

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

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APR 18 2019

S.C. SUPREME COURT

Appellate Case No. 2018-000621
Opinion No. 2018-UP-062 (S.C. 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, 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 Appellant.

APPELLANT'S PETITION FOR REHEARING

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S.C. SUPREME COURT

Appellant Nordic Group, LLC (“Nordic”), respectfully petitions for reconsideration of the Court’s order dismissing the writ of certiorari as improvidently granted. The Court’s decision was filed on April 3, 2019, and this petition has been submitted within fifteen (15) days thereafter in compliance with Rule 221(a), SCACR.¹

Given the nature of the Court’s decision, it is impossible to determine the reason(s) for which the Court decided that the writ was improvidently granted. From comments made and questions asked during oral argument, however, counsel for Nordic is concerned that the Court may have concluded that the non-monetary terms included in Respondent’s bid on the property (for example, gravesite protection) rendered that bid more favorable to the heirs than Nordic’s.

If indeed that was the thinking of the Court, Nordic respectfully wishes to point out that, at the time the Master made his final decision, the two opposing bids for the property were identical with respect to non-monetary terms. The record is clear and indisputable on this point. (App. 152, transcript p.7 lines 15-18, p.8 lines 9-10 (“We’re on an equal playing field with Associated Developers [with respect to contingencies and gravesite protection] as it stands for the interest of the owners. We’re offering them the same thing. ... the contingencies are the same.”); *see also* App. 146, transcript p.59, lines 8-17)

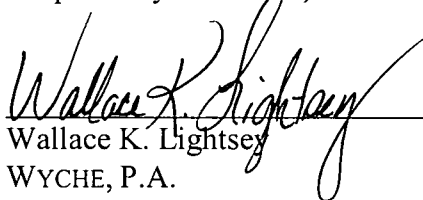
Thus, the only difference between the two bids was the \$90,000 higher price offered by Nordic, and the only basis for the Master’s rejection of Nordic’s bid was his error of law in

¹ The undersigned are aware of this Court’s holding in *Hollins v. Wal-Mart Stores, Inc.*, 392 S.C. 313, 709 S.E.2d 625 (2011), that “no petition for rehearing is permitted from a dismissal of a writ of certiorari as improvidently granted.” Counsel respectfully submit that the *Hollins* decision is distinguishable because of the fact that there was a dissent from the dismissal of the writ in the instant case.

concluding that he was “bound by” the Statute of Frauds to reject that bid. (App. 36 (“This court is conscious of and bound by the Statute of Frauds.”); App. 155, transcript p.17 lines 16-19 (“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.”))

For these reasons, and those previously argued, Nordic respectfully asks the Court to reconsider its dismissal of the appeal and decide this case on its merits.

Respectfully submitted,



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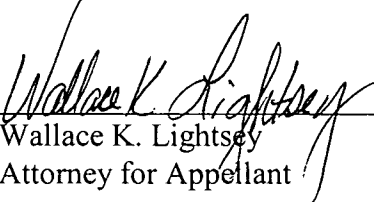
ATTORNEYS FOR APPELLANT

April 18, 2019

Certificate of Service

I hereby certify that on the 18th day of April, 2019, a copy of the forgoing Appellant's Petition for Rehearing was served on counsel for Respondent by depositing a copy of the same in the United States mail, first-class postage prepaid, and addressed as follows:

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