THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2018-002185

Molly M. Morphew — Appellant

v.

Stephen Dudek, Doreen Cross, Carolina One, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile — Respondents

---

RECORD ON APPEAL -- VOLUME I

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Stephen Dudek, Doreen Cross, Susan Nicholson, Carolina One, and Michael Scarafile

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ORDERS

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801706

Molly M Morphew		**Stephen Dudek** **David Collins** **First Federal** **Susan Nicholson** **Carrie Boyer**	**Doreen Cross** **Allison Williams** **Michael Scarafile** **Carolina One Real Estate**
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED-RECORDED
2018 MAY 31 A 10:08
CHERYL GRAY
CLERK OF COURT
DORCHESTER COUNTY

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Edgar Dickson	2153	5/31/2018
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **5/31/2018**, and a copy mailed first class or placed in the appropriate attorney's box on **5/31/2018**, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 786 E. Butternut Road Summerville, SC 29483

Steven L. Smith /Zachary James Closser /Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill /Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer /William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576
David Collins Po Box 30052 Charleston, SC 29417

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter: Wendy Derrick

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Case No. 2016-CP-18-1706

Molly Morphew,

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,

Defendants.

ORDER

FILED-RECORDED
2018 MAY 31 AM 10:08
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This matter came before the Court on May 29, 2018 to resolve numerous pending motions. Among those pending motions were three Motions for Summary Judgment filed variously by Defendants Stephen Dudek, Doreen Cross, Allison Williams, First Federal Bank, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, and the Wooddy Law Firm. A Hearing was set for May 29, 2018 at 10:00 AM and properly noticed to all parties including Plaintiff. Counsel for all Defendants appeared for the Hearing. Plaintiff did not appear. At 6:42 AM on May 29, 2018, Plaintiff emailed the Court and counsel stating:

> All, my apologies but I;ll [sic] be unalbe [sic] to attend today's hearing. I'm on my way to the emergency room with my daughter with severe abdominal pains Sorry for the brief message but in a hurry.

Prior to the Hearing, on May 15, 2018, Plaintiff emailed Chief Deputy Clerk of Court Becky Stevens requesting that the court reschedule the Hearing because Plaintiff would "be out of town for the Memorial holiday weekend and would not be back until Wednesday." Ms. Stevens advised Plaintiff that a continuance could only be granted if all parties consented. On

May 18, 2018, eleven days prior to the Hearing, Plaintiff filed a Motion for Continuance based primarily on a planned vacation to Arlington Cemetery and a sailing trip from Beaufort, North Carolina to Hampton, Virginia.

IT IS HEREBY ORDERED THAT:

1. Within ten (10) days of the date of this Order, Plaintiff shall submit proof of Plaintiff's (or Plaintiff's daughter's) admittance to the Emergency Room showing, to the satisfaction of the court, the existence of such an emergency and, but for the emergency, Plaintiff would be able to attend the Hearing scheduled for 10:00 AM, May 29, 2018 at the Dorchester County Courthouse. Such proof shall consist of or include emergency room intake forms or admittance records indicating the date, time, and location of such intake or admittance. Plaintiff is permitted to redact personally identifiable information and sensitive medical information.
2. If such proof is not provided, or if the court is not satisfied with the completeness or accuracy of the information, the Defendants' dispositive motions shall be granted. All pending motions filed by Plaintiff shall be denied.
3. If such proof is provided to the satisfaction of the court, the motions currently pending before the Court will be placed on the August 6, 2018 Motions roster.
4. This matter is hereby removed from the June 25, 2018 Jury Trial Roster.
5. To the extent necessary, this matter will be placed on the September 24, 2018, Jury Trial Roster.
6. Within ten (10) days of the date of this Order, Plaintiff is hereby further ordered to provide a true and accurate address of record at which Plaintiff can and will receive personal service.

The above does not indicate and the Court does not order any change to the scheduling order in place in this matter. The Court understands that the Deposition of Plaintiff Molly Morphew was held open and continues to be open. This order does not affect the ability of Defendants to continue the deposition of Plaintiff.

Finally, this Court specifically finds that Defendant David Collins is not in default or good cause exists to set aside any such entry of default.

AND IT IS SO ORDERED.

~~The Honor~~able Judge Edgar W. Dickson
First Judicial Circuit

May 30, 2018
St. George, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1801706

Molly M Morphew
PLAINTIFF(S)

Stephen Dudek et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter is before the court on Plaintiff's 2nd Motion for Entry of Default Against Defendant David Collins. Plaintiff's Motion is hereby DENIED, since Defendant David Collins timely filed a Motion to Dismiss on September 20, 2016

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/12/2018 .

David Collins for David Collins
David Collins for David Collins
Molly M Morphew for Molly M Morphew
Molly M Morphew for Molly M Morphew

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2018 Nov 13 10:43 AM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801706

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Dorchester Common Pleas

Case Caption: Molly M Morphew VS Stephen Dudek , defendant, et al

Case Number: 2016CP1801706

Type: Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166

ELECTRONICALLY FILED - 2018 Nov 15 12:34 PM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801706

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Civil Action No. 2016-CP-18-01706
	)	
Molly Morphew	)	
	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANT DAVID COLLINS'S MOTION TO DISMISS**
	)	
vs.	)	
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,	)	
	)	
Defendants.	)	

This matter is before the court on Defendants' Joint Motion to Dismiss. For the reasons set forth herein, the Court **GRANTS** Defendant's Motion to Dismiss, which was treated as a Motion for Summary Judgment, as to David Collins.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

According to Plaintiff, the present litigation arises out of fraud perpetuated by the Defendants, all of whom were involved in some way in a prior real estate transaction. In 2012, Defendants Stephen Dudek and Doreen Cross had a real estate contract for property located in Summerville, South Carolina. Shortly after, Plaintiff entered into a back-up sales contract with the sellers for the same piece of property. Defendants Wooddy Law Firm and Carrie Boyer, a paralegal at Wooddy Law Firm, acted as the closing attorney for Defendants Dudek and Cross. Defendant Carolina One Real Estate was the real estate agent for Defendants Dudek and Cross, and Defendants Michael Scarafile and Susan Nicholson, as employees of Carolina One Real

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Estate, performed similar activities. Likewise, Defendant David Collins was employed as the attorney for Defendants Dudek and Cross to perform certain legal functions related to the purchase of the property. Lastly, Defendants First Federal and Allison Williams, a lender officer employed by First Federal, acted as the lender for Defendants.

Plaintiff previously sought enforcement of the contract for the purchase of the property located in Summerville, SC. The Honorable James E. Chellis, Master-in-Equity, Dorchester County, issued an order finding that while Plaintiff had an enforceable contract, it was conditional on the termination of Defendants Dudek and Cross's contract and ordering specific performance of Defendants Dudek and Cross's contract. Plaintiff commenced this litigation on September 8, 2016, alleging that shorty before and during trial, all of the Defendants perpetrated fraud on both her and the court by making fraudulent misrepresentations and failing to disclose material facts.

In January of 2017, the Honorable Deadra Jefferson dismissed several of Plaintiff's claims pursuant to Rule 12(b)(6), SCRCP. As to Defendant David Collins, the following claims remain pending: (1) Plaintiff's First Cause of Action, identified as "Fraud, Extrinsic Fraud, and Fraud on the Court;" (2) Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud;" (3) Plaintiff's Seventeeth Cause of Action, identified as "Intentional Infliction of Emotional Distress;" and (4) Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interfernce with Existing Contractual Relations."

STANDARD OF REVIEW

Rule 56 of the South Carolina Rules of Civil Procedure provides that summary judgment is warranted when "the pleadings, depositions, answers to interrogatories, and admissions on file,

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together with affidivaits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, SCRCP. Furthemore, when an party moves for summary judgment, an adverse party is not allowed to simply rest upn the allegations of his pleadings and, instead, "must set forth specific facts showing that there is a genuine issue for trial." Rule 59(e), SCRCP. "[O]n a defendant's motion for summary judgment such as the one at issue here, a court cannot properly deny the motion after *only* finding that genuine issue of material fact exists as to *one* element of the plaintiff's claim; rather, under Baughman, the court must determine that a genuine issue of material fact exists for *each* essential element of the plaintiff's claim. *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007) (emphasis added). Lastly, a trial court may treat a 12(b)(6) motion as a motion for summary judgment and consider matters presented outside the pleadings as long as the parties are given notice and an opportunity to respond. *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 699 (1987); see also *Bowen & Smoot v. Plumley*, 301 S.C. 262, 391 S.E.2d 558 (1990).

ANALYSIS

I. Plaintiff's First Cause of Action, identied as "Fraud, Extrinsic Fraud, and Fraud on the Court"

Under South Carolina law, fraud on the court has been defined as "the species of fraud which does, or attempts to subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjuding cases that are presented for adjudication." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1998)). However, to prevail on a theory of fraud on the court, one must

allege extrinsic fraud, meaning "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Hilton Head Ctr. of South Carolina v. Pub. Serv. Comm.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).

Noting the high threshold for establishing fraud on the court, the Supreme Court noted "[g]enerally speaking, only the most egregious misconduct, such as bribery of a judge or members of the jury, or fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious conduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court." *Chewning*, 354 S.C. at 78-79, 579 S.E.2d at 608. Lastly, successfully pleading fraud upon the court requires a showing of intent. In fact, the Supreme Court held "when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for 'fraud on the court'." *Id.* (quoting *U.S. v. Buck*, 281 F.3d 1336, 1342 (10th Cir. 2002)). Speaking directly on the issue at hand, the Supreme Court held that the charge of perjury or false swearing on the part of a party or his witnesses "is a species of intrinsic, not extrinsic, fraud," and affords no grounds for equitable interference with a judgment. *Corley v. Centennial Const. Co.*, 247 S.C. 179, 189, 146 S.E.2d 609, 614 (1966).

Plaintiff, both in her pleadings and her deposition, claims that Defendant Collins committed fraud on the court by falsely testifying and failing to disclose pertinent documents in a previous trial. As explained above, the Supreme Court held that nondisclosure of material facts, and even perjury, amounst only to intrinsic, not extrinsic, fraud. This is especially true considering that the documents Plaintiff alleges were concealed were, in fact, provided to her attorney shortly before a previous trial. Pltf. Depo. p. 80, lns. 1-23. For these reasons, Plaintiff has been unable to create a genuine issue of material fact with respect to the essential elements of

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fraud on the court and, thus, summary judgment with respect to this cause of action is appropriate.

II. Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud"

While unclear from the pleadings, in the light most favorable to the Plaintiff, her pleadings could raise causes of action for (1) bad faith; (2) breach of duty of good faith and fair dealing; or (3) breach of contract accompanies by a fraudulent act; or (4) civil conspiracy. In South Carolina, the tort action for bad faith has only been recognized in the context of an and insured-insurer relationship, which is not present or even alleged. *See Tyger River Pine Co. v. Maryland Casualty Co.*, 170 S.C. 286, 170 S.E.2d 346 (1933). Similarly, causes of action for both breach of duty of good faith and fair dealing and breach of contract accompanied by a contract require, at the very least, the showing of a contractual relationship, which is also not present here or even alleged. *RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004); see also *Harper v. Etheridge*, 290 S.C. 112, 348 S.E.2d 374 (1986).

On the other hand, a civil conspiracy consists of three elements: (1) a combination of two or more persons; (2) for the purpose on injuring the plaintiff, (3) which cause him special damage. *Charles v. Texas Co.*, 192 S.C. 82, 5 S.E.2d 464 (1939). "[T]o be actionable, therefore, a conspiracy's *primary* purpose or object must be to injure the plaintiff." *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 10 344 S.E.2d 379, 382 (Ct. App. 1986) (emphasis added). The South Carolina Court of Appeals held "[i]f a plaintiff merely repeats the damages from another

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claim instead of specifically listing damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009).

Similarly, to support Plaintiff's claim, she claims Defendant David Collins perpetuated fraud on the court and, as a result, her by concealing documents and making fraudulent misrepresentations concerning whether co-Defendants Stephen Dudek and Doreen Cross had been able to obtain financing. Assuming arguendo that these mere allegations were sufficient to satisfy the first two elements of civil conspiracy, Plaintiff has not made a showing, or even alleged, special damages, which is an essential element for a cause of action for civil conspiracy. In fact, Plaintiff, in her deposition, admitted that all of the causes action, together, support her claim for damages and that if he civil conspiracy claim were dismissed, the damages sought would not change. Pltf's Depo., pgs. 298-99,

III. Plaintiff's Seventeeth Cause of Action, identified as "Intentional Infliction of Emotional Distress"

To recover for a claim of intentional infliction of emotional distress, plaintiff must show extreme and outrageous conduct which intentionally or recklessly causes severe emotional distress to another. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). The conduct complained of must be "so 'extreme and outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized society." *Gattison v. S.C. State College*, 318 S.C. 148, 151, 458 S.E.2d 414, 416 (Ct. App. 1995). The question of whether the conduct arose to the level of "extreme and outragous is a question of law reserved for the court. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984).

Plaintiff fails to raise a genuine issue of material fact as to each essential element of this

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claim. First, dishonesty, especially without the existence of any special relationship, cannot rise to the level of "extreme and outrageous" conduct. Next, and most importantly, Plaintiff has also failed to raise a genuine issue of material fact as to whether her "emotional distress" is sufficiently severe. *See Hansson*, 374 S.C. at 358, 650 S.E.2d at 72 ("[i]t is for the court to determine whether on the evidence severe emotional distress can be found . . ."). Instead, Plaintiff has relied solely on mere bald assertions of distress, providing not even a mere scintilla of evidence from a third-party witness or any other corroborating evidence to show severe emotional distress. *Id.* ("[t]o permit a plaintiff to legitimately state a cause of action by simply alleging, "I suffered emotional distress" would be irreconciliable with this Court's development of the law in this area."). In particular, Plaintiff attempt to establish emotional distress on her testimony that she discussed stress-related symptoms with both a gynecologist and an eye doctor, and that she was prescribed medication for ulcers roughly twelve yerars ago, well before the conduct complained of in this litigation. For these reasons, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Intentional Infliction of Emotional Distress is granted.

IV. Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interfernce with Existing Contractual Relations"

To recover under a cause of action for tortious interference with an existing contract are (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) resulting damages. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008). "Generally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party." *Edelco, Inc. v. Charleston County*

School Dist., 372 S.C. 470, 642 S.E.2d 726 (2007) (quoting *Southern Contracting, Inc. v. H.C. Brown Constr. Co.*, 317 S.C. 95, 102, 450 S.E.2d 602, 606 (Ct. App. 1994). Lastly, and rather obvious, "where there is no breach of contract there can be no recovery." *Id.*

Plaintiff has failed to set forth evidence to make a showing to establish any of these elements, which are essential to Plaintiff's case. As discussed above, while Plaintiff had a contract, her contract was contingent upon the termination of the Dudek and Cross contract. Since specific performance was ordered on the Dudek and Cross contract, Plaintiff's contract was not enforceable and thus could not have been, and was not, breached. Thus, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Tortious Interference with Existing Contractual Relations is granted.

CONCLUSION

Based on the aforementioned reasons, the Court hereby **GRANTS** Defendant's Motion to Dismiss, which was treated as a Motion for Summary Judgment, as to all remaining causes of action.

IT IS HEREBY ORDERED.

_____
The Honorable Maite Murphy

_____, 2018.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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Dorchester Common Pleas

Case Caption: Molly M Morphew VS Stephen Dudek , defendant, et al

Case Number: 2016CP1801706

Type: Order/Summary Judgment

So Ordered

s/ Maite Murphy 2166

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801706

FILED-RECORDED
2017 JAN 31 AM 8:58
CHERYL Davis
CLERK OF COURT
DORCHESTER COUNTY

Molly M Morphew	**Stephen Dudek** **David Collins** **First Federal** **Susan Nicholson** **Carrie Boyer**	**Doreen Cross** **Allison Williams** **Michael Scarafile** **Carolina One Real Estate**
PLAINTIFF(S)	**DEFENDANT(S)**	

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2128	1/31/2017
Deadra L. Jefferson, Circuit Court Judge	**Judge Code**	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 12/2016

1/31/17 **For Clerk of Court Office Use Only** 1/31/17

This judgment was entered on 1/31/17 and a copy mailed first class or placed in the appropriate attorney's box on 1/31/17 to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E. Butternut Road Summerville, SC 29483

Michael Christopher Scarafile 4024 Salt Pointe Parkway N. Charleston, SC 29405
Steven L. Smith/Zachary James Closser/Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill/Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer/William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter: Karen Andersen

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Molly Morphew, Plaintiff, vs. Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Woody Law Firm, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIRST JUDICIAL CIRCUIT CASE NO. 2016-CP-18-1706 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS STEPHEN DUDEK AND DOREEN CROSS' MOTION TO DISMISS**

FILED-RECORDED
2017 JAN 31 AM 8:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's counsel:	Molly Morphew, *Pro Se*
Defendants' counsel:	Steven L. Smith, Esq.
Date of Hearing:	November 7, 2016
Court Reporter:	Karen Andersen

This matter came before the Court on November 7, 2016 for a hearing on Defendants Stephen Dudek and Doreen Cross' Motion to Dismiss, filed September 21, 2016. Present at the hearing were Steven L. Smith, attorney for Defendants Stephen Dudek and Doreen Cross, and Molly Morphew[1], appearing *pro se*. For the reasons stated below, the Dudeks' Motion is hereby granted in part and denied in part.

BRIEF FACTS AND PROCEDURAL HISTORY

The Plaintiff, Molly Morphew (hereinafter referred to as "Plaintiff" or "Morphew"), proceeding *pro se*, filed the above-captioned action against, *inter alia*, the Dudeks on August 24, 2016. The Plaintiff's sixty-four (64) page Complaint enumerates eighteen (18) causes of action.

[1] Ms. Morphew was accompanied by a next of friend that assisted her during the hearing but did not speak on the record.

As to the Dudeks, the Complaint alleges the following eleven (11) causes of action: As a First Cause of Action, "Fraud, Extrinsic Fraud – Fraud on the Court;" as a Second Cause of Action, "Perjury;" as a Seventh Cause of Action, "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud;" as an Eighth Cause of Action, "Slander of Title;" as a Ninth Cause of Action, "Breach of Contract Accompanied by Fraudulent Act;" as a Twelfth Cause of Action, "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive;" as a Thirteenth Cause of Action, "Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal;" as a Fourteenth Cause of Action, "Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d);" as a Sixteenth Cause of Action, "Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4(a), Rule 3.4(d);" as a Seventeenth Cause of Action, "Intentional Infliction of Emotional Distress; and as an Eighteenth Cause of Action, "Tortious Interference with Exiting Contractual Relations."

The Complaint correctly asserts that the Plaintiff and the Dudeks are currently parties to several other cases that were consolidated and subsequently affirmed by the Court of Appeals on January 11, 2017. (Compl., ¶ 2). The Prior Civil Actions arose out of two separate real estate contracts between the Dudeks and a seller and between Morphew and the same seller. Both the Dudeks and Morphew filed suit under their respective contracts, and their cases were consolidated. Ultimately, Judge James E. Chellis, the Master in Equity, for Dorchester County ruled in favor of the Dudeks, causing both Morphew and the sellers to appeal. On appeal, the Court of Appeals affirmed the decision of the Master in Equity by Order dated, January 11, 2017.[2] In the Prior Civil Actions, the Plaintiff asserted the following cause of action:

[2] The underlying suit bears Case Nos. 2013-CP-18-00183 and 2013-CP-18-00074. On September 18, 2013, the above cases were consolidated under Case No. 2013-CP-18-00183. Thereafter, on December 30, 2013, by Consent

"Declaratory Judgment," "Specific Performance," "Breach of Contract" and "Tortious Interference with Exiting Contractual Relations."

This instant action, arises out of the same real estate contracts and the actions of various parties, including the Dudeks, during the course of the Prior Civil Actions. Plaintiff's Complaint contains forty-nine (49) factual allegations, some with subparts. (Compl. ¶¶ 25-73). The factual allegations begin with activity occurring on October 24, 2012, when the Dudeks entered into the sales contract with the sellers. (See Compl. ¶ 26). Plaintiff then gives a date-by-date recount of what occurred leading up to the Prior Civil Actions. (Compl. ¶¶ 27-49). Plaintiff further outlines what occurred during the course of the Prior Civil Actions. (Compl. ¶¶ 28-73). The final factual allegation is a clear reference to how this case concerns Plaintiff's issues with the Prior Civil Actions. (See Compl. ¶ 73) (stating, "The Defendant(s) or its agent(s) having participated in the civil action(s) are to presumed to have acted with full knowledge or the facts, had [intentionally] failed to disclose required pertinent material facts to the case."). The Complaint, as to the Dudeks, does not make a factual allegation that does not involve either the facts leading up to the Prior Civil Actions or the procedural history of the Prior Civil Actions.

LAW AND ANALYSIS

A. Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action, Declaratory Judgment That No Contract Exists, and Eighteenth Cause of Action, Tortious Interference with Exiting Contractual Relations, is heard and granted.

Rule 12(b)(8) states that a complaint should be dismissed when "another action is pending between the same parties for the same claim." Rule 12(b)(8), SCRCP. In *Capital City*

Order, the matter was referred to the Master in Equity. The Master in Equity ruled in favor of Defendants Dudek and Cross, and Plaintiff and the Sellers appealed the decision. (Complaint, ¶¶ 64-65). The South Carolina Court of Appeals affirmed the decision in opinion number, 2017-UP-019, dated January 11, 2016.

Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524 (2009), the South Carolina Court of Appeals explained dismissal under this rule as follows:

> In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Rule 12(b)(8), SCRCP. The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of action and relief. *S.C. Public Serv. Comm'n v. City of Rock Hill*, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977); see also James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed.1996). We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). See, *e.g., Beatty v. Liberty Mut. Ins. Group*, 893 N.E.2d 1079, 1084 (Ind.App.Ct.2008) (applying 12(b)(8) dismissal " where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same."). Accordingly, we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).

382 S.C. 92, 105-106, 674 S.E.2d 524, 531-532.

Arguably, Plaintiff's entire Complaint should be dismissed pursuant to Rule 12(b)(8). As stated above, all of her factual allegations in this action concern what led up to the Prior Civil Actions and what occurred during the Prior Civil Actions. (Compl. ¶¶ 25-73). However, given the Court of Appeals narrow interpretation in *Capital City*, this Court limits dismissal to Plaintiff's Thirteenth Cause of Action, for "Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal," and Eighteenth Cause of Action, for "Tortious Interference with Exiting Contractual Relations."

In comparing these two claims with Plaintiff's pleadings in the Prior Civil Actions, it is evident that she previously and identically asserted against the Dudeks in the Prior Civil Actions these two claims based on the same or similar facts. For these reasons, Defendants' Motion to Dismiss Plaintiff's Thirteenth and Eighteenth Causes of Action is granted.

B. Defendants' Motion to Dismiss Plaintiff's Ninth Cause of Action, Breach of Contract Accompanied by Fraudulent Act, is heard and granted.

Plaintiff alleges in her Ninth Cause of Action, for "Breach of Contract Accompanied by Fraudulent Act," that "Defendants Dudek and Cross failed or intentionally failed to perform the court Order of November 15th, 2014 for specific performance." (Compl. p. 40). She then cites to South Carolina's Appellate Court Rules, stating, "Per SC Rule 241(b)(4), orders, judgments, decree or decision[s] on appeal that direct the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170, are not stayed on appeal."

While this Court agrees, without deciding the merits of this cause of action, that matters not on appeal can be heard, Plaintiff has brought the matter in a new action, as opposed to bringing it in the Prior Civil Actions. Further, this Court lacks jurisdiction to hear this matter because the underlying civil suit was referred to the Master in Equity by Consent Order, filed December 30, 2013. Because these claims were adjudicated by the Master in Equity and affirmed by the Court of Appeals, by Order dated January 11, 2017, this Court lacks jurisdiction over any claim that was encompassed in the Master in Equity's Order. S.C. Code Ann. § 14-11-85 states that "[w]hen some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action, and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules." S.C. Code Ann. § 14-11-85. Accordingly this Court lacks jurisdiction to hear any claim that was already litigated and decided by the Master in Equity. As such, Defendants' Motion to Dismiss Plaintiff's Ninth Cause of Action is granted.

C. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action – Perjury and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct, Rule 1.4(a)(4) and Rules 3.4(a)(d) is heard and granted.

Plaintiff's Second Cause of Action is a claim of perjury against all Defendants. South Carolina Code Ann. § 16-9-10 provides, in relevant part,

> (A)(1) It is unlawful to give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.
>
> (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Perjury is a criminal felony punishable with a fine and up to five years imprisonment. See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 462, 574 S.E.2d 739 (2002). Accordingly, perjury is a criminal charge – not a civil cause of action.

Obstruction of justice is a common law criminal offense. Specifically, "it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice." State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). It is a criminal charge and not a basis for civil liability.

As an initial matter, Plaintiff's claim fails because there is no independent civil cause of action for perjury. Moreover, this purported perjury claim contains no specific allegations directed at Defendants. Plaintiff's obstruction of justice claim likewise fails because it is not a civil cause of action. Therefore, Plaintiff's claims for perjury and obstruction of justice are dismissed.

Further, the claims by Plaintiff of Defendants' violation of the South Carolina Rules of Professional Conduct are also without merit. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis

for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation"). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

D. Defendants' Motion to Dismiss Plaintiff's Eighth Cause of Action, Slander of Title, is heard and granted.

Plaintiff's Eighth Cause of Action, for "Slander of Title," alleges damages as a result of the Dudeks filing a Lis Pendens in the Prior Civil Actions, followed by their filing of a suit to enforce their contract for the real estate in question. (Compl. ¶¶ 213-217).

"[T]o maintain a claim for slander of title, the plaintiff must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties." *Huff v. Jennings*, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct.App.1995).

At no point in her Complaint does Plaintiff claim that she holds title to the property alleged to have been slandered. (Compl. ¶¶ 213-217). In fact, who should hold title, the Dudeks or Morphew, was precisely the purpose of the Prior Civil Actions. It must be noted that the Plaintiff herself filed a Lis Pendens and suit over the same property. As such, Plaintiff is claiming that the Dudeks slandered a title by virtue of the exact same actions that she also took. Plaintiff does not and has never held title to the property that she alleges has been slandered. Nor does she allege that she holds or has held this title. Under no set of facts could she meet the

fourth element necessary to prevail under a slander of title claim. Therefore, Defendants' Motion to Dismiss Plaintiff's Eighth Cause of Action is granted.

E. Defendants' Motion to Dismiss Plaintiff's Fourteenth Cause of Action Causes of Action - Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d) is heard and granted.

These two causes of action, for "Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d)," is brought under the South Carolina Rules of Professional Conduct. "A review of the Scope of Rule 407, SCACR [i.e., the Rules of Professional Conduct] clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation." *Spence v. Wingate*, 395 S.C. 148, 716 S.E.2d 920 (2011). Plaintiff has unequivocally asserted causes of action under the Rules of Professional Conduct. As such, her Fourteenth Cause of Action is dismissed.

F. Defendants' Motion to Dismiss Plaintiff's First Cause of Action, Fraud, Extrinsic Fraud – Fraud on the Court, Seventh Cause of Action, Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud, and Twelfth Cause of Action, Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive is heard and granted pursuant to the doctrine of *res judicata*.

In order for res judicata to operate as a bar to a lawsuit, the following elements need to be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Riedman Corp. v. Greenville Steel Structures*, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992).

"*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011). "Under the doctrine of *res judicata*, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Id.*

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Accordingly, the above Causes of Action are barred by the doctrine of *res judicata.* As previously stated, Plaintiff does not assert a factual allegation beyond what occurred leading up to or during the Prior Civil Actions. She had knowledge of these facts at all relevant times leading up to and during the Prior Civil Actions, thus her current claims involve "issues which might have been raised in the former suit." *Id.* As such, Defendants to Motion to Dismiss Plaintiff's First, Seventh, and Twelfth Causes of Action is granted.

With regards to Plaintiff's First Cause of Action, for "Fraud, Extrinsic Fraud – Fraud on the Court," Plaintiff has attempted to cast this claim and the underlying facts as "extrinsic fraud," because such a cause of action would not be barred by res judicata. Extrinsic fraud "induces a person not to present a case or deprives a person of the opportunity to be heard." *Chewning v. Ford Motor Company*, 354 S.C. 72, 81, 579 S.E.2d 605, 610 (citing *Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). On the other hand, intrinsic fraud "is fraud which was presented and considered in the trial" and which "misleads a court in determining issues and induces the court to find for the party perpetrating the fraud." *Id*. (citing *Hagy v. Pruitt*, 339 S.C. 425, 529 S.E.2d 714 (2000). "Extrinsic fraud, as opposed to intrinsic fraud, is often difficult, if not impossible to discover during the litigation. For example, concealing assets through an unknown third-party not subject to discovery is extrinsic fraud in that it constitutes conduct or activities outside of the court proceedings which deprive the other party of the opportunity to fully exhibit and try his case." *Ray v. Ray*, 374 S.C. 79, 647 S.E.2d 237 (2007). In looking at Plaintiff's factual allegations, this Court finds that Plaintiff has made a claim for intrinsic fraud, as opposed to extrinsic fraud. Accordingly, Plaintiff's First Cause of Action is also barred by *res judicata.*

G. Defendants' Motion to Dismiss Plaintiff's Seventeenth Cause of Action, Intentional Infliction of Emotional Distress, is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress would be improper. Accordingly, Defendants' Motion to Dismiss the Seventeenth Cause of Action of Plaintiff's Complaint is heard and respectfully denied.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED that, for the foregoing reasons, Defendants' Motion to Dismiss is Granted in part and Denied in part.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge
First Judicial Circuit

January 25, 2017
Charleston, South Carolina
At chambers

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Civil Action No. 2016-CP-18-01706
	)	
Molly Morphew	)	
	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANTS STEPHEN DUDEK, DOREEN CROSS, SUSAN NICHOLSON, MICHAEL SCARAFILE AND CAROLINA ONE REAL ESTATE'S MOTION FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,	)	
	)	
Defendants.	)	

This matter is before the court on the Motion for Summary Judgment of Defendants Stephen Dudek, Doreen Cross, Susan Nicholson, Michale Scarafile, and Carolina One Real Estate. For the reasons set forth herein, the Court **GRANTS** Defendants' Motion for Summary Judgment.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

According to Plaintiff, the present litigation arises out of fraud perpetuated by the Defendants, all of whom were involved in some way in a prior real estate transaction. In 2012, Defendants Stephen Dudek and Doreen Cross had a real estate contract for property located in Summerville, South Carolina. Shortly after, Plaintiff entered into a back-up sales contract with the sellers for the same piece of property. Defendants Wooddy Law Firm and Carrie Boyer, a paralegal at Wooddy Law Firm, performed real estate closing services for Defendants Dudek and Cross. Defendant Carolina One Real Estate was the real estate agent for Defendants Dudek and Cross, and Defendants Michael Scarafile and Susan Nicholson, as employees of Carolina One

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Real Estate, performed similar activities. Likewise, Defendant David Collins was employed as the attorney for Defendants Dudek and Cross to perform certain legal functions related to the purchase of the property. Lastly, Defendants First Federal and Allison Williams, a lender officer employed by First Federal, acted as the lender for Defendants Dudek and Cross.

Plaintiff previously sought enforcement of the contract for the purchase of the property located in Summerville, SC. The Honorable James E. Chellis, Master-in-Equity, Dorchester County, issued an order finding that while Plaintiff had an enforceable contract, it was conditional on the termination of Defendants Dudek and Cross's contract and ordering specific performance of Defendants Dudek and Cross's contract. Plaintiff commenced this litigation on September 8, 2016, alleging that shorty before and during trial, all of the Defendants perpetrated fraud on both her and the court by making fraudulent misrepresentations and failing to disclose material facts.

In January of 2017, the Honorable Deadra Jefferson dismissed several of Plaintiff's claims pursuant to Rule 12(b)(6), SCRCP. The following claim remains pending as to Defendants Stephen Dudek and Doreen Cross: Plaintiff's Seventeenth Cause of Action, identified as "Intentional Infliction of Emotional Distress." As to Defendants Susan Nicholson, Michael Scarafile, and Carolina One Real Estate, the following claims remain pending: (1) Plaintiff's First Cause of Action, identified as "Fraud, Extrinsic Fraud, and Fraud on the Court;" (2) Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud;" (3) Plaintiff's Seventeeth Cause of Action, identified as "Intentional Infliction of Emotional Distress;" and (4) Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interfernce with Existing Contractual Relations."

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STANDARD OF REVIEW

Rule 56 of the South Carolina Rules of Civil Procedure provides that summary judgment is warranted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidivaits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, SCRCP. Furthemore, when an party moves for summary judgment, an adverse party is not allowed to simply rest upn the allegations of his pleadings and, instead, "must set forth specific facts showing that there is a genuine issue for trial." Rule 59(e), SCRCP. "[O]n a defendant's motion for summary judgment such as the one at issue here, a court cannot properly deny the motion after *only* finding that genuine issue of material fact exists as to *one* element of the plaintiff's claim; rather, under Baughman, the court must determine that a genuine issue of material fact exists for *each* essential element of the plaintiff's claim. *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007) (emphasis added).

ANALYSIS

I. Plaintiff's First Cause of Action, identied as "Fraud, Extrinsic Fraud, and Fraud on the Court"

Under South Carolina law, fraud on the court has been defined as "the species of fraud which does, or attempts to subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjuding cases that are presented for adjudication." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1998)). However, to prevail on a theory of fraud on the court, one must allege extrinsic fraud, meaning "fraud that induces a person not to present a case or deprives a

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person of the opportunity to be heard." *Hilton Head Ctr. of South Carolina v. Pub. Serv. Comm.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).

Noting the high threshold for establishing fraud on the court, the Supreme Court noted "[g]enerally speaking, only the most egregious misconduct, such as bribery of a judge or members of the jury, or fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious conduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court." *Chewning*, 354 S.C. at 78-79, 579 S.E.2d at 608. Lastly, successfully pleading fraud upon the court requires a showing of intent. In fact, the Supreme Court held "when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for 'fraud on the court'." *Id.* (quoting *U.S. v. Buck*, 281 F.3d 1336, 1342 (10th Cir. 2002)). Speaking directly on the issue at hand, the Supreme Court held that the charge of perjury or false swearing on the part of a party or his witnesses "is a species of intrinsic, not extrinsic, fraud," and affords no grounds for equitable interference with a judgment. *Corley v. Centennial Const. Co.*, 247 S.C. 179, 189, 146 S.E.2d 609, 614 (1966).

Plaintiff, both in her pleadings and her deposition, claims that Defendants Susan Nicholson, Michael Scarafile, and Carolina One Real Estate committed fraud on the court by falsely testifying and failing to disclose pertinent documents in the previous trial. As explained above, the Supreme Court held that nondisclosure of material facts, and even perjury, amounst only to intrinsic, not extrinsic, fraud. This is especially true considering that the documents Plaintiff alleges were concealed were, in fact, provided to her attorney shortly before a previous trial. Pltf. Depo. p. 80, lns. 1-23. For these reasons, Plaintiff has been unable to create a genuine issue of material fact with respect to the essential elements of fraud on the court and, thus,

summary judgment with respect to this cause of action is appropriate.

II. Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud"

While unclear from the pleadings, in the light most favorable to the Plaintiff, her pleadings could raise causes of action for (1) bad faith; (2) breach of duty of good faith and fair dealing; or (3) breach of contract accompanies by a fraudulent act; or (4) civil conspiracy. In South Carolina, the tort action for bad faith has only been recognized in the context of an and insured-insurer relationship, which is not present or even alleged. *See Tyger River Pine Co. v. Maryland Casualty Co.*, 170 S.C. 286, 170 S.E.2d 346 (1933). Similarly, causes of action for both breach of duty of good faith and fair dealing and breach of contract accompanied by a contract require, at the very least, the showing of a contractual relationship between the parties, which is also not present here or even alleged. *RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004); see also *Harper v. Etheridge*, 290 S.C. 112, 348 S.E.2d 374 (1986).

On the other hand, a civil conspiracy consists of three elements: (1) a combination of two or more persons; (2) for the purpose on injuring the plaintiff, (3) which cause him special damage. *Charles v. Texas Co.*, 192 S.C. 82, 5 S.E.2d 464 (1939). "[T]o be actionable, therefore, a conspiracy's *primary* purpose or object must be to injure the plaintiff." *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 10 344 S.E.2d 379, 382 (Ct. App. 1986) (emphasis added). The South Carolina Court of Appeals held "[i]f a plaintiff merely repeats the damages from another claim instead of specifically listing damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C.

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110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009).

Similarly, to support Plaintiff's claim, she claims Defendants perpetuated fraud on the court and, as a result, her by concealing documents and making fraudulent misrepresentations concerning whether co-Defendants Stephen Dudek and Doreen Cross had been able to obtain financing. Assuming arguendo that these mere allegations were sufficient to satisfy the first two elements of civil conspiracy, Plaintiff has not made a showing, or even alleged, special damages, which is an essential element for a cause of action for civil conspiracy. In fact, Plaintiff, in her deposition, admitted that all of the causes action, together, support her claim for damages and that if he civil conspiracy claim were dismissed, the damages sought would not change. Pltf's Depo., pgs. 298-99,

III. Plaintiff's Seventeeth Cause of Action, identified as "Intentional Infliction of Emotional Distress"

To recover for a claim of intentional infliction of emotional distress, plaintiff must show extreme and outrageous conduct which intentionally or recklessly causes severe emotional distress to another. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). The conduct complained of must be "so 'extreme and outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized society." *Gattison v. S.C. State College*, 318 S.C. 148, 151, 458 S.E.2d 414, 416 (Ct. App. 1995). The question of whether the conduct arose to the level of "extreme and outragous is a question of law reserved for the court. Todd v. S.C. Farm Bureau Mut. Ins. Co., 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984).

Plaintiff fails to raise a genuine issue of material fact as to each essential element of this claim. First, dishonesty, especially without the existence of any special relationship, cannot rise to the level of "extreme and outrageous" conduct. Next, and most importantly, Plaintiff has also

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failed to raise a genuine issue of material fact as to whether her "emotional distress" is sufficiently severe. *See Hansson*, 374 S.C. at 358, 650 S.E.2d at 72 ("[i]t is for the court to determine whether on the evidence severe emotional distress can be found . . ."). Instead, Plaintiff has relied solely on mere bald assertions of distress, providing not even a mere scintilla of evidence from a third-party witness or any other corroborating evidence to show severe emotional distress. *Id.* ("[t]o permit a plaintiff to legitimately state a cause of action by simply alleging, "I suffered emotional distress" would be irreconciliable with this Court's development of the law in this area."). In particular, Plaintiff attempt to establish emotional distress on her testimony that she discussed stress-related symptoms with both a gynecologist and an eye doctor, and that she was prescribed medication for ulcers roughly twelve yerars ago, well before the conduct complained of in this litigation. For these reasons, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Intentional Infliction of Emotional Distress is granted.

IV. Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interfernce with Existing Contractual Relations"

To recover under a cause of action for tortious interference with an existing contract are (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) resulting damages. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008). Intentional procurement requires that the interference be for an improper purpose or by improper methods, so "[g]enerally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party." *Edelco, Inc. v.*

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Charleston County School Dist., 372 S.C. 470, 642 S.E.2d 726 (2007) (quoting *Southern Contracting, Inc. v. H.C. Brown Constr. Co.*, 317 S.C. 95, 102, 450 S.E.2d 602, 606 (Ct. App. 1994). Lastly, and rather obvious, "where there is not breach of contract there can be no recovery." *Id.*

Plaintiff has failed to set forth evidence to make a showing to establish any of these elements, which are essential to Plaintiff's case. As discussed above, while Plaintiff had a contract, her contract was contingent upon the termination of the Dudek and Cross contract. Since specific performance was ordered on the Dudek and Cross contract, Plaintiff's contract was not enforceable and thus could not have been breached. Despite all of this, Plaintiff has also failed to show a genuine issue of material fact with respect to the final three elements, since Defendants Susan Nicholson, Michael Scarafile, and Carolina One Real Estate are in the business of providing real estate-related services, and none of their conduct extended beyond ordinary business practices. Thus, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Tortious Interference with Existing Contractual Relations is granted.

CONCLUSION

Based on the aforementioned reasons, the Court hereby **GRANTS** Defendants' Motion for Summary Judgment as to all remaining causes of action.

IT IS HEREBY ORDERED.

_____
The Honorable Maite Murphy

_____, 2018.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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Dorchester Common Pleas

Case Caption: Molly M Morphew VS Stephen Dudek , defendant, et al

Case Number: 2016CP1801706

Type: Order/Summary Judgment

So Ordered

s/ Maite Murphy 2166

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Civil Action No. 2016-CP-18-01706
	)	
Molly Morphew	)	
	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANTS ALLISON WILLIAMS AND FIRST FEDERAL'S MOTION FOR SUMMARY JUDGMENT**
	)	
	)	
	)	
	)	
vs.	)	
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,	)	
	)	
Defendants.	)	

This matter is before the court on the Motion for Summary Judgment of Defendants Allison Williams and First Federal. For the reasons set forth herein, the Court **GRANTS** Defendants' Motion for Summary Judgment.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

According to Plaintiff, the present litigation arises out of fraud perpetuated by the Defendants, all of whom were involved in some way in a prior real estate transaction. In 2012, Defendants Stephen Dudek and Doreen Cross had a real estate contract for property located in Summerville, South Carolina. Shortly after, Plaintiff entered into a back-up sales contract with the sellers for the same piece of property. Defendants Wooddy Law Firm and Carrie Boyer, a paralegal at Wooddy Law Firm, performed real estate closing services for Defendants Dudek and Cross. Defendant Carolina One Real Estate was the real estate agent for Defendants Dudek and Cross, and Defendants Michael Scarafile and Susan Nicholson, as employees of Carolina One Real Estate, performed similar activities. Likewise, Defendant David Collins was employed as

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the attorney for Defendants Dudek and Cross to perform certain legal functions related to the purchase of the property. Lastly, Defendants First Federal and Allison Williams, a lender officer employed by First Federal, acted as the lender for Defendants.

Plaintiff previously sought enforcement of the contract for the purchase of the property located in Summerville, SC. The Honorable James E. Chellis, Master-in-Equity, Dorchester County, issued an order finding that while Plaintiff had an enforceable contract, it was conditional on the termination of Defendants Dudek and Cross's contract and ordering specific performance of Defendants Dudek and Cross's contract. Plaintiff commenced this litigation on September 8, 2016, alleging that shortly before and during trial, all of the Defendants perpetrated fraud on both her and the court by making fraudulent misrepresentations and failing to disclose material facts.

In January of 2017, the Honorable Deadra Jefferson dismissed several of Plaintiff's claims pursuant to Rule 12(b)(6), SCRCP. As to Defendants Allison Williams and First Federal, the following claims remain pending: (1) Plaintiff's First Cause of Action, identified as "Fraud, Extrinsic Fraud, and Fraud on the Court;" (2) Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud;" (3) Plaintiff's Seventeeth Cause of Action, identified as "Intentional Infliction of Emotional Distress;" and (4) Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interfernce with Existing Contractual Relations."

STANDARD OF REVIEW

Rule 56 of the South Carolina Rules of Civil Procedure provides that summary judgment is warranted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidivaits, if any, show there is no genuine issue as to any material fact and that

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the moving party is entitled to judgment as a matter of law." Rule 56, SCRCP. Furthemore, when an party moves for summary judgment, an adverse party is not allowed to simply rest upn the allegations of his pleadings and, instead, "must set forth specific facts showing that there is a genuine issue for trial." Rule 59(e), SCRCP. "[O]n a defendant's motion for summary judgment such as the one at issue here, a court cannot properly deny the motion after *only* finding that genuine issue of material fact exists as to *one* element of the plaintiff's claim; rather, under Baughman, the court must determine that a genuine issue of material fact exists for *each* essential element of the plaintiff's claim. *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007) (emphasis added).

ANALYSIS

I. Plaintiff's First Cause of Action, identied as "Fraud, Extrinsic Fraud, and Fraud on the Court"

Under South Carolina law, fraud on the court has been defined as "the species of fraud which does, or attempts to subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjuding cases that are presented for adjudication." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1998)). However, to prevail on a theory of fraud on the court, one must allege extrinsic fraud, meaning "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Hilton Head Ctr. of South Carolina v. Pub. Serv. Comm.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).

Noting the high threshold for establishing fraud on the court, the Supreme Court noted "[g]enerally speaking, only the most egregious misconduct, such as bribery of a judge or

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members of the jury, or fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious conduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court." *Chewning*, 354 S.C. at 78-79, 579 S.E.2d at 608. Lastly, successfully pleading fraud upon the court requires a showing of intent. In fact, the Supreme Court held "when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for 'fraud on the court'." *Id.* (quoting *U.S. v. Buck*, 281 F.3d 1336, 1342 (10th Cir. 2002)). Speaking directly on the issue at hand, the Supreme Court held that the charge of perjury or false swearing on the part of a party or his witnesses "is a species of intrinsic, not extrinsic, fraud," and affords no grounds for equitable interference with a judgment. *Corley v. Centennial Const. Co.*, 247 S.C. 179, 189, 146 S.E.2d 609, 614 (1966).

Plaintiff, both in her pleadings and her deposition, claims that Defendants Allison Williams and First Federal committed fraud on the court by falsely testifying and failing to disclose pertinent documents in a previous trial. As explained above, the Supreme Court held that nondisclosure of material facts, and even perjury, amounst only to intrinsic, not extrinsic, fraud. This is especially true considering that the documents Plaintiff alleges were concealed were, in fact, provided to her attorney shortly before a previous trial. Pltf. Depo. p. 80, lns. 1-23. For these reasons, Plaintiff has been unable to create a genuine issue of material fact with respect to the essential elements of fraud on the court and, thus, summary judgment with respect to this cause of action is appropriate.

II. Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud"

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While unclear from the pleadings, in the light most favorable to the Plaintiff, her pleadings could raise causes of action for (1) bad faith; (2) breach of duty of good faith and fair dealing; or (3) breach of contract accompanies by a fraudulent act; or (4) civil conspiracy. In South Carolina, the tort action for bad faith has only been recognized in the context of an and insured-insurer relationship, which is not present or even alleged. *See Tyger River Pine Co. v. Maryland Casualty Co.*, 170 S.C. 286, 170 S.E.2d 346 (1933). Similarly, causes of action for both breach of duty of good faith and fair dealing and breach of contract accompanied by a contract require, at the very least, the showing of a contractual relationship, which is also not present here or even alleged. *RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004); see also *Harper v. Etheridge*, 290 S.C. 112, 348 S.E.2d 374 (1986).

On the other hand, a civil conspiracy consists of three elements: (1) a combination of two or more persons; (2) for the purpose on injuring the plaintiff, (3) which cause him special damage. *Charles v. Texas Co.*, 192 S.C. 82, 5 S.E.2d 464 (1939). "[T]o be actionable, therefore, a conspiracy's *primary* purpose or object must be to injure the plaintiff." *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 10 344 S.E.2d 379, 382 (Ct. App. 1986) (emphasis added). The South Carolina Court of Appeals held "[i]f a plaintiff merely repeats the damages from another claim instead of specifically listing damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009).

