

**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. 2016-001298

**RECEIVED**  
MAR 05 2018  
SC Court of Appeals

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, Dannon 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, distributee, 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, Roxanna Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Albertha 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. Mithcell, 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.

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RESPONDENT'S RETURN TO PETITION FOR REHEARING

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**TABLE OF AUTHORITIES**

**Cases**

*Anderson Memorial Hospital, Inc. v. Hagen*, 313 S.C. 497,  
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*N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015) .....8

*Sessions v. Withers*, 327 S.C. 409, 488 S.E.2d 888 (Ct. App. 1997).....4

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## CERTIFICATE OF COUNSEL

The undersigned counsel for Respondent Associated Developers, Inc., received a copy of Appellant's Petition for Rehearing via U.S. Mail on February 23, 2018. Pursuant to Rule 240(e), SCACR, Respondent timely files this Return.

### INTRODUCTION

Appellant Nordic Group, Inc. ("Nordic"), seeks reconsideration of this Court's Per Curiam decision entered February 7, 2018, affirming the Master in Equity's approval of Respondent's fully ratified contract to purchase the property at issue. Nordic rehashes its belief that the Master should have instead approved its oral bid, made only by its trial counsel, even though the bid was not in writing, had not been accepted, and untimely written versions still contained contingencies and failed to provide for the preservation of the family gravesites. For the reasons set forth herein,<sup>1</sup> this Court should deny Nordic's Petition for Rehearing.

### ARGUMENT AND CITATION OF AUTHORITY

#### **I. NORDIC'S PETITION FAILS TO MEET THE BURDEN OF RULE 221, SCACR.**

Rule 221(a), SCACR, requires Nordic to state with particularity the points that were overlooked or misapprehended by this Court. *See Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322 (2001) ("In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument."). Nordic's Petition does not reveal any principle of law or material fact this Court overlooked or misapprehended. On the contrary, the dispositive facts are without contradiction in the record, and those facts fit squarely within the well-settled precedent cited by this Court. Nordic's Petition merely repeats the same flawed

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<sup>1</sup> The underlying factual and procedural background of this appeal is accurately set forth in Respondent's Brief on file with the Court. For brevity, it is not repeated here.

arguments it presented before. *See Kennedy*, 349 S.C. at 532, 564 S.E.2d 322 (it is not the purpose of a petition for rehearing to have the case tried again in the appellate court for a second time).

Nordic also fails to challenge this Court's finding that Nordic's failed to submit a signed, written commitment waiving contingencies and providing for the family gravesites. Respondent satisfied these key elements in the Record, but Nordic did not. *Laughon v. O'Braitis*, 360 S.C. 520, 524-25, 602 S.E.2d 108, 110 (Ct. App. 2004) (this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence). This Court agreed that Nordic's lingering contingencies and lack of gravesite protection were material to the approval of Respondent's contract, and Nordic did not challenge these findings in its Petition. An unappealed ruling becomes the law of the case. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997). For these reasons alone, Nordic's Petition should be denied.

## **II. THE MASTER PROPERLY APPROVED RESPONDENT'S RATIFIED CONTRACT OVER THE ORAL BID NORDIC ATTEMPTED TO PRESENT BEFORE THE MASTER.**

This Court squarely addressed this issue in its decision and did not overlook or misapprehend any matter of fact or law. Nordic falsely argues the Master erred in determining, *as a matter of law*, that the "fair market value" of the property was \$560,000. (Petition, p. 5-7). As this Court noted, that all parties, including Nordic, *stipulated* the value of the property was \$560,000, as determined by Nordic's appraiser.<sup>2</sup> (**R. p. 128** (Trans. 6, lines 6-22)); (**R. p. 131** (Trans. 18, ln. 3 to Trans. 19, ln. 9)). Nordic is trying to change the undisputed facts.

The Record also contradicts Nordic's suggestion that its trial counsel was "duly authorized" at the May 3<sup>rd</sup> hearing to contract on its behalf for \$650,000. At the May 3<sup>rd</sup> hearing,

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<sup>2</sup> Nordic admitted in its Initial Brief the value of the property was determined by stipulation. (**App. Brief, p. 3**).

