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May 26 2022

SC Court of Appeals

THE STATE OF SOUTH
CAROLINA IN THE COURT
OF APPEALS

APPEAL FROM AIKEN
COUNTY CIRCUIT COURT

M. Anderson Griffith, Master in Equity

Case No. 2020-CP-02-1173

Mark B. Mitchell and Celine C. Mitchell, Plaintiff,
v.

Ronald Joseph Albertelli and Mary Frances Snelling, Trustees of the Mary Frances Snelling
Living Trust, Donnita C. Harmon and Jimmie Phillip Harmon, Defendants,

Of Whom Mark B. Mitchell, Celine C. Mitchell, Ronald Joseph Albertelli, and Mary Frances
Snelling are the Respondents,

And Donnita Harmon and Jimmie Harmon are the Appellants.

REPLY BRIEF OF APPELLANTS

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ARGUMENT

I. APPELLANTS HAVE PRESERVED ALL NECESSARY ISSUES ON APPEAL

Without citing to any portion of the record or motion before the Master in Equity the Respondent asserts that the Harmons have waived objection to the Master's grant of specific performance. This is incorrect.

As a preliminary matter, there is no factual or legal dispute that the claim of a right to specific performance was squarely before the Master in Equity, contested by the Harmons and formed a basis for the Master's decision. Consequently, the issue was not raised for the first time on appeal. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Secondly, the fact that the phraseology used to address a particular issue is not identical to that asserted below does not preclude its consideration on appeal. “[A] party is not required to use the exact name of a legal doctrine in order to preserve the issue.” *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011).

The basic nature of the appellate process is to seek to correct an error committed at the trial level. Here, the trial court rejected, albeit incorrectly, that a right of first refusal had not been preserved and that consequently, the Respondents were entitled to specific performance of their contract to purchase. Appellants' appeal seeks to correct and reverse this ruling. Simply put, enforcement of the Appellant's right of first refusal could not be realized if the Respondents were granted a right of specific performance.

When an issue is not specifically set out in the statements of issues, the appellate court may nevertheless consider the issue if it is reasonably clear from an appellant's arguments. *See Eubank v. Eubank*, 347 S.C. 367, 555

S.E.2d 413 (Ct. App. 2001) (finding the statement of issue, when read in conjunction with the argument, sufficiently raised the issue to the court).

Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 642–43 (2011).

Appellant’s entire argument, both during trial and on appeal, is that the Master’s denial of enforcement of the right of first refusal was in error. Had the Master not erred, no specific performance of the contract could have been granted, as such a result would have been legally illogical. Moreover, the Harmons specifically requested that the trial court’s grant of specific performance be overturned (Appellant’s brief p. 10), because the failure to recognize the Appellant’s right of first refusal was in error. Consequently, it is reasonably clear from the appellate argument that the Harmons were preserving this issue and seeking redress for it. To assert otherwise would require that the entire appeal be disregarded.

Moreover, it is utterly illogical to suggest that the Appellants could exercise their right of first refusal, while simultaneously enforcing the request for specific performance of the same property to another party. Such an illogical result would not stand. Therefore, the objection to the grant of specific performance was properly preserved and asserted by the Harmons.

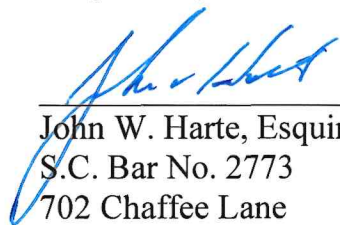
CONCLUSION

By disregarding the right of first refusal, the Master in Equity denied the Harmons a valuable property right they had purchased. For the reasons and authorities set forth above, it is respectfully requested that the Court reverse the Master in Equity’s Order of

February 9, 2022 granting specific performance of the Mitchell contract and that the Court reinstate the Right of First Refusal of the Harmons.

Dated: May 26, 2022

Respectfully submitted,



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Defendants,

Of Whom Mark B. Mitchell, Celine C. Mitchell, Ronald Joseph Albertelli, and
Mary Frances Snelling are the Respondents,

And Donnita Harmon and Jimmie Harmon are the Appellants.

PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellant on W. Grady Jordan
and Brad A. Brodie by email on May 26 2022 and will be mailed USPS to the
below addresses on May 27 2022.

May 26 2022



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May 26, 2022

The Honorable Jenny Abbott Kitchings
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RE: Mark B. Mitchell and Celine C. Mitchell, Plaintiff, v. Ronald Joseph Albertelli and Mary Frances Snelling, Trustees of the Mary Frances Snelling Living Trust, Donnita C. Harmon and Jimmie Phillip Harmon, Defendants,

Of Whom Mark B. Mitchell, Celine C. Mitchell, Ronald Joseph Albertelli, and Mary Frances Snelling are the Respondents, And Donnita Harmon and Jimmie Harmon are the Appellants.

Hon M. Anderson Griffith, Master in Equity Case Number 2020-CP-02-1173

Dear Ms. Kitchings:

Please find the Appellant's Reply Brief and Proof of Service for filing.

Respectfully,


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