Similarly, to support Plaintiff's claim, she claims Defendants perpetuated fraud on the court and, as a result, her by concealing documents and making fraudulent misrepresentations concerning whether co-Defendants Stephen Dudek and Doreen Cross had been able to obtain

financing. Assuming arguendo that these mere allegations were sufficient to satisfy the first two elements of civil conspiracy, Plaintiff has not made a showing, or even alleged, special damages, which is an essential element for a cause of action for civil conspiracy. In fact, Plaintiff, in her deposition, admitted that all of the causes action, together, support her claim for damages and that if he civil conspiracy claim were dismissed, the damages sought would not change. Pltf's Depo., pgs. 298-99,

III. Plaintiff's Seventeeth Cause of Action, identified as "Intentional Infliction of Emotional Distress"

To recover for a claim of intentional infliction of emotional distress, plaintiff must show extreme and outrageous conduct which intentionally or recklessly causes severe emotional distress to another. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). The conduct complained of must be "so 'extreme and outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized society." *Gattison v. S.C. State College*, 318 S.C. 148, 151, 458 S.E.2d 414, 416 (Ct. App. 1995). The question of whether the conduct arose to the level of "extreme and outragous is a question of law reserved for the court. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984).

Plaintiff fails to raise a genuine issue of material fact as to each essential element of this claim. First, dishonesty, especially without the existence of any special relationship, cannot rise to the level of "extreme and outrageous" conduct. Next, and most importantly, Plaintiff has also failed to raise a genuine issue of material fact as to whether her "emotional distress" is sufficiently severe. *See Hansson*, 374 S.C. at 358, 650 S.E.2d at 72 ("[i]t is for the court to determine whether on the evidence severe emotional distress can be found . . ."). Instead, Plaintiff has relied solely on mere bald assertions of distress, providing not even a mere scintilla of evidence from a third-party

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witness or any other corroborating evidence to show severe emotional distress. *Id.* ("[t]o permit a plaintiff to legitimately state a cause of action by simply alleging, "I suffered emotional distress" would be irreconciliable with this Court's development of the law in this area."). In particular, Plaintiff attempt to establish emotional distress on her testimony that she discussed stress-related symptoms with both a gynecologist and an eye doctor, and that she was prescribed medication for ulcers roughly twelve yerars ago, well before the conduct complained of in this litigation. For these reasons, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Intentional Infliction of Emotional Distress is granted.

IV. Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interfernce with Existing Contractual Relations"

To recover under a cause of action for tortious interference with an existing contract are (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) resulting damages. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008). Intentional procurement requires that the interference be for an improper purpose or by improper methods, so [g]enerally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party." *Edelco, Inc. v. Charleston County School Dist.*, 372 S.C. 470, 642 S.E.2d 726 (2007) (quoting *Southern Contracting, Inc. v. H.C. Brown Constr. Co.*, 317 S.C. 95, 102, 450 S.E.2d 602, 606 (Ct. App. 1994). Lastly, and rather obvious, "where there is no breach of contract there can be no recovery." *Id.*

Plaintiff has failed to set forth evidence to make a showing to establish any of these

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elements, which are essential to Plaintiff's case. As discussed above, while Plaintiff had a contract, her contract was contingent upon the termination of the Dudek and Cross contract. Since specific performance was ordered on the Dudek and Cross contract, Plaintiff's contract was not enforceable and thus could not have been, and was not, breached. Despite all of this, Plaintiff has also failed to show a genuine issue of material fact with respect to the final three elements, since Plaintiff has failed to show any conduct on behalf of the Defendants Allison Williams and First Federal which improperly extended beyond ordinary business practices. Thus, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Tortious Interference with Existing Contractual Relations is granted.

CONCLUSION

Based on the aforementioned reasons, the Court hereby **GRANTS** Defendants' Motion for Summary Judgment as to all remaining causes of action.

IT IS HEREBY ORDERED.

_____
The Honorable Maite Murphy

_____, 2018.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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Dorchester Common Pleas

Case Caption: Molly M Morphew VS Stephen Dudek , defendant, et al

Case Number: 2016CP1801706

Type: Order/Summary Judgment

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2018-11-15 11:39:10 page 9 of 9

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER FILED - RECORDED
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801706

Molly M Morphew	2017 FEB 13 PM 2:21 CLERK OF COURT DORCHESTER COUNTY	**Stephen Dudek** **David Collins** **First Federal** **Susan Nicholson** **Carrie Boyer**	**Doreen Cross** **Allison Williams** **Michael Scarafile** **Carolina One Real Estate**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2128 2/13/2017

Deadra L. Jefferson, Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 12/2016

This judgment was entered on **2/13/2017**, and a copy mailed first class or placed in the appropriate attorney's box on **2/13/2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E. Butternut Road Summerville, SC 29483

Michael Christopher Scarafile/Steven L. Smith/ Samuel M Wheeler/Zachary J Closser PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill/Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer/William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter: Karen Andersen

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Molly Morphew,

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Woody Law Firm,

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Case No. 2016-CP-18-1706

AMENDED[1] ORDER

FILED - RECORD
2017 FEB 13 PM 2:21
CHERYL F. [illegible]
CLERK OF COURT
DORCHESTER COUNTY

Presiding Judge:	Hon. Deadra L. Jefferson
Date of Hearing:	November 7, 2016
Plaintiff's Counsel:	Molly Morphew, *Pro Se*
Defendant Dudek & Cross's Counsel:	Steve Smith, Esq.
Defendant Williams and First Federal's Counsel:	Jordan Crapps, Esq.
Defendant Wooddy Law Firm & Carrie Boyer's Counsel:	Claude PreVoust, Esq.
Defendant Scarafile, Nicholson, Collins, & Carolina One's Counsel:	Steve Smith, Esq.
Court Reporter:	Karen Andersen

This Matter came before the Court on Defendants Allison Williams ("Williams") and First Federal, properly named South State Bank f/k/a SCBT, successor in interest to First Federal Bank's ("First Federal") (collectively, the "Defendants") Motion to Dismiss, filed September 26, 2016. Present at the hearing was the Plaintiff Molly Morphew, representing herself *pro se*.[2] Additionally present were Jordan Crapps, Esq., counsel for Defendant Williams and First Federal, Steve Smith, Esq., representing Defendants Dudek and Cross as well as Defendants Scarafile, Collins,

[1] Amended to correct scrivener's error concerning the omission of the Fourteenth Cause of Action plead against Defendant Allison Williams.

[2] Ms. Morphew was accompanied by a next of friend to assist her throughout the proceeding but who did not speak on the record.

Nicholson, and Carolina One, and Claude PreVoust, Esq., representing Defendants Wooddy Law Firm and Carrie Boyer. For the reasons stated herein, Defendants Williams and First Federal's motion is granted in part and denied in part.

FINDINGS OF FACT

This case revolves around Plaintiff's attempt to purchase a property located in Summerville, South Carolina. Co-defendants Dudek and Cross (the "Buyers") entered into a contract for the purchase of the property with the sellers of the property (the "Sellers"). (Complaint, ¶ 26). Subsequently, Plaintiff also entered into a contract with the Sellers for the purchase of the property. (Complaint, ¶ 46). Because of the competing contracts, litigation ensued between the Buyers, Sellers, and Plaintiff. (Complaint, ¶ 48-55). In the previous litigation, Plaintiff filed a complaint on January 31, 2013, alleging that the Buyers had breached their contract with Sellers by failing to submit proof of financing within the prescribed time period (the "January 2013 Complaint").[3] (Complaint, ¶ 5, and Plaintiff's Brief in Opposition to Dudek and Cross' Notice of Motion and Motion to Dismiss and Motion and Motion for Sanctions, Attachment 2). The Bank was the contingent financing institution for the Buyers and the loan file was handled by Williams, a loan officer for the Bank. (Complaint, ¶ 30-37). The January 2013 Complaint asked the court to find that the Buyers' contract was thus breached and requested that Plaintiff's contract with Sellers be specifically performed. (Complaint, ¶ 55). The prior litigation resulted in an opinion issued by the Master in Equity granting Buyers' contract priority over the Plaintiff's contract. (Complaint, ¶64).

[3] The underlying suit bears Case Nos. 2013-CP-18-00183 and 2013-CP-18-00074. On September 18, 2013, the above cases were consolidated under Case No. 2013-CP-18-00183. Thereafter, on December 30, 2013, by Consent Order, the matter was referred to the Master in Equity. The Master in Equity ruled in favor of Defendants Dudek and Cross, and Plaintiff and the Sellers appealed the decision. (Complaint, ¶¶ 64-65). The South Carolina Court of Appeals affirmed the decision in Opinion Number, 2017-UP-019, dated January 11, 2016.

This litigation arises out of the same set of facts and circumstances. Plaintiff brings suit against Defendants for monetary damages due to the real estate transaction described above and for alleged perjury and discovery issues occurring during the previous litigation. The Defendants were not a party to the prior suit but were served with a subpoena for documents and Williams testified at the trial of the matter. The Defendants' role in the underlying real estate transaction and the Defendants' role in the prior litigation underlies Plaintiff's entire complaint.

A hearing was held on this Motion to Dismiss on November 7, 2016. Upon consideration of the Motion, Defendants' Memorandum in Support of their Motion to Dismiss, Plaintiff's Memorandum in Opposition to the Motion to Dismiss, and the arguments heard during the hearing, this Court concludes that the Motion should be granted, in part, and denied, in part, as to the Defendants.

STANDARD OF REVIEW

Pursuant to SCRCP Rule 8(a), "[a] pleading which sets forth a cause of action . . . shall contain. . . a short and plain statement of the facts showing that the pleader is entitled to relief. . . ." See South Carolina Nat'l Bank v. Joyner, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) ("[T]he principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial."). Rule 8(a), "requires a litigant to plead the ultimate facts which will be proved at trial." Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973); Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) ("Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions."). Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

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Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based upon "failure to state sufficient facts to constitute a cause of action." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998). A trial judge may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, when reviewing a motion to dismiss, the trial court must base its ruling solely on the allegations contained in the complaint. See Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998); Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998).

"The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). However, when a party has explicitly relied upon documents to form the underlying basis for one or more of its causes of action, the Court can consider those documents in deciding a motion to dismiss without converting that motion into a motion for summary judgment. Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). A motion to dismiss should be sustained if facts alleged and reasonable inferences derived therefrom would not entitle the plaintiff to any relief on any theory of the case. Stiles at 300, 457 S.E.2d at 603.

PROCEDURAL BACKGROUND

Plaintiff Molly Morphew filed this lawsuit in the Dorchester County Court of Common Pleas on August 24, 2016. Plaintiff's sixty four (64) page Complaint purports to allege a total of eighteen (18) causes of action.

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Plaintiff's causes of action against William and First Federal are as follows: **First Cause of Action** – Fraud, Extrinsic Fraud, Fraud on the Court; **Second Cause of Action** – Perjury; **Fifth Cause of Action** – Violation of the Federal Rules of Civil Procedure Rules 26, 37, and Sanctions, South Carolina Rules of Professional Conduct Rule 8.4(c) and Rules Regulating the South Carolina Bar; **Seventh Cause of Action** – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud; **Tenth Cause of Action**; Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct; **Twelfth Cause of Action** – Fraud; **Thirteenth Cause of Action** – Declaratory Judgment that No Contract Exists; **Fourteenth Cause of Action** – Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d)); **Fifteenth Cause of Action** – Violation of Federal Rules and Regulations of Banking Rules and Regulations (FDIC); **Sixteenth Cause of Action** – Obstruction of Justice and South Carolina Rules of Professional Conduct Rule 1.4(a)(4) and 3.4(a)(d); **Seventeenth Cause of Action** – Intentional Infliction of Emotional Distress; and **Eighteenth Cause of Action** – Tortious Interference with Existing Contractual Relations.

CONCLUSIONS OF LAW

A. Defendants' Motion to Dismiss Plaintiff's First Cause of Action – Fraud, Extrinsic Fraud, and Fraud on the Courts is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint

should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in a light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's First Cause of Action – Fraud would be improper. Accordingly, Defendants Williams and First Federal's Motion to Dismiss Plaintiff's First Cause of Action is heard and denied.

B. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action – Perjury and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct, Rule 1.4(a)(4) and Rules 3.4(a)(d) is heard and granted.

Plaintiff's Second Cause of Action is a claim of perjury against all Defendants. South Carolina Code Ann. § 16-9-10 provides, in relevant part,

> (A)(1) It is unlawful to give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.
>
> (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Perjury is a criminal felony punishable with a fine and up to five years imprisonment. See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 462, 574 S.E.2d 739 (2002). Accordingly, perjury is a criminal charge – not a civil cause of action.

Obstruction of justice is a common law criminal offense. Specifically, "it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice." State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). It is a criminal charge and not a basis for civil liability.

As an initial matter, Plaintiff's claim fails because there is no independent civil cause of action for perjury. Moreover, this purported perjury claim contains no specific allegations directed at

Defendants Allison Williams and First Federal Bank. Plaintiff's obstruction of justice claim likewise fails because it is not a civil cause of action. Therefore, Plaintiff's claims for perjury and obstruction of justice are dismissed.

Further, the claims by Plaintiff of Defendants' violation of the South Carolina Rules of Professional Conduct are also without merit. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation"). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

C. Defendants' Motion to Dismiss Plaintiff's Fifth Cause of Action – Violation of the Federal Rules of Civil Procedure Rules 26, 37, and Sanctions, South Carolina Rules of Professional Conduct Rule 8.4(c) and Rules Regulating the South Carolina Bar is heard and granted.

In Plaintiff's Fifth Cause of Action, she alleges that Defendants Collins and Scarafile violated the Federal Rules of Civil Procedure (FRCP) Rule 26 (Duty to Disclose) and Rule 37 (Failure to Make Disclosures or to Cooperate in Discovery) as well as violations of South Carolina Rules of Professional Conduct, Rule 8.4(c) (lawyer misconduct by committing a criminal act involving moral turpitude).

Plaintiff's claims for violations of the Federal Rules of Civil Procedure and the South Carolina Rules of Professional Conduct fail for several reasons. First, it is well established that a violation

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of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

Finally, the Plaintiff has failed to state a claim for Violations of the Federal Rules of Civil Procedure which is not a recognized or cognizable claim for relief in South Carolina. In South Carolina Courts, the South Carolina Rules of Civil Procedure govern. "These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity." SCRCP 1. As such, even if Plaintiff pled a violation of the South Carolina Rules of Civil Procedure her claim would still fail because a violation of the rules is not a recognized or cognizable claim for relief in South Carolina. Accordingly, Defendants' Motion to Dismiss the Plaintiff's Fifth Cause of Action is granted.

D. Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged

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and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud would be improper. Accordingly, Defendants Williams and First Federal's Motion to Dismiss the Seventh Cause of Action of Plaintiff's Complaint is heard and denied.

E. Defendants' Motion to Dismiss Plaintiff's Tenth Cause of Action; Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct is heard and granted.

The Restatement Second of Torts recognizes that one "who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act." Restatement 2nd Torts § 874 cmt. (C) (1979). South Carolina cases have considered breaches of fiduciary duty as the basis for contractual and tort actions. See e.g., Corley v. Ott, 326 S.C. 89, 485 S.E.2d 91 (1997)(dissolution of partnership based on breach of fiduciary duty); Jacobson v. Yaschik, 249 S.C. 577, 155 S.E.2d 601 (1967)(holding an accounting in equity could be had in tort case where the complaint charged fraud involving a fiduciary and trust relationship); Designer Showrooms, Inc. v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991)(finding constructive fraud arising out of breach of fiduciary duty); Anthony v. Padmar, Inc., 320 S.C. 436, 465 S.E.2d 745 (Ct. App. 1995) (breach of fiduciary duty and breach of partnership contract as basis of rescission of sale of partnership assets); Loftis v. Eck, 288 S.C. 154, 341 S.E.2d 641 (Ct. App. 1986)(construing complaint to allege breach of fiduciary duty to affirm setting aside deed).

"A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). A relationship must be more than casual to equal a fiduciary relationship. Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988). "Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring." Island Car Wash, Inc., 292 S.C. at 599, 358 S.E.2d at 152; see Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986) ("As a general rule, mere respect for another's judgment or trust in his character is usually not sufficient to establish such a [fiduciary] relationship. The facts and circumstances must indicate that one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party.").

In the present case, the Plaintiff was not a party to the loan concerning Defendant First Federal, the contingent financing institution for the Buyers Dudek and Cross, and Defendant Williams, the loan officer for the First Federal. As the Plaintiff was not a party to that transaction, there could be no duty owed to her and no fiduciary relationship created between First Federal, its agents or employees and the Plaintiff. As such, the Plaintiff's Tenth Cause of Action fails and Defendants' Motion to Dismiss as to Plaintiff's Tenth Cause of Action is granted.

F. Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action – Fraud; Untrue Assertion of Fact (or Equivalent); Assertion Made with Knowledge of Falsity and Intent to Deceive) is heard and granted.

The Twelfth Cause of Action plead by Plaintiff asserts that, through testimony and discovery,

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the Defendants Williams and First Federal deceived both the Plaintiff and the Court by making untrue assertions. As such, the Plaintiff pleads a claim of perjury rather than fraud. Accordingly, Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action is heard and granted.

G. Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action – Declaratory Judgment that No Contract Exists is barred by res judicata and therefore granted.

Unless extrinsic fraud exists, res judicata can be asserted to bar a collateral attack on a judgment. Aaron v. Mahl, 381 S.C. 381, 593, 674 S.E.2d 482, 486 (2009); Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46. Specifically, the doctrine of res judicata prevents the re-litigation of issues previously litigated or which might have been litigated in the first action. See Mungo v. Rental Uniform Serv. of Florence, 383 S.C. 270, 284, 678 S.E.2d 825, 832 (Ct. App. 2009) (citing and quoting Estridge v. Joslyn Clark Controls, Inc., 325 S.C. 532, 540, 482 S.E.2d 577, 581 (Ct. App. 1997)).

The doctrine of claim preclusion bars claims that were asserted in the previous suit as well as those that could have been asserted but were not. The following four tests are used by South Carolina courts to determine whether claim preclusion applies: (1) when the identity of the subject matter is the same; (2) when the cases involves the same primary right by plaintiff and primary wrong committed by defendant; (3) when there is the same evidence in both cases; and (4) when claims arise out of the same transaction or occurrence. James F. Flanagan, South Carolina Civil Procedure 671 (3d ed. 2010) (citing cases).

Here, all of the issues raised in Plaintiff's Complaint arose during the course of the underlying suit and were either asserted, or could have been asserted during the previous lawsuit. Accordingly, her claims are barred by the doctrines of res judicata and issue preclusion. Moreover, to the extent that any of the alleged actions by Defendants were newly-discovered evidence uncovered during the course of underlying suit, any claims related to this information should have

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been brought before the trial or appellate court pursuant to Rules 59 and 60(b) of the South Carolina Rules of Civil Procedure. See also Gray v. Bryant, 298 S.C. 285, 286-87, 379 S.E.2d 894, 895 (1989) (noting that Rule 59 and 60(b) should be read together with regard to motions for new trial due to newly-discovered evidence.). Accordingly, because Plaintiff's claims are barred by res judicata and issue preclusion, she has failed to state a claim upon which relief can be granted and Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action is granted.

H. Defendants' Motion to Dismiss Plaintiff's Fourteenth Cause of Action –Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d) is heard and granted.

These two causes of action, for "Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d)," is brought under the South Carolina Rules of Professional Conduct. "A review of the Scope of Rule 407, SCACR [i.e., the Rules of Professional Conduct] clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation." Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (2011). Plaintiff has unequivocally asserted causes of action under the Rules of Professional Conduct. As such, Defendants' Motion to Dismiss Plaintiff's Fourteenth Cause of Action is granted.

I. Defendants' Motion to Dismiss Plaintiff's Fifteenth Cause of Action – Violation of Federal Rules and Regulations of Banking Rules and Regulations (FDIC) is heard and granted.

Plaintiff's Fifteenth Cause of Action alleges "violations of federal rules and regulations (FDIC)/violation of banking rules and regulations" without stating any specific rules or cites for the Court to use to determine which violations were alleged. Accordingly, Plaintiff's pleadings with regards to her Fifteenth Cause of Action fail to meet the heightened pleading standards imposed by Rule 9(b) of the South Carolina Rules of Civil Procedure and as such are dismissed.

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However, even if the Plaintiff stated with particularity the provisions with which she was relying in the FDIC, her claim would still fail. The FDIC does not allow for a private right of action (stating that "[t]his section may not be construed as creating any private right of action"). 12 U.S.C.A. § 1831g. Accordingly, Defendants' Motion to Dismiss Plaintiff's Fifteenth Cause of Action is heard and granted.

J. Defendants' Motion to Dismiss Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress would be improper. Accordingly, Defendants Motion to Dismiss the Seventeenth Cause of Action of Plaintiff's Complaint is heard and denied.

K. Defendants' Motion to Dismiss Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for

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relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations would be improper. Accordingly, Defendants' Motion to Dismiss the Eighteenth Cause of Action of Plaintiff's Complaint is heard and denied.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED that, for the foregoing reasons, Defendants Williams and First Federal's Motion to Dismiss Plaintiff's Complaint is granted in part, and denied in part.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge
First Judicial Circuit

February 9, 2017
Charleston, South Carolina
At Chambers

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED - RECORDED
2017 APR -3 AM 11:07
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801706

Molly M Morphew		Stephen Dudek David Collins First Federal Susan Nicholson Carrie Boyer	Doreen Cross Allison Williams Michael Scarafile Carolina One Real Estate

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Deadra L. Jefferson — 2128 — 4/3/2017
Circuit Court Judge — **Judge Code** — **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

This judgment was entered on **4/3/2017**, and a copy mailed first class or placed in the appropriate attorney's box on **4/3/2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E. Butternut Road Summerville, SC 29483

Michael Christopher Scarafile 4024 Salt Pointe Parkway N. Charleston, SC 29405
Steven L. Smith/Zachary James Closser /Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill /Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer /William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

FILED - RECORDED

COUNTY OF DORCHESTER) 2017 APR -3 AM 11:07 FIRST JUDICIAL CIRCUIT

Molly Morphew,) CHERYL GRAHAM CLERK OF COURT Civil Action No.: 2016-CP-18-1706

Plaintiff,) DORCHESTER COUNTY

vs.) **AMENDED[1] ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS CARRIE BOYER AND WOODDY LAW FIRM'S MOTION TO DISMISS**

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,

Defendants.)

Presiding Judge:	Hon. Deadra L. Jefferson
Date of Hearing:	November 7, 2016
Plaintiff's Counsel:	Molly Morphew, *Pro Se*
Defendant Dudek & Cross's Counsel:	Steve Smith, Esq.
Defendant Williams and First Federal's Counsel:	Jordan Crapps, Esq.
Defendant Wooddy Law Firm & Carrie Boyer's Counsel:	Claude PreVoust, Esq.
Defendant Scarafile, Nicholson, Collins, & Carolina One's Counsel:	Steve Smith, Esq.
Court Reporter:	Karen Andersen

This Matter came before the Court on Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss, filed September 29, 2016. Present at the hearing was the Plaintiff Molly Morphew, representing herself *pro se*.[2] Additionally present were Jordan Crapps, Esq., counsel for Defendant Williams and First Federal, Steve Smith, Esq., representing Defendants Dudek and Cross as well as Defendants Scarafile, Collins, Nicholson, and Carolina One, and Claude PreVoust, Esq., representing Defendants Wooddy Law Firm and Carrie Boyer. For the reasons

[1] Amended to correct scrivener's error concerning the Second Cause of Action. This Court mistakenly referred to Defendants Allison Williams and First Federal instead of referring to Defendants Wooddy Law Firm and Carrie Boyer. As such, the Order has been corrected to reflect the proper Defendants.

[2] Ms. Morphew was accompanied by a next of friend who assisted her throughout the proceedings but did not speak on the record.

stated herein Defendants Wooddy Law Firm and Carrie Boyer's motion is granted in part and denied in part.

