

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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Case No. 2018-CP-07-1559

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**RECEIVED**  
APR 24 2020  
SC Court of Appeals

Charles E. Houston, Jr.

Appellant

v.

Dean B. Bell, Individually,  
The Law Offices of Dean B. Bell, LLC and  
B. Hammel Properties, LLC

Respondents

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INITIAL BRIEF OF RESPONDENTS  
DEAN B. BELL, INDIVIDUALLY,  
AND THE LAW OFFICES OF DEAN B. BELL, LLC

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## STATEMENT OF THE CASE

Appellant filed a Lis Pendens, Summons, and Complaint on July 31, 2018 as a “collateral attack” on the final judgment in Civil Action No. 2011-CP-07-0541 issued on July 19, 2013 (“the Partition Action”).

Appellant’s Complaint sets out challenges to the jurisdiction of the Lower Court to award the relief set out in the final judgment entered in the Partition Action and the process in the Lower Court leading up to that final judgment. As such, the Statement of the Case involves matters from the Partition Action and the specific action from which Appellant has filed this appeal.

Cornelia H. Hall, Jeanne H. Hampton, and Mary A. Houston (“the Partition Plaintiffs”) are sisters. The Partition Plaintiffs, with their brother, Appellant, jointly owned property on Hilton Head Island that is commonly referred to as 31 Marshland Road (the “Property”). *Complaint, Partition Action.*

On December 7, 2011 Respondent Dean B. Bell, as an attorney with the Respondent, The Law Offices of Dean B. Bell, LLC (collectively “Bell”), acting as attorney for the Partition Plaintiffs filed the Complaint in the Partition Action against Appellant seeking the partition by sale of the Property. *Complaint, Partition Action.*

Appellant, an attorney licensed to practice law in South Carolina, appeared pro se in that matter and filed his Answer. *Answer of Appellant, Partition Action.*

On June 4, 2012, Partition Plaintiffs filed a Motion for Order of Reference and a Motion for Summary Judgment in the Partition Action with a Certificate of Mailing indicating service on Appellant by mail on June 1, 2012. *June 4, 2012 Motion for Reference and June 4, 2012 Motion for Summary Judgment, with*

*Certificate of Mailing.*

Appellant provides that he did not receive a copy of the Motion for Order of Reference or a copy of the Motion for Summary Judgment because the address for service by mail was a former address used by Appellant. *Deposition of Charles E. Houston dated December 12, 2018 ("Houston Deposition"), Page 27, Line 24- Page 28, Line 1; Page 33, Line 16 - Page 34, Line 18; Affidavit of Appellant dated June 6, 2019 and filed June 10, 2019.*

A hearing was held on the Motion for Order of Reference and the Motion for Summary Judgment August 10, 2012. At the hearing the Court heard an outstanding discovery motion filed by the Plaintiffs and the Motion for Order of Reference. The Court did not hear the Summary Judgment Motion. Appellant was present at the hearing and made an oral Motion to Dismiss the Complaint.

By Order dated August 20, 2012, and filed September 4, 2012 (the "Order of Reference"), the Court granted the Motion for Order of Reference, referring the matter to the Master in Equity for Beaufort County and allowed the Partition Plaintiffs to amend their Complaint. *Order entered September 4, 2012, Partition Action.*

Appellant contends that the Court, at the August 10, 2012 hearing, determined that any partition of the Property would be by a public auction and that the Partition Plaintiffs could amend their Complaint but they were restricted as to what they could allege in that Amended Complaint. *Complaint.* The Order of Reference contains neither of these determinations. *Order of Reference.*

The Partition Plaintiffs filed a Summons and First Amended Complaint on

October 4, 2012. *Summons, First Amended Complaint, with Action Cover Sheet, Partition Action.* The First Amended Complaint included claims against Appellant for rent and an action for contribution for taxes, insurance and other expenses associated with maintenance of the Property. The First Amended Complaint also specifically alleged that the partition sale of the Subject Property should be by sale secured through the use of a private real estate agent. *First Amended Complaint, Partition Action.*

Appellant responded to the First Amended Complaint with an Answer dated November 15, 2012 that specifically denied the Partition Plaintiffs' allegations concerning Appellants' responsibility for rent, taxes, insurance and other expenses associated with the maintenance of the Property. The Answer also denied the request that the Property be listed and sold in the manner proposed by the Partition Plaintiffs. Appellant's Answer included a Motion to Dismiss based on Rule 12(b)(6) SCRPC and *res judicata*, and failure to join indispensable parties pursuant to Rule 19 SCRPC, and no other affirmative defenses. *Appellant's Answer to Amended Complaint, Partition Action.*

The Lower Court conducted the trial in the Partition Action on May 22, 2013. Appellant was present at the trial and argued his positions. *Partition Order; Affidavit of Appellant dated June 6, 2019 and filed June 10, 2019.*

The Lower Court did not issue a decision at the May 22, 2013 trial. On June 24, 2013, Respondent Dean B. Bell communicated with the Master in Equity for Beaufort County by electronic mail and requested a status on the Lower Court's decision. The electronic mail shows that Bell sent Appellant a copy of the

communication, but Appellant claims that the address used was the wrong electronic mail address. *Houston Deposition, Page 52, Line 7 - Page 53, Line 7*. The Lower Court responded on the same date asking Bell to prepare a proposed order. The Lower Court copied Appellant on that communication to the same electronic address Appellant claims is incorrect. Bell presented a proposed order to the Lower Court on July 9, 2013 by electronic mail and provided a copy to Appellant at the same address Appellant claims to be incorrect. *Respondent Hammel Memorandum in Support of Motion for Summary Judgment, Ex. 6*.

The Lower Court entered final judgment in the Partition Action by executing the Partition Order dated July 15, 2013 and recorded on July 19, 2013 (“Partition Order”). *Partition Order*.

Appellant filed a Motion for Reconsideration of the Partition Order on July 30, 2013 challenging it on the following grounds

- i. Bell submitted a proposed order without being requested;
- ii. Error in allowing testimony concerning an accounting from Appellant, conversion, and partition by private sale because those claims were allegedly dismissed by the Order of Reference;
- iii. Failure to consider the Property to be “heirs title”;
- iv. Lack of jurisdiction concerning issues relating to contribution among heirs to decedent’s estate; and
- v. Improper determination of attorney’s fees to be paid to Bell.

*Appellant’s Motion to Reconsider, Partition Action*.

The Court denied Appellant’s Motion to Reconsider on September 11, 2013.

*Order Denying Motion to Reconsider, Partition Action*.

On September 23, 2013, Appellant served his Notice of Appeal of the Partition Order. *Notice of Appeal, Appellate Case Number 2013-002166*. Appellant did not pursue the appeal and the matter was remitted to the circuit court on March 10, 2014. *Remittitur, Appellate Case No. 2013-002166*.

On June 23, 2015, Cornelia H. Hall (one of the Partition Plaintiffs), in accordance with the terms of the Partition Order, made, executed and delivered a General Warranty Deed (the "Partition Deed") conveying the Subject Property to Respondent B. Hammel Properties, LLC ("Hammel"). The Partition Deed was recorded in the Office of the Register of Deeds for Beaufort County on July 17, 2015 in Book 3412 at page 462. *Partition Deed*.

On July 22, 2015, Respondent Bell, as counsel for the Partition Plaintiffs, filed a Satisfaction of Judgment dated July 20, 2015, in the Partition Action acknowledging that the judgment against the Appellant was paid in full. *Satisfaction of Judgment*.

Hammel combined the Property with other real property in Beaufort County and transferred title to the properties to DMS Funding I, LLC ("DMS"). Hammel accomplished that transfer by making, executing and delivering a Title to Real Estate to DMS dated May 22, 2018 and recorded in the Office of the Register of Deeds for Beaufort County on June 4, 2018 in Book 3672 at page 263. *Deed Hammel to DMS*.

Appellant filed his Complaint in this action on July 31, 2018 setting forth seven (7) causes of action :

1. to declare the Partition Order void and declare it invalid pursuant to Rule 60 (b)(4), SCRPC because of lack of jurisdiction of the Lower Court;
2. to set aside the Partition Order because it was inconsistent with

- prior rulings of the Lower Court in the Partition Action;
3. to set aside the Partition Order because extrinsic fraud prevented Appellant from meaningful and effective participation in the Partition Action;
  4. to set aside the Partition Order as an abuse of power by the Lower Court and an *ultra vires* act of the Lower Court;
  5. to declare the deed issued pursuant to the Partition Order was ineffective to convey title;
  6. an action for wrongful ouster against Bell; and
  7. An action to recover damages for waste to the real property and theft of personal property against Hammel Properties, LLC.

*Complaint.*

Appellant did not join the Partition Plaintiffs as parties to his collateral attack of the Partition Order. Rather, he filed the action against the Partition Plaintiffs' legal counsel, Bell, and the purchaser at the partition sale, Hammel. *Complaint.*

Hammel and Bell timely filed pleadings responsive to the Complaint and conducted discovery, including the deposition of Appellant.

Hammel filed a Motion for Summary Judgment on February 13, 2019 and Bell filed a Motion for Summary Judgment on April 3, 2019.

