized that Respondent had already incurred development costs in the Property and took that into consideration when choosing the contract to approve. Failing to approve the purchase contract which presented $90,000.00 in additional value to the landowners disregards the pecuniary interest of the parties and is in error. The trial court placed the interest of Respondent ahead of the other parties, including the landowners. In doing so, the trial court abused its discretion.

II. APPELLANT'S VERBAL OFFER OF $650,000.00 IN COURT IS SUFFICIENT AND BINDING.

The Appellant was penalized by the trial court for failing to provide its $650,000.00 proposed contract in writing at the time of the valuation hearing. The $560,000.00 value of the Property was established by the appraisal prepared on behalf of Appellant. However, Appellant increased its proposed purchase price at the valuation

hearing based on its knowledge of the Property. Respondent increased its contract amount just prior to the hearing from $455,000.00 to the $560,000.00 contract amount equal to Appellant's written proposed contract. The true value of real property is what a sophisticated buyer is willing to pay for the property. In this case, Appellant was willing to pay $90,000.00 above the appraised value of the Property. Respondent was not willing to pay any more for the Property than $560,000.00. May 3, 2016 hearing p. 32 ln. 20 – p. 33 ln. 10 (R. pp. 134-135).

The purpose of the May 3, 2016 hearing was to take testimony and to determine the "fair market value" of the subject property as of the date of the initial hearing on December 17, 2015. "Fair Market Value" is defined as "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect." VALUE, Black's Law Dictionary (10th ed. 2014); see also http://www.investopedia.com/terms/f/fairmarketvalue.asp. ("the price that a person reasonably interested in buying a given asset would pay to a person reasonably interested in selling it for the purchase of the asset or asset would get in the marketplace."). The "Fair Market Value" in this matter was the $650,000.00 Appellant offered to purchase the Property for at the May 3, 2016 hearing. While the appraisal presented to the trial court established an estimated value of $560,000.00, the price that a willing buyer is agreeable to paying a willing seller establishes the fair market value. To establish fair market value, it must be assumed that prospective buyers and sellers are reasonably knowledgeable about the asset, that they are behaving in their own best interest, that they are free of undue pressure to trade, and that a reasonable time period is given for completing the transaction. Appellant and Defendants

in their purchase agreement for the Property satisfy all of these conditions.

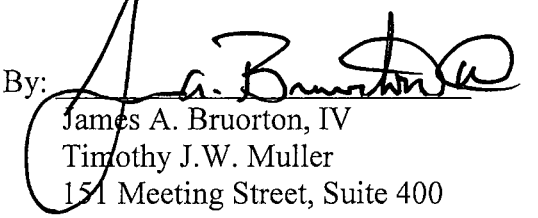
In the absence of a statute providing otherwise, an oral bid is sufficient. 68 C.J.S Partition § 177 (citing Holliday v. McFadden, 188 S.C. 187, 198 S.E. 392 (1938)). South Carolina's Partition Statute does not provide that an oral bid is insufficient. The actions of the trial court in this partition action mirror a judicial sale of the Property. Notably, there is no requirement that a higher bid presented during judicial sales or the hearing that was conducted in this matter be reduced to writing under South Carolina law. Appellant's $650,000.00 oral offer should have been given equal consideration by the trial court as it had provided to Respondent' contract. Appellant's memorialized $650,000.00 contract filed with the trial court on June 3, 2016, was given no consideration, which was in error.

If the trial court had concern over Appellant's ability to perform the proposed contract, it could have given Appellant a timeline to close on the Property. If Appellant failed to comply with the trial court's ordered timeline, then the Property could be sold to Respondent pursuant to Respondent's presented contract. Such action would result in no prejudice to the parties, provided the timeline was consistent with that presented for closing of Respondent's contract. The pecuniary interest of the parties, especially the landowners, would have been protected through such action. Further, the procedure for issuing a partition sale of the Property would have been fair and equitable to all parties to the action. Under South Carolina law, a property partition procedure must be fair and equitable to all parties to the action. Campbell v. Jordan, 382 S.C. 445, 675 S.E.2d 801 (2009).

CONCLUSION

For all the foregoing reasons, this Court should reverse the Master-in-Equity's Form 4 Order dated May 5, 2016 and the Master's Decree dated June 16, 2016 directing the sale of Property to Respondent and instead direct the sale of the Property to Appellant pursuant to its purchase agreement with Defendants.

ROSEN, ROSEN & HAGOOD, LLC

By: 

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November 15, 2016