PROCEDURAL BACKGROUND

Plaintiff Molly Morphew filed this lawsuit in the Dorchester County Court of Common Pleas on August 24, 2016. Plaintiff's sixty four (64) page Complaint purports to allege a total of eighteen (18) causes of action. The Complaint purports to allege the following causes of action against "all Defendants:"[3]

- Plaintiff's First Cause of Action, identified as "Fraud, Extrinsic Fraud – Fraud on the Court"
- Plaintiff's Second Cause of Action, identified as "Perjury"
- Plaintiff's Seventh Cause of Action, identified as, "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud"
- Plaintiff's Twelfth Cause of Action, identified as "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive"
- Plaintiff's Sixteenth Cause of Action, identified as "Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4(a), Rule 3.4(d)"
- Plaintiff's Seventeenth Cause of Action, identified as "Intentional Infliction of Emotional Distress"
- Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interference with Existing Contractual Relations"

In addition, the Complaint purports to allege the following cause of action against Defendants Wooddy Law Firm and Carrie Boyer, specifically:

- Plaintiff's Sixth Cause of Action, identified as "Violation ABA Rules of Professional Conduct"

[3] The allegations of these purported claims generically refer to "all defendants." However, the substance of these alleged claims contain no allegations against Defendants Wooddy Law Firm and Boyer and in fact do not reference these defendants aside from the statement that Defendant Nicholson requested The Wooddy Law Firm to ask for proof of repairs to the damages identified in the CL-100 (Complaint, ¶ 194).

Defendants Wooddy Law Firm and Boyer moved to dismiss Plaintiff's Complaint on the grounds that the facts alleged in the Complaint do not support a valid claim for relief against either Defendants Wooddy Law Firm or Carrie Boyer. Plaintiff opposed Defendants' Motion to Dismiss, arguing that the allegations in the Complaint satisfy the requirements of Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FACTUAL ALLEGATIONS

This action arises out of Plaintiff Molly Morphew's attempted purchase of property located in Summerville, South Carolina, and a resulting consolidated civil lawsuit, which was recently affirmed by the South Carolina Court of Appeals ("the underlying suit").[4] All of the Defendants named in the present action are in some way related to the subject matter of the underlying suit. Defendants Dudek and Cross were competing buyers of the subject property, on which Plaintiff admittedly had a "back-up contract." (Id. at ¶ 39). Defendant Wooddy Law Firm is a real estate law firm that acted as the closing attorney for Defendants Dudek and Cross with respect to their unconsummated closing of the subject property pursuant to their contract with the Sellers. Defendant Boyer was a paralegal employed by the Wooddy Law Firm.

In the present action, Plaintiff claims she was "ultimately wronged by failing to be awarded specific performance to purchase [the subject property] . . . ." (Complaint, ¶ 5). Plaintiff only references Defendants Wooddy Law Firm and Carrie Boyer in seven paragraphs throughout the entirety of the sixty-four (64) page complaint. First, Plaintiff asserts that on November 27, 2012, Defendants Dudek, Cross, or Nicholson requested that Wooddy Law Firm contact the Sellers.

[4] The underlying suit bears Case Nos. 2013-CP-18-00183 and 2013-CP-18-00074. On September 18, 2013, the above cases were consolidated under Case No. 2013-CP-18-00183. Thereafter, on December 30, 2013, by Consent Order, the matter was referred to the Master in Equity. The Master in Equity ruled in favor of Defendants Dudek and Cross, and Plaintiff and the Sellers appealed the decision. (Complaint, ¶¶ 64-65). The South Carolina Court of Appeals affirmed the decision in Opinion Number, 2017-UP-019, dated January 11, 2016.

(Complaint, ¶ 170). Next, Plaintiff asserts that the Wooddy Law Firm mailed a letter to the Sellers introducing themselves as the closing attorneys and requesting information. (Complaint, ¶ 171). Plaintiff then asserts that Defendant Boyer requested that the Sellers provide proof of repairs to minor damages stated in the CL-100. (Complaint, ¶ 172).[5]

Plaintiff then alleges that these actions "created an unjustified expectation or belief as to the status of Defendants Dudek and Cross's financing status . . . and created a false sense of belief that a closing would take place [in the near future], which was materially misleading to the Plaintiff or the courts." (Complaint, ¶ 173). Plaintiff further generally alleges that all Defendants' actions were dishonest and "she (and all parties involved) would never have gone to trial [in the underlying suit] or be in this position today if Defendant or its agent had conducted themselves with honesty. . . ." (Complaint, ¶ 174 and 177).

STANDARD OF REVIEW

Pursuant to SCRCP Rule 8(a), "[a] pleading which sets forth a cause of action . . . shall contain. . . a short and plain statement of the facts showing that the pleader is entitled to relief. . . ." See South Carolina Nat'l Bank v. Joyner, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) ("[T]he principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial."). Rule 8(a), "requires a litigant to plead the ultimate facts which will be proved at trial." Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973); Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) ("Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions.").

[5] Plaintiff later references Wooddy Law Firm and asserts that Defendant Nicholson requested that the firm provide notice that they required proof of repairs to damages stated in the CL-100. (Complaint, ¶ 194).

Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based upon "failure to state sufficient facts to constitute a cause of action." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998). A trial judge may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, when reviewing a motion to dismiss, the trial court must base its ruling solely on the allegations contained in the complaint. See Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998); Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998).

"The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). However, when a party has explicitly relied upon documents to form the underlying basis for one or more of its causes of action, the Court can consider those documents in deciding a motion to dismiss without converting that motion into a motion for summary judgment. Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). A motion to dismiss should be sustained if facts alleged and reasonable inferences derived therefrom would not entitle the plaintiff to any relief on any theory of the case. Stiles at 300, 457 S.E.2d at 603.

CONCLUSIONS OF LAW

A. Defendants' Motion to Dismiss Plaintiff's First Cause of Action – Fraud, Extrinsic Fraud, and Fraud on the Courts is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in a light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's First Cause of Action – Fraud would be improper. Accordingly, Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss Plaintiff's First Cause of Action is heard and denied.

B. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action – Perjury and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct, Rule 1.4(a)(4) and Rules 3.4(a)(d) is heard and granted.

Plaintiff's Second Cause of Action is a claim of perjury against all Defendants. South Carolina Code Ann. § 16-9-10 provides, in relevant part,

> (A)(1) It is unlawful to give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.
>
> (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Perjury is a criminal felony punishable with a fine and up to five years imprisonment. See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 462, 574 S.E.2d 739 (2002). Accordingly, perjury is a criminal charge – not a

civil cause of action.

Obstruction of justice is a common law criminal offense. Specifically, "it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice." State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). It is a criminal charge and not a basis for civil liability.

As an initial matter, Plaintiff's claim fails because there is no independent civil cause of action for perjury. Moreover, this purported perjury claim contains no specific allegations directed at Defendants Wooddy Law Firm or Carrie Boyer. Plaintiff's obstruction of justice claim likewise fails because it is not a civil cause of action. Therefore, Defendants' Motion to Dismiss Plaintiff's claims for perjury and obstruction of justice is granted.

Further, the claims by Plaintiff of Defendants' violation of the South Carolina Rules of Professional Conduct are also without merit. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Prof'l Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Prof'l Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

C. Defendants' Motion to Dismiss Plaintiff's Sixth Cause of Action – Violation of the ABA Rules of Professional Conduct is heard and granted.

In Plaintiff's Sixth Cause of Action, she alleges that Defendant Wooddy Law Firm and its

agents have violated Rules 4.1 and 5.3 of the American Bar Association Rules of Professional Conduct ("ABA Rules").[6]

Plaintiff's claims for violations of the ABA and South Carolina Rules of Professional Conduct fail for several reasons. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

Although the Rules of Professional Conduct do not create a civil cause of action, they are relevant in assessing a lawyer's duty in a malpractice action. Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996). However, to the extent that Plaintiff's claim could be construed as a legal malpractice claim, it also fails. The elements of a legal malpractice claim include: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. See Brown v. Theos, 345 S.C. 626, 629, 550 S.E.2d 304, 306 (2001); Hall v. Fedor, 349 S.C. 169, 174, 561 S.E.2d 654, 656 (Ct. App. 2002). Plaintiff's Complaint contains insufficient

[6] South Carolina has not adopted the ABA Rules. Instead, South Carolina attorneys are bound by the S.C. Rules of Professional Conduct. However, Rules 4.1 and 5.3 of the ABA Rules are identical to Rules 4.1 and 5.3 of the South Carolina Rules of Professional Conduct. Therefore, the Court will address Plaintiff's claim as though she cited the applicable rules.

facts to establish an attorney-client relationship between Plaintiff and Defendant Wooddy Law Firm. Accordingly, Plaintiff has failed to establish a cause of action for legal malpractice. Moreover, even if Plaintiff had pled all of the elements of a legal malpractice claim, the cause of action against Defendant Wooddy Law Firm is dismissed because Plaintiff failed to comply with the expert affidavit requirements under S.C. Code Ann. § 15-36-100(B).[7] Accordingly, Defendants' Motion to Dismiss Plaintiff's Sixth Cause of Action is granted.

D. Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud would be improper. Accordingly, Defendants

[7] In her Brief in Opposition to Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss, Plaintiff further asserts that, even if she were to allege a legal malpractice claim, the allegations in the Complaint fall within the exception to Subsection B regarding negligence involving common knowledge and experience. However, the real estate closing process is not within the ambit of common knowledge and experience. Therefore, this exception is inapplicable. Moreover, Plaintiff cannot have it both ways—she is either asserting a legal malpractice claim or she is not.

Wooddy Law Firm and Carrie Boyer's Motion to Dismiss the Seventh Cause of Action of Plaintiff's Complaint is heard and denied.

E. Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action – Fraud; Untrue Assertion of Fact (or Equivalent); Assertion Made with Knowledge of Falsity and Intent to Deceive) is heard and granted.

The Cause of Action plead by Plaintiff asserts that, through testimony and discovery, the Defendants Wooddy Law Firm and Carrie Boyer deceived both the Plaintiff and the Court by making untrue assertions. As such, the Plaintiff pleads a claim of perjury rather than fraud. Accordingly, Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action is granted.

F. Defendants' Motion to Dismiss Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress would be improper. Accordingly, Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss the Seventeenth Cause of Action of Plaintiff's Complaint is heard and denied.

G. Defendants' Motion to Dismiss Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations would be improper. Accordingly, Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss the Eighteenth Cause of Action of Plaintiff's Complaint is heard and denied.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED that, for the foregoing reasons, Defendants Motion to Dismiss Plaintiff's Complaint is granted in part, and denied in part.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge
First Judicial Circuit

March 15, 2017
Charleston, South Carolina
At Chambers

ELECTRONICALLY FILED - 2018 Nov 13 10:42 AM - DORCHESTER - COMMON PLEAS - CASE#2016CP1801706

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Civil Action No. 2016-CP-18-01706
	)	
Molly Morphew	)	
	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S MOTION FOR SUMMARY JUDGMENT**
	)	
vs.	)	
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,	)	
	)	
Defendants.	)	

This matter is before the court on the Motion for Summary Judgment of Defendants Woody Law Firm and Carrie Boyer (collectively "Defendants"). For the reasons set forth herein, the Court **GRANTS** Defendants' Motion for Summary Judgment.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

According to Plaintiff, the present litigation arises out of fraud perpetuated by the Defendants, all of whom were involved in some way in a prior real estate transaction. In 2012, Defendants Dudek and Cross had a real estate contract for property located in Summerville, South Carolina. Shortly after, Plaintiff entered into a back-up contract for the same piece of property, contingent upon the termination of the Dudek and Cross contract. Defendants Wooddy Law Firm and Carrie Boyer, a paralegal at Wooddy Law Firm, performed real estate closing services for Defendants Dudek and Cross. Defendant Carolina One Real Estate was the real estate agent for Defendants Dudek and Cross, and Defendants Michael Scarafile and Susan Nicholson, as employees of Carolina One Real Estate, performed related activities. Likewise,

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Defendant David Collins was employed as Defendants Dudek and Cross's attorney for the purpose of performing certain legal functions related to the purchase of this property. Lastly, Defendants First Federal and Allison Williams, an employee of First Federal, acted as the lender for Defendants Dudek and Cross.

Plaintiff previously sought enforcement of the contract for the purchase of the property located in Summerville, SC. The Honorable James E. Chellis, Master-in-Equity, Dorchester County, issued an order finding that while Plaintiff had an enforceable contract, it was conditional on the termination of Defendants Dudek and Cross's contract, which the court determined was entitled to specific performance. Plaintiff commenced this litigation on September 8, 2016, alleging that shortly before and during trial, all of the Defendants perpetrated fraud on both her and the court both by making fraudulent misrepresentations and failing to disclose material facts and documents.

In January of 2017, the Honorable Deadra Jefferson dismissed several of Plaintiff's claims pursuant to Rule 12(b)(6), SCRCP. The following claims remain pending as to Defendants: (1) Plaintiff's First Cause of Action, identified as "Fraud, Extrinsic Fraud, and Fraud on the Court;" (2) Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud;" (3) Plaintiff's Seventeeth Cause of Action, identified as "Intentional Infliction of Emotional Distress;" and (4) Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interfernce with Existing Contractual Relations."

STANDARD OF REVIEW

Rule 56 of the South Carolina Rules of Civil Procedure provides that summary judgment is warranted when "the pleadings, depositions, answers to interrogatories, and admissions on file,

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together with affidivaits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56, SCRCP. Furthemore, when an party moves for summary judgment, an adverse party is not allowed to simply rest upn the allegations of his pleadings and, instead, "must set forth specific facts showing that there is a genuine issue for trial." Rule 59(e), SCRCP. "[O]n a defendant's motion for summary judgment such as the one at issue here, a court cannot properly deny the motion after *only* finding that genuine issue of material fact exists as to *one* element of the plaintiff's claim; rather, under *Baughman*, the court must determine that a genuine issue of material fact exists for *each* essential element of the plaintiff's claim. *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007) (emphasis added).

ANALYSIS

I. Plaintiff's First Cause of Action, identied as "Fraud, Extrinsic Fraud, and Fraud on the Court"

Under South Carolina law, fraud on the court has been defined as "the species of fraud which does, or attempts to subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjuding cases that are presented for adjudication." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1998)). However, to prevail on a theory of fraud on the court, one must allege extrinsic fraud, meaning "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Hilton Head Ctr. of South Carolina v. Pub. Serv. Comm.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).

Noting the high threshold for establishing fraud on the court, the Supreme Court noted

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"[g]enerally speaking, only the most egregious misconduct, such as bribery of a judge or members of the jury, or fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious conduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court." *Chewning*, 354 S.C. at 78-79, 579 S.E.2d at 608. Lastly, successfully pleading fraud upon the court requires a showing of intent. In fact, the Supreme Court held "when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for 'fraud on the court'." *Id.* (quoting *U.S. v. Buck*, 281 F.3d 1336, 1342 (10th Cir. 2002)).

To sustain her cause of action for fraud on the court, the only evidence presented by Plaintiff is four electronic communications between Defendant Boyer and either the Sellers of the Property or the real estate agents of the Buyers. Not only has Plaintiff failed to make a showing sufficient to establish whether Defendants had the requisite intent, but Plaintiff has also failed to show the existence of any representations made to any court by Defendants either orally or through documentary evidence, both of which are essential elements for fraud on the court. For this reasons, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for fraud on the court is granted.

II. Plaintiff's Seventh Cause of Action, identified as "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud"

While unclear from the pleadings, in the light most favorable to the Plaintiff, her pleadings could raise causes of action for (1) bad faith; (2) breach of duty of good faith and fair dealing; or (3) breach of contract accompanies by a fraudulent act; or (4) civil conspiracy. In

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South Carolina, the tort action for bad faith has only been recognized in the context of an and insured-insurer relationship, which is not present or even alleged. *See Tyger River Pine Co. v. Maryland Casualty Co.*, 170 S.C. 286, 170 S.E.2d 346 (1933). Similarly, causes of action for both breach of duty of good faith and fair dealing and breach of contract accompanied by a contract require, at the very least, the showing of a contractual relationship, which is also not present here or even alleged. *RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004); see also *Harper v. Etheridge*, 290 S.C. 112, 348 S.E.2d 374 (1986).

On the other hand, a civil conspiracy consists of three elements: (1) a combination of two or more persons; (2) for the purpose on injuring the plaintiff, (3) which cause him special damage. *Charles v. Texas Co.*, 192 S.C. 82, 5 S.E.2d 464 (1939). "[T]o be actionable, therefore, a conspiracy's *primary* purpose or object must be to injure the plaintiff." *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 10 344 S.E.2d 379, 382 (Ct. App. 1986) (emphasis added). The South Carolina Court of Appeals held "[i]f a plaintiff merely repeats the damages from another claim instead of specifically listing damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009).

As mentioned above, in support of this claim, Plaintiff has presented only correspondence between Defendant Boyer and co-Defendants in which various aspects of closing on the property were discussed. In addition, Plaintiff has failed to present any evidence that Defendants were aware of Plaintiff's back-up contract for the property or that their conduct was for the primary purpose of injuring the Plaintiff, as opposed to engaging in the ordinary course of business. In fact, at her deposition, Plaintiff admitted that she has no evidence that these communications

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were made for any other purpose but preparing for a real estate closing. Pltf's Depo., pg. 22, lns. 8-12. Despite all of this, Plaintiff fails to establish, or even allege, special damages. For these reasons, the Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for "bad faith and unfair dealings and/or accompanied by a fraudulent act; conspiracy to defraud is granted.

III. Plaintiff's Seventeeth Cause of Action, identified as "Intentional Infliction of Emotional Distress"

To recover for a claim of intentional infliction of emotional distress, plaintiff must show extreme and outrageous conduct which intentionally or recklessly causes severe emotional distress to another. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). The conduct complained of must be "so 'extreme and outrageous' as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized society." *Gattison v. S.C. State College*, 318 S.C. 148, 151, 458 S.E.2d 414, 416 (Ct. App. 1995). The question of whether the conduct arose to the level of "extreme and outragous" is a question of law reserved for the court. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984).

Plaintiff has not only failed to present any evidence of "extreme and outrageous' conduct but failed to present any evidence of any conduct which was directed at her. Instead, as with the other causes of action against these Defendants, Plaintiff relies on a few communications between Defendant Boyer and co-Defendants which discuss preparing for a real estate closing, a common business activity that is not only tolerated but encouraged in a civilized society. In addition, Plaintiff has also failed to raise a genuine issue of material fact as to whether her "emotional distress" is sufficiently severe. *See Hansson*, 374 S.C. at 358, 650 S.E.2d at 72 ("[i]t is for the court to determine whether on the evidence severe emotional distress can be found . . ."). Instead,

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Plaintiff has relied solely on mere bald assertions of distress, providing not even a mere scintilla of evidence from a third-party witness or any other corroborating evidence to show severe emotional distress. *Id.* ("[t]o permit a plaintiff to legitimately state a cause of action by simply alleging, "I suffered emotional distress" would be irreconciliable with this Court's development of the law in this area."). In particular, Plaintiff attempts to establish severe emotional distress solely based on her testimony that she discussed stress-related symptoms with both a gynecologist and an eye doctor, and that she was prescribed medication for ulcers roughly twelve yerars ago, well before the conduct complained of in this litigation. Pltf's Depo., pgs. 229 -233. For these reasons, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Intentional Infliction of Emotional Distress is granted.

IV. Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interfernce with Existing Contractual Relations"

To recover under a cause of action for tortious interference with an existing contract are (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) resulting damages. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008). Intentional procurement requires intentional inference for an improper purpose or by improper methods, so "[g]enerally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party." *Edelco, Inc. v. Charleston County School Dist.*, 372 S.C. 470, 642 S.E.2d 726 (2007) (quoting *Southern Contracting, Inc. v. H.C. Brown Constr. Co.*, 317 S.C. 95, 102, 450 S.E.2d 602, 606 (Ct. App. 1994). Lastly, and rather obvious, "where there is no breach of contract there can be no

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recovery." *Id.*

Plaintiff has failed to set forth evidence to make a showing to establish any of these elements, which are essential to Plaintiff's case. As discussed above, while Plaintiff had a contract, her contract was contingent upon the termination of the Dudek and Cross contract. Since specific performance was ordered on the Dudek and Cross contract, Plaintiff's contract was not enforceable and thus could not have been, and was not, breached. Furthermore, like the causes of action mentioned above, Plaintiff presents as evidence only communications between the Defendant and co-Defendants which related to preparing for a real estate closing, communications which took place before Plaintiff entered into a back-up contract for purchase of the property at issue.

Despite all of this, Plaintiff has also failed to produce evidence to establish either the third or fourth element, intentional procurement or absence of justification. The communications upon which Plaintiff bases this and all other causes of action against these Defendants cannot be considered improper under South Carolina law. In fact, Plaintiff, in her depositon, admits she has no other evidence that these communications were sent for any other purpose but preparing for a real estate closing. Pltf's Depo., pg. 22, lns. 8-12. For the same reason, Plaintiff has also failed to show a genuine issue of material fact with respect to absence of justification. Thus, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Tortious Interference with Existing Contractual Relations is granted.

CONCLUSION

Based on the aforementioned reasons, the Court hereby **GRANTS** Defendants' Motion for Summary Judgment as to all remaining causes of action.

IT IS HEREBY ORDERED.

The Honorable Maite Murphy

_____, 2018.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]

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Dorchester Common Pleas

Case Caption: Molly M Morphew VS Stephen Dudek , defendant, et al

Case Number: 2016CP1801706

Type: Order/Summary Judgment

So Ordered

s/ Maite Murphy 2166

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED-RECORDED
2017 JAN 31 AM 8:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801706

Molly M Morphew	**Stephen Dudek** **David Collins** **First Federal** **Susan Nicholson** **Carrie Boyer**	**Doreen Cross** **Allison Williams** **Michael Scarafile** **Carolina One Real Estate**
PLAINTIFF(S)	**DEFENDANT(S)**	

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2128	1/31/2017
Deadra L. Jefferson, Circuit Court Judge	**Judge Code**	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 12/2016

1/31/17

For Clerk of Court Office Use Only

1/31/17

This judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E. Butternut Road Summerville, SC 29483

Michael Christopher Scarafile 4024 Salt Pointe Parkway N. Charleston, SC 29405
Steven L. Smith/Zachary James Closser/Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill/Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer/William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter: Karen Andersen

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED-RECORDED
2017 JAN 31 AM 8:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
Case No. 2016-CP-18-1706

Molly Morphew,

Plaintiff,

vs.

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Woody Law Firm,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS MICHAEL SCARAFILE, SUSAN NICHOLSON, CAROLINA ONE REAL ESTATE AND DAVID COLLINS' MOTION TO DISMISS

Presiding Judge:	Hon. Deadra L. Jefferson
Date of Hearing:	November 7, 2016
Plaintiff's Counsel:	Molly Morphew, *Pro Se*
Defendant Dudek & Cross's Counsel:	Steve Smith, Esq.
Defendant Williams and First Federal's Counsel:	Jordan Crapps, Esq.
Defendant Wooddy Law Firm & Carrie Boyer's Counsel:	Claude PreVoust, Esq.
Defendant Scarafile, Nicholson, Collins, & Carolina One's Counsel:	Steve Smith, Esq.
Court Reporter:	Karen Andersen

This Matter came before the Court on Defendants Michael Scarafile, Susan Nicholson, Carolina One Real Estate, and David Collins' (collectively, the "Defendants") Motion to Dismiss, filed September 20, 2016. Present at the hearing was the Plaintiff Molly Morphew, representing herself *pro se*.[1] Additionally present were Jordan Crapps, Esq., counsel for Defendant Williams and First Federal, Steve Smith, Esq., representing Defendants Dudek and Cross as well as Defendants Scarafile, Collins, Nicholson, and Carolina One, and Claude PreVoust, Esq., representing Defendants Wooddy Law Firm and Carrie Boyer. For the reasons stated herein,

[1] Ms. Morphew was accompanied by a next of friend that assisted her throughout the proceedings but did not speak on the record.

Defendants Michael Scarafile, Susan Nicholson, Carolina One Real Estate, and David Collins' Motion is granted in part and denied in part.

FINDINGS OF FACT

This case revolves around Plaintiff's attempt to purchase a property located in Summerville, South Carolina (the "Subject Property") and a resulting consolidated civil actions, that was recently affirmed by the South Carolina Court of Appeals by Order dated January 11, 2016 ("the underlying suit").[2] All of the Defendants named in the present action are in some way related to the subject matter of the underlying suit. In the present action, Plaintiff claims she was "ultimately wronged by failing to be awarded specific performance to purchase [the subject property] . . . ." (Complaint, ¶ 5).

