THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Honorable Mikell R. Scarborough, Master in Equity

Appellate Case No. 2018-000621
Opinion No. 2018-UP-062 (S.C. Court of Appeals)
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 Briwbane, 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 Manifault, 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 Petitioner.

PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS

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Nordic Group, LLC

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CERTIFICATE OF COUNSEL

Counsel for Petitioner Nordic Group, LLC, certify that they petitioned for rehearing to the Court of Appeals and that the Court of Appeals finally ruled on this petition on April 4, 2018. Counsel sought and received this Court's extension of the time to file this petition to May 24, 2018.

QUESTIONS PRESENTED

This is an action for the partition by sale of heirs' property in Charleston County, for which Petitioner and Respondent were competing bidders. At the hearing on the valuation and sale of the property, the Master in Equity allowed Respondent to match Petitioner's then-higher bid, but would not recognize an oral offer by the attorney for Petitioner to raise its bid by another $90,000, even though the offer was explicitly stated on the record to have been made with Petitioner's authorization. The Master based his ruling on the inability of Petitioner's attorney to produce a fully executed contract on the spot for the amount of Petitioner's higher bid and the Master's view that an offer that did not satisfy the Statute of Frauds was not legally acceptable.

1. Did the Court of Appeals err in affirming the Master's ruling, when there is nothing in the partition statute or the law that requires a signed contract in order to make a bid on property in a partition sale, and where the result is that the heirs are deprived of a higher price for their property?

2. Did the Court of Appeals err in ruling that Petitioner had not preserved this issue for appeal, when it was raised by Petitioner in the hearings and motion papers below and the Master in Equity addressed it in his initial ruling, in his denial of Petitioner's motion for reconsideration, and in his formal written decree issued after the motion for reconsideration was heard?

STATEMENT OF THE CASE

Plaintiffs filed their Complaint in this action on February 13, 2015, seeking partition and sale of certain heirs' property in Charleston County. (R.49-54) The Complaint sought approval of the sale of the property to Respondent pursuant to a purchase contract between the Plaintiffs and Respondent for the amount of $455,000, with the proceeds to be divided among the heirs according to their respective interests. (R.53 ¶ 8)

The matter was referred to the Master in Equity by Consent Order entered September 25, 2015. (R.1-3) At a hearing on December 17, 2015, the parties advised the Master that Petitioner ("Nordic") had offered to pay $560,000 for the property – an increase of $105,000 over what Respondent had agreed to. (R.14-15) Accordingly, the Master ordered a valuation hearing for May 3, 2016. (R.72-74) Pursuant to separate orders entered on April 27, 2016, the Master granted motions by Nordic and Respondent to intervene in the action. (R.11-13)

At the hearing on May 3, 2016, which the Master later stated was for the purpose of determining "the value of the Subject Property and, further, to determine whether Associated or Nordic should be approved as the purchaser," (R.45) the parties stipulated that the fair market value of the property was $560,000.[1] The Master allowed Respondent to submit an offer via an amended purchase agreement for the amount of $560,000 in order to match the offer made by Nordic. (R.130, transcript p.16 lines 16-21)

[1] The Master commented at the hearing: "[I]f you-all have an agreement as to what you think the price is, I think it's just a question of who's got to go forward." (R.128, transcript p.6 lines 15-17) Later, however, he stated: "Let's stick to value for today and get to that. I know we have more to do at some subsequent time I'm afraid." (R.130, transcript p.13 lines 20-22) Thus, it was unclear until the end of the hearing whether or not the Master intended to decide which bid to approve at that time.

The attorney of record for Nordic was at the hearing. The signed written contract between Nordic and two of the heirs for the purchase price of $560,000 had been provided to the Master. (R.135, transcript p.36 lines 12-15) At the hearing, Nordic's attorney stated twice on the record that he was authorized by Nordic to increase its bid to $650,000 – an additional $90,000 to be divided among the heirs. (R.128, transcript p.6 line 24 – p.7 line 1; R.141, transcript p.59, lines 6-20) One of the heirs testified that he objected to the sale to Respondent at $560,000 and wanted the Court to approve the sale at the higher price. (R.137, transcript p.41 line 24 – p.42 line 7) Respondent, however, refused to meet the price of $650,000. (R.134-35, transcript p.32 line 23 – p.33 line 10)

Nevertheless, the Master would not accept Nordic's increased offer. The Master asked Nordic's attorney, "Have you got a written offer to that effect or not?" Nordic's attorney responded, "No, Your Honor, I don't have a written offer, but is anybody here willing to agree to 650?" The Master replied, "Oh, yes, they all want more money." (R.141, transcript p.60 lines 1-6) At the end of the hearing, the Master stated his ruling as follows:

> I'm going to approve the [Respondent's] contract as amended today. ... It's not the highest price that's coming here, but it's the highest price that's coming here pursuant to law.
>
> Mr. Lanning [Nordic's counsel], we read the statute as Mr. McFarland was talking, and you-all are supposed to come in here, and we'll have a fight over valuation. That's what this hearing was today. Both parties agreed the value of the property is $560,000. Now, you're offering over and above that. I have a problem with how it was done. ...
>
> If you-all were willing to come in here ten days ago and put your 650 on the table I would do it, and I would say that that was clearly pursuant to Statute 15-61-25.

(R.142, transcript p.63 line 17 – p.64 line 8 (emphasis added)) The Master entered a short-form order on May 5, 2016, approving the sale to Respondent for $560,000. (R.14)

Nordic moved for reconsideration, asserting expressly that the partition statute did not require a written contract to be produced on the spot to validate an oral bid, and submitting a signed contract at the higher price of $650,000 in order to corroborate the oral offer made at the May 3 hearing. (R.92-93, 103-11) Nordic also filed affidavits from two of the heirs asking the Master to approve the sale at Nordic's higher price. (R.112-15) The Court rejected Nordic's arguments, reasoning as follows: "I fall back on some of those little basic rules of real estate law like the Statute of Frauds and if it involves land it needs to be in writing ..." (R.150, transcript p.17 lines 16-19)

On June 9, 2016, the Master entered a short-form order denying Nordic's motion to reconsider. (R.15) In a formal written decree entered a week later, the Master expressly stated that his decision was founded upon his belief that he was bound by the Statute of Frauds. (R.31) Indeed, before executing the decree, which had been drafted by Plaintiffs' counsel, the Master struck out the word "binding" before the reference to Nordic's increased offer, and hand-wrote the word "written" in its place, signifying that Nordic had indeed made a binding offer, but that it was not valid because it was not in writing. The Master then wrote by hand at the bottom of this page of the decree: "This court is conscious of and bound by the Statute of Frauds." (R.31)

Nordic filed its notice of appeal on June 14, 2016, (R.122) and moved for a temporary restraining order and preliminary injunction to halt the sale of the property pending the appeal. The Master treated the motion as one for supersedeas and granted it on the condition that Nordic post a supersedeas bond in the amount of $100,000, which Nordic did. (R.44-48)

The Court of Appeals affirmed the Master in a 2-page, *per curiam* decision entered on February 7, 2018. (App. 232-36) Nordic moved for rehearing on February 22, 2018. (App. 238-51) By order dated April 4, 2018, the Court of Appeals denied the motion for rehearing. (App. 278-81)

Nordic sought and obtained this Court's extension of the deadline to petition for a writ of certiorari to May 24, 2018.

STANDARD OF REVIEW

"A partition action is an equitable action, heard by a judge alone and, as such, this Court on review may find facts in accordance with its view of the preponderance of the evidence." *Anderson v. Anderson*, 299 S.C. 110, 113, 382 S.E.2d 897, 899 (1989); *accord Zimmerman v. Marsh*, 365 S.C. 383, 618 S.E.2d 898, 900 (2005).

ARGUMENT

Summary of Argument

This appeal presents two issues in which there is substantial confusion among the bar and the lower courts: the conduct of partition sales, and the preservation of issues for appeal. The Court of Appeals' erroneous affirmance of the Master in Equity's unfair and legally unfounded ruling, if not corrected, will only generate more confusion and gamesmanship in both areas of law. This Court should take this opportunity to bring greater clarity to these areas of the law, and to allow the heirs to the property at issue to receive the highest bid for their property.

As to partition sales, this Court has remarked on the "somewhat confused state of the law in this area." *Anderson v. Anderson*, 299 S.C. 110, 114, 382 S.E.2d 897, 899 (1989).

As to issue preservation, this Court has cautioned litigants and lower courts that it "is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)). The Court of Appeals

has recognized this principle in other cases, *Johnson v. Roberts*, Op. No. 5535, Shearouse Adv. Sh. No. 6, at 72, 76 (S.C. Ct. App. Feb. 7, 2018), and yet in the instant action, gamesmanship and "gotcha" tactics are exactly what the Court of Appeals has condoned and even encouraged.

As a result, if the decision below stands, the heirs who own the property at issue will be deprived of an additional $90,000 that they would have received but for the Master's erroneous conclusion that it was incumbent on Nordic to produce a fully executed written contract, on the spot at the valuation hearing, in order to validate a higher bid. There is no such requirement in the law, nor any basis for it in logic or policy. Further, it was inequitable for the Master to allow Respondent to increase its bid and then deny Nordic the same opportunity. Nordic's assertion of error in the Master's decision is preserved and properly at issue in this appeal, as it was presented to and addressed by the Master in his rulings.

This Court should grant certiorari and reverse the Court of Appeals.

I. The Court of Appeals Erred in Affirming the Master's Ruling that an Oral Bid by the Bidder's Attorney in a Partition Sale Is Legally Insufficient Unless a Written Contract Sufficient To Satisfy the Statute of Frauds Is Put in Evidence at or Prior to the Sale.

There is absolutely nothing in the law, nor any logical or policy reason, that requires a bid on property at a partition sale to be in the form of a written and signed contract sufficient to satisfy the Statute of Frauds and produced on the spot to make the bid valid. Indeed, the overwhelming weight of authority is to the contrary.

The over-arching principle governing partition actions is that "[t]he partition procedure must be fair and equitable to all parties of the action," *Zimmerman v. Marsh*, 365 S.C. 383, 386, 618

S.E.2d 898, 900 (2005), the objective of which is to obtain "the most equitable result." *Id.* at 388, 730 S.E.2d at 901. Similarly, a partition by sale may be ordered only when the sale is "fairly and impartially made and without injury to any of the parties in interest." *Anderson v. Anderson*, 299 S.C. 110, 113, 382 S.E.2d 897, 899 (1989). Ultimately, "the pecuniary interests of all of the parties is the determining factor." *Zimmerman, supra*, 365 S.C. at 388, 730 S.E.2d at 901.

Consequently, when presented with competing offerors, the court conducting a partition sale should take steps to ensure fair competitive bidding in order to yield the highest price. Nothing in any relevant statutory or common law requires bids to be in writing, let alone in the form of a fully executed written contract sufficient to satisfy the State of Frauds. The Court held to this effect in *Holiday v. McFadden*, 188 S.C. 181, 198 S.E. 392 (1938), addressing the statute governing judicial sales in the context of a partition action:

> Does the statute require that the bids be in writing? The statute in question merely uses the words "bid" and "bidding" and "bidder". Nowhere in the statute is there any evidence or intimation as to any sort of specific bidding intended by the Legislature. ...
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> ...
>
> [I]f it had intended to restrict the accepted mode of bidding to a written bid, it would have done so. ...
>
> ... There is nothing in the statute to put a prospective bidder on notice as to the form of the bid, and ... an oral bid submitted to the selling officer, duly entered in the bidder's name and with the 'necessary deposit' would be a good bid under the statute.

Id. at 191-92, 198 S.E. at 394.

While *Holiday* dealt with a different section of the Code governing judicial sales, it was a partition action and its reasoning is directly applicable to sales under the partition statute, S.C. Code

§ 15-61-25. That statute likewise does not specify the form that bids must take or require that they be in writing.

Similarly, in *Ex Parte Keller*, 185 S.C. 283, 194 S.E. 15 (1937), the Court held:

> Since it is in the interest of justice that a judicial sale should be so conducted as to yield to the owner the best price that can fairly be had, free, fair and competitive bidding is contemplated at such a judicial sale, and the law does not tolerate any influence likely to prevent competition; ... any conduct on the part of those actively engaged in the selling or bidding that tends to prevent a fair, free, open sale, or stifle or suppress free competition among bidders, is contrary to public policy, vitiates the sale, and constitutes ground for setting it aside upon the complaint of the injured party.

Id. at 291, 194 S.E. at 19.

There is absolutely no reason that these principles should not apply in the context of a partition sale. Thus, addressing partition sales in particular, one treatise notes: "The sale must be properly and fairly made, and it is the duty of the court to have the land sold in such manner as will produce the highest possible sum for distribution." 68 C.J.S. *Partition*, § 160, at 136 (1998). As this Court has recognized in the same context, "the pecuniary interests of all of the parties is the determining factor." *Zimmerman, supra*, 365 S.C. at 388, 730 S.E.2d at 901. Yet the perverse result of the Master's proceeding as he did, affirmed by the Court of Appeals, was that competitive bidding was stifled, one bidder was unfairly prejudiced without any prior notice that a signed contract would be required, and the heirs did not receive the highest price offered for the property. One and only one party benefitted from this process – Respondent – at the expense of all the others, including the heirs.

The Court of Appeals did not address, or even mention, this body of law in its decision. The sole basis of the Court of Appeals' reasoning on this issue is the following passage:

> "Although Nordic submitted to the Master a written but unsigned offer to purchase the property for the price of $560,000 prior to the valuation hearing, the only evidence Nordic offered at the hearing was its attorney's oral offer increasing its offer

> price.[2] We find the attorney's statement was not proper evidence for the Master to consider. *See McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) ("This [c]ourt has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."); *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 185 (Ct. App. 1986) (noting the circuit court properly disregarded statements of counsel about testimony appearing in depositions not otherwise introduced into evidence). ...
>
> ...
>
> ... Nordic's oral offer to purchase the property was not sufficient and binding because the statement of Nordic's attorney regarding Nordic's oral offer at the valuation hearing did not constitute evidence of an offer. *See McManus*, 171 S.C. at 89, 171 S.E. at 475 ("This [c]ourt has repeatedly held that statements of fact appearing only in argument of counsel will not be considered."). Because Nordic offered no evidence of the oral offer at the hearing, there was no valid offer, and the offer was not sufficient or binding on the Master.

(App. 235-36)

The Court of Appeals made a serious wrong turn in viewing the offer presented by Nordic's attorney as an attempt to put in evidence of facts outside the record. The context here is completely unlike that in *McManus*, where a party asserted that funds held by the adverse party were held in trust but had no evidence for that assertion other than the argument of its own counsel, or in *Gilmore*, where the court held that an attorney's summary of deposition testimony did not suffice to put that testimony in evidence. What we are dealing with in this case was a contractual offer made in court, on the record, by an attorney with both actual and apparent authority to make the offer, who expressly stated twice that he was authorized by his client to make a binding offer. The statement

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[2] This statement is factually erroneous. The Master specifically stated at the May 3 hearing, "My recollection is your clients had signed a second contract with the Nordic Group; is that right?" The attorney for the heirs who had signed the contract with Nordic answered, "Yes." (R.135, transcript p.36 lines 12-15 (emphasis added)) Thus, the signed agreement with Nordic for the $560,000 purchase price had been provided to the Master, and he was aware of it.

was in and of itself the offer, made on the record by an agent with authority, not an attempt to put in evidence of facts outside the record through argument of counsel.

The Court of Appeals' decision contravenes black-letter law concerning the binding nature of offers made by a party's attorney. In South Carolina, it is well-settled that "[t]he acts of an attorney are directly attributable to and binding on his client" under principles of agency law. *Hillman v. Pinion*, 347 S.C. 253, 257, 554 S.E.2d 427, 429 (Ct. App. 2001); *see Crowley v. Harvey & Battey, P.A.*, 327 S.C. 68, 70, 488 S.E.2d 334, 335 (1997); *Collins v. Bisson Moving & Storage, Inc.*, 332 S.C. 290, 303, 504 S.E.2d 347, 354 (Ct. App. 1998). Consequently, "[i]n the attorney-client relationship, clients are generally bound by their attorneys' acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys' authority." *Koutsogiannis v. BB & T*, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005).

The binding nature of an attorney's actions and statements on behalf of his or her client applies to statements made in court in particular. *See Smith v. Pearson*, 210 S.C. 524, 530, 43 S.E.2d 479, 481 (1947) (holding that the appellants were bound by a statement made by their counsel at the outset of the hearing); *Hall v. Benefit Ass'n of Ry. Emps.*, 164 S.C. 80, 83, 161 S.E. 867, 868 (1932) ("The parties to a suit are bound by admissions, made by their attorneys of record, in open court, or elsewhere, touching matters looking to the progress of the trial."); *Widdicombe v. TuckerCales*, 366 S.C. 75, 90 n.5, 620 S.E.2d 333, 341 n.5 (Ct. App. 2005) ("[A] party is generally bound by stipulations made by their counsel.").

Accordingly, the actions an attorney takes and the statements an attorney makes on behalf of his or her client before a court are binding on the client. The offer made by Nordic's attorney at the May 3 hearing constituted a valid and binding offer. The Master erred as a matter of law by ruling

that a written contract was required by the Statute of Frauds, and the Court of Appeals compounded that error by viewing the attorney statement as an attempt to put in evidence outside of the record.

The decisions below are clearly wrong as a matter of law, and the result is one that is neither fair nor equitable nor in the pecuniary interest of the heirs. It calls out for reversal.

II. The Court of Appeals Erred in Finding that Nordic Did Not Preserve the Issue of the Master's Error for Appeal.

In addition to its errors in analyzing the merits of Nordic's appeal, the Court of Appeals went further astray in holding that Nordic's assignments of error had not been preserved for appeal. The record shows that Nordic disputed the Master's requirement of a written contract at the May 3 hearing (R.141, transcript p.60, lines 1-5) and specifically asserted the following in the motion for reconsideration: "Notably, there is no requirement that a higher bid presented during judicial sales or the hearing in this matter be reduced to writing under South Carolina law. '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))." (App. 93) Moreover, the Master addressed (and rejected) this argument at the June 7 hearing, explaining that "I fall back on some of those little basic rules of real estate law like the Statute of Frauds and if it involves land it needs to be in writing," (R.150, transcript p.17 lines16-19), and then noted specifically in the formal decree entered a week after the June 7 hearing, "This court is conscious of and bound by the Statute of Frauds." (R.31)

This is more than enough to preserve the issue of the Master's error in refusing to accept Nordic's oral bid. In South Carolina, "'[a]n issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court.'" *Buist v.*

Buist, 399 S.C. 110, 124, 730 S.E.2d 879, 886 (Ct. App. 2012), *aff'd as modified*, 410 S.C. 569, 766 S.E.2d 381 (2014) (quoting *In re Michael H.*, 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004)). "In other words, the trial court must be given an opportunity to resolve the issue before it is presented to the appellate court." *Michael H.*, 360 S.C. at 546, 602 S.E.2d at 732.

Here, Nordic's objection to the Master's requirement of a written contract was raised to and ruled upon by the Master. Nordic clearly asserted that "there is no requirement that a higher bid presented during judicial sales or the hearing in this matter be reduced to writing under South Carolina law. 'In the absence of a statute providing otherwise, an oral bid is sufficient.'" (App. 93) The Master rejected the argument, concluding that he was bound by the Statute of Frauds both at the June 7 hearing and in his post-hearing formal decree entered a week later. (R.31, 150)

"'Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.'" *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (emphasis added) (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). Here, the Master clearly had a fair opportunity to resolve the issue of the validity of Nordic's oral bid, and in fact did so. The error in that ruling is preserved for appeal, and the arguments made by Nordic to the Court of Appeals are fairly encompassed by the issue. The Court of Appeals' decision to the contrary is simply, flatly wrong.

CONCLUSION

The Court should grant certiorari to review and reverse the decision of the Court of Appeals.

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May 24, 2018

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Honorable Mikell R. Scarborough, Master in Equity

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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, 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 Briwbane, 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 Manifault, 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 Petitioner.

PROOF OF SERVICE

I hereby certify that on May 24, 2018, I have served a copy of Nordic Group, LLC's Petition for Writ of Certiorari to the South Carolina Court of Appeals and Appendix on Respondent's counsel by U.S. Mail first-class postage prepaid, addressed as follows:

Michael A. Timbes, Esquire
Thomas J. Rode, Esquire
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf
Charleston, SC 29401

By: _____
Wallace K. Lightsey

May 24, 2018

ATTORNEYS FOR PETITIONER