The hearing on the two Motions for Summary Judgment was held June 10, 2019. Everything in the Court's file prior to the hearing was made a part of the record before the Court on Summary Judgment. *Hearing Tr. Page 16, Line 12 – Page 18, Line 19.*

The Lower Court issued separate Orders on the two Motions for Summary Judgment on September 4, 2019, granting the relief requested in each of the Respondents' Motions and ending the case. *Order Granting Summary Judgment to*

*Hammel, September 4, 2019; Order Granting Summary Judgment to Bell, September 4, 2019.*

Appellant filed his Notice of Appeal on October 3, 2019 s to both orders granting summary Judgment with the Supreme Court and indicated in the transmittal letter that the appeal involved a constitutional challenge to a state statute. *Notice of Appeal: Cover letter to Supreme Court filing Notice of Appeal.*

The Clerk of the Supreme Court sent a letter to Appellant on October 8, 2019 advising that he did not see a Lower Court ruling on a constitutional challenge to a state statute in the Orders appealed and requested an explanation. *Clerk's Letter dated October 8, 2019.* Appellant responded to this request filing a Brief on Venue on October 22, 2019 (*First Brief on Venue*) and a revised Brief on Venue on October 22, 2019. (*Second Brief on Venue*).

On October 24, 2019, the Supreme Court issued an Order transferring the appeal to the Court of Appeals because Appellant failed to "make a sufficient showing that the principal issue in this appeal will involve a 'challenge on state or federal grounds to the constitutionality of a state law.'" *Order, October 24, 2019.*

### **SUMMARY JUDGMENT STANDARD**

"Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Rule 56(c) SCRCP; see also *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all

reasonable inferences in the light most favorable to the non-moving party." *McLaughlin v. Williams*, 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct. App. 2008)). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, ... the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.* (citation omitted); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 89 L.Ed.2d 538 (1986) (the opposing party must "do more than simply show that there is some metaphysical doubt as to the material facts").

When reviewing an order granting of summary judgment, the appellate court applies the same standard applied by the trial court. *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 707 S.E.2d 397 (2011).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976). In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "[i]n each instance, one party must lose as a matter of law." *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984) (emphasis added).

When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *USAA Property and Cas. Ins. Co. v. Clegg*, 37 S.C. 43, 61 S.E.2d 791, rehearing denied (2008). "On summary judgment

motion, a court must view the facts in the light most favorable to the non-moving party. Nonetheless, a court "cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Bloom v. Ravoira*, 339 S.C. 417, 423, 529 S.E.2d 710, 713, (2000) (citations omitted).

"The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment, after adequate time for discovery, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 579, 55 S.E.2d 732, 736 (Ct. App. 2001). On a motion for summary judgment, "a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 671 S.E.2d 79, rehearing denied, certiorari denied (Ct. App. 2008). Where the non-moving party has the burden of proof, the moving party may demonstrate the lack of a genuine issue of material fact "by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case." *Lanham v. Blue Cross and Blue Shield of South Carolina, Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, \_\_\_ (2002). Once the party moving for summary judgment carries its initial burden of showing absence of evidentiary support for nonmoving party's case, the non-moving party may not simply rest on mere allegations or denials in its pleadings. Rule 56(c) SCRPC, see also *NationsBank v. Scott Farm*, 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995).

The principal focus of Appellant's argument is a request to provide relief based on Rule 60(b) (4) or (b)(5) SCRPC. "Whether or not McDaniel made his Rule 60 motion within a reasonable time is a matter addressed to the trial judge's sound discretion, and an appellate court will not disturb that determination absent abuse of discretion." *McDaniel v. United States Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996).

### STATEMENT OF FACTS

The instant case is the most recent in a series of actions initially commenced December 7, 2011 all involving real property located on Hilton Head Island, South Carolina and the partition of that property by sale and division of the proceeds among the co-owners, all siblings who inherited the property from their parents. Viewing the facts set forth in the various exhibits submitted by the parties in connection with the two Motions for Summary Judgment and the Affidavit of Respondent Dean B. Bell and Appellant (even though Appellant's Affidavit was not timely filed in accordance with Rule 56(c) SCRPC), the following facts are undisputed in the record:

- On December 7, 2011 Respondent Bell as attorney for the Partition Plaintiffs filed the Complaint in the Partition Action against Appellant seeking the partition by sale of the Property. *Complaint, Partition Action.*
- Prior to the filing of that action, the relationship between the Partition Plaintiffs and Appellant had been strained for many years. *Respondent Bell's Affidavit in Support of Motion for Summary Judgment, Para 2 and Ex. K.*
- Appellant appeared pro se in that matter and filed his Answer. *Answer of*

*Appellant, Partition Action.*

- On June 4, 2012, Respondents Bell, filed a Motion for Order of Reference and a Motion for Summary Judgment in the Partition Action with a Certificate of Mailing signed by Bell's paralegal indicating service on Appellant by mail on June 1, 2012. *June 4, 2012 Motion for Reference and June 4, 2012 Motion for Summary Judgment, with Certificate of Mailing.*
- At the time of the hearing on August 10, 2012, the Court heard an outstanding discovery motion filed by the Respondent Bell on behalf of the Partition Plaintiffs and the Motion for Order of Reference. The Court did not hear the Summary Judgment Motion. Appellant was present at the hearing and made an oral Motion to Dismiss the Complaint. By Order dated August 20, 2012 and filed September 4, 2012 (the "Order of Reference"), the Court granted the Motion for Order of Reference and allowed the Partition Plaintiffs to amend their Complaint. *Order entered September 4, 2012, Partition Action*
- The Partition Plaintiffs filed a Summons and First Amended Complaint on October 4, 2012. *Summons, First Amended Complaint, with Action Cover Sheet, Partition Action.* The First Amended Complaint included claims against Appellant for rent and an action for contribution for taxes, insurance and other expenses associated with maintenance of the Subject Property. The First Amended Complaint also specifically alleged that the partition sale of the Subject Property should be by sale secured through the use of a private real estate agent. *First Amended Complaint, Partition Action.*
- Appellant responded to the Amended Complaint with an Answer dated

November 15, 2012 that specifically denied the Partition Plaintiffs' allegations concerning Appellants' responsibility for rent, taxes, insurance and other expenses associated with the maintenance of the Subject Property. The Answer also denied the request that the Property be listed and sold by private sale. Appellant's Answer included a Motion to Dismiss based on Rule 12(b)(6) SCRCP and *res judicata*, without any recitation of facts relied upon to support the defense, and failure to join indispensable parties pursuant to Rule 19 SCRCP, and no other affirmative defenses. *Partition Action, Houston Answer to Amended Complaint.*

- The Lower Court conducted the trial in the Partition Action on May 22, 2013. Appellant was present at the trial and argued his positions. *Partition Order; Affidavit of Appellant dated June 6, 2019 and filed June 10, 2019*
- On June 24, 2013, Respondent Dean B. Bell communicated with the Master in Equity for Beaufort County by electronic mail for a decision. The electronic mail shows that Bell sent Appellant a copy of the communication but Appellant claims that the address used was the wrong email address. *Houston Deposition, page 52, line 7 to page 53, line 7.*
- The Master in Equity responded on the same date asking Respondent Dean B. Bell to prepare a proposed order. The Lower Court copied Appellant on that communication to the same address Appellant claims is incorrect. Respondent Bell presented a proposed order to the Master in Equity on July 9, 2013 by electronic mail and provided a copy to Appellant at the same email address Appellant claims to be incorrect. *Respondent Hammel Memorandum*

*in Support, Ex. 6.*

- The Lower Court entered final judgment in the Partition Action by executing the Partition Order dated July 15, 2013 and recorded it on July 19, 2013. *Partition Order.*
- Appellant filed a Motion for Reconsideration of the Partition Order on July 30, 2013 that challenged the Partition Order. *Appellant's Motion to Reconsider, Partition Action.*
- The Court denied Appellant's Motion to Reconsider on September 11, 2013. *Order Denying Motion to Reconsider, Partition Action.*
- On September 23, 2013, Appellant served his Notice of Appeal of the Partition Order. *Notice of Appeal, Appellate Case Number 2013-002166.* Appellant did not pursue his appeal and the matter was remitted to the circuit court on March 10, 2014. *Remittitur, Appellate Case No. 2013-002166.*
- The Partition Order required Appellant to vacate the property within thirty (30) days of receipt of any signed contract for sale of the property. *Partition Order, Para. 17.* In accordance with the terms of that provision, Respondent Bell provided Appellant with notice of a signed contract as required by the Partition Order and Appellant refused to leave or force his tenants to leave. As a result, the Partition Plaintiffs were forced to retain Respondent Bell to file an eviction action against the tenants. Appellant inserted himself as a defendant in the eviction action and claimed that he could not be evicted because he was a joint tenant owning  $\frac{1}{4}$  interest in the property and that further the named tenants were not tenants but were instead his house guests.