Defendants Dudek and Cross were competing buyers of the subject property, on which Plaintiff, Molly Morphew, admittedly had a "back-up contract." (Id. at ¶ 39). Because of the competing contracts, litigation ensued between the Buyers, Sellers, and Plaintiff. (Complaint, ¶ 48-55). The Plaintiff filed her initial complaint on January 31, 2013, alleging that the Buyers had breached their contract with Sellers by failing to submit proof of financing within the prescribed time period. The January 2013 Complaint asked the court to find that the Buyers' contract was thus breached and requested that Plaintiff's contract with Sellers be specifically performed. (Complaint, ¶ 55). The prior litigation resulted in an opinion issued by the Master in Equity granting the Dudek and Cross contract priority over the Plaintiff's contract. (Complaint, ¶64).

[2] The underlying suit bears Case Nos. 2013-CP-18-00183 and 2013-CP-18-00074. On September 18, 2013, the above cases were consolidated under Case No. 2013-CP-18-00183. Thereafter, on December 30, 2013, by Consent Order, the matter was referred to the Master in Equity. The Master in Equity ruled in favor of Defendants Dudek and Cross, and Plaintiff and the Sellers appealed the decision. (Complaint, ¶¶ 64-65). The South Carolina Court of Appeals affirmed the decision in Opinion Number, 2017-UP-019, dated January 11, 2016.

2/6/17

Defendants Dudek and Cross were represented in the previous litigation by Defendant David Collins. Defendant Susan Nicholson, an agent with Carolina One Real Estate, was the agent for Buyers Dudek and Cross and did not represent the Plaintiff at any time. Defendant Michael Scarafile is the President and General Counsel for Carolina One Real Estate. While the Defendants were not a party to the prior suit, Defendants Susan Nicholson and Carolina One Real Estate were served with a subpoena for documents and Defendant Susan Nicholson testified at the trial of the matter. The Defendants' role in the underlying real estate transaction and the Defendants' role in the prior litigation underlies Plaintiff's entire complaint.

STANDARD OF REVIEW

Pursuant to SCRCP Rule 8(a), "[a] pleading which sets forth a cause of action . . . shall contain. . . a short and plain statement of the facts showing that the pleader is entitled to relief. . . ." See South Carolina Nat'l Bank v. Joyner, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) ("[T]he principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial."). Rule 8(a), "requires a litigant to plead the ultimate facts which will be proved at trial." Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973); Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) ("Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions."). Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based upon "failure to state sufficient facts to constitute a cause of action." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d

689, 691 (Ct. App. 1998). A trial judge may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, when reviewing a motion to dismiss, the trial court must base its ruling solely on the allegations contained in the complaint. See Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998); Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998).

"The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). However, when a party has explicitly relied upon documents to form the underlying basis for one or more of its causes of action, the Court can consider those documents in deciding a motion to dismiss without converting that motion into a motion for summary judgment. Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). A motion to dismiss should be sustained if facts alleged and reasonable inferences derived therefrom would not entitle the plaintiff to any relief on any theory of the case. Stiles at 300, 457 S.E.2d at 603.

PROCEDRUAL BACKGROUND

The Plaintiff's sixty four (64) page Complaint enumerates eighteen (18) causes of action against Defendants for monetary damages due to the real estate transaction described above and for alleged perjury and discovery issues occurring during the previous litigation as follows:

Plaintiff's Causes of Action as to all Defendants are as follows: **First Cause of Action** – Fraud, Extrinsic Fraud – Fraud on the Court; **Second Cause of Action** – Perjury; **Seventh Cause of Action** – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud; **Twelfth Cause of Action** – Fraud – Untrue assertion of fact [or equivalent]; Assertion

made with knowledge of falsity and intent to deceive; **Sixteenth Cause of Action** – Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4(a), Rule 3.4(d); **Seventeenth Cause of Action** –Intentional Infliction of Emotional Distress; and **Eighteenth Cause of Action** – Tortious Interference with Exiting Contractual Relations.

Plaintiff's Causes of Action as to Defendant Collins are as follows: **Third Cause of Action** – Violation of South Carolina Frivolous Civil Proceedings Sanctions Act; **Fourth Cause of Action** – Violation of ABA Rules of Professional Conduct, Rule 3.3; and **Thirteenth Cause of Action** – Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal.

Plaintiff's Causes of Action as to Defendant Collins and Defendant Scarafile are as follows: **Fifth Cause of Action** – Violation of Federal Rules of Civil Procedure; **Eighth Cause of Action** – Slander of Title; and as to Defendant Scarafile: **Sixth Cause of Action** – Violation of ABA Rules of Professional Conduct, Rule 4.1.

Plaintiff's Causes of Action as to Defendants Nicholson, Collins and Scarafile are as follows: **Tenth Cause of Action** – Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of full disclosure/Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct; **Eleventh Cause of Action** – Violation of the Real Estate Code of Conduct.

Finally, Plaintiff's Causes of Action as to Defendants Nicholson and Collins are as follows: **Fourteenth Cause of Action** –Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d).

CONCLUSIONS OF LAW

A. Defendants' Motion to Dismiss Plaintiff's First Cause of Action – Fraud, Extrinsic Fraud, and Fraud on the Courts is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every

doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in a light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's First Cause of Action – Fraud would be improper. Accordingly, Defendants Motion to Dismiss Plaintiff's First Cause of Action is heard and denied.

B. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action – Perjury and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct, Rule 1.4(a)(4) and Rules 3.4(a)(d) is heard and granted.

Plaintiff's Second Cause of Action is a claim of perjury against all Defendants. South Carolina Code Ann. § 16-9-10 provides, in relevant part,

> (A)(1) It is unlawful to give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.
>
> (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Perjury is a criminal felony punishable with a fine and up to five (5) years imprisonment. See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 462, 574 S.E.2d 739 (2002). Accordingly, perjury is a criminal charge – not a civil cause of action.

Obstruction of justice is a common law criminal offense. Specifically, "it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice." State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). It is a criminal charge and not a basis for civil liability.

As an initial matter, Plaintiff's claim fails because there is no independent civil cause of action for perjury. Moreover, this purported perjury claim contains no specific allegations directed at Defendants. Plaintiff's obstruction of justice claim likewise fails because it is not a civil cause of action. Therefore, Defendants' Motion to Dismiss Plaintiff's claims for perjury and obstruction of justice is granted.

Further, the claims by Plaintiff of Defendants' violation of the South Carolina Rules of Professional Conduct are also without merit. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

C. Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then

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dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud would be improper. Accordingly, Defendants' Motion to Dismiss the Seventh Cause of Action of Plaintiff's Complaint is heard and denied.

D. Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action – Fraud; Untrue Assertion of Fact (or Equivalent); Assertion Made with Knowledge of Falsity and Intent to Deceive) is heard and granted.

The Cause of Action plead by Plaintiff asserts that, through testimony and discovery, the Defendants deceived both the Plaintiff and the Court by making untrue assertions. As such, the Plaintiff pleads a claim of perjury rather than fraud. Accordingly, Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action is granted. See supra Part B.

E. Defendants' Motion to Dismiss Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress would be

improper. Accordingly, Defendants' Motion to Dismiss the Seventeenth Cause of Action of Plaintiff's Complaint is heard and denied.

F. Defendants' Motion to Dismiss Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations would be improper. Accordingly, Defendants' Motion to Dismiss the Eighteenth Cause of Action of Plaintiff's Complaint is heard and denied.

G. Defendants' Motion to Dismiss Plaintiff's Third Cause of Action – Violation of South Carolina Frivolous Civil Proceedings Sanctions Act is heard and granted.

The Plaintiff's third cause of action alleges that Defendant Collins, the attorney for Defendants Cross and Dudek in the prior action, violated Section 15-36-10, of the South Carolina Frivolous Civil Proceedings Sanctions Act through his filing of the prior Civil Action seeking Specific Performance of the Cross/Dudek contract to purchase the Subject Property.

S.C. Code Ann. § 15-36-10(C)(1) provides that a party "at the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a

directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous."

The Plaintiff's claim is not appropriate as a cause of action in a separate action or as filed against the attorney that represented the other party, but could have only been made as a motion in the prior action against the party represented by Defendant Collins. However, even if made in the appropriate case or at the appropriate time, Mr. Collins prevailed on the claim for Specific Performance filed on behalf of his clients and such was the relief ordered by the Court. As a matter of law, the Plaintiff could not prevail on a claim for a frivolous proceeding that was in fact successful in recovering 100% of the remedy sought. Accordingly, Defendants' Motion to Dismiss Plaintiff's Third Cause of Action is granted.

H. Defendants' Motion to Dismiss Plaintiffs Fourth Cause of Action – Violation of ABA Rules of Professional Conduct, Rule 3.3 and Plaintiff's Sixth Cause of Action Sixth Cause of Action – Violation of ABA Rules of Professional Conduct, Rule 4.1 is heard and granted.

The Plaintiff asserts several causes of action based on violation of various, none statutory, codes of conduct, professional standards and even alleged violations of the Federal Rules of Civil Procedure, none of which state a valid cause of action. The Plaintiff's Fourth and Sixth Causes of Action allege violations of Rules 3.3 and 4.1 and of the American Bar Association Rules of Professional Conduct ("ABA Rules").[3] Her Fifth Cause of Action alleges a violation of the Federal Rules of Civil Procedure, her Sixteenth Cause of Action alleges the violation of Rules 1.4 and 3.4 of the South Carolina Rules of Professional Conduct and the Eleventh Cause of Action asserts a violation of the Real Estate Code of Conduct.

[3] South Carolina has not adopted the ABA Rules. Instead, South Carolina attorneys are bound by the S.C. Rules of Professional Conduct. However, Rules 4.1 and 5.3 of the ABA Rules are identical to Rules 4.1 and 5.3 of the South Carolina Rules of Professional Conduct. Therefore, the Court will address Plaintiff's claim as though she cited the applicable rules.

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Plaintiff's claims for violations of the ABA and South Carolina Rules of Professional Conduct fail for several reasons. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Prof'l Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Prof'l Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Defendants' Motion to Dismiss on these grounds is granted.

I. Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action – Declaratory Judgment that No Contract Exists is barred by res judicata and therefore granted.

Unless extrinsic fraud exists, res judicata can be asserted to bar a collateral attack on a judgment. Aaron v. Mahl, 381 S.C. 381, 593, 674 S.E.2d 482, 486 (2009); Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46. Specifically, the doctrine of res judicata prevents the re-litigation of issues previously litigated or which might have been litigated in the first action. See Mungo v. Rental Uniform Serv. of Florence, 383 S.C. 270, 284, 678 S.E.2d 825, 832 (Ct. App. 2009) (citing and quoting Estridge v. Joslyn Clark Controls, Inc., 325 S.C. 532, 540, 482 S.E.2d 577, 581 (Ct. App. 1997)).

The doctrine of claim preclusion bars claims that were asserted in the previous suit as well as those that could have been asserted but were not. The following four tests are used by South Carolina courts to determine whether claim preclusion applies: (1) when the identity of the subject matter is the same; (2) when the cases involves the same primary right by plaintiff and primary wrong committed by defendant; (3) when there is the same evidence in both cases; and

(4) when claims arise out of the same transaction or occurrence. James F. Flanagan, South Carolina Civil Procedure 671 (3d ed. 2010) (citing cases).

Here, all of the issues raised in Plaintiff's Complaint arose during the course of the underlying suit and were either asserted, or could have been asserted during the previous lawsuit. Accordingly, her claims are barred by the doctrines of res judicata and issue preclusion. Moreover, to the extent that any of the alleged actions by Defendants were newly-discovered evidence uncovered during the course of the underlying suit, any claims related to this information should have been brought before the trial or appellate court pursuant to Rules 59 and 60(b) of the South Carolina Rules of Civil Procedure. See also Gray v. Bryant, 298 S.C. 285, 286-87, 379 S.E.2d 894, 895 (1989) (noting that Rule 59 and 60(b) should be read together with regard to motions for new trial due to newly-discovered evidence.). Accordingly, because Plaintiff's claims are barred by res judicata and issue preclusion, she has failed to state a claim upon which relief can be granted and Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action is granted.

J. Defendants' Motion to Dismiss Plaintiff's Fifth Cause of Action – Violation of the Federal Rules of Civil Procedure Rules 26, 37, and Sanctions, South Carolina Rules of Professional Conduct Rule 8.4(c) and Rules Regulating the South Carolina Bar is heard and granted.

In Plaintiff's Fifth Cause of Action, she alleges that Defendants Collins and Scarafile violated the Federal Rules of Civil Procedure (FRCP) Rule 26 (Duty to Disclose) and Rule 37 (Failure to Make Disclosures or to Cooperate in Discovery) as well as violations of South Carolina Rules of Professional Conduct, Rule 8.4(c) (lawyer misconduct by committing a criminal act involving moral turpitude).

Plaintiff's claims for violations of the Federal Rules of Civil Procedure and the South Carolina Rules of Professional Conduct fail for several reasons. First, it is well established that a violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C.

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Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

Finally, the Plaintiff has failed to state a claim for Violations of the Federal Rules of Civil Procedure which is not a recognized or cognizable claim for relief in South Carolina. In South Carolina Courts, the South Carolina Rules of Civil Procedure govern. "These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity." SCRCP 1. As such, even if Plaintiff pled a violation of the South Carolina Rules of Civil Procedure her claim would still fail because a violation of the rules is not a recognized or cognizable claim for relief in South Carolina. Accordingly, Defendants' Motion to Dismiss the Plaintiff's Fifth Cause of Action is granted.

K. Defendants' Motion to Dismiss Plaintiff's Eighth Cause of Action – Slander of Title is heard and granted.

Plaintiff's Eighth Cause of Action, for "Slander of Title," alleges damages as a result of the Dudeks filing a Lis Pendens in the Prior Civil Actions, followed by their filing of a suit to enforce their contract for the real estate in question. (Compl. ¶¶ 213-217). "[T]o maintain a claim for slander of title, the plaintiff must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of

diminished value of the property in the eyes of third parties." Huff v. Jennings, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct.App.1995).

At no point in her Complaint does Plaintiff claim that she holds title to the property alleged to have been slandered. (Compl. ¶¶ 213-217). In fact, who should hold title, was precisely the purpose of the Prior Civil Action. It must be noted that Plaintiff herself filed a Lis Pendens and suit over the same property. As such, Plaintiff is claiming that the Dudeks slandered a title by virtue of the exact same actions that she also took. Plaintiff does not and has never held title to the property that she alleges has been slandered. Nor does she allege that she holds or has held this title. Under no set of facts could she meet the fourth element necessary to prevail under a slander of title claim. Therefore, Defendants' Motion to Dismiss Plaintiff's Eighth Cause of Action is granted.

L. Defendants' Motion to Dismiss Plaintiff's Tenth Cause of Action; Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct is heard and granted.

The Restatement Second of Torts recognizes that one "who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act." Restatement 2nd Torts § 874 cmt. (C) (1979). South Carolina cases have considered breaches of fiduciary duty as the basis for contractual and tort actions. See e.g., Corley v. Ott, 326 S.C. 89, 485 S.E.2d 91 (1997)(dissolution of partnership based on breach of fiduciary duty); Jacobson v. Yaschik, 249 S.C. 577, 155 S.E.2d 601 (1967)(holding an accounting in equity could be had in tort case where the complaint charged fraud involving a fiduciary and trust relationship); Designer Showrooms, Inc. v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991)(finding constructive fraud arising out of breach of fiduciary duty); Anthony v. Padmar, Inc., 320 S.C. 436, 465 S.E.2d 745 (Ct. App. 1995) (breach of fiduciary duty and breach of partnership contract as basis of rescission of sale of

partnership assets); Loftis v. Eck, 288 S.C. 154, 341 S.E.2d 641 (Ct. App. 1986)(construing complaint to allege breach of fiduciary duty to affirm setting aside deed).

"A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). A relationship must be more than casual to equal a fiduciary relationship. Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988). "Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring." Island Car Wash, Inc., 292 S.C. at 599, 358 S.E.2d at 152; see Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986) ("As a general rule, mere respect for another's judgment or trust in his character is usually not sufficient to establish such a [fiduciary] relationship. The facts and circumstances must indicate that one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party").

In the present case, the Plaintiff was not a party to contract between Collins, Nicholson, Scarafile, or the Buyers Dudek and Cross. As the Plaintiff was not a party to that transaction, there could be no duty owed to her and no fiduciary relationship created between Carolina One, its agents or employees and the Plaintiff. As such, the Plaintiff's Tenth Cause of Action fails and Defendants Motion to Dismiss as to Plaintiff's Tenth Cause of Action is granted.

M. Defendants' Motion to Dismiss Plaintiff's Eleventh Cause of Action – Violation of the Real Estate Code of Conduct is heard and granted.

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The Plaintiff's Eleventh Cause of Action alleges "violation of the Real Estate Code of Conduct Section 40-57-137 Real estate brokerage company duties to client; agency relationship; applicability of common law: (H)(4), (H)(6)(b), (H)(6)(c); (K), (O)(2)(e), (O)(4); Section 40-57-140(B); Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct." S.C. Code Ann. § 48-1-250.

In determining whether a statute creates a private cause of action, the main factor is legislative intent:

> The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.

Dorman v. Aiken Communications, Inc., 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (quoting Whitworth v. Fast Fare Markets of South Carolina, Inc., 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). "When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party." Doe v. Marion, 373 S.C. 390, 396–97, 645 S.E.2d 245, 248 (2007) (citing Citizens of Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992)). As there is no indication that the statutes cited by Plaintiff give rise a cause of action, Defendants' Motion to Dismiss Plaintiff's Fifteenth Cause of Action is granted.

N. Defendants' Motion to Dismiss Plaintiff's Fourteenth Cause of Action –Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d) is heard and granted.

These two causes of action, for "Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d)," is brought under the South Carolina Rules of Professional Conduct. "A review of the Scope of Rule 407, SCACR [i.e., the Rules

of Professional Conduct] clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation." Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (2011). Plaintiff has unequivocally asserted causes of action under the Rules of Professional Conduct. As such, Defendants' Motion to Dismiss Plaintiff's Fourteenth Cause of Action is granted.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED that, for the foregoing reasons, Defendants Michael Scarafile, Susan Nicholson Carolina One Real Estate and David Collins' Motion to Dismiss Plaintiff's Complaint is granted in part and denied in part.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge
First Judicial Circuit

January 26, 2017
Charleston, South Carolina
At Chambers

1/26/17

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED-RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801706

Molly M Morphew	2017 JAN 31 AM 8:56 CHERYL CRAIG CLERK OF COURT DORCHESTER COUNTY	**Stephen Dudek** **David Collins** **First Federal** **Susan Nicholson** **Carrie Boyer**	**Doreen Cross** **Allison Williams** **Michael Scarafile** **Carolina One Real Estate**
PLAINTIFF(S)		**DEFENDANT(S)**	

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Deadra L. Jefferson, Circuit Court Judge	2128 **Judge Code**	1/31/2017 **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 12/2016

1/31/17 **For Clerk of Court Office Use Only** 1/31/17

This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E. Butternut Road Summerville, SC 29483

Michael Christopher Scarafile 4024 Salt Pointe Parkway N. Charleston, SC 29405
Steven L. Smith/Zachary James Closser/Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill/Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer/William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter: Karen Andersen

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
Molly Morphew,	)	Civil Action No.: 2016-CP-18-1706
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS CARRIE BOYER AND WOODDY LAW FIRM'S MOTION TO DISMISS**
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,	)	
	)	
Defendants.	)	

FILED-RECORDED
2017 JAN 31 AM 8:56
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Presiding Judge:	Hon. Deadra L. Jefferson
Date of Hearing:	November 7, 2016
Plaintiff's Counsel:	Molly Morphew, *Pro Se*
Defendant Dudek & Cross's Counsel:	Steve Smith, Esq.
Defendant Williams and First Federal's Counsel:	Jordan Crapps, Esq.
Defendant Wooddy Law Firm & Carrie Boyer's Counsel:	Claude PreVoust, Esq.
Defendant Scarafile, Nicholson, Collins, & Carolina One's Counsel:	Steve Smith, Esq.
Court Reporter:	Karen Andersen

This Matter came before the Court on Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss, filed September 29, 2016. Present at the hearing was the Plaintiff Molly Morphew, representing herself *pro se*.[1] Additionally present were Jordan Crapps, Esq., counsel for Defendant Williams and First Federal, Steve Smith, Esq., representing Defendants Dudek and Cross as well as Defendants Scarafile, Collins, Nicholson, and Carolina One, and Claude PreVoust, Esq., representing Defendants Wooddy Law Firm and Carrie Boyer. For the reasons stated herein Defendants Wooddy Law Firm and Carrie Boyer's motion is granted in part and denied in part.

[1] Ms. Morphew was accompanied by a next of friend who assisted her throughout the proceedings but did not speak on the record.

PROCEDURAL BACKGROUND

Plaintiff Molly Morphew filed this lawsuit in the Dorchester County Court of Common Pleas on August 24, 2016. Plaintiff's sixty four (64) page Complaint purports to allege a total of eighteen (18) causes of action. The Complaint purports to allege the following causes of action against "all Defendants:"[2]

- Plaintiff's First Cause of Action, identified as "Fraud, Extrinsic Fraud – Fraud on the Court"
- Plaintiff's Second Cause of Action, identified as "Perjury"
- Plaintiff's Seventh Cause of Action, identified as, "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud"
- Plaintiff's Twelfth Cause of Action, identified as "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive"
- Plaintiff's Sixteenth Cause of Action, identified as "Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4(a), Rule 3.4(d)"
- Plaintiff's Seventeenth Cause of Action, identified as "Intentional Infliction of Emotional Distress"
- Plaintiff's Eighteenth Cause of Action, identified as "Tortious Interference with Existing Contractual Relations"

In addition, the Complaint purports to allege the following cause of action against Defendants Wooddy Law Firm and Carrie Boyer, specifically:

- Plaintiff's Sixth Cause of Action, identified as "Violation ABA Rules of Professional Conduct"

Defendants Wooddy Law Firm and Boyer moved to dismiss Plaintiff's Complaint on the grounds that the facts alleged in the Complaint do not support a valid claim for relief against either

[2] The allegations of these purported claims generically refer to "all defendants." However, the substance of these alleged claims contain no allegations against Defendants Wooddy Law Firm and Boyer and in fact do not reference these defendants aside from the statement that Defendant Nicholson requested The Wooddy Law Firm to ask for proof of repairs to the damages identified in the CL-100 (Complaint, ¶ 194).

Defendants Wooddy Law Firm or Carrie Boyer. Plaintiff opposed Defendants' Motion to Dismiss, arguing that the allegations in the Complaint satisfy the requirements of Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FACTUAL ALLEGATIONS

This action arises out of Plaintiff Molly Morphew's attempted purchase of property located in Summerville, South Carolina, and a resulting consolidated civil lawsuit, which was recently affirmed by the South Carolina Court of Appeals ("the underlying suit").[3] All of the Defendants named in the present action are in some way related to the subject matter of the underlying suit. Defendants Dudek and Cross were competing buyers of the subject property, on which Plaintiff admittedly had a "back-up contract." (Id. at ¶ 39). Defendant Wooddy Law Firm is a real estate law firm that acted as the closing attorney for Defendants Dudek and Cross with respect to their unconsummated closing of the subject property pursuant to their contract with the Sellers. Defendant Boyer was a paralegal employed by the Wooddy Law Firm.

In the present action, Plaintiff claims she was "ultimately wronged by failing to be awarded specific performance to purchase [the subject property] . . . ." (Complaint, ¶ 5). Plaintiff only references Defendants Wooddy Law Firm and Carrie Boyer in seven paragraphs throughout the entirety of the sixty-four (64) page complaint. First, Plaintiff asserts that on November 27, 2012, Defendants Dudek, Cross, or Nicholson requested that Wooddy Law Firm contact the Sellers. (Complaint, ¶ 170). Next, Plaintiff asserts that the Wooddy Law Firm mailed a letter to the Sellers introducing themselves as the closing attorneys and requesting information. (Complaint, ¶ 171).