Nordic's trial counsel admitted, "**There's no one here on their behalf, Your Honor.**" (R. p. 141 (Trans. 57, ln. 25 to Trans. 58, ln. 7))(emphasis added). If Nordic's trial counsel had authority to create a binding contract at the hearing, one must wonder why he did not sign and submit a written, approved contract in that amount. Besides, the Record contains no corporate resolution or other evidence whatsoever establishing trial counsel's authority to bind Nordic to any offer or contract. *See Harkins v. Greenville County*, 340 S.C. 606, 616, 533 S.E.2d 886, 891 (2000) (noting it is Appellant's requirement to develop a record sufficient for this Court to review the alleged errors).

At bottom, this Court considered and rejected Nordic's claim that the Master should have accepted its May 3<sup>rd</sup> "oral bid," over Respondent's fully ratified purchase agreement and separate written agreement to preserve the gravesites. Nordic improperly conflates an oral offer (if it was an "offer" at all) with a written and ratified contract. They are not the same.

The Record proves that: (i) no witnesses appeared on Nordic's behalf at the May 3<sup>rd</sup> hearing;<sup>3</sup> (ii) Nordic did not introduce a written<sup>4</sup> offer for the \$650,000 purchase price at the May 3<sup>rd</sup> hearing; and (iii) there is no evidence that any heir had accepted Nordic's \$650,000 oral bid at or before the May 3<sup>rd</sup> hearing in order to create a contract. Nordic's trial counsel had to ask, "No, Your Honor, I don't have a written offer, but is anybody here willing to agree to 650?" (R. p. 141 (Trans. 69, ln. 25 to Trans. 60, ln. 5). Ernestine Brown, with whom Nordic originally contracted

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<sup>3</sup> Nordic elected not to attend despite having moved to intervene in order "**to participate** in the hearing scheduled on May 3, 2016, **to present evidence and testimony** regarding the appraisal it obtained and **why its contract is the more favorable and equitable** for the parties." (R. p. 68) (emphasis added). Nordic offered no such testimony or competent evidence.

<sup>4</sup> S.C. Code Ann. § 31-3-10 requires agreements for the sale of real property to be in writing and signed. *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602 (2007). Nordic's oral "bid" could not amend the price in its contract with Ernestine Brown. *See Windham v. Honeycutt*, 279 S.C. 109, 302 S.E. (2d) 856 (1983) (evidence of oral modification of the real estate contract violates the Statute of Frauds). It is axiomatic that all material terms offered by Nordic must satisfy the Statute of Frauds if they are to be considered. They did not.

for the lower price of \$560,000, attended the hearing, but she never agreed to Nordic's oral bid. This Court carefully considered the arguments and Record and correctly found that Nordic failed to introduce competent evidence of a binding contract for \$650,000. *Accord McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933); *Sessions v. Withers*, 327 S.C. 409, 414, 488 S.E.2d 888 (Ct. App. 1997); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (noting statements of counsel are not evidence). It would not matter if it did.

For sake of argument only, even if the \$650,000 "oral bid" had any meaning, the Record lacks evidence that Nordic removed its contingencies and reached a binding contract with the heirs to preserve the gravesites. In contrast, the Record contains Respondent's contract with the heirs to preserve the gravesites, allowing family members open visitation.<sup>5</sup> (**R. p. 162**); (**R. p. 129** (Trans. 12, lines 3-25)); (**R. p. 130** (Trans. 14, lines. 5-20)); (**R. pp. 131-132** (Trans. 20, ln. 25 to Trans. 21, ln. 7)); (**R. pp. 132-133** (Trans. 24, ln. 4 to Trans. 25, ln. 3)); (**R. pp. 133-134** (Trans. 28, ln. 13 to Trans. 29, ln. 10)); (**R. p. 134** (Trans. 31, ln. 6 to Trans. 32, ln. 12)). Respondent also removed its contingencies and stood ready to close within thirty days. (**R. p. 131** (Trans. 19, lines 10-16)); (**R. p. 132** (Trans. 23, lines 3-12)); (**R. p. 133** (Trans. 27, ln. 16 to Trans. 28, ln. 7)). This Court correctly noted that Nordic offered no evidence matching these key concerns.