Respondent Bell was ultimately required to enlist the services of the Beaufort County Sheriff Office to remove Appellant's "house guests" as trespassers. Appellant, despite being present at the Subject Property at the time, refused to provide any assistance in that process. *Respondent Bell's Affidavit in Support of Motion for Summary Judgment, Paras 9-11 and Ex. J and Ex K.*

- On June 23, 2015, Ms. Cornelia Hall, in accordance with the terms of the Partition Order, delivered a General Warranty Deed conveying the Subject Property to Respondent Hammel (the "Partition Deed"). The Partition Deed was recorded in the Office of the Register of Deeds for Beaufort County on July 17, 2015 in Book 3412 at page 462. *Partition Deed.*
- On July 1, 2015, Todd E. Houston ("T. Houston"), Appellant's son, in his alleged capacity as Trustee of the Houston-Patterson Educational Trust, filed an action against two of the Partition Plaintiffs as Trustees of the Trust and Wells Fargo Bank alleging, among other things, breach of trust, conspiracy, and embezzlement (the "Trust Action"). Appellant served as attorney for T. Houston in the Trust Action until he was placed on suspension by the South Supreme Court related to another matter. *In re Houston*, 415 S.C. 594, 784 S.E.2d 238 (2016). Appellant was also a co-trustee of the Houston-Patterson Educational Trust. The allegations in the Trust action concerned the Houston's Sisters handling of a payment required to be made to the Trust pursuant to paragraph 9 of the Partition Order, specifically alleging that the Sisters embezzled the funds referenced in that paragraph of the Partition Order from the Trust. *Respondent Bell's Affidavit in Support of Motion for*

*Summary Judgment, Ex. G and K.*

- On January 5, 2018, approximately 31 months after filing the Trust Action, T. Houston filed a formal grievance against Respondent Dean B. Bell with The South Carolina Supreme Court, Commission on Lawyer Conduct accusing Respondent Dean B. Bell of embezzlement, the misappropriation of client funds, intentionally disobeying a court order, fraud and deceit. Specifically, T. Houston accused Respondent Dean B. Bell of misappropriating the same funds he accused the Partition Plaintiffs of misappropriating in the Trust Action and not obeying the terms of the Partition Order as to those funds. *Respondent Bell's Affidavit in Support of Motion for Summary Judgment, Ex. H.* Appellant assisted T. Houston in the preparation of his complaint letter against Bell, although then under suspension. *Houston Deposition, page 75, line 9 thru page 76, line 17.*
- The parties settled the Trust Action on February 12, 2018. Appellant, as Third Party Defendant, was a party to the settlement. In that settlement, Ms. Hall, as the surviving Houston Sister named in the Trust Action, agreed to pay \$4,574.75 to T. Houston and Appellant and in exchange T. Houston and Appellant agreed to

**“absolutely, fully, and forever release and discharge each other and each of their associates, owners, members, predecessors, successors, heirs, assigns, agents, directors, officers, partners, employees, representatives, lawyers, and all persons acting by, through, under, or in concert with them, of and from any and all actions, causes of action, arbitrations or requests for proceedings, debts, guarantees, warranties, express or implied, balances, liabilities, demands, obligations, costs, expenses, damages, and liens of every kind whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent,**

**which each now has against the other. . . .”** (emphasis added).

*Respondent Bell’s Affidavit in Support of Motion for Summary Judgment, Ex. I and K.*

- The ODC complaint against Respondent Dean B. Bell was fully investigated by the Office of Disciplinary Counsel and dismissed subsequent to the date of the Settlement in the Trust Action. However, despite the settlement and payment of the disputed funds to T. Houston and Appellant by Ms. Hall, T. Houston, again with Appellant’s assistance and while on suspension, requested a full panel review of the findings of Disciplinary Counsel. The full panel subsequently confirmed the previous findings. *Respondent Bell’s Affidavit in Support of Motion for Summary Judgment, Para. 20.*
- On May 22, 2018, Respondent Hammel made, executed and delivered a Title to Real Estate conveying the Subject Property to DMS Funding I, LLC.
- Houston filed his Complaint in this action on July 31, 2018.

## ARGUMENTS

### **I. THE TRIAL COURT PROPERLY RULED THAT THE CAUSES OF ACTION IN APPELLANT’S “COLLATERAL ATTACK” ARE BARRED BY ESTOPPEL, LACHES, AND THE STATUTE OF LIMITATIONS.**

Appellant summarized his Complaint in the action below as a “collateral attack challenging the [Master’s] [Partition Order].” *Complaint.* Appellant’s argument that the Trial Court erred in its application of the principles of estoppel, laches, and the statute of limitations as to his claims fails. Appellant’s Arguments I, IV and V are all

based on Appellant's assertion that the Master in Equity in the Partition Action never acquired subject matter jurisdiction and that the Partition Order is, therefore, "void ab initio". *Complaint Para 12*. Viewing the undisputed facts in the record in a light most favorable to Appellant, that argument fails.

The Master in Equity had subject matter jurisdiction to conduct the final hearing and issue the Partition Order. "[S]ubject matter jurisdiction refers to a court's constitutional or statutory power to adjudicate a case." *Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) (citations omitted); *Earthscapes Unlimited Inc. v. Ulbrich*, 390 S.C. 609, 703 S.E.2d 221 (2010). The Master in Equity is part of the unified South Carolina judicial system. S.C. Code §14-11-10 (2019). Moreover, the Master in Equity is the judge of the Equity Courts which are a part of the judicial system. S.C. Code §14-11-15 (2019). The Master acquired subject matter jurisdiction to hear all aspects of the Partition Action with authority to enter final judgment in the matter pursuant to the Order of Reference. Rule 53 SCRPC provides in part:

**b) References.** In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. . . .

**(c) Powers.** Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

Rule 53 SCRPC

There is no dispute that the Plaintiffs in the Partition Case filed a Motion for Order of Reference since it is included on the Fourteenth Circuit Court Multicourt Index for the Partition Action. *Complaint, Exhibit 1*. Appellant argues that he did not receive a copy of that Motion, yet he was present at the time of the hearing on the Motion for Order of Reference and made an oral Motion to Dismiss the Complaint. *Respondent Bell's Affidavit Ex. A- Order of Reference*. Appellant alleges also that his copy of the Order of Reference was mailed to an old address and that he did not receive it. Even assuming the truth of that allegation, Appellant nonetheless participated in the underlying litigation subsequent to the date of the Order of Reference by: filing his Answer to the Amended Complaint (which the Order permitted); being present for, testifying on his own behalf, and representing himself at the final hearing before the Master after the case was referred by the Order; filing a Motion for Reconsideration; and, filing his Notice of Appeal.

The record is devoid of any reference to Appellant challenging the jurisdiction of the Master to hear the Partition Action and issue a final ruling. He only challenged the authority of the Master as to certain terms of the Partition Order. *Motion for Reconsideration*. Appellant timely filed his Answer to the Amended Complaint in the Partition Action, wherein he denied the Plaintiff's allegations as to the right to an accounting for rents, contribution, and the request for public sale, the same issues he now once again challenges in the current action. He did not raise any issues in that Amended Answer concerning his belief that the causes of action set forth in the Amended Complaint did not comply with his recollection of the Lower Court's ruling granting the Motion to Amend and Motion for Order of Reference.

Appellant also did not assert subject matter jurisdiction as affirmative defenses in his Amended Answer as required by Rule 12 SCRC. *Houston Answer to Amended Complaint*. “[A]ffirmative defenses to a cause of action in any pleading must generally be asserted in a party's responsive pleading.” *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007). ). “The failure to plead an affirmative defense is deemed a waiver of the right to assert it.” *Earthscapes Unlimited Inc. v. Ulbrich*, 390 S.C. 609, 703 S.E.2d 221 (2010). Appellant, as an attorney licensed to practice law in South Carolina at the time, is presumed to have been aware of the requirements Rule 12 SCRC.<sup>1</sup>

By his voluntary participation in the matter and appearance at the final hearing without filing any objection to the Master's jurisdiction to hear the testimony and issue the Partition Order, Appellant waived any right to subsequently challenge the Master's jurisdiction by his “collateral attack” in this action. “Waiver is a voluntary and intentional abandonment or relinquishment of a known right.” *Spur at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015). Waiver can be implied from conduct. *Id.* “Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they

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<sup>1</sup> Appellant has a lengthy history with the Court: : *In the Matter of Charles E. Houston, Jr.* 271 S.C. 259, 247 S.E.2d 315 (1978) (**public reprimand**) (failing to promptly pay a client a settlement check); *In the Matter of Charles E. Houston, Jr.* 314 S.C. 94, 442 S.E.2d 175 (1998) (**disbarred**) (a long pattern of various ethical violations); *In Re Houston*, 342 S.C. 247, 540 S.E.2d 839 (2000) (**reinstated**); *In re Houston*, 675 S.E.2d 721 (2009) (**public reprimand**) (misconduct in the administration of trust accounts); *In re Houston*, Order No. 2012-12-07-04 (**interim suspension**) (civil contempt); *In re Houston*, 403 S.C. 368, 744 S.E.2d 501 (2013) (**reinstated**); *In re Houston*, 415 S.C. 594, 784 S.E.2d 238 (2016) (**definite suspension**) (failed to perfect an appeal for a client, failed to pay videographer, refused to cooperate with the Panel); *In re Houston*, 415 S.C. 594, 748 S.E.2d 238 (2016) (**reinstated**).

depended.” *Id* at 91, 781 S.E.2d at 125, citing *Janaski v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 451 S.E.2d 384, 387-388 (1992). Having fully participated in the Partition Action without questioning the jurisdiction of the Master in any way, Appellant waived the right to assert that claim now in a new action.

Regardless of any potential waiver by Appellant, the Order of Reference conferred jurisdiction to the Master in Equity.

Appellant argues in his Brief on Appeal that the “[T]rial [J]udge did not, in his order, reach or touch upon the issue of the validity of the order...” and, such, failed to exercise his discretion concerning that issue, resulting in an “error of law”. *Brief on Appeal, page 2*. Appellant is incorrect. The Trial Judge specifically addressed the issue of the Order of Reference and the jurisdiction of the Master in the Partition Action, finding as matters of fact: the Plaintiffs filed a Motion for an Order of Reference; Appellant was served with the Motion; Appellant was in attendance for the hearing on the Motion; the Order of Reference was served on Appellant; the Order of Reference does not include the terms alleged by Appellant; and, the Order of Reference conferred jurisdiction on the Master. *Order Granting Respondents Bell’s Motion for Summary Judgment, Para. 4-8, and 32*.