[3] The underlying suit bears Case Nos. 2013-CP-18-00183 and 2013-CP-18-00074. On September 18, 2013, the above cases were consolidated under Case No. 2013-CP-18-00183. Thereafter, on December 30, 2013, by Consent Order, the matter was referred to the Master in Equity. The Master in Equity ruled in favor of Defendants Dudek and Cross, and Plaintiff and the Sellers appealed the decision. (Complaint, ¶¶ 64-65). The South Carolina Court of Appeals affirmed the decision in Opinion Number, 2017-UP-019, dated January 11, 2016.

Plaintiff then asserts that Defendant Boyer requested that the Sellers provide proof of repairs to minor damages stated in the CL-100. (Complaint, ¶ 172).[4]

Plaintiff then alleges that these actions "created an unjustified expectation or belief as to the status of Defendants Dudek and Cross's financing status . . . and created a false sense of belief that a closing would take place [in the near future], which was materially misleading to the Plaintiff or the courts." (Complaint, ¶ 173). Plaintiff further generally alleges that all Defendants' actions were dishonest and "she (and all parties involved) would never have gone to trial [in the underlying suit] or be in this position today if Defendant or its agent had conducted themselves with honesty. . . ." (Complaint, ¶ 174 and 177).

STANDARD OF REVIEW

Pursuant to SCRCP Rule 8(a), "[a] pleading which sets forth a cause of action . . . shall contain. . . a short and plain statement of the facts showing that the pleader is entitled to relief. . . ." See South Carolina Nat'l Bank v. Joyner, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) ("[T]he principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial."). Rule 8(a), "requires a litigant to plead the ultimate facts which will be proved at trial." Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973); Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) ("Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions.'). Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

[4] Plaintiff later references Wooddy Law Firm and asserts that Defendant Nicholson requested that the firm provide notice that they required proof of repairs to damages stated in the CL-100. (Complaint, ¶ 194).

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based upon "failure to state sufficient facts to constitute a cause of action." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998). A trial judge may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, when reviewing a motion to dismiss, the trial court must base its ruling solely on the allegations contained in the complaint. See Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998); Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998).

"The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). However, when a party has explicitly relied upon documents to form the underlying basis for one or more of its causes of action, the Court can consider those documents in deciding a motion to dismiss without converting that motion into a motion for summary judgment. Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). A motion to dismiss should be sustained if facts alleged and reasonable inferences derived therefrom would not entitle the plaintiff to any relief on any theory of the case. Stiles at 300, 457 S.E.2d at 603.

CONCLUSIONS OF LAW

A. Defendants' Motion to Dismiss Plaintiff's First Cause of Action – Fraud, Extrinsic Fraud, and Fraud on the Courts is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the

plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in a light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's First Cause of Action – Fraud would be improper. Accordingly, Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss Plaintiff's First Cause of Action is heard and denied.

B. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action – Perjury and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct, Rule 1.4(a)(4) and Rules 3.4(a)(d) is heard and granted.

Plaintiff's Second Cause of Action is a claim of perjury against all Defendants. South Carolina Code Ann. § 16-9-10 provides, in relevant part,

> (A)(1) It is unlawful to give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.
>
> (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Perjury is a criminal felony punishable with a fine and up to five years imprisonment. See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 462, 574 S.E.2d 739 (2002). Accordingly, perjury is a criminal charge – not a civil cause of action.

Obstruction of justice is a common law criminal offense. Specifically, "it is an offense to

do any act which prevents, obstructs, impedes, or hinders the administration of justice." State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). It is a criminal charge and not a basis for civil liability.

As an initial matter, Plaintiff's claim fails because there is no independent civil cause of action for perjury. Moreover, this purported perjury claim contains no specific allegations directed at Defendants Allison Williams and First Federal Bank. Plaintiff's obstruction of justice claim likewise fails because it is not a civil cause of action. Therefore, Defendants' Motion to Dismiss Plaintiff's claims for perjury and obstruction of justice is granted.

Further, the claims by Plaintiff of Defendants' violation of the South Carolina Rules of Professional Conduct are also without merit. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Prof'l Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Prof'l Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

C. Defendants' Motion to Dismiss Plaintiff's Sixth Cause of Action – Violation of the ABA Rules of Professional Conduct is heard and granted.

In Plaintiff's Sixth Cause of Action, she alleges that Defendant Wooddy Law Firm and its agents have violated Rules 4.1 and 5.3 of the American Bar Association Rules of Professional

Conduct ("ABA Rules").[5]

Plaintiff's claims for violations of the ABA and South Carolina Rules of Professional Conduct fail for several reasons. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

Although the Rules of Professional Conduct do not create a civil cause of action, they are relevant in assessing a lawyer's duty in a malpractice action. Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996). However, to the extent that Plaintiff's claim could be construed as a legal malpractice claim, it also fails. The elements of a legal malpractice claim include: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. See Brown v. Theos, 345 S.C. 626, 629, 550 S.E.2d 304, 306 (2001); Hall v. Fedor, 349 S.C. 169, 174, 561 S.E.2d 654, 656 (Ct. App. 2002). Plaintiff's Complaint contains insufficient facts to establish an attorney-client relationship between Plaintiff and Defendant Wooddy Law

[5] South Carolina has not adopted the ABA Rules. Instead, South Carolina attorneys are bound by the S.C. Rules of Professional Conduct. However, Rules 4.1 and 5.3 of the ABA Rules are identical to Rules 4.1 and 5.3 of the South Carolina Rules of Professional Conduct. Therefore, the Court will address Plaintiff's claim as though she cited the applicable rules.

Firm. Accordingly, Plaintiff has failed to establish a cause of action for legal malpractice. Moreover, even if Plaintiff had pled all of the elements of a legal malpractice claim, the cause of action against Defendant Wooddy Law Firm is dismissed because Plaintiff failed to comply with the expert affidavit requirements under S.C. Code Ann. § 15-36-100(B).[6] Accordingly, Defendants' Motion to Dismiss Plaintiff's Sixth Cause of Action is granted.

D. Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud would be improper. Accordingly, Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss the Seventh Cause of Action of Plaintiff's Complaint is heard and denied.

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[6] In her Brief in Opposition to Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss, Plaintiff further asserts that, even if she were to allege a legal malpractice claim, the allegations in the Complaint fall within the exception to Subsection B regarding negligence involving common knowledge and experience. However, the real estate closing process is not within the ambit of common knowledge and experience. Therefore, this exception is inapplicable. Moreover, Plaintiff cannot have it both ways—she is either asserting a legal malpractice claim or she is not.

E. Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action – Fraud; Untrue Assertion of Fact (or Equivalent); Assertion Made with Knowledge of Falsity and Intent to Deceive) is heard and granted.

The Cause of Action plead by Plaintiff asserts that, through testimony and discovery, the Defendants Wooddy Law Firm and Carrie Boyer deceived both the Plaintiff and the Court by making untrue assertions. As such, the Plaintiff pleads a claim of perjury rather than fraud. Accordingly, Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action is granted.

F. Defendants' Motion to Dismiss Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress would be improper. Accordingly, Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss the Seventeenth Cause of Action of Plaintiff's Complaint is heard and denied.

G. Defendants' Motion to Dismiss Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the

plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations would be improper. Accordingly, Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss the Eighteenth Cause of Action of Plaintiff's Complaint is heard and denied.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED that, for the foregoing reasons, Defendants Motion to Dismiss Plaintiff's Complaint is granted in part, and denied in part.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge
First Judicial Circuit

January 24, 2017
Charleston, South Carolina
At Chambers

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

FILED-RECORDED
2017 JAN 31 AM 8:55
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP1801706

Molly M Morphew	**Stephen Dudek** **David Collins** **First Federal** **Susan Nicholson** **Carrie Boyer**
	Doreen Cross **Allison Williams** **Michael Scarafile** **Carolina One Real Estate**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Deadra L. Jefferson, Circuit Court Judge	2128 **Judge Code**	1/31/2017 **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 12/2016

1/31/17 **For Clerk of Court Office Use Only** 1/31/17

This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 788 E. Butternut Road Summerville, SC 29483

Michael Christopher Scarafile 4024 Salt Pointe Parkway N. Charleston, SC 29405
Steven L. Smith/Zachary James Closser/Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill/Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer/William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter: Karen Andersen

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Molly Morphew, Plaintiff, vs. Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Woody Law Firm, Defendants.	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT Case No. 2016-CP-18-1706 **ORDER**

FILED-RECORDED
2017 JAN 31 AM 8:55
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Presiding Judge:	Hon. Deadra L. Jefferson
Date of Hearing:	November 7, 2016
Plaintiff's Counsel:	Molly Morphew, *Pro Se*
Defendant Dudek & Cross's Counsel:	Steve Smith, Esq.
Defendant Williams and First Federal's Counsel:	Jordan Crapps, Esq.
Defendant Wooddy Law Firm & Carrie Boyer's Counsel:	Claude PreVoust, Esq.
Defendant Scarafile, Nicholson, Collins, & Carolina One's Counsel:	Steve Smith, Esq.
Court Reporter:	Karen Andersen

This Matter came before the Court on Defendants Allison Williams ("Williams") and First Federal, properly named South State Bank f/k/a SCBT, successor in interest to First Federal Bank's ("First Federal") (collectively, the "Defendants") Motion to Dismiss, filed September 26, 2016. Present at the hearing was the Plaintiff Molly Morphew, representing herself *pro se*.[1] Additionally present were Jordan Crapps, Esq., counsel for Defendant Williams and First Federal, Steve Smith, Esq., representing Defendants Dudek and Cross as well as Defendants Scarafile, Collins, Nicholson, and Carolina One, and Claude PreVoust, Esq., representing Defendants Wooddy Law

[1] Ms. Morphew was accompanied by a next of friend to assist her throughout the proceeding but who did not speak on the record.

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Firm and Carrie Boyer. For the reasons stated herein, Defendants Williams and First Federal's motion is granted in part and denied in part.

FINDINGS OF FACT

This case revolves around Plaintiff's attempt to purchase a property located in Summerville, South Carolina. Co-defendants Dudek and Cross (the "Buyers") entered into a contract for the purchase of the property with the sellers of the property (the "Sellers"). (Complaint, ¶ 26). Subsequently, Plaintiff also entered into a contract with the Sellers for the purchase of the property. (Complaint, ¶ 46). Because of the competing contracts, litigation ensued between the Buyers, Sellers, and Plaintiff. (Complaint, ¶ 48-55). In the previous litigation, Plaintiff filed a complaint on January 31, 2013, alleging that the Buyers had breached their contract with Sellers by failing to submit proof of financing within the prescribed time period (the "January 2013 Complaint").[2] (Complaint, ¶ 5, and Plaintiff's Brief in Opposition to Dudek and Cross' Notice of Motion and Motion to Dismiss and Motion and Motion for Sanctions, Attachment 2). The Bank was the contingent financing institution for the Buyers and the loan file was handled by Williams, a loan officer for the Bank. (Complaint, ¶ 30-37). The January 2013 Complaint asked the court to find that the Buyers' contract was thus breached and requested that Plaintiff's contract with Sellers be specifically performed. (Complaint, ¶ 55). The prior litigation resulted in an opinion issued by the Master in Equity granting Buyers' contract priority over the Plaintiff's contract. (Complaint, ¶64).

[2] The underlying suit bears Case Nos. 2013-CP-18-00183 and 2013-CP-18-00074. On September 18, 2013, the above cases were consolidated under Case No. 2013-CP-18-00183. Thereafter, on December 30, 2013, by Consent Order, the matter was referred to the Master in Equity. The Master in Equity ruled in favor of Defendants Dudek and Cross, and Plaintiff and the Sellers appealed the decision. (Complaint, ¶¶ 64-65). The South Carolina Court of Appeals affirmed the decision in Opinion Number, 2017-UP-019, dated January 11, 2016.

2/14

This litigation arises out of the same set of facts and circumstances. Plaintiff brings suit against Defendants for monetary damages due to the real estate transaction described above and for alleged perjury and discovery issues occurring during the previous litigation. The Defendants were not a party to the prior suit but were served with a subpoena for documents and Williams testified at the trial of the matter. The Defendants' role in the underlying real estate transaction and the Defendants' role in the prior litigation underlies Plaintiff's entire complaint.

A hearing was held on this Motion to Dismiss on November 7, 2016. Upon consideration of the Motion, Defendants' Memorandum in Support of their Motion to Dismiss, Plaintiff's Memorandum in Opposition to the Motion to Dismiss, and the arguments heard during the hearing, this Court concludes that the Motion should be granted, in part, and denied, in part, as to the Defendants.

STANDARD OF REVIEW

Pursuant to SCRCP Rule 8(a), "[a] pleading which sets forth a cause of action . . . shall contain. . . a short and plain statement of the facts showing that the pleader is entitled to relief. . . ." See South Carolina Nat'l Bank v. Joyner, 289 S.C. 382, 346 S.E.2d 329 (Ct. App. 1986) ("[T]he principal purpose of pleadings is to inform the pleader's adversary of legal and factual positions which he will be required to meet on trial."). Rule 8(a), "requires a litigant to plead the ultimate facts which will be proved at trial." Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987); see Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973); Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001) ("Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity of 'legal conclusions."). Conclusory allegations in a complaint are insufficient to survive a judgment on the pleadings. Jones v. Gilstrap, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986).

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based upon "failure to state sufficient facts to constitute a cause of action." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998). A trial judge may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, when reviewing a motion to dismiss, the trial court must base its ruling solely on the allegations contained in the complaint. See Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998); Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793, 794 (Ct. App. 1998); O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689, 691 (Ct. App. 1998).

"The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). However, when a party has explicitly relied upon documents to form the underlying basis for one or more of its causes of action, the Court can consider those documents in deciding a motion to dismiss without converting that motion into a motion for summary judgment. Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). A motion to dismiss should be sustained if facts alleged and reasonable inferences derived therefrom would not entitle the plaintiff to any relief on any theory of the case. Stiles at 300, 457 S.E.2d at 603.

PROCEDURAL BACKGROUND

Plaintiff Molly Morphew filed this lawsuit in the Dorchester County Court of Common Pleas on August 24, 2016. Plaintiff's sixty four (64) page Complaint purports to allege a total of eighteen (18) causes of action.

Plaintiff's causes of action against William and First Federal are as follows: **First Cause of Action** – Fraud, Extrinsic Fraud, Fraud on the Court; **Second Cause of Action** – Perjury; **Fifth Cause of Action** – Violation of the Federal Rules of Civil Procedure Rules 26, 37, and Sanctions, South Carolina Rules of Professional Conduct Rule 8.4(c) and Rules Regulating the South Carolina Bar; **Seventh Cause of Action** – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud; **Tenth Cause of Action**; Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct; **Twelfth Cause of Action** – Fraud; **Thirteenth Cause of Action** – Declaratory Judgment that No Contract Exists; **Fifteenth Cause of Action** – Violation of Federal Rules and Regulations of Banking Rules and Regulations (FDIC); **Sixteenth Cause of Action** – Obstruction of Justice and South Carolina Rules of Professional Conduct Rule 1.4(a)(4) and 3.4(a)(d); **Seventeenth Cause of Action** – Intentional Infliction of Emotional Distress; and **Eighteenth Cause of Action** – Tortious Interference with Existing Contractual Relations.

CONCLUSIONS OF LAW

A. Defendants' Motion to Dismiss Plaintiff's First Cause of Action – Fraud, Extrinsic Fraud, and Fraud on the Courts is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint

should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in a light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's First Cause of Action – Fraud would be improper. Accordingly, Defendants Williams and First Federal's Motion to Dismiss Plaintiff's First Cause of Action is heard and denied.

B. Defendants' Motion to Dismiss Plaintiff's Second Cause of Action – Perjury and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct, Rule 1.4(a)(4) and Rules 3.4(a)(d) is heard and granted.

Plaintiff's Second Cause of Action is a claim of perjury against all Defendants. South Carolina Code Ann. § 16-9-10 provides, in relevant part,

> (A)(1) It is unlawful to give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.
>
> (2) It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Perjury is a criminal felony punishable with a fine and up to five years imprisonment. See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000), rev'd on other grounds, 352 S.C. 462, 574 S.E.2d 739 (2002). Accordingly, perjury is a criminal charge – not a civil cause of action.

Obstruction of justice is a common law criminal offense. Specifically, "it is an offense to do any act which prevents, obstructs, impedes, or hinders the administration of justice." State v. Cogdell, 273 S.C. 563, 567, 257 S.E.2d 748, 750 (1979). It is a criminal charge and not a basis for civil liability.

As an initial matter, Plaintiff's claim fails because there is no independent civil cause of action for perjury. Moreover, this purported perjury claim contains no specific allegations directed at

Defendants Allison Williams and First Federal Bank. Plaintiff's obstruction of justice claim likewise fails because it is not a civil cause of action. Therefore, Plaintiff's claims for perjury and obstruction of justice are dismissed.

Further, the claims by Plaintiff of Defendants' violation of the South Carolina Rules of Professional Conduct are also without merit. First, it is well established that violation of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation"). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

C. Defendants' Motion to Dismiss Plaintiff's Fifth Cause of Action – Violation of the Federal Rules of Civil Procedure Rules 26, 37, and Sanctions, South Carolina Rules of Professional Conduct Rule 8.4(c) and Rules Regulating the South Carolina Bar is heard and granted.

In Plaintiff's Fifth Cause of Action, she alleges that Defendants Collins and Scarafile violated the Federal Rules of Civil Procedure (FRCP) Rule 26 (Duty to Disclose) and Rule 37 (Failure to Make Disclosures or to Cooperate in Discovery) as well as violations of South Carolina Rules of Professional Conduct, Rule 8.4(c) (lawyer misconduct by committing a criminal act involving moral turpitude).

Plaintiff's claims for violations of the Federal Rules of Civil Procedure and the South Carolina Rules of Professional Conduct fail for several reasons. First, it is well established that a violation

of the Rules of Professional Conduct does not give rise to a cause of action against a lawyer. S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). The Rules "are not designed to be a basis for civil liability." S.C. Rules of Professional Conduct R. 407, cmt. 7 (2013). Instead, they are designed to provide guidance to lawyers and provide a structure for regulating attorney conduct. See also Spence v. Wingate, 395 SC. 148, 161, 716 S.E.2d 920, 927 (2011) ("A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation."). Therefore, there is no civil cause of action for a violation of the Rules of Professional Conduct and Plaintiff's claims grounded on such violations are dismissed.

Finally, the Plaintiff has failed to state a claim for Violations of the Federal Rules of Civil Procedure which is not a recognized or cognizable claim for relief in South Carolina. In South Carolina Courts, the South Carolina Rules of Civil Procedure govern. "These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity." SCRCP 1. As such, even if Plaintiff pled a violation of the South Carolina Rules of Civil Procedure her claim would still fail because a violation of the rules is not a recognized or cognizable claim for relief in South Carolina. Accordingly, Defendants' Motion to Dismiss the Plaintiff's Fifth Cause of Action is granted.

D. Defendants' Motion to Dismiss Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged

and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; Conspiracy to Defraud would be improper. Accordingly, Defendants Williams and First Federal's Motion to Dismiss the Seventh Cause of Action of Plaintiff's Complaint is heard and denied.

E. Defendants' Motion to Dismiss Plaintiff's Tenth Cause of Action; Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct is heard and granted.

The Restatement Second of Torts recognizes that one "who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act." Restatement 2nd Torts § 874 cmt. (C) (1979). South Carolina cases have considered breaches of fiduciary duty as the basis for contractual and tort actions. See e.g., Corley v. Ott, 326 S.C. 89, 485 S.E.2d 91 (1997)(dissolution of partnership based on breach of fiduciary duty); Jacobson v. Yaschik, 249 S.C. 577, 155 S.E.2d 601 (1967)(holding an accounting in equity could be had in tort case where the complaint charged fraud involving a fiduciary and trust relationship); Designer Showrooms, Inc. v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991)(finding constructive fraud arising out of breach of fiduciary duty); Anthony v. Padmar, Inc., 320 S.C. 436, 465 S.E.2d 745 (Ct. App. 1995) (breach of fiduciary duty and breach of partnership contract as basis of rescission of sale of partnership assets); Loftis v. Eck, 288 S.C. 154, 341 S.E.2d 641 (Ct. App. 1986)(construing complaint to allege breach of fiduciary duty to affirm setting aside deed).

"A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). A relationship must be more than casual to equal a fiduciary relationship. Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988). "Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring." Island Car Wash, Inc., 292 S.C. at 599, 358 S.E.2d at 152; see Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986) ("As a general rule, mere respect for another's judgment or trust in his character is usually not sufficient to establish such a [fiduciary] relationship. The facts and circumstances must indicate that one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party.").

In the present case, the Plaintiff was not a party to the loan concerning Defendant First Federal, the contingent financing institution for the Buyers Dudek and Cross, and Defendant Williams, the loan officer for the First Federal. As the Plaintiff was not a party to that transaction, there could be no duty owed to her and no fiduciary relationship created between First Federal, its agents or employees and the Plaintiff. As such, the Plaintiff's Tenth Cause of Action fails and Defendants' Motion to Dismiss as to Plaintiff's Tenth Cause of Action is granted.

F. Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action – Fraud; Untrue Assertion of Fact (or Equivalent); Assertion Made with Knowledge of Falsity and Intent to Deceive) is heard and granted.

The Twelfth Cause of Action plead by Plaintiff asserts that, through testimony and discovery,

the Defendants Williams and First Federal deceived both the Plaintiff and the Court by making untrue assertions. As such, the Plaintiff pleads a claim of perjury rather than fraud. Accordingly, Defendants' Motion to Dismiss Plaintiff's Twelfth Cause of Action is heard and granted.

G. Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action – Declaratory Judgment that No Contract Exists is barred by res judicata and therefore granted.

Unless extrinsic fraud exists, res judicata can be asserted to bar a collateral attack on a judgment. Aaron v. Mahl, 381 S.C. 381, 593, 674 S.E.2d 482, 486 (2009); Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46. Specifically, the doctrine of res judicata prevents the re-litigation of issues previously litigated or which might have been litigated in the first action. See Mungo v. Rental Uniform Serv. of Florence, 383 S.C. 270, 284, 678 S.E.2d 825, 832 (Ct. App. 2009) (citing and quoting Estridge v. Joslyn Clark Controls, Inc., 325 S.C. 532, 540, 482 S.E.2d 577, 581 (Ct. App. 1997)).

The doctrine of claim preclusion bars claims that were asserted in the previous suit as well as those that could have been asserted but were not. The following four tests are used by South Carolina courts to determine whether claim preclusion applies: (1) when the identity of the subject matter is the same; (2) when the cases involves the same primary right by plaintiff and primary wrong committed by defendant; (3) when there is the same evidence in both cases; and (4) when claims arise out of the same transaction or occurrence. James F. Flanagan, South Carolina Civil Procedure 671 (3d ed. 2010) (citing cases).

Here, all of the issues raised in Plaintiff's Complaint arose during the course of the underlying suit and were either asserted, or could have been asserted during the previous lawsuit. Accordingly, her claims are barred by the doctrines of res judicata and issue preclusion. Moreover, to the extent that any of the alleged actions by Defendants were newly-discovered evidence uncovered during the course of underlying suit, any claims related to this information should have

been brought before the trial or appellate court pursuant to Rules 59 and 60(b) of the South Carolina Rules of Civil Procedure. See also Gray v. Bryant, 298 S.C. 285, 286-87, 379 S.E.2d 894, 895 (1989) (noting that Rule 59 and 60(b) should be read together with regard to motions for new trial due to newly-discovered evidence.). Accordingly, because Plaintiff's claims are barred by res judicata and issue preclusion, she has failed to state a claim upon which relief can be granted and Defendants' Motion to Dismiss Plaintiff's Thirteenth Cause of Action is granted.

H. Defendants' Motion to Dismiss Plaintiff's Fifteenth Cause of Action – Violation of Federal Rules and Regulations of Banking Rules and Regulations (FDIC) is heard and granted.