### **III. NORDIC'S UNPRESERVED ARGUMENTS.**

All of the arguments and evidence relied upon by Nordic to support the existence of a contract for \$650,000 (as opposed to a meaningless "oral bid"), were offered after the close of the May 3<sup>rd</sup> evidentiary hearing through Nordic's Rule 59(e) motion. "A party cannot use Rule 59(e), SCRCF, to present to the trial court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (1990). *Accord Dempsey v. Huskey*,

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<sup>5</sup> Preserving the graves was also a requirement of the City's annexation of the property.

224 S.C. 536, 80 S.E.2d 119 (1954); *Anderson Memorial Hospital, Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994); *Commercial Credit Loans, Inc., v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999). None of Nordic's arguments are preserved.

Nordic now concedes on page 10 of its Petition that it does not challenge the Master's procedure. Thus, Nordic has abandoned its complaint that nothing in the partition statutes required the Master to approve Respondent's contract at the May 3<sup>rd</sup> hearing. This concession also should resolve Nordic's argument that the approval of Respondent's contract over Nordic's "oral bid" was akin to a "judicial sale," which Nordic never argued at the May 3<sup>rd</sup> hearing. If not, Respondent points out that Nordic elsewhere conceded the May 3<sup>rd</sup> hearing was *not* a judicial sale. (**R. p. 147** (Trans. p. 8, ln. 2-3) ("I know it wasn't a judicial sale ...."); (**App. Br. p. 8**) ("Although this action did not involve a public sale by auction ....").

Nordic intervened so the Master could determine whether Respondent's or Nordic's *contract* should be approved, not to request an open bid session. (**R. p. 68**). The only contract Nordic timely placed into evidence was its inferior contract with Ernestine Brown. The "oral bid" for a higher amount was not in writing, was not accepted by Ms. Brown (or anyone) at the hearing, and no ratified contract for that amount was offered during the evidentiary hearing. Having voiced no objection to the Master's proceedings, and having intervened to seek approval at the May 3<sup>rd</sup> hearing of its own contract with Ms. Brown, Nordic consented to this process and cannot now question it. *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 23, 698 S.E.2d 612, 624 (2010) ("[A] contemporaneous objection is required to preserve an issue for appellate review."); *Gissel v. Hart*, 382 S.C. 235, 243, 676 S.E.2d 320, 324 (2009) (a party may not complain on appeal of an error that his conduct induced).

**IV. THIS COURT CONSIDERED AND CORRECTLY FOUND THAT NORDIC CANNOT USE RULE 59(E) TO INTRODUCE NEW EVIDENCE INTO THE CASE.**

Nordic argues the Master erred in failing to consider its “\$650,000 contract.” (**Petition, p. 12**). This argument fails because the Record proves no signed contract for \$650,000 existed between Nordic and any heir when the May 3<sup>rd</sup> evidentiary hearing was held. Had it existed, Nordic would have introduced it at the hearing. Because it did not exist, Nordic later created an unsigned version dated May 11<sup>th</sup>, eight days *after* the May 3<sup>rd</sup> hearing. (**R. pp. 96-102**). That document was not signed until May 31, 2016, and June 2, 2016, about a month *after* the May 3<sup>rd</sup> hearing. (**R. pp. 103-110**).<sup>6</sup> Moreover, this new contract is between different parties than the original contract with Ernestine Brown that Nordic sought to have approved. (**R. p. 143** (Trans. p. 67, ln. 7-10)). The suggestion that Nordic’s post-trial “\$650,000 contract” is anything other than “new evidence” is incredulous. But, Nordic did not stop there.

Nordic tried to introduce additional new evidence regarding Nordic’s business during the June 7<sup>th</sup> hearing on its motion to reconsider, because Nordic failed to introduce that evidence at the May 3<sup>rd</sup> hearing. (**R. p. 147** (Trans. p. 5, ln. 4-18)). Compare (**R. p. 141** (Trans. 57, ln. 25 to Trans. 58, ln. 7)). Nordic also brought an engineer to the June 7<sup>th</sup> hearing to testify, even though this person was not presented as a witness on May 3<sup>rd</sup>. (**R. p. 147** (Trans. p. 5, ln. 19-24)). Nordic told the Master about *yet another* contract purporting to remove some, but not all, of the contingencies in Nordic’s prior contract with Ms. Brown, but did not try to place it into evidence. (**R. p. 147** (Trans. p. 7, ln. 6-18)). *All* of this “new” evidence that cannot be introduced using Rule

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<sup>6</sup> An affidavit from Nordic submitting the belated \$650,000 contract states it was made between Nordic and Ms. Brown. But, it is not signed by her, and she did not seek reconsideration of the approval of Respondent’s contract. (**R. p. 148** (Trans. 12, lines 18-23)). Instead, Nordic introduced a new contract signed by two new heirs, Sheneatha and Germaine Brisbane. This new contract did not exist on May 3<sup>rd</sup> when the hearing was held. Additional post-trial affidavits from Sheneatha and Germain Brisbane prove their involvement did not begin until after the May 3<sup>rd</sup> hearing.

59(e), and Nordic cites no authority to the contrary. *Hickman*, 301 S.C. 455, 392 S.E.2d 481. The purported \$650,000 contract Nordic belatedly offered is not memorialization of its \$650,000 “oral bid.” An unsigned, unwritten offer that has not been accepted is altogether different from a fully ratified real estate purchase contract. One is enforceable, while the other is not. Considering the hearing was held to determine whether Respondent’s “contract” or Nordic’s would be approved, this distinction makes all the difference.

Further, Nordic’s reliance upon post-trial affidavits filed after the May 3<sup>rd</sup> hearing deprived other parties of the “opportunity for cross examination with the respect to the proffered, additional evidence.” *Goolsby v. Goolsby*, 229 S.C. 101, 92 S.E.2d 57 (1956) (citing *Dempsey*, 224 S.C. 536, 80 S.E.2d 119. *See also Zaman v. S.C. State Bd. of Med. Exam’rs*, 305 S.C. 281, 408 S.E.2d 213 (1991); *State ex rel. Medlock v. Nest Egg Soc. Today, Inc.*, 290 S.C. 124, 130-131, 348 S.E.2d 381 (Ct. App. 1986). This Court recognized this settled principle, and Nordic offers no facts or authorities that were overlooked or misapprehended.

**V. NEITHER THE MASTER NOR THIS COURT PLACED RESPONDENT’S INTERESTS ABOVE THE OTHER PARTIES.**

At no time during the May 3<sup>rd</sup> hearing did Nordic ever argue the Master placed Respondent’s interests ahead of the other parties. In addition to not preserving this argument, Nordic seems to have manufactured an “issue” for which there is no supporting proof. Considering the Record as a whole, as this Court did, there was no error in approving Respondent’s ratified contract over Nordic’s “oral bid.” Nordic had every opportunity to appear, testify, and have its “interests” heard and considered, but it chose not to do so. It presented no witnesses or evidence of its own, chose not cross examine the witnesses who testified, and did not introduce the contract it now says should have been favored. If Nordic believes its interests should have received more consideration, it was Nordic’s reasonability to appear and make its case.

Regardless, Nordic's proposed "new" contract signed a month after the May 3<sup>rd</sup> hearing, is still fully contingent upon Nordic's sole satisfaction with the property. (R. p. 111). See also (R. p. 147 (Trans. 7, lines 6-11)). Recognizing this problem, Nordic tried to offer additional "new evidence" during the June 7<sup>th</sup> hearing on its Rule 59(e) motion that it had *yet another version* of the contract removing all but the gravesite contingency. This document was neither offered nor accepted into evidence. (R. p. 147 (Trans. 7, lines 12-22)). The fact that Nordic still required a grave survey contingency on June 7<sup>th</sup> further separates the two deals. By then, Respondent had already completed its gravesite survey and was prepared to close. (R. p. 141 (Trans. 58, ln. 15 to Trans. 59, ln. 4)); (R. pp. 141-142 (Trans. 60, ln. 19 to Trans. 61, ln. 4)); (R. p. 148 (Trans. 10, ln. 11 to Trans. 11, ln. 7)); (R. p. 124). To this day, the Record is devoid of any *binding* contract<sup>7</sup> whereby Nordic would preserve the family gravesites.

"A partition should be fair and equitable to all parties." *Campbell v. Jordan*, 382 S.C. 445, 451, 675 S.E.2d 801 (Ct. App. 2009). By approving the sale to Respondent, the Master entered a ruling it found was in the best interest of the parties. (R. p. 142 (Trans. 63, lines 17-21)); (R. pp. 142-143 (Trans. 64, ln. 14 to Trans. 66, ln. 12)); (R. pp. 149-150 (Trans. 16, ln. 14 to Trans. 18, ln. 23)). This Court found no error in the Master's ruling, and Nordic identifies no matter of fact or law that was overlooked or misapprehended.

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<sup>7</sup> Nordic's gravesite provision was nothing more than an unenforceable "agreement to agree," which is void under South Carolina law. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015) ("Provisions which are essentially agreements to agree in the future have no legal effect.") (citing *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994)). See (R. p. 111) ("At closing, Buyer and Seller shall enter into a written agreement regarding the perpetual maintenance of all such grave sites and the right of Sellers and respective Heirs to visit such grave sites.") (all emphasis added).

**CONCLUSION**

Because Nordic failed to demonstrate with particularity any preserved argument, material fact, or matter of law that was overlooked or misapprehended by this Court, Respondent respectfully requests that Nordic's Petition for Rehearing be denied.

THURMOND KIRCHNER & TIMBES, P.A.

  
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**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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Appellate Case No. 2016-001298

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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, distributee, 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, Roxanna Pinckney, Daniel Simmons, Horace Robinson, Elizabeth Williams, Mabel Robinson, Julian Robinson, Patricia Williams, Albertha 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. Mithcell, 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.

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**AFFIDAVIT OF SERVICE**

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I, Moira K. McIntire, hereby certify that I have on this date served via Hand Delivery to Appellant and via U.S. Mail and electronic mail to all other counsel of record, a true and correct copy of Respondent's Return to Petition for Rehearing to the following:

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**ATTORNEY FOR ERNESTINE BROWN**

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Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



---

Moira K. McIntire  
Paralegal to Michael A. Timbes & Thomas J. Rode

March 2, 2018  
Charleston, South Carolina

March 2, 2018

VIA US MAIL

The Honorable Jenny A. Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**Re: Appellate Case No. 2016-001298  
Vivian Cromwell v. Alberta Brisbane**

Dear Ms. Kitchings:

This firm represents the Respondent, Associated Developers, Inc. in connection with the above appeal. Enclosed please find the original and seven (7) copies of the Respondent's Return to Appellant's Petition for Rehearing. Kindly file this Return with the Court and return a file-stamped copy to me using the enclosed self-addressed, stamped envelope.

By copy of this letter, I hereby certify that I have served a true and correct copy upon all counsel of record. Your assistance with this matter is appreciated.

With kind regards, I am

Very truly yours,

THURMOND KIRCHNER & TIMBES, PA



Moira McIntire  
Paralegal to Michael A. Timbes

cc: John J. Dodds, III, Esq.  
J. Christopher Lanning, Esq.  
Arthur C. McFarland, Esq.  
James Bruorton, IV, Esq.  
Timothy Muller, Esq.  
Walter R. Kaufmann, Esq.  
John E. Romanosky, Jr., Esq.

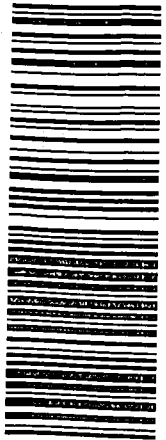
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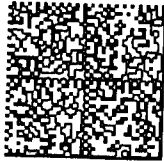
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*The Honorable Jenny A. Kitchings  
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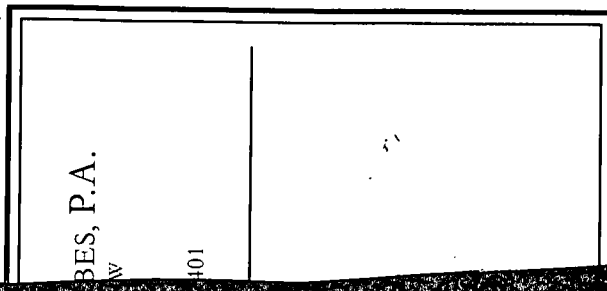
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Time Accepted <i>1900</i>	10:30 AM Delivery Fee \$	Return Receipt Fee \$	Live Animal Transportation Fee \$
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