Since the Trial Court concluded that the Master had jurisdiction in the Partition Action, the principals of collateral estoppel, laches and the statute of limitations were properly applied barring Appellant’s claims.

Appellant raised the identical claims and issues he asserts in this matter in the Partition Action and those claims were fully litigated and resolved in the Partition

Order. In his Motion for Reconsideration Appellant asked the Master to review his findings and conclusions. The Master, after hearing argument on that Motion, issued his Order Denying same. *Order Denying Motion to Reconsider, Partition Action*. Accordingly, the doctrine of collateral estoppel stands as a complete bar to the relief requested by Appellant in this action. *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984).

Under South Carolina law, “[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App.2009). “The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” *Id.* “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008); *Kunst v. Loree*, 404 S.C. 649, 654, 746 S.E.2d 360, 362 (Ct. App. 2013)

Although Appellant did not join the parties to the Partition Action in his new action, collateral estoppel still applies. The doctrine of collateral estoppel does not require mutuality of the parties in the actions compared. South Carolina recognizes nonmutual collateral estoppel. *Id.* A lack of privity does not prevent the application of the defense of collateral estoppel when “the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action.” *Graham v. State Farm Fire and Casualty Ins. Co.*, 277 S.C. 389, 391, 287 S.E.2d 495, 496 (1982).

Appellant fully participated in the Partition Action and had a “full and fair opportunity” to litigate the claims he asserts once again in this action, all of which were directly addressed in the pleadings in that matter, in the Partition Order, and in his Motion for Reconsideration.

The Complaint in this action sets forth the following seven causes of action:

1. Challenging the jurisdiction of the Master in Equity in the Partition Action based on an allegation that there was no Order of Reference to the Master in Equity.
2. A challenge that the Partition Order in the Partition Action was inconsistent with the previous rulings by the Court.
3. Alleged due process violations by the Court in the Partition Action for ignoring the law of the case and against Respondent Dean B. Bell for alleged *ex parte* submissions of a purportedly unsolicited proposed order to the Master in Equity in the Partition Action.
4. A collateral attack on the Partition Order in the Partition Action as allegedly exceeding the jurisdictional and statutory powers of a court of equity in South Carolina.
5. A cause of action to determine that the Partition Deed ultimately issued in accordance with the requirements of the Partition Order in the Partition Action did not convey Appellant’s interest in the property because the Master in Equity exceeded his authority.
6. An action for wrongful ouster against Respondent Dean B. Bell and The Law Office of Dean B. Bell, LLC, and
7. An action to recover damages for waste to the real property and theft of personal property.

The first four of Appellant’s Causes of Action are essentially the identical issues raised in Appellant’s Motion for Reconsideration in the Partition Action:

- i. That Respondent Bell allegedly submitted a proposed

- order to the Master in Equity without being requested to submit such a proposed order; (*Third Cause of action and in the current Appeal Appellant's Arguments II and III*)
- ii. The Master in Equity erred in allowing testimony concerning an accounting from Appellant, conversion and partition by private sale because those claims were allegedly dismissed by the Order of Reference; (*Second Cause of Action and in the current Appeal Appellant's Argument IV*)
  - iii. The Master in Equity failed to consider the Subject Property to be "heirs title" (*not raised in the new action*);
  - iv. The Master in Equity lacked jurisdiction concerning issues relating to contribution among heirs to decedent's estate; (*First and Fourth Causes of Action and in the current Appeal Appellant's Argument IV*) and
  - v. The finding of attorney's fees to be paid to Respondents Bell was improper because the Master in Equity should not have ruled in favor of the Partition Plaintiffs.

In short, there is nothing new in Appellant's arguments and allegations. This is just an attempt to relitigate the issues and claims already concluded.

Appellant frames his current complaint as a "collateral attack" on the Partition Order and relies, in part, on Rule 60(b) SCRPC to support his arguments. *Complaint, Summary of Action*. Appellant's "collateral attack" is premised upon his belief that four years, four months and twenty-one (21) days is a "reasonable time" under the requirements of Rule 60(b)(4) and (b)(5) SCRPC. Because the Order of Reference conferred subject matter jurisdiction on the Master, Appellant's reliance on Rule 60(b)(4)'s and (b)(5)'s "reasonable time" parameter is misplaced.

Rule 60(b) SCRPC provides, in part:

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal

representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The definition of "void" under Rule 60(b)(4) "only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fid. and Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct.App.1996). Because the Master had subject matter jurisdiction in the Partition Action pursuant to the Order of Reference, Appellant's "collateral attack," under Rule 60(b)(4) SCRCP does not work because the judgment is not void.

Appellant filed the Complaint in this action four (4) years, four (4) months and twenty-one (21) days after the Court of Appeals issued the Remittitur ending his appeal of the Partition Order. If Appellant's claims are pursuant to Rule 60(b) (1), (2), or (3) SCRCP, the date of the filing of the Complaint is well beyond the one year required for challenges to be made under the requirements of the Rules.

Rule 60(b) provides the motion shall be made within a reasonable time and for subsections (1), (2) and (3) of the rule, not more than one year after the judgment was entered.

Subsection (5) is notably not limited by the one year provision, but only that of a reasonable time. The rule further provides it "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court." Again, there is no specific time limit.

*Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988)

In his "Statement of the Case" Appellant claims "a memorandum Order ending the case was filed by the Master in Equity on July 22, 2015." This is not an accurate statement of fact. The Remittitur was filed March 12, 2014 ending the case. The filing on July 22, 2015 was a satisfaction of judgment filed by the Partition Action Plaintiffs satisfying their judgment against Appellant to release the lien of that judgment so as to be able to pass clear title in the sale of the Property to Respondent Hammel. *Fourteenth Judicial Circuit Court Index, Complaint Ex. 1; Respondent Bell's Affidavit in Support of Motion for Summary Judgment, Ex. I.*

In *Evans v. Gunter*, the Court made it clear that a motion to challenge a judgment pursuant to Rule 60(b)(5) SCRPC must be filed within a "reasonable time." In *McDaniel v. U.S. Fid. and Guar. Co.*, *supra*, the Court settled the inconsistency among South Carolina Appellate decisions finding that a motion to challenge a judgment as void pursuant to Rule 60(b)(4) SCRPC must be filed within a reasonable time as well. Appellant argues his challenges fall within Section 60(b)(4) or (5) SCRPC. As such, the "reasonable time" standard would apply. Appellant offers no reason for the delay in filing his "collateral attack." Four years, four months, and twenty one days is not a reasonable time, particularly under the circumstances of this case where Appellant was served with the Partition Order, filed a Motion for

Reconsideration of the Partition Order asserting the same claims and arguments made in this action, and then relied on the Partition Order in connection with two prior actions, the Trust Action and the formal Grievance, as the basis for the claims made in those actions.

Moreover, as set forth hereinabove, the Complaint filed on July 31, 2018 merely repeats the challenges he made almost five (5) years earlier when he filed his Motion to Reconsider the Partition Order on September 11, 2013.

Appellant fully participated in the Partition Action, received the Partition Order, filed a Motion for Reconsideration, and subsequently a Notice of Appeal, then took no steps to perfect the appeal. In his Brief on Appeal, Appellant now alleges that he “withdrew his appeal to the SC Court of Appeals in the partition action” because of the “nondisclosure of the identity of the court reporter who was hired by the plaintiffs to transcribe the hearing held before the Master -in-Equity.” *Brief of Appellant, pg. 15*. This allegation is completely different from Appellant’s prior statements regarding his direct Appeal in the Partition Action. In his deposition, the Appellant testified that he “[withdrew] his appeal before he ordered the transcript. *Houston Deposition, Page 40, Lines 10 – 19*. The hearing before the trial judge included the following exchange between the Court and Appellant concerning his direct appeal:

**The Court:** Alright, now Mr. Houston, let me ask you another question. When the master in equity signed that order, okay, he did sign an order ...

**Mr. Houston:** He did sign the order, yes.

**The Court:** Okay, did you appeal that order?

**Mr. Houston:** I did appeal it, but the appeal, I thought, was premature so I withdrew it. I withdrew it because the property

hadn't been sold and the case hadn't been ended. And the case didn't end until 2015. (emphasis added.)

**The Court:** So in 2015 was when the house was sold, the property was sold?

**Mr. Houston:** Yes.

**The Court:** Okay, did you appeal it then?

**Mr. Houston:** No, I brought this collateral attack on the entire proceeding.

*Trial Transcript, Pg. 8, Ln. 11 – Pg. 9, Ln. 2.*

None of the three versions of Appellant's story concerning his direct Appeal in the Partition Action is accurate. Appellant did not "withdraw" his direct Appeal in the Partition Action, it was dismissed because he failed to perfect it and a Remittitur issued to the Beaufort County Court of Common Pleas. Appellant's direct Appeal in the Partition Action ended because he did nothing other than file the Notice.