Plaintiff's Fifteenth Cause of Action alleges "violations of federal rules and regulations (FDIC)/violation of banking rules and regulations" without stating any specific rules or cites for the Court to use to determine which violations were alleged. Accordingly, Plaintiff's pleadings with regards to her Fifteenth Cause of Action fail to meet the heightened pleading standards imposed by Rule 9(b) of the South Carolina Rules of Civil Procedure and as such are dismissed.

However, even if the Plaintiff stated with particularity the provisions with which she was relying in the FDIC, her claim would still fail. The FDIC does not allow for a private right of action (stating that "[t]his section may not be construed as creating any private right of action"). 12 U.S.C.A. § 1831g. Accordingly, Defendants' Motion to Dismiss Plaintiff's Fifteenth Cause of Action is heard and granted.

I. Defendants' Motion to Dismiss Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged

12/5/14

and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress would be improper. Accordingly, Defendants Motion to Dismiss the Seventeenth Cause of Action of Plaintiff's Complaint is heard and denied.

J. Defendants' Motion to Dismiss Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations is heard and denied.

For the purpose of a 12(b)(6) motion for failure of the pleadings to state facts sufficient to constitute a cause of action, "the [sole] question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247-248 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal is improper. Id. "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Id.

Viewing the facts in the light most favorable to the Plaintiff, this Court finds that dismissal of Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations would be improper. Accordingly, Defendants' Motion to Dismiss the Eighteenth Cause of Action of Plaintiff's Complaint is heard and denied.

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CONCLUSION

NOW, THEREFORE, IT IS ORDERED that, for the foregoing reasons, Defendants Williams and First Federal's Motion to Dismiss Plaintiff's Complaint is granted in part, and denied in part.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge
First Judicial Circuit

January 26, 2017
Charleston, South Carolina
At Chambers

1/26/17

PETITIONS

90063

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Case No. 2016-CP-18-1706
Appellate Case No. 2018-002185

Molly M. Morphew — Appellant

v.

Stephen Dudek, Doreen Cross, Carolina One, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile — Respondents

RECEIVED
JUN 20 2019
SC Court of Appeals

2ND MOTION FOR PAGE EXCEEDANCE OF APPELLANT'S INITIAL AND REPLY BRIEFS

Molly M. Morphew, pro se
45 Lullwater Dr. #1416
Richmond Hill, GA 31324
(843) 514-7299

Appellant, Molly M. Morphew (hereafter "Morphew"), hereby respectfully asks this court to allow it to exceed the page requirement of its Initial Brief, and its Reply Brief, pursuant 208(b)(5), and moves for leave to file the attached Appellant's Initial Brief that exceeds the 50-page limitation set forth in the SCRCP Rule 208[1].. Specifically, she seeks leave of the Court to file a 209-page brief (229 pages if including front matter). This page count is listed on **the Certificate of Compliance** contained within the brief. A copy of her brief is attached to this motion. This motion is supported by the **declaration of Molly Morphew**, which demonstrates her diligence in reducing the volume of the brief, and sets forth her substantial need.

DECLARATION OF MOLLY MORPHEW, PRO SE

I, Molly M. Morphew, hereby declare that:

1. I am pro se in the above-titled case.
2. This motion is timely filed because it is filed on or before June 25, 2019 the due date for the Initial Brief, pursuant to this Court's Order filed May 30, 2019.
3. I, pro se, have attached a copy of my Initial Brief to this motion.
4. This motion is predicated on my substantial need for extra words.
5. I acknowledge that a motion seeking leave to file a brief that exceeds the page limitation is generally disfavored and, ordinarily, parties are very often able to comply with the 50-pagelimit governing Initial Briefs. I thus regret having to make this motion for such consideration, but this is an extraordinary case addressing fraud and fraud on the court, including this court, and a ruling that is apparently contrary to substantial rules, statutes or precedents in law or equity, or is VOID, in a prior action.
6. It involves multiple complex legal issues and sub-issues. For example, my Initial Brief must address, argue, and/or respond to the lower court's rulings regarding the following complex issues:

[1] In compliance with the rules, Morphew submits or serves this motion on June 19, 2019, the due date of her Initial Brief, pursuant to this Court's decision dated May 30, 2019.

- Whether the prior order granting specific performance [first] in favor of the Dudeks and [second] in favor of Morphew is VOID in-part and [in-part] must be vacated; or whether it is binding on this Court and precludes both the substantial rules, statutes or precedents set by the South Carolina Courts in regards to the maxims of equity, and Appellant's legal right to the property and Due Process claims.
- Whether Respondent Collins is in default, and committed further fraud on the court, along with the Deputy Chief Clerk of Court, in the May 29, 2018 hearing, consequently obtaining an unlawful ruling and preventing Morphew her due process.
- Whether Morphew's due process was violated or the trial judge erred, abused its discretion or showed substantial partiality or bias by holding a hearing and making a ruling from the bench, with no grounds to support its ruling, and in Morphew's [excused] absence.
- Whether the trial court erred or abused its discretion granting multiple motions for summary judgment on many different causes of action when discovery on the merits was pending, or when another judge in the same case had previously made a ruling denying in-part respondent(s) motions to dismiss on the very same causes of action another judge in the same case later granted, especially when the prior orders were not vacated, no new evidence supporting reconsideration of the actions was presented, and the prior rulings denying in part the respondents' motion(s) to dismiss has not been appealed or contested.
- Whether the trial court erred or abused its discretion when it performed a conversion to summary judgment pursuant SCRCP Rule 12(b) and Rule 56 when it had no grounds which to support its conversion; specifically when no motion to dismiss was in the record or no matters outside the pleading were presented; further no notice by the court was given to Morphew that it was going to consider a motion 12(b)(6) for summary judgment or that any matter outside the pleading was going to be considered.
- Whether the trial court erred or abused its discretion or violated SCRCP Rules 7, 8, 12, or 55 denying Morphew's motion for entry of default and judgment or relieving a respondent of default or its entry of 'because he filed a timely motion to dismiss' (It should be noted that respondent failed to answer the summons and complaint, has

not participated in the case since its motion to dismiss, and has not appealed the prior court's ruling denying his motion to dismiss on several causes of action, including his fraud and fraud on the court).

- This requires Morphew making multiple independent arguments depending which order (i.e., summary judgment, motion to dismiss, default, conversion), judge (i.e., Judge Murphy, Judge Dickson, or Judge Jefferson) or cause of action (there are 18 to each respondent) that was granted or dismissed; and what ruling (example, pursuant Rule 12(b)(6), 12(b)(8), res judicata, issue preclusion or default) and regarding which respondent the ruling(s) correspond to respectively (there are 10 respondents, separated into 4 groups each having its own counsel).
- The trial court's 10 order(s) as a whole equal 100 pages, and to limit Appellant to only 50 pages when she has to include cases, rulings, arguments and a conclusion to support its arguments substantially challenges Appellant's ability to defend fully and fairly.
- Appellant's Brief was 356 pages and 45 issues (averaging 7.91 pages per Issue on appeal or 35.6 pages per Order on appeal), and has been reduced to 209 pages and 23 issues (averaging 9.09 pages per Issue on appeal or 21 pages per Order on appeal) after receiving this Court's ruling denying its first motion.
- Nevertheless, she addresses below her diligent efforts to reduce this brief to the minimum size possible, without forfeiting significant arguments, or hurting clarity of presentation.
- In sum, Appellant requires 229 total pages, including title page, table of contents, table of authorities, standards of review and facts and history in order to adequately address the multiple, complex legal issues involved.
- Appellant represents that she has made a diligent effort to keep her initial brief as succinct and streamlined as possible. She has cut out everything from the brief that is not essential to a complete presentation of her argument, including lesser arguments, and additional citations supporting arguments. She has eliminated excess sentences and words wherever possible, and sincerely believes that she cannot cut any additional material from the brief without eliminating important arguments, or reducing the clarity of existing arguments. Appellant, pro se thus believes she has

been diligent in reducing the number of pages in the brief as much as possible, and that there is "substantial need" for the requested page extension she seeks.

- Appellant is requesting the minimum number of extra pages that she believes in good faith to be absolutely necessary in order to adequately brief the numerous complex issues in this appeal.
- For the above reasons, and based on the diligence and substantial need demonstrated by Appellant, pro se, Appellant respectfully requests leave to file the attached 229-total page Initial brief.
- I declare under penalty of perjury that the foregoing is true and correct.

Molly M. Morphew, Appellant pro se
45 Lullwater Dr. Unit #1416
Richmond Hill, GA 31324

6/18/19

June 17, 2019

ANTHONY SMITH
MY COMM EXP
NOTARY
PUBLIC
JULY 11, 2020
CHATHAM COUNTY, GA

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson, First Judicial Circuit
The Honorable Edgar W. Dickson, First Judicial Circuit
Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2018-002185

Molly M. Morphew — Appellant

v.

Stephen Dudek, Doreen Cross, Carolina One, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile — Respondents

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APPELLANT'S INITIAL BRIEF

RECEIVED
JUN 20 2019
SC Court of Appeals

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ISSUES ON APPEAL

1. Is the Order or ruling in-part of November 6, 2014 VOID?
2. Did the trial court err or abuse its discretion specifically finding Respondent Collins not in default or that good cause exists to set aside any such entry of default?
3. Did the trial court err or abuse its discretion in denying Appellant's 2nd Motion for Entry of Default against Respondent Collins, or relieving Collins of default, or its entry of?
4. Did the trial court err or abuse its discretion or process by granting Respondent Collins' Motion to Dismiss?
5. Did the trial court err or abuse its discretion in granting summary judgment/motion to dismiss to Respondents on the very same causes of action another judge in the same case denied in a previous motion to dismiss?
6. Did the trial court err or abuse its discretion in granting summary judgment/motion to dismiss to Respondents when discovery had not yet been completed?
7. Did the trial court err in granting in-part Respondents Michael Scarafile, Susan Nicholson, David Collins and Carolina One Real Estate's Motion to Dismiss when its motion lacked any argument, was totally unsupported or failed SCRCP Rules?
8. Did the trial court err or abuse its discretion in granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss in-part to Appellant's Cause of Action for Declaratory Judgement That No Contract Exists, and Cause of Action for Tortious Interference with Existing Contractual Relations pursuant Rule 12(b)(8)?
9. Did the trial court err in granting Respondents First Federal, Allison Williams, Michael Scarafile, David Collins, Susan Nicholson, and Carolina One Real Estate's Motion to Dismiss in-part to Appellant's Cause of Action for Declaratory Judgement That No Contract Exists pursuant res judicata?
10. Did the trial court err or abuse its discretion in granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss in-part to Appellant's Cause of Action for Breach of Contract Accompanied by Fraudulent Act?
11. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, and David Collins on Appellant's claim of fraud or fraud on the court?

12. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents Wooddy Law Firm and Carrie Boyer on Appellant's claim of fraud or fraud on the court?
13. Did the trial court err or abuse its discretion in granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss in-part to Appellant's Cause of Action for Fraud, Extrinsic Fraud- Fraud on the Court; its' Cause of Action for Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud; and its' Cause of Action, Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive?
14. Did the trial court err in granting Respondents First Federal, Allison Williams, Wooddy Law Firm, Carrie Boyer, David Collins, Michael Scarafile, Carolina One Real Estate and Susan Nicholson's Motion to Dismiss in-part to Appellant's Cause of Action for "Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive?"
15. Did the Trial court err in granting Respondent Michael Scarafile, Susan Nicholson David Collins, Carolina One, First Federal and Allison Williams' Motion to Dismiss in-part regarding Appellant's Cause of Action – Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct?
16. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, David Collins, and Carolina One Real Estate on Appellant's claim of Tortious Interference with Existing Contractual Relations?
17. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents Wooddy Law Firm and Carrie Boyer on Appellant's claim of Tortious Interference with Existing Contractual Relations?
18. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents First Federal, Allison Williams, David Collins, Wooddy Law Firm, Carrie Boyer, Stephen Dudek, Doreen Cross, Michael Scarafile, Susan Nicholson and Carolina One Real Estate on Appellant's claim of Intentional Infliction of Emotional Distress?

19. Did the trial court err or abuse its discretion in granting summary judgment or motion to dismiss in favor of Respondents First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, David Collins, Wooddy Law Firm and Carrie Boyer on Appellant's claim of conspiracy to defraud?
20. Addressing Appellant's Cause of Action – Perjury, Obstruction of Justice, violating South Carolina Rules of Professional Conduct, Forgery/falsifying documents with intent to defraud in regards to Respondents.
21. Is Respondent David Collins liable for and can be sanctioned in a civil action for violation of ABA Rules of Professional Conduct, Rule 3.3, Rule 4.1, and 8.4(c)?
22. Addressing Appellant's Cause of Action – Violation of Federal Rules and Regulations of Banking Rules and Regulations (FDIC) in regards to Respondents First Federal and Allison Williams.
23. Is Respondents Michael Scarafile, Susan Nicholson or Carolina One Real Estate liable for and can be sanctioned in a civil action for their actions violating the Real Estate Code of Conduct?

FACTS AND PROCEDURAL HISTORY

On October 24, 2012 Respondents Stephen Dudek ("Dudek") and Doreen Cross ("Cross") (together "Dudeks" or "buyers") entered into a time is of the essence real estate contract for 788 E. Butternut Rd., ("property") located in Summerville, South Carolina (**Dudek sales contract, October 24, 2012**).

On December 6, 2012 the sellers Ferro ("sellers") received Respondent Wooddy Law Firm's ("Wooddy" or "closing attorney") formal engagement letter via USPS mail introducing themselves as the closing attorney representing the Dudeks in their mortgage purchase transaction. In their letter the closing attorney also requested the sellers provide them their social security numbers, emails and phone numbers. In response, the sellers provided the requested information but also gave a 7-day notice to close, "if a closing does not take place in 7 days or less, there will be no closing" (**Wooddy Engagement letter/ Ferro response, November 27, 2012**).

On December 16, 2012, 16 days after the Dudek contract had expired and they failed to close or offer a closing date, the Dudeks received a termination notice from the sellers (**Termination Notice, December 16, 2012**). Shortly after, Morphew entered into contract ("Morphew contract") to purchase same property (**Morphew sales contract, December 16, 2012**). Morphew's contract contained a clause that allowed her or the sellers to terminate said contract by a specific date if the Dudeks failed to sign the termination notice. The Dudeks refused to sign the termination notice, but neither Morphew nor the sellers terminated the Morphew contract. Morphew presented to the sellers a tentative closing date of January 31, 2013, but was ready to close as soon as January 10, 2013.

Four (4) weeks later and after discovering the sellers had secured another buyer (Morphew), the Dudeks filed a lis pendens to prevent the sale, then shortly after filed their complaint for breach of contract to compel specific performance (**Email-- Attorney Qualey to**

Ferros, January 15, 2013);(Lis Pendens, January 11, 2012);(Dudek Complaint, January 15, 2013 Civil Case No. 2013-CP-180074). Two (2) weeks later, Morphew filed its breach of contract compelling specific performance against the sellers Ferro **(Morphew Complaint, Original action, January 3[illegible], 2013 Civil Case No. 2013-CP-18-0183).** Litigation ensued, Morphew attempted to discover material facts and evidence in subpoenas, requests for documents/admissions, and depositions.

On June 11 and 12, 2014, a trial took place. No ruling was made during or at commencement of the trial. Critical evidence was discovered after trial by the defendants/sellers Ferro, pro se. In or about August 2014, the Master requested closing statements of the parties. The sellers presented their closing statement in a filed petition to the Master **(Ferro Petition, September 9, 2014).** The record shows the facts and evidence presented were contrary to all testimony or evidence presented by the respondents in discovery and at trial, and that the Dudeks had not secured financing and were not ready and able to tender payment for the property as they and the co-respondents had testified at trial. The Master refused to consider the evidence or the pro se party's closing statements, and chose only to deliberate the attorney's closing statements. Two (2) months later, it filed its Order and awarded specific performance first to the Dudeks and second to Morphew [if Dudeks failed to close or terminated their contract] **(Order-- granting specific performance to the Dudeks and Morphew, November 6, 2014 Case No. 2013-CP-18-0183).** Both the sellers and Morphew appealed, presenting the discovered evidence. (*See,* original action Appellate Case No. 2014-002633).

On August 24, 2016, during the pendency of the appeal and before the decision by this court, Appellant Morphew filed this current action stating causes of action, including but not limited to, for fraud, fraud on the court, conspiracy to commit fraud, Bad Faith and Unfair Dealings, and/or Accompanied by Fraudulent Action, Tortious Interference with Existing

Contractual Relations, Breach of Duty of Care, and Intentional Infliction of Emotional Distress -- all arising from the prior decision by the trial court awarding Specific Performance [first] to the Dudeks and [second] to Morphew.

Respondents Wooddy Law Firm and Carrie Boyer, a paralegal at Wooddy Law Firm, (together "closing attorney"), acted as the closing attorney for the Dudeks. Respondent Carolina One Real Estate ("C1") was the real estate agent for the Dudeks, and Respondents Michael Scarafile ("Scarafile") and Susan Nicholson ("Nicholson"), as employees of Carolina One, with Nicholson being the Dudeks' real estate agent and Scarafile being President and Chief Counsel for Carolina One (together "Dudek sales agent"). Respondent David Collins ("Collins" or "prior attorney") was not involved in the purchase of the property, but was originally employed as the attorney for the Dudeks to represent them in their action for specific performance against the sellers Ferro (or 'prior action') (*See*, Civil Case No. 2013-CP-18-0183) until he was suspended by the Supreme Court for fraud and had to withdraw as counsel. His prior business associate, Steven Smith, of Smith and Closser, PA, previously Smith, Collins and Newton, PA, resumed as counsel for the Dudeks. Lastly, Respondents First Federal and Allison Williams ("Williams"), a lending officer employed by First Federal, acted as the lender for Respondents Dudek (together "lender").

In its decision in 2017 of the prior action, the appellate court neither considered nor ruled on the arguments or evidence, instead chose to rely on their standard of review to affirm the trial court's decision based on "the broad scope of review in an action of equity does not require it to disregard the findings at trial or to ignore the fact the master was in a better position to assess the credibility of the witnesses" therefore affirming without its own view of the preponderance of the evidence (**Opinion No. 2017-UP- 019, Filed January 11, 2017 Appellate Case No. 2014-00263**). Though Morphew filed a motion requesting a rehearing, she voluntarily withdrew its

request before this Court's review or hearing of said motion when it became known that the sellers, an innocent party, were in dire economic distress due to the pending litigation.

After the January 2017 remitter of this court, the Dudeks filed a motion in March 2017 for a closing and attorney's fees. During that initial hearing in March and one that followed in May 2017, both Morphew and the sellers Ferro objected to the closing and presented arguments and evidence proving the Dudeks had been denied financing at their own hand, critically breached their sales contract, and did not have any right, legal or otherwise, to the property or to compel specific performance. Consequently, the record shows the trial court had not the ability, jurisdiction or inherent power to adjudicate specific performance in favor of the Dudeks. Further, Morphew raised issue of the injustice taking place ruling specific performance in favor of the Dudeks or allowing the Dudeks to obtain the property by their improper or fraudulent actions. The Master determined such evidence moot and issued an Order for closing, and shortly after an Order for ejectment and contempt against Morphew. Both Orders/rulings are currently on appeal (*See,* Morphew v. Stephen Dudek, et al pending Appellate Case No. 2017-001393).

In January of 2017, the Honorable Deadra Jefferson dismissed several of Morphew's claims in this instant action pursuant to SCRCP Rule 12(b)(6),or 12(b)(8) or that the cause of action is a criminal action not a civil action. Several motions for reconsideration followed. All respondents, except Respondent David Collins, filed an Answer to the complaint.

In June 2017, even though the Dudeks had actual notice of Morphew's claim to the property, they obtained the property. After which time the Dudeks became the owners of the property, Morphew filed an action for Constructive Trust, alleging the Dudeks were not bona fide purchasers and had obtained the property unlawfully or fraudulently. On June 27, 2017, the trial court dismissed the Constructive Trust action pursuant Rule 12(b)(6) SCRCP, the doctrine of res judicata, and pursuant Rule 12(b)(8) SCRCP based on the fact that an action has been adjudicated

between the same parties for the same claim. Morphew appealed. (*See,* Constructive Trust – Morphew v. Stephen Dudek and Doreen Cross pending Appellate Case No. 2018-000507).

Approximately nine (9) months later following the 2017 Dudek closing, the Dudeks violated their sewer and water easement agreement with Morphew in regards to her neighboring property adjacent to the property in question in the origianl action and herein current action by shutting off water to her home (**Dudek Sales Contract, Addendum A October 24, 2012**) Shortly after, the Dudeks physically assaulted the water line, permanently disabling water to the property. Morphew was left with no choice but to file a Trespass Upon Easement complaint against the Dudeks to let the courts properly and lawfully settle the dispute. Their violation and destruction has led to Morphew's inability to inhabit her home and to *substantial* undue expenses and stress until resolved by the lower court. **(Complaint – Trespass Upon Easement-- Morphew v. Stephen Dudek and Doreen Cross Civil Case No. 2018-CP-18-01661).**

In November 2017, the Honorable Judge Dickson issued a scheduling order in this current case, discovery ensued with all respondents participating except for Respondent David Collins. As a result of Collins' failure to Answer the complaint, Morphew filed a motion for entry of default and default judgment against him (**Motion-- Entry of Default and Judgment, November 27, 2017**)

After several motions and hearings taking place, including motions to dismiss, motions for summary judgment, and a 2nd motion for entry of default and judgment against respondent Collins, the trial court issued its final orders on November 13th and November 15th. Morphew served its Notice of Appeal on December 7, 2018.

STANDARD OF REVIEW

1. A court may set aside an entry of default for good cause shown. Rule 55(c), SCRCP. Whether good cause is established is within the sound discretion of the court. *Wham v. Shearson Lehman Brothers, Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct.App.1989).
2. The power to set aside a default is exercised within the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Frank Ulmer Lumber Co. v. Patterson*, 272 S.C. 208, 250 S.E.2d 121 (1978); *Estate of Weeks*, 329 S.C. 251, 495 S.E.2d 454 (Ct.App.1997). The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge and will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Harbor Island Owners' Ass'n v. Preferred Island Prop., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). In reviewing the court's exercise of discretion, the issue before the appellate court is not whether it believes good cause existed to set aside the default, "but rather, whether the [trial judge's] determination is supportable by the evidence and not controlled by an error of law." *Pilgrim v. Miller*, 350 S.C. 637, 567 S.E.2d 527 (2002).
3. This Court will not disturb a discretionary ruling on appeal unless it appears the ruling is without evidentiary support or controlled by some error of law. *Stanton v. Town of Pawley's Island, S.C.*, 420 S.E.2d 502 (1992).
4. An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990)
5. Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); *see also Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E. (2c) 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. 10A Wright & Miller, *Federal Practice and Procedure* § 2741, p. 543 (1983); 6 *Moore's Federal Practice* ¶ 56.02[6], p. 56-39 (2d) ed. 1990); *see, e.g., First Chicago Int'l v. United Exchange Co.*, 836 F. (2d) 1375 (D.C. Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F. (2d) 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So. (2d) 951 (Ala.

1988); *Gangadean v. Lemmi Fin. Corp.*, 13 Ariz. App. 534, 478 P. (2d) 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So. (2d) 564 (Fla. Dist. Ct. App. 1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W. Va. 140, 267 S.E. (2d) 440 (1980); *cf.* Rule 56(f), S.C.R.C.P.

6. "It is an error of law for a court to decide a case on a ground not before it." *Griffin v. Capital Cash*, 310 S.C. 288, 294, 423 S.E.2d 143, 147 (Ct.App.1992); see *Friedberg v. Goudeau*, 279 S.C. 561, 562, 309 S.E.2d 758, 759 (1983) (reversing the grant of summary judgment because the ground for summary judgment was not properly before the trial court). A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it. *Skinner v. Skinner*, 257 S.C. 544, 550, 186 S.E.2d 523, 526 (1972).
7. The doctrines of res judicata and collateral estoppel do not bar collateral attack of a judgment based on fraud. *Arnold v. Arnold*, 285 S.C. 296, 328 S.E.2d 924 (1985). (The complaint of a plaintiff "must be liberally construed in favor of the pleader and sustained if the facts alleged, and the inferences reasonably deducible therefrom, entitle plaintiffs to relief on *any theory* of the case, even though different from that on which they may have supposed themselves entitled to recover." (Emphasis added.) *Arnold, supra*; *Springfield v. Williams Plumbing Supply Co.*, 249 S.C. 130, 153 S.E.2d 184 (1967).
8. On appeal from the grant of a summary judgment motion, this court applies the same standard as that required for the circuit court under Rule 56(c), SCRCP. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "Summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991); *Adamson v. Richland Cnty. Sch. Dist. One*, 332 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct.App.1998) (quoting *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997)).
9. "Summary judgment should be granted when plain, palpable and indisputable facts exist on which reasonable minds cannot differ." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799, 802 (Ct.App.2009). In addition, it must be shown that further inquiry into the facts is not needed to clarify the application of law. *Folkens v. Hunt*, 290 S.C. 194, 348 S.E. (2d) 839 (Ct. App. 1986). "In determining whether any triable issues of fact exist, the evidence and all inferences must be viewed in the light most favorable to the nonmoving

party." *Pee Dee*, 381 S.C. at 240, 672 S.E.2d at 802. "Thus, the appellate court reviews all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party." Id; *Osborne v. Adams,* 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant". *Baugus, supra.* Further, " '[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.' "*Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 456, 684 S.E.2d 756, 758 (2009) (quoting *Brockbank*, 341 S.C. at 378, 534 S.E.2d at 692); *Gillilard v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d 577 (1990).

10. An action for specific performance is one in equity. *Lewis v. Premium Inv. Corp.,* 351 S.C. 167, 170 n. 2, 568 S.E.2d 361, 362 n. 2 (2002); *Wright v. Trask,* 329 S.C. 170, 176, 263*263 495 S.E.2d 222, 225 (Ct.App.1997). In an action in equity, tried by the judge alone, without a reference, on appeal the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. *Townes Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). "It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the trial court in such cases when the appellant satisfies this court that the finding is against the preponderance of the evidence." *Crowder v. Crowder,* 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965).
11. In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without, a reference. The judge's findings are equivalent to a jury's findings in a law action. *Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 211 S.E. (2d) 876 (1974).
12. Turning to the question of the determination of the existence of a fiduciary duty, this Court has said "[a] fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992).

13. The appellate court applies the same standard of review as the circuit court in scrutinizing the application of Rule 12(b)(8), SCRCP. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct.App.2009). A defendant may seek dismissal of an action pursuant to Rule 12(b)(8) when another action is pending between the same parties for the same claim. In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999); *Spence v. Spence*, 368 S.C. 105, 628 S.E.2d 869 (2006). "The trial court and this [C]ourt on appeal must presume all well pled facts to be true." *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct.App. 1988). "[P]leadings in a case should be construed liberally so that substantial justice is done between the parties. Further, a judgment on the pleadings is considered to be a drastic procedure by our courts." *Russell v. City of Columbia,* 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citation omitted). The court should not dismiss the complaint merely because there exists doubt that the plaintiff will prevail in the action. *Doe*, 373 S.C. at 395, 645 S.E.2d at 248.

ARGUMENTS

1. Is the Order or ruling in-part of November 6, 2014 VOID?

Appellant Morphew brings before this court a request to review and find the Order of November 6, 2014 VOID in-part that it fails on its face, fails all rules, statutes and precedents of law or equity, fails due to lack of jurisdiction or the inherent power to adjudicate specific performance in favor of Stephen Dudek and Doreen Cross, and/or that it was procured by fraud.

> "A judgment obtained by fraud may, however, be void under some circumstances, and subject to collateral attack, as where such fraud appears on the face of the record or goes to the method of acquiring jurisdiction. Likewise, *the judgment may be attacked collaterally where fraud had been practiced in the very act of obtaining the judgment*, or on the party against whom the judgment was rendered, so as to prevent him from having a fair opportunity to present his case; * * *." (Emphasis added.) 49 C.J.S. Judgments § 434 Fraud, Collusion, or Perjury, p. 859.
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> "Judgments and decrees of courts having jurisdiction of parties and of the subject-matter cannot be collaterally attacked, however erroneous, unless procured through fraud or collusion. *Barnes v. American Fertilizer Co.*, 144 Va. 692, 130 S.E. 902; *Fink v. Fink*, 103 Va. 423, 137 S.E. 703; *Scott v. Newell*, 146 S.C. 385, 144 S.E. 82, 89 (7-10)." *Piedmont Press Ass'n v. Record Pub. Co. et al.*, 156 S.C. 43, 152 S.E. 721.
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> *Wold v. Funderburg, 250 S.C. 2015, 157 S.E.2d 180 (1967)*

Morphew argues the ruling fails all rules and statutes of law or equity, especially to compel such an extreme remedy of specific performance. It is not supported by any [valid] evidence in the record, and maybe most importantly, is contrary to the precedents of not only the South Carolina Courts but to all state courts and the U.S. Supreme Court.

As argued below and repeated herein, the Dudeks failed to meet the strict conditions, precedents, or rules and statutes of equity or law conditional to their *ability* to compel specific

performance. Consequently, the order compelling specific performance is then VOID in-part due to its failure on its face or to the trial court's LACK OF INHERENT POWER or JURISDICTION to adjudicate specific performance in favor of the Dudeks.

A void judgment is one that is void on face of judgment roll, **Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828): * Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities." *Cockett Oil Co. v. Effie*, 374 S.W.2d 154 (Mo.App. 1964). Decision is void on the face of the judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over subject matter, or (3) jurisdictional power to pronounce particular judgment that was rendered, *B & C Investments, INC. v. F & M Nat. Bank & Trust,* 903 P.2d 339 (Okla.App.Div 3, 1995). Void order may be attacked, either directly or collaterally, at any time. They are not "voidable", but simply "void"; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. " *Elliot v. Piersol, supra*; Black's Law Dictionary, Sixth Edition, page 1574: Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process.

As stated in the Order of November 6, 2014 in the original action in which this current case arose from, in order to compel specific performance, a court of equity *must* find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. Ingram, 340 S.C. at 106, 531 S.E.2d at 291; *Campbell v. Carr*, 361 S.C. 258, 263-64, 603 S.E.2d 625, 627-28 (Ct. App. 2004)[1];*Gibson v. Hrysikos,* 293 S.C. 8, 358 S.E.2d 173 (Ct.App.1987) (citing *Thomson v. Scott,* 6 S.C. Eq. (1 McCord Eq.) 32 (1825)). At a minimum, the Dudeks must demonstrate that they were ready and willing to perform their part of the contract (i.e. willing to tender the purchase price) on November 30, 2012, the date the sales contract expired, or on January 15, 2013, the date they brought the action for specific performance. The record indicates that the Dudeks were not in a position to pay the Ferros the purchase price for the property in question on either date.

Specific performance is unsound in the original case because the Dudeks lacked the ability to perform their part of the sales contract on the date the sales contract expired and on the date they sought specific performance. *See* 71 Am.Jur.2d *Specific Performance* § 201 (1973) ("[C]omplainant in an action for specific performance must aver that he has performed his part of the contract or that he is willing and ready to perform it, and that he has performed all conditions precedent to the taking effect of the obligation of the defendant, including the payment to be made thereon, or some valid excuse for his failure to perform or offer to perform.") Here, the Dudeks intentionally hindered their own closing or the seller's ability to transfer the deed which was not justified, therefore waived any right to file a complaint for specific performance and to and to prevent Morphew from performing her contract (**Order-- granting specific performance to the**

[1] **Supra, Order for Specific Performance**

Dudeks and Morphew, November 6, 2014 Pg. 3 and 4, Para. 6, 8, 9, 10, 11, Case No. 2013-CP-18-0183).

In the original case, equity does not favor the granting of specific performance as a matter of law or of sound judicial discretion. The Supreme Court relies on the equity maxim: "He who seeks equity must do equity." *Norton v. Matthews,* 249 S.C. 71, 152 S.E.2d 680 (1967). The Dudeks misled the courts, sellers Ferro, and Morphew by a false promise they were ready, able and willing to close escrow or tender payment per their sales contract and specific performance. The Dudeks testified and presented false evidence and forged financial documents to show they had secured financing and performed all conditions of their sales contract and were ready, able and willing to close per specific performance but that a sellers breach prevented them from doing so[2]; their lender (co-respondents) testified and presented false evidence their clients, the Dudeks, had secured financing per their sales contract, and also presented at trial a "false promise[3]" they were extending the Dudeks mortgage credit for the purchase of the property in question. Their sales agent (co-respondents) represented its clients were ready, able and willing to close per their sales contract. In reliance on these representations, the trial court found the Dudeks met the precedents to compel specific performance, therefore granted the Dudeks specific performance first, then Morphew if they failed to close. The Dudeks and their co-respondents' perjury, misrepresentations, forgery and false promises were particularly egregious because it was more than the sellers that were affected. They were aware that time was of the essence because the sellers had moved to another state and had a contract to purchase a home out of state, contingent

[2] The record in the original action indicates the sellers Ferro did not breach. Instead, they had performed the acts required of them in the time is of the essence sales contract, but were prevented from transferring the deed on or before the contract expired or on or before the Dudeks filed its complaint by the Dudeks themselves. Meaning, the Dudeks financing condition was precedent to any condition the sellers were required to perform (*See,* Appellate Case No. 2014-002633)

[3] An issue collateral to the original case

on the sale of their property in question. They also had knowledge of another buyer or Morphew ready to close since the start of the Dudek litigation (**email Respondent Williams, January 18, 2013**). Additionally, the evidence demonstrates that the Dudeks only decided to exercise specific performance when they found out the sellers had secured another buyer, at which time they filed a lis pendens to prevent that sale (**Email-- Attorney Qualey to Ferros, January 15, 2013**). Thus, the Dudeks had improper ulterior purposes for using the judicial process, specifically to interfere with the performance of the Morphew contract, therefore ultimately preventing her legal right to the property, and forcing an innocent party to sell them property that, ultimately and by their own hand, they lost any right to or *at all times material* had no legal right to.

The Dudeks should not continue to be awarded for their unlawful conduct [and continued unlawful conduct] when they acted fraudulently or with unclean hands by intentionally breaching every condition of their sales contract; by filing a frivolous complaint and other legal documents when they had no valid right, or legal ability to do so; by preventing Morphew from her legal right/claim to the property; by critically failing the rules, statutes and guidelines of equity or specific performance; by their and their co-respondents actions and non-actions misleading the sellers, Morphew and the courts) with substantial perjury and suborned perjury, misrepresentation, forgery, conspiracy, and concealment of critical facts and documents to obtain an unlawful ruling or ruling contrary to the precedents set by the South Carolina courts

The respondents to this appeal, but especially Respondents First Federal, Allison Williams, Susan Nicholson, and Carolina One/Michael Scarafile who were under oath, not litigants, and were in the best position to provide the financial status of the Dudeks and their readiness or ability to tender payment per specific performance, had a duty to speak at trial and/or in answering subpoenas during discovery. Both the Master and Morphew substantially relied on their duty to speak. If [any one of] the respondents had disclosed the truth or concealed

documents, or provided the true financial/mortgage credit status of the Dudeks instead of committing substantial fraudulent actions or non-actions to create a false promise and condition critical to the action, the original case would have never made it to trial or the trial court would have known it lacked the jurisdiction or inherent power to adjudicate specific performance in the Dudeks' favor. If the truth were told and material facts and documents disclosed as first required by discovery and then at trial, Morphew would have been able to present her case fully in the first place and closed on her home, and the [now four (4)] civil cases against the Respondents or its co-respondents would not exist; consequently, fraud would not have been committed and Morphew would not be severely prejudiced and out undue and extensive costs, stress and time it's taken to right an injustice. Meaning, we wouldn't be here today with this court attempting to untangle the legal problems presented in the substantial litigation caused by the respondents.

> "A judgment obtained by fraud may, however, be void under some circumstances, and subject to collateral attack, as where such fraud appears on the face of the record *or goes to the method of acquiring jurisdiction.* Likewise, *the judgment may be attacked collaterally where fraud had been practiced in the very act of obtaining the judgment*, or on the party against whom the judgment was rendered, so as *to prevent him from having a fair opportunity to present his case*, * * *." (Emphasis added.) 49 C.J.S. Judgments § 434 Fraud, Collusion, or Perjury, p. 859.

> "Judgments and decrees of courts having jurisdiction of parties and of the subject-matter cannot be collaterally attacked, however erroneous, unless procured through fraud or collusion. *Barnes v. American Fertilizer Co.*, 144 Va. 692, 130 S.E. 902; *Fink v. Fink*, 103 Va. 423, 137 S.E. 703; *Scott v. Newell*, 146 S.C. 385, 144 S.E. 82, 89 (7-10)." *Piedmont Press Ass'n v. Record Pub. Co. et al.*, 156 S.C. 43, 152 S.E. 721.

Morphew argues Rule 60 is based on the historical power of a court of equity to modify its decree in light of subsequent conditions. 11 C. Wright & A. Miller, Federal Practice and Procedure, § 2863 (1973); H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 407 (2nd Ed. 1985). Though this action is an independent action allowed by SCRCP Rule 60, the allegations and validated supporting documentation presented by Morphew make out a case such that the prior judgment of November 6, 2014 "would no longer be equitable that the judgment have prospective application if the allegations are true".

As argued herein Brief, and maybe most importantly, if the prior judgment of November 6, 2014 granting specific performance in favor of the Dudeks is allowed to stand then the courts would be then overturning their own precedents, especially without a compelling reason to do so, therefore creating new rules or setting a new precedent. It would then appear that any ruling, especially for specific performance, that has relied on the equity maxims, "He who seeks equity must do equity" and "he who comes into equity must come with clean hands," can be overturned. Such cases include, *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000); *Hayne Federal Credit Union v. Bailey* 327 S.C. 242, 489 S.E.2d 472 (1997); *Norton v. Matthews,* 249 S.C. 71, 152 S.E.2d 680 (1967); *Provident Life and Acc. Ins. Co. v. Driver*, 317 S.C. 471, 451 S.E.2d 924 (1994); *Taff v. Smith*, 114 S.C. 306, 103 S.E. 551 (1920); *New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc.*, 291 F.2d 471 [5th Cir. 1961])(where the court denied relief because the Giants did not come into equity with clean hands).

All respondents to this appeal had full knowledge at the time of the trial, and after, that Dudek and Cross did not have a valid or negotiable sales contract after November30, 2012 or at initial application for mortgage credit on December 5, 2012, the expired time is of the essence sales contract was never remedied, therefore the Dudeks had been *denied lending at their own*

hand and their lending file permanently closed in January 2013[4]. Consequently, it was the Dudeks who intentionally hindered their own ability to obtain financing for the property, therefore critically breached and prevented their own closing *and* the seller's ability to transfer the deed. They knew before trial of the deceit, fraud, or unlawful acts they were going to commit and that were committed in the original action. They were fully aware of another buyer at start of the litigation (**Email-- Attorney Qualey to Ferros, January 15, 2013**), intentionally prevented the performance of her contract and contributed significantly to the breach of the Morphew contract, her failure to obtain the property as it appears by the record was her sole and legal right, the violation of her due process or failure to present her case fully *and fairly*, the ejectment from her home, the Dudeks' unlawful purchase of the property in question, and now the inability of Morphew to live in her own neighboring home. The Respondents are substantially responsible for any damages caused to the courts, Morphew and anyone involved in the prior transaction and original litigation, including any additional and continuing damages in the subsequent complaint(s) arising from the original action.

CONCLUSION

The Appellant contends the Order of November 6, 2014 fails both in law and equity, and undermines the very precedence set in a ruling for specific performance, regardless of any fraud or of the improper or fraudulent acts perpetrated in obtaining the judgment. Such an order is void. Additionally, Appellant's substantive rights have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law.

[4] Where between the 10-day adverse letter and the denial letter(s), it's clear the Dudeks were denied mortgage credit AND they would have submit a NEW application if interested at a later date.

Due to this or the reasons argued herein appeal, Morphew FIRST asks this court to review the record as a whole, including the original action and Order of November 6, 2014, which it granted specific performance [first] to the Dudeks, and provide either that ruling is lawful, not an abuse of discretion or error and should stand as is, therefore overturning the court's own precedents and consequently setting a new precedent; OR find that the Order is in-part[5] VOID due to 1) the fraud committed in the intentional procurement of an unlawful ruling or void judgment, and/or 2) the Master's failure of inherent power, or its lack of jurisdiction, to *adjudicate* or order specific performance in favor of the Dudeks, or 3) for any other reason this court finds as represented by the record.

SECOND, based on the arguments herein Brief or on a void order in which this instant action arose from,

1) Vacate or reverse the trial court's ruling granting summary judgment in this instant action, specifically:
    - Vacate or reverse Order/Judgment of November 15, 2018, granting David Collins' Motion to Dismiss;
    - Vacate or reverse Order/Judgment of November 15, 2018, granting Respondents Steven Dudek, Doreen Cross, Michael Scarafile, Carolina One and Susan Nicholson's motion for summary judgment;
    - Vacate or reverse Order/Judgment of November 15, 2018, granting Respondents Allison Williams and First Federal's motion for summary judgment.
    - Vacate or reverse Order/Judgment of November 13, 2018, granting Respondents Wooddy Law Firm and Carrie Boyer's motion for summary judgment;

[5] Specifically in its granting specific performance in favor of respondents Stephen Dudek and Doreen Cross.

2) Vacate or reverse the trial court's ruling in-part in this instant action, specifically in its GRANTING Respondents motions to dismiss Appellants causes of action in favor of the Respondents, specifically:

- Vacate or reverse Order/Judgment of January 31, 2017, granting and denying in-part Respondents Steven Dudek and Doreen Cross' motion to dismiss;
- Vacate or reverse Order/Judgment of January 31, 2017, granting and denying in-part Respondents Michael Scarafile, Carolina One, David Collins and Susan Nicholson's motion to dismiss;
- Vacate or reverse Amended Order/Judgment of April 3, 2017, granting in-part Respondents Woddy Law Firm and Carrie Boyer's motion to dismiss;
- Vacate or reverse Amended Order/Judgment February 13, 2017, granting and denying in-part Respondents Allison Williams and First Federal's motion to dismiss;

3) Vacate or reverse Order/Judgment of May 31, 2018, relieving Respondent Collins of default or its' entry of;

4) Vacate or reverse Order/Judgment of November 13, 2018, denying Appellant Morphew's Motion for Entry of Default/Default Judgment;

5) And remand back to the trial court for further proceedings.

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2. Did the trial court err or abuse its discretion specifically finding Respondent Collins not in default or that good cause exists to set aside any such entry of default?

This APPEAL arises out of the Judge's decision to rule that Respondent Collins is not in default or good cause exists to set aside any such entry of default, "*Finally, this Court specifically finds that Defendant Collins is not in default or good cause exists to set aside any such entry of default.*" **(Order, May 31, 2018)**

Appellant Morphew ("Morphew") disagrees and appeals.

ADDITIONAL FACTS AND HISTORY

Pursuant to SCRCP Rule 4 (Process; Personal Service), a copy of the Summons, together with a copy of the Complaint, was served upon the Respondent Collins by certified mail, restricted delivery, return receipt requested on August 24, 2016, and service of process was deemed complete on August 26, 2016.

On September 20, 2016, a Motion to Dismiss was filed by Collins. The Motion to Dismiss was heard and granted in part and denied in part on November 7, 2016, and an Order was filed on January 31, 2017. Said Order has not been contested or appealed by Collins.

After several months, with many various Motions and Answers submitted, including several Motions for reconsideration, none which Collins was a party to, a scheduling Order was filed on November 7, 2017. Discovery ensued.

Shortly after, on November 27, 2017, Morphew filed her combined Motion for Default Entry and Judgment against Collins. Morphew appeared in person at the Courthouse intending to file two (2) motions, one (1) for Entry and one (1) for Judgement, but was told by the Deputy Chief Deputy Clerk ("Clerk") that only one motion was necessary for Entry and Judgment based on the wording in the Motion for Entry of Default, and was further directed by the Clerk to add "*AND THEREFORE, I hereby direct the Chief Deputy Clerk of Court to set this matter for a damages hearing*" as the last line of the ENTRY OF DEFAULT/DAMAGES HEARING FORM presented by Morphew **(Entry Of Default/Damages Hearing Form, Case No. 2016-CP-1801706)**. Collins had not filed an Answer nor has conducted, participated or has been a party to any discovery prior to or after his default or assumed entry of default on November 27, 2017.

Morphew left the courthouse to update her submitting paperwork and returned to file the motion. The Clerk provided Morphew with the copy of the stamped Motion. When asked if she

was supposed to get the Entry of Default Form stamped and back, the Clerk responded, "No, entry is complete, and the Defendant can no longer defend himself against the allegations, but you will receive the paperwork back in the self-addressed, stamped envelope you provided today." The Clerk also stated the Motion, and accompanying paperwork (including the proposed Order for judgment) will be provided to the Judge for review.

On December 8, 2017, Morphew again personally appeared at the Courthouse to inquire about the status of the Default Judgment. The Clerk informed Morphew that the 'Judge's "assistant" (no name provided) had picked up the motion and accompanying documents 'last Friday' (December 1, 2017) but 'the Judge was out all week signing Orders; she will be back next week.' On that same day, and in the interest of good faith and fair dealings, Morphew served its combined motion for entry of default and default judgment upon the defaulting party, Collins, via his attorney of record, Michael Scarafile.

On December 19, Collins *personally* filed an Answer to the complaint and a response to Morphew's default motion (**Collins Answer, December 19, 2017**) (**Return to Motion, December 19, 2017**). The Chief Deputy Clerk of Court, Becky Stevens, sent out an email to Collins' attorney, Michael Scarafile, and cc'ing all counsel of record and Morphew, pro se informing him of his client's improper action, or violation of Rule 11 SCRCP, for failing to contain his attorney's name or signature, and that the filings were invalid (**Email Clerk to Scarafile, et al. December 19, 2017**). The filing deficiency was never corrected or remedied, and the Clerk failed to strike the filings from the record as required by the rules.

On January 16, 2018 Morphew's deposition took place. Though Collins was present at Morphew's deposition and attempted to question her, Morphew refused his questioning, stating to opposing counsel Collins was represented by counsel and his attorney was not present. Collins became very belligerent, informed Morphew she had to answer his questions, and then threatened

Morphew with charging her with all costs associated with holding another deposition if she refused. Morphew ended her deposition.

On January 19th, 2018, Morphew requested a damages hearing on the next available court roster date, and then retracted when the Clerk answered a hearing was not necessary [in this instance] **(Email – Morphew and Stevens January 19, 2018)**

Morphew: Good afternoon, Ms. Stevens-

I would like to request a damages hearing on the next available court roster date on my *Motion for Entry/Judgment* against Defendant David Collins in which an *Entry of Default was entered on November 27, 2017.*

Stevens: Ms. Morphew,

You submitted a proposed order; thereby not making it necessary for a hearing. Do you want to retract that now?

On January 23, 2018, Morphew requested a status of the Default Judgment. The Clerk replied it is still with the Judge under review. **(Email Morphew and Stevens, January 23, 2018).**

Morphew: Good afternoon, Ms. Stevens-

May I inquire as to the status of the *Default Judgement* against Defendant David Collins (only)?

Stevens: It is still with the Judge under review.

On January 30, 2018, when the deficiency wasn't corrected, and the Clerk refused or failed to strike Collin's "Answer" and "Return to Motion", Morphew filed a Motion to Strike both filings due to, including but not limited to, its violation of SCRCP Rule 11(a), specifically its filing did not contain his attorney of record's name or signature, therefore making the filings

invalid[6]. Further, the filings failed to meet the statutes or timeliness, and were not sufficient. **(Motion to Strike Def. Collins Answer and Return to Motion, January 30