Regardless of Appellant's different version of his story, his position is untenable. The Partition Order in Partition Action was a final judgment. An order is a final judgment if there is no further act that must be done by a court prior to a determination of the rights of the parties. *Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999). "In other words, a final judgment is one that operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term; that is, it must put the case out of Court, and must be final in all matters within the pleadings." *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209, 212 (1942). Although the Partition Order contains terms concerning its administration and

as to disposition of the proceeds of the sale, it is final as to all matters that were raised in the pleadings or otherwise disputed at the time. An order for foreclosure and sale constitutes a “final judgment,” even if the sale has yet to occur and the amount of the deficiency remains uncertain. *Bartles v. Livingston*, 282 S. C. 448, 319 S. E. 2d 707 (Ct. App. 1984). The Court of Appeals held in *Bartles* that a decree of foreclosure and a finding that a party is entitled to a deficiency constitutes a final adjudication thereof, and unless an appeal is taken of the foreclosure order, the lower court’s findings as to the debt are binding in any subsequent proceedings between the parties. *Id.*

Assuming Appellant’s position as stated at the hearing was accurate, that the Partition Action did not end until 2015 when the Property was sold, the time to file his direct Appeal would have been triggered by the sale, or upon the date he alleges that he discovered the sale. *Brief of Appellant, Pg. 6.* The Partition Action ended with the filing of the Remittitur on March 12, 2014, not June 24, 2014, the date of the sale. Even assuming *arguendo* the date of the sale triggered the beginning of Appellant’s “reasonable time” to file his “collateral attack”, the sale occurred three years and twenty-eight days prior to the date Appellant filed this action. Even that would not be a reasonable time under the circumstances.

In October 2015, three months after the sale of the Property and disbursement of the proceeds, Appellant filed the Complaint as the attorney for the Trust in the Trust Action. *Respondents Bell Affidavit in Support to Strike Affidavit of Default, Para. 14.* That action pertained, principally, to allegations concerning tax funds disbursed from the proceeds of the sale. *Id. Para. 15-17, 21.* In January 2018, two years and three months after filing the Trust Action, Appellant assisted his son in preparing a formal

Grievance against Respondent Dean B. Bell, alleging that Respondent Bell “purposely and knowingly” disobeyed the Partition Order and embezzled the tax funds referenced in the Partition Order, a fact known not to be true by Appellant at the time the Grievance was filed because that very issue was addressed in the Trust Action. *Id. Para. 18-20; Affidavit in Support of Respondents Bell’s Motion for Summary Judgment Ex. H.* It was not until the dismissal of that formal Grievance that Appellant initiated this action.

The actions of Appellant in connection with the Partition Action (his Answer to the Amended Complaint, his participation in the litigation, his appearance at the final hearing, his filing a Motion for Reconsideration asking the Master to review the same issues raised in his “collateral attack”, his direct Appeal, the Remittitur filed March 12, 2014 ending the case, followed by the Trust Action and his participation in the formal Grievance filed against Respondent Dean B. Bell), which spanned a term of over four years, were sufficient for the Trial Court to determine that, as a matter of law, Appellant’s claims are barred under both Rule 60(b)(4) or (5) because they were not filed within a reasonable time.

In *McDaniel v. United States Fid. & Guar. Co.*, *supra*, the court upheld a special referee’s decision that a Rule 60(b)(4) motion was untimely when made four years after the judgment. “Whether or not McDaniel made his Rule 60 motion within a reasonable time is a matter addressed to the trial judge’s sound discretion, and an appellate court will not disturb that determination absent abuse of discretion.” *Id.*, 324 S.C at 644, 478 S.E.2d at 871. The court of appeals has also held that an 18 month delay was unreasonable under Rule 60(B)(4) and (5) - *Smith Cos. v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993) (“The record reveals no justifiable reason to

excuse Hayes's delay in seeking to set aside the February 23d judgment. Relief from judgment under Rule 60 should not be considered a substitute for appeal from a final judgment, particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion.”)

The Court was also correct in applying the doctrine of laches to the claims of Appellant in this matter. “The equitable doctrine of laches is defined as ‘neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.’” *Robinson v. Estate of Harris*, 389 S.C. 360, 371-372, 698 S.E.2d 801, 807 (2010), quoting, *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). “Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.” *Robinson*, 296 S.C. at 372, 689 S.E.2d at 807, citing, *Chambers of S.C., Inc. v. County Council of Lee County*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party alleging laches must show (1) delay, (2) the delay was unreasonable under the circumstances, and (3) resulting prejudice. *Robinson*, 296 S.C. at 372, 689 S.E.2d at 807, citing, *Hallums*, 296 S.C. at 199, 371 S.E.2d at 528.

Appellant failed to follow through with his Appeal in the Partition Action resulting in a dismissal of that Appeal and an end to the case. The Property was sold to Respondent Hammel June 24, 2015 and the proceeds distributed in accordance with the terms of the Partition Order. *Respondents Bell Affidavit in Support to Strike Affidavit of Default, Para. 12*. Respondent Hammel then spent large sums of money

developing the property, combined it with other property, and then sold to another party. *Hammel Memorandum in Support of Motion for Summary Judgment, Para. 24.* All that occurred in the four years, four months and twenty-one days between the date of the Remittitur and the filing of the Complaint in this matter. The Court's finding that Appellant's delay in filing this action was an unreasonable time was not an abuse of discretion.

**II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN RULING THAT APPELLANT'S CAUSE OF ACTION FOR EXTRINSIC FRAUD IS BARRED BY THE STATUTE OF LIMITATIONS, ESTOPPEL, AND LACHES, AND, IN ADDITION, THE TRIAL COURT PROPERLY APPLIED THE LAW WITH REGARD TO THE APPLICATION OF RULE 60(B)(4) AND (5) SCRPC AS TO APPELLANT'S CLAIMS AGAINST RESPONDENTS BELL.**

In his Argument II, Appellant argues that the Court erred in ruling his cause of action for extrinsic fraud fails as a result of the application of the statute of limitations and the doctrines of estoppel and laches. In his Argument III, Appellant argues that the Trial Court abused its discretion in granting Summary Judgment "under SCRPC, Rule 60(b)(4) and (5)" as to the cause of action against Respondents Bell. Because these two arguments are closely related such that they require an analysis under the same facts, Rules, and law, they are addressed together. Appellant's reliance on the referenced Rules and interpretation thereof fails. The claims fail as a matter of law.

Appellants cause of action against Respondents Bell arises out of alleged *ex parte* actions and communications with the Court in the Partition Action. Specifically, Appellant alleges (in summary form): that the Motion for Order of Reference was not

served upon him; that the Order of Reference did not contain the “complete ruling of the Court;” that the proposed Order of Reference was not furnished to Appellant when it was forwarded to the Court; that Appellant was never served with the Order of Reference; that the Amended Complaint filed by the Plaintiffs in the Partition Action was “an exact duplicate of its original complaint...”; that “plaintiff counsel’s notes and mathematical calculations that had not been introduced into evidence . . . wrongfully placed with the Court’s file<sup>2</sup>; and, that Respondent Dean B. Bell used an incorrect email address for Appellant when forwarding a proposed Partition Order to the Court, preventing Appellant from objecting to the terms of the proposed Order. Appellant alleges that these alleged actions constitute a “fraud upon the court.” All of these allegations are without any factual support and flatly refuted by reference to the documents in the record. The lower Court addressed each of these alleged facts in its findings of fact, as follows:

5. The Court in the Partition Action scheduled a hearing on the Motion for Order of Reference and the Motion for Summary Judgment for August 10, 2012. Despite Houston’s claim that he did not receive a copy of the Motion for Order of Reference, he attended the hearing. At the scheduled hearing, the Court heard discovery motions and the Motion for Order of Reference. At the time of the hearing, Houston made an oral Motion to Dismiss the Complaint of the Partition Plaintiffs. By Order dated August 20, 2012 and recorded September 4, 2012 (the “Order of Reference”), the Court granted the Motion for Reference, referring the matter to the Master in Equity for Beaufort County and provided time for the Partition Plaintiffs to amend their Complaint. The Court did not hear the Summary Judgment Motion.

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<sup>2</sup> Appellant alleges that the Clerk’s file contained a document with “plaintiff counsel’s note and mathematical calculations that had not been introduced into evidence before the Master in Equity and wrongfully placed within the file.” This “document,” whatever it is, was never produced in discovery nor filed with the Court or presented to the Trial Judge at the time of the hearing and as such is not part of the record.

6. Houston alleges that the Order of Reference made the determination that any partition of the Subject Property would be by a public auction. The Order of Reference does not contain the determination suggested by Houston.
7. Houston also claims that, at the August 10, 2012 hearing, the Court ruled that the Partition Plaintiffs could amend their Complaint, but they were restricted on what they could allege in that Amended Complaint. Houston did not believe that the Partition Plaintiffs could pursue claims for an accounting on rents, taxes and "other sundry items", and were restricted to pursuing partition by public sale. The Order of Reference does not restrict what the Partition Plaintiffs were able to allege in their Amended Complaint.
8. The record indicates that Houston was served with the Order of Reference.
9. Bell, in his capacity as attorney for the Partition Plaintiffs, filed an Amended Complaint in the Partition Action on October 4, 2012. The Amended Complaint included claims against Houston for rent and an action for contribution for taxes, insurance and other expenses associated with maintenance of the Subject Property. The Amended Complaint also specifically alleged that the partition sale of the Subject Property should be a private sale secured through the use of private real estate agent.
10. Houston responded to the Amended Complaint with an Answer dated November 15, 2012 that specifically denied the Partition Plaintiffs' allegations concerning Houston's responsibility for rent, taxes, insurance and other expenses associated with the maintenance of the Subject Property. Houston also denied that the partition should be by private sale.
11. The Master in Equity for Beaufort County conducted the trial in the Partition Action on May 22, 2013. Houston was present at the trial representing himself.
12. On June 24, 2013, Bell communicated with the Master in Equity for Beaufort County by electronic mail

requesting a decision by the Master in Equity. The electronic mail shows that Bell sent Houston a copy of the communication, but Houston claims that the address used was the wrong address.

13. The Master in Equity responded to Bell's June 24, 2013 electronic mail on the same date asking Bell to prepare a proposed order. The Master in Equity copied Houston on that communication to the same address Houston claims is incorrect.
14. Bell presented a proposed order to the Master in Equity on July 9, 2013 by electronic mail and provided a copy to Houston at the same address Houston claims to be incorrect.
15. The Master in Equity executed a Partition Order in the Partition Action on July 15, 2013 and the Clerk of Court for Beaufort County recorded it on July 19, 2013 (the "Partition Order").

...

16. Houston filed a Motion for Reconsideration of the Partition Order on July 30, 2013 that challenged the Partition Order on the following grounds:

.....

17. The Court denied Houston's Motion to Reconsider on September 11, 2013.
18. On September 23, 2013; Houston served his Notice of Appeal of the Partition Order.
19. Houston did not pursue the appeal resulting in its dismissal and the matter was remitted to the circuit court on March 10, 2014.

*Order Granting Respondents Bell's Motion for Summary Judgment.*

Each of the various allegations of "extrinsic fraud" are shown by the record to be inaccurate and without any factual support. In addition to the above, Appellant argues that the Amended Complaint was never filed. Reference to Exhibit 1 of

Appellant's Complaint in this matter confirms that according to the Court's records, the Amended Complaint was filed on October 4, 2012. As such, Appellant fully joined his issues and defenses in the case and had full and fair opportunity to present his case. Appellant focuses on his allegations that he was not copied on the communications to the Court regarding the Partition Order and alleges that was "detrimentally adverse to and a hindrance to [his] advancing [his] interest in the case." In his Brief on Appeal, he argues that such failure prevented him from advancing his "objections to the Order." Yet, Appellant addressed the same objections asserted in his current action in his Motion for Reconsideration, and the Master heard argument on that Motion and issued his order denying the Motion.

Appellant alleges there was no testimony on the issue of the need to appoint one heir as the designee to take care of any issues regarding the closing. Ms. Hall's letter to the Office of Disciplinary Counsel and other documents in the record refute that argument. *Defendants Bells Affidavit in Support of Motion for Summary Judgment Ex. K; Partition Order Para. 14.*

Underlying Appellant's claim that Rules 60(b)4 and 60(b)5 SCRCPC provide grounds for the filing of his action is his argument that the Master lacked jurisdiction over the Partition Action and that the Partition Order is, therefore, *void abinitio*. Appellant's argument fails completely, the Order of Reference conferred jurisdiction to the Master. *Order Granting Respondents Bell Motion for Summary Judgment, Para 32.* As a result, at a minimum, Rule 60(b)(4) is inapplicable. The claims are additionally barred by the doctrine of collateral estoppel, laches, and the statute of limitations.

Appellant once again relies on the date of the sale of the Property, June 24, 2015 or July 17, 2015 (the date the deed was recorded) as the triggering clock as to all time issues. He then argues that the Discovery Rule would extend the triggering event to a date some weeks later, the date he allegedly learned of the sale. *Brief on Appeal*, Pg. 6. Putting aside the inaccuracy of Appellant's recollection of the timing and history of events over the course of the almost ten years from the date of the filing of the Partition Action, which was followed by the Trust Action, the formal Grievance referenced herein, and this action, the date of the sale (or recording of the deed) has no bearing whatsoever with regard to Appellant's cause of action against Respondents Bell. The discovery rule does not aid Appellant.

In South Carolina, the statute of limitations for causes of action for fraud is governed by the "discovery rule," and does not begin to run until discovery of the fraud itself or of "such facts as would have led to the knowledge thereof, if pursued with reasonable diligence." *Grayson v. Fidelity Life Ins. Co. of Philadelphia*, 114 S.C. 130, 135, 103 S.E. 477 (1920), quoting *Smith v. Linder*, 77 S.C. 535, 58 S.E. 610 (1907). In applying the discovery rule, inquiry is focused upon whether the complaining party acquired knowledge of any existing facts "sufficient to put said party on inquiry which, if developed, will disclose the alleged fraud." *Walter J. Klein Co. v. Kneece*, 239 S.C. 478, 123 S.E.2d 870 (1962), citing *Tucker v. Weathersbee*, 98 S.C. 402, 82 S.E. 638 (1914). A party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances, because the law also provides that if such facts and circumstances could have been known to the party through the exercise of ordinary care and reasonable diligence, the same result follows. *Tucker v. Weathersbee*, 98 S.C. at 408-409, 82 S.E. at 640. Thus, either actual or constructive knowledge of facts or circumstances, indicative of fraud, trigger a duty on the part of the aggrieved party to exercise reasonable diligence in investigating and, ultimately, in pursuing a claim arising therefrom.

*Burgess v. American Cancer Soc., South Carolina Div., Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989)

Appellant alleges that Respondents Bell committed “extrinsic fraud” and “fraud upon the court.”

Historically, the courts have made a distinction between intrinsic fraud and extrinsic fraud. Intrinsic fraud refers to fraud presented and considered in the judgment assailed, including perjury and forged documents presented at trial. Extrinsic fraud refers to frauds which are collateral or external to the matter tried such as misleading acts which prevent the movant from presenting all of his case. It is some intentional act or conduct by which the prevailing party has prevented the unsuccessful party from having a fair submission of the controversy.

*Evans v. Gunter*, 366 S.E.2d 44, 294 S.C. 525 (Ct. App. 1987) (citations omitted).

Appellant’s allegations are unsupported and, in fact, as reflected hereinabove, refuted by the record. The record indicates that Respondent Bell copied Appellant on all communications with the Lower Court. Appellant fully participated in the Partition Action and, in fact, asserted all the arguments he raises herein in that litigation. Viewed in the light most favorable to Appellant’s, those allegations do not rise to the level of extrinsic fraud as matter of law because nothing prevented Appellant from presenting “all of his” case in the Partition Action.

Even if Appellant’s claim for extrinsic fraud was a viable claim, it would nonetheless be barred by the statute of limitations, estoppel, and laches. A cause of action for fraud must be filed within three years of the date of the discovery by the aggrieved party of the facts constituting the fraud. S.C. Code §15-3-530(7) (2019). The actions which Appellant alleges to have occurred, all happened prior to July 30, 2013, the date that Appellant filed his Motion for Reconsideration in the Partition

Action and Appellant had knowledge of the existence of that claim. That fact is readily apparent from the Motion for Reconsideration itself, wherein he specifically asked the Court to Reconsider its ruling because, among other things: (1) Plaintiff's Counsel submitted a proposed Order to the Court without providing Appellant a copy; and (2) the Plaintiff's Amended Complaint was merely a reshuffling of their first "dismissed" complaint and constituted a "Fraud upon the court."<sup>3</sup> *Motion for Reconsideration.*

Those are the same arguments once again raised by Appellant in his Argument II and III in the instant Appeal. From Appellant's own filing it appears he had sufficient knowledge to have held the opinion that Respondents Bell had committed "extrinsic fraud" resulting in a "fraud upon the court" at least as early as July 30, 2013. As such he had already "acquired knowledge of any existing facts sufficient to put [him] on inquiry . . ." triggering the clock under the Discovery Rule. *Burgess v. American Cancer Soc., South Carolina Div., Inc, Supra.* The current action was filed on July 31, 2018, more than five years later.

Under Appellant's theory based on Rule 60(4) or 60(b)(5) SCRPC, the claim is barred. As set forth hereinabove, an analysis under Rule 60(b)(4) is not necessary because the judgment is not void as a result of the Lower Court not having subject matter jurisdiction. However, that analysis would parallel the "reasonable time" analysis under Rule 60(b)(5). A four (4) year delay in the filing of a Rule 60(b) SCRPC motion to set aside a partition action based on fraud has been determined to be an

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<sup>3</sup> It is noteworthy here that Appellant's Motion for Reconsideration provides a different version of the Appellant's recollection of the facts. In his Brief on Appeal he alleges that the Amended Complaint was an "exact duplicate" of the original Complaint with just the word Amended added. Neither version is accurate as the Amended Complaint specifically included the request that the Property be listed with a private real estate broker for sale, which was not included in the original Complaint.

unreasonable time. *Perry v. Heirs at Law & Distributees of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003). Five years under the circumstances of this case is an unreasonable delay and it was within the “sound discretion” of the trial Court to make that determination and that determination was not an abuse of the trial Court’s discretion. *McDaniel v. United States Fid. & Guar. Co.*, *supra*.

**III. THE TRIAL COURT PROPERLY APPLIED THE LAW WITH REGARD TO THE APPLICATION OF RULE 60(B)(4) AND (5) SCRPC AS TO APPELLANT’S CLAIMS AGAINST RESPONDENTS BELL.**

Appellants Argument III is addressed in Respondents Bell’s Argument II.

**IV. THE TRIAL COURT CORRECTLY RULED THAT THE MASTER IN EQUITY IN THE PARTITION ACTION PROPERLY EXERCISED HIS DISCRETION WITH REGARD TO THE EQUITABLE REMEDIES AVAILABLE IN A PARTITION ACTION.**

Appellant argues that the Trial Court abused its discretion by not finding that the Partition Order is “void upon its face” because it ordered that the Property be sold at private sale and not public sale. Appellant is incorrect in his interpretation of the Statutes and Rules concerning partition actions in general. Each of the points raised in Appellant’s Argument IV states an incorrect proposition as to applicable law and/or rules.

Contrary to Appellant’s implication that the Partition Order is “void upon its face” because it “does not set forth or recite or render notice of the jurisdictional

prerequisite basis upon which the Master in Equity acquired jurisdiction . . .”, the Rules specifically provide that a “judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings.” Rule 54(a) SCRPC. The Order of Reference in the Partition Matter was a matter of record having been filed on September 4, 2012. *Complaint, Ex. 1*. It was not necessary that the Partition Order make specific reference to it.

Appellant also cites S.C. Code §1-23-350 (2019) for the premise that any final order is required to set forth specific findings of fact and conclusions of law. Again, Appellant misapplies the applicable Rules and Statutes. S.C. Code §1-23-350 (2019) is part to the Administrative Procedures Act and pertains to contested cases brought under that Act. The Courts are specifically excluded from application of that Title. (“Agency” means each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases; SC Code 1-23-310(2); “Contested case” means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing; SC Code 1-23-310(2) and (3) (2019) (emphasis added)). The proper guidance for judgments in a civil action is provided by Rule 52(a) SCRPC.

Rule 52(a) SCRPC provides that the court “shall find the facts specially and state separately its conclusion of law thereon.” The Master complied with this Rule. After general recitals concerning the parties present for the Final Hearing and the history of the case, the Court stated “I find and conclude as follows:” and thereafter set

forth seventeen (17) separate enumerated paragraphs which contained findings of fact and conclusions of law specifically related to each finding of fact. *Partition Order*. Rule 52(a) SCRPC is directory and noncompliance is not grounds for vacating a judgment. *Noisette v. Ismail*, 304 S.C. 56, 403 S.E.2d 122 (1990).

The South Carolina Rules of Civil Procedure require "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." Rule 52(a), SCRPC. The rule is directorial in nature so "where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding." *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 123 (1991)(emphasis added)

*In re Treatment and Care of Luckabaugh*, 568 S.E.2d 338, \_\_\_, 351 S.C. 122, 131 (S.C. 2002)

If Appellant was not satisfied with the findings of fact and conclusions of law set forth in the Partition Order, he was required to request amendment of the Order in accordance with the provisions of Rule 52(b) SCRPC. He did not file a motion to amend the factual findings and conclusions of law in the Partition Order and did not address any of these issues in his Motion for Reconsideration. The failure to challenge a ruling of the Lower Court renders any objection to issues abandoned and they cannot be considered on appeal. *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993); *see also Charleston Lumber Co., Inc. v. Miller Hous. Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (finding an unchallenged ruling, right or wrong, is the law of the case). The Partition Order properly sets forth findings of fact and conclusions of law. Nonetheless, Appellant abandoned this issue by not raising it pursuant to the

Rules. Furthermore, this issue, which is the law of the case, is outside of the grounds for relief provided by Rule 60 SCRPC.

There is no reference in the applicable Statutes and Rules to a “public” sale. Appellant incorrectly reads S.C. Code §14-11-160 as applying to the procedure for a partition action. That section of the statute only pertains to the Master’s authority to sell real estate in a county other than the one in which he is appointed. By consent of the parties, the Master may sell property in any county. That section of the Code has no bearing in this instance, the Property is located in Beaufort County and within the jurisdiction of the Master in Equity in the Partition Action.

The applicable provisions addressing the partition of real property are contained in Title 15, Chapter 61 of the South Carolina Code of Laws., S.C. Code §15-61-10, *et seq.*, and Rule 71 SCRPC.

The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties.

S.C. Code § 15-61-50 (2019).

And:

**Allotment or Sale.** If it shall appear to the court that it will be for the benefit of all parties interested in the estate or property that it should be vested in one or more of the persons entitled to a portion of it, on the payment of a sum of money assessed as provided in Rule 71(f)(3), the court shall determine accordingly, and the person or persons, on the payment of the consideration money, shall be vested with the estate so

adjudged to such person or persons. But if it shall appear to the court that it would be more for the interest of the parties interested in the estate or property that it should be sold and the proceeds of sale be divided among them, then the court shall direct a sale to be made upon such terms as the court shall deem right. (emphasis added)

Rule 71(4) SCRPC.

The Master in Equity heard the testimony of the parties in the Partition Action and issued his Partition Order. “When the court determines a partition cannot be fairly and equally made, the court may order a sale of the property and a division of the proceeds according to the rights of the parties.” *Zimmerman v. Marsh*, 365 S.C. 383, 618 S.E.2d 898 (2005). The Master in Equity specifically concluded that the property could not be partitioned in kind. *Partition Order Para 6*. The Master also concluded that it was undisputed that a private sale would result in greater value to the parties and that a private sale was in the best interest of the parties. *Partition Order Para 7*. Appellant agreed that a public sale would not result in a fair market value for the property and was not in the best interests of the parties. *Amended Complaint, Para’s 29 and 30; Houston Answer to Amended Complaint, Para 8*.

Nothing in Rule 71, South Carolina Rules of Civil Procedure, concerning partition actions, shall be construed to affect the power of a court hearing a partition action to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such writ. And the court may in all proceedings in partition, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind among the parties be practicable or expedient and, when such partition cannot be fairly and equally made, may order a sale of the property and a division of the proceeds according to the rights of the parties.

S.C. Code §15-61-100 (2017).

The Court concluded, and all parties – including Appellant – agreed that significantly greater value would be realized from a private sale. *Partition Order Para 7*. Although termed a private sale, to distinguish it from a judicial auction, the Property was listed for sale with a licensed broker and advertised to the public as “For Sale”. The term “private sale” is somewhat of a misnomer. Appellant, like any other member of the public, could have offered to purchase the property. Nothing prevented him for negotiating with his sisters to purchase the Property after it was listed for sale.

The Court had authority to enter an order directing the Property to be sold upon such terms as the Court deemed right. Rule 71(4) SCRPC. Based on the testimony at the Final Hearing, the Court concluded that Appellant would not cooperate with the sale. Appellant admitted that he refused to cooperate. *Partition Order, Para. 13*. Ordering that the Property be listed for sale with a licensed broker and advertised for private sale was within the equitable powers of the Master. *Partition Order, Para. 7*. Contrary to Appellant’s argument in his Brief on Appeal, the Partition Order also confirms there was testimony concerning the need to appoint Appellant’s sister as the designee of the Plaintiffs and Appellant to sign any contracts, deeds, or settlement documents necessary to close the final sale on the Property. *Partition Order Para 7 and 14*.

The Trial Court correctly exercised its discretion by not finding that the Partition Order was “void upon its face.” “An abuse of discretion arises when the court issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support.” *Melton v. Olenik*, 379 S.C. 45, 50, 664 S.E.2d 487, 489–90 (Ct.App.2008); *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d

583 (Ct.App.2013). The Partition Order is not “void upon its face,” the matter was within the personal and subject matter jurisdiction of the Master and the terms of the Partition Order within the authority of the Master pursuant to the applicable Statutes and Rules.

**V. THE TRIAL COURT PROPERLY RULED THAT THE ISSUES RAISED IN THE PARTITION ACTION AND THE PARTITION ORDER THEREIN WERE WITHIN THE SUBJECT MATTER JURISDICTION OF THE MASTER IN EQUITY.**

Appellant’s Argument V is a narrative with little citation to supporting legal authority, and the authority cited is inapplicable. Failure to provide argument or supporting authority is deemed an abandonment of the issue. *First Savings Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994). It is difficult to discern the reason for the reference to Title 27 Chapters 5 (presumably) and 7 and how they are intended to apply to Appellant’s analysis. In addition, Appellant once again cites S.C. Code§14-11-160 (2019) which has no bearing on this matter. Those are the only legal authorities cited in support of the narrative.

The question of the personal and subject matter jurisdiction and authority of the Master in Equity in the Partition Action are thoroughly addressed hereinabove and are not repeated here. The same analysis of the law, rules and facts is incorporated herein. Appellant argued in the Partition Action, in his Motion for Reconsideration and now in this action, that the Property had to be sold at “public auction,” presumably referring to the procedure set forth S.C. Code §15-39-610 (2019), *et seq.* It is axiomatic that such a sale would necessarily involve the execution of a deed by the Master pursuant

to S.C. Code §15-39-830 (2019). Furthermore, the courts have authority to order the sale of property and divide the proceeds according to the rights of the parties. S.C. Code §15-61-50 (2019); S.C. Code §15-61-100 (2019); Rule 71 SCRCP. The Master was vested with jurisdiction and authority to issue the Partition Order and the remedies set forth therein were within the range of equitable remedies available.

**VI. APPELLANT WAS NOT DENIED ANY DUE PROCESS RIGHTS AS GUARANTEED BY THE UNITED STATES OR STATE OF SOUTH CAROLINA CONSTITUTIONS.**

Appellant's argument that he was denied due process rights is based on his continued assertion that the Master did not have jurisdiction in the Partition Action. That issue has been addressed at length hereinabove and need not be repeated here. The Order of Reference conferred jurisdiction on the Master, who was then vested with "all power and authority which a circuit judge sitting without a jury would have in a similar matter." Rule 53(c) SCRCP. As for any specific issues Appellant has with the Order Granting Respondents Bell's Motion for Summary Judgment, those issues were abandoned as a result of Appellant failing to file any post trial motions in the current action. *Biales v. Young, supra*.

"It is well settled that an issue may not be raised for the first time in a post-trial motion." *McGee v. Bruce Hosp. Syst.*, 321 S.C. 340, 347, 468 S.E.2d 633, 637 (1996). "Further, it is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error." *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965). Additionally, "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to

and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by Appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *SCDOT v. First Carolina Corp. of S.C.*, 641 S.E.2d 903, 372 S.C. 295 (2007). Even if Appellant has properly preserved his argument that he was somehow denied due process by the Master in the Partition Action, that issue is without merit.

In his argument, Appellant does not make any distinction between procedural due process rights and substantive due process rights. He was not denied either, the applicable rules and statutes were properly applied and Appellant has not challenged the constitutionality of the statutes and rules themselves, only the application thereof in this instance. His challenge fails.

"Procedural due process imposes constraints on governmental decisions that deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. U.S. Const. amends. V and XIV, § 1; *Mathews v. Eldridge*, 424 U.S. 319, 331, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice, an opportunity to be heard in a meaningful way, and judicial review. U.S. Const. amends. V and XIV, § 1; S.C. Const. art. 1, § 22; *Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). Further, due process is flexible and calls for such procedural protections as the particular situation

demands. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008)” *Harbit v. City of Charleston*, 675 S.E.2d 776, 781. 382 S.C. 383, \_\_\_ (Ct.App. 2009). Due process requires (1) notice; (2) opportunity for a hearing; (3) opportunity to introduce evidence; and (4) opportunity to confront and cross-examine witnesses. *In re Vora*, 582 S.E.2d 413, 354 S.C. 590 (2003). All of these criteria were met in the Partition Action.

Appellant had notice of every proceeding in the Partition Action and fully participated. He alleged that he did not receive the Motion for Order of Reference, but he was present at the hearing. The only motions heard at the time were the Plaintiff’s Motion to Compel, the Motion for Order of Reference, and Appellant’s Motion to Dismiss. The Order of Reference was issued, the Motion to Compel resolved, and the Motion to Dismiss resulted in the Court allowing the Complaint to be amended. *Order of Reference*. Appellant answered the Amended Complaint, which contained the causes of action he is still challenging. He appeared at the Final Hearing, offered evidence and his own testimony and cross examined the witnesses. He then filed his Motion for Reconsideration, challenging the Partition Order. That Motion was heard and denied. Appellant appeared on the hearing on his Motion via teleconference. *Order Denying Motion for Reconsideration*. Appellant then filed a Notice of Appeal which was ultimately dismissed solely as a result of his own failings.

Appellant raised issues concerning the Partition Matter in two subsequent proceedings prior to the current one, relying on the provisions of the Partition Order in both. In his current action, he appeared and argued his case before the Trial Judge and had the same opportunity as all parties to present evidence and affidavits in opposition

to the two Motions for Summary Judgment. There is no merit to any argument that Appellant makes regarding denial of due process rights. He has been afforded multiple opportunities to present his arguments in a meaningful way and seek judicial review as to adverse decisions.

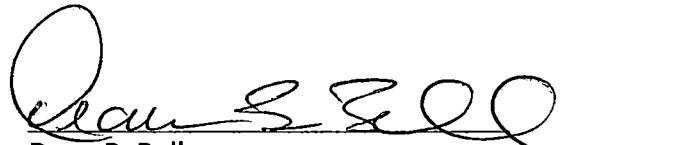
Neither has Appellant been denied substantive due process rights. "In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." *Harbit v. City of Charleston*, 675 S.E.2d at 782, 382 S.C. at \_\_\_\_, (citing *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004)). As set forth at length herein, Appellant has fully participated and presented his own evidence and witnesses at each stage of the four actions (five including the eviction action before the Magistrate's Court) involving the various claims he has asserted regarding his rights to the Property which all originate from his documented refusals to cooperate with his sisters in selling the property, while he lived on and operated his law office out of the Property without paying rent or contributing to any costs to the exclusion of his sisters (the co-owners), and, despite his exclusive use of the Property, refusal to contribute to the cost of insurance. *Partition Order, Para's. 4, 5, 7, 10, 11, and 12*. In each of those actions the Courts have applied the applicable Rules and Law. Except for the Trust Action (which was settled among the parties), Appellant exhausted his appeals and review options in each action. Moreover, Appellant was not deprived of an interest in the Property. He owned an undivided  $\frac{1}{4}$  interest with his sisters as tenants in common. Upon sale of the Property, he received full credit of his share for the net proceeds.

**Conclusion**

For all of the foregoing reasons, the Master in Equity had subject matter jurisdiction in the Partition Action to hear the testimony, review the evidence, and issue his Partition Order addressing all of the claims and issues raised in the pleadings or otherwise at the final hearing in the matter. Appellant was present at the final hearing, subsequently received the Partition Order, filed his Motion for Reconsideration addressing the very same claims and issues he raised in this action, and subsequently filed his Notice of Appeal which was dismissed and followed by a Remittitur to the Beaufort County Court of Common Pleas. Additionally, the terms of Partition Order in the Partition Action were within the authority of the Master pursuant to the applicable Statutes and Rules. Neither was Appellant denied any due process rights in this or any prior proceeding concerning the same issues. For all of the above reasons, the Order Granting Respondents Bells' Motion Summary Judgment should be affirmed.

April 21, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dean B. Bell", with a large, stylized initial "D" and a long horizontal stroke extending to the right.

Dean B. Bell  
6120 College Street, Ste D121  
Beaumont, TX 77707  
Respondent and Attorney for Respondent  
The Law Office of Dean B. Bell, LLC

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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Case No. 2018-CP-07-1559

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**RECEIVED**  
APR 24 2020  
SC Court of Appeals

Charles E. Houston, Jr.  
Appellant

v.

Dean B. Bell, Individually,  
The Law Offices of Dean B. Bell, LLC and  
B. Hammel Properties, LLC  
Respondents

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PROOF OF SERVICE

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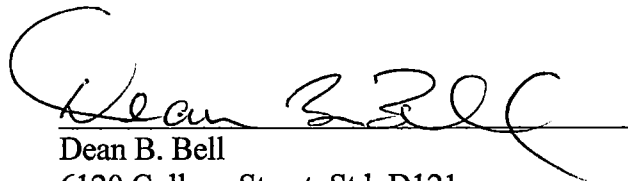
Dean B. Bell  
6120 College Street, Std. D121  
Beaumont, Texas, 77707  
*dbell@deanbell-law.com*  
*Pre Se* and Attorney for Respondent  
The Law Office of Dean B. Bell, LLC

I certify that I have served the INITIAL BRIEF OF RESPONDENTS DEAN B. BELL, INDIVIDUALLY, AND THE LAW OFFICE OF DEAN B. BELL, LLC, addressed to the following parties by depositing a copy of it in the United States Mail, postage prepaid, on April 22, 2020.

Charles E. Houston, Jr.  
100 Shady Brook Walk  
Fayetteville, GA 30214  
*Appellant*

W. Cliff Moore, III  
Adams and Reese, LLP  
P.O. Box 2285  
Columbia, SC 29202  
*Attorney for Respondent Hammel Properties, LLC*

Thomas C. Taylor  
Law Office of Thomas C. Taylor, LLC  
P.O. Box 5550  
Hilton Head Island, SC 29938  
*Attorney for Respondent Hammel Properties, LLC*

A handwritten signature in black ink that reads "Dean B. Bell". The signature is written in a cursive style and is positioned above a horizontal line.

Dean B. Bell  
6120 College Street, Std. D121  
Beaumont, Texas, 77707  
[dbell@deanbell-law.com](mailto:dbell@deanbell-law.com)  
*Pre Se* and Attorney for Respondent  
The Law Office of Dean B. Bell, LLC

# The Law Office of Dean B. Bell, LLC

Dean B. Bell \*  
Admitted in Texas and South Carolina  
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April 22, 2020

## VIA UPS

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: *Charles E. Houston, Jr. v. Dean B. Bell, et al*  
Appellate Case No. 2019-001676

RECEIVED  
APR 24 2020  
SC Court of Appeals

Dear Ms. Kitchings:

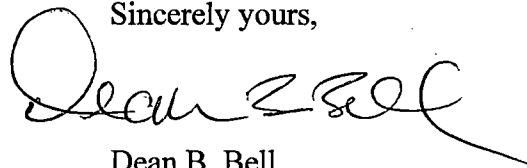
Enclosed herewith for filing with the Court, please find one copy of the Initial Brief and Designation of Matter of Respondents Dean B. Bell, Individually, and The Law Office of Dean B. Bell, along with the appropriate Proofs of Service.

I have also enclosed a copy of the Initial Brief and Designation of matter, along with a stamped, self-addressed envelope. I would appreciate it if you would return a file stamped copy for my files.

By copy of this correspondence, I am simultaneously serving the copy of the Initial Brief and Designation of Matter on the Appellant and other Respondent. Should you have any questions, do not hesitate to contact me.

With kind regards, I am

Sincerely yours,



Dean B. Bell

Enc.

Cc. Charles E. Houston, Esq. w/enc  
W. Cliff Moore, III, Esq. w/enc  
Thomas C. Taylor, Esq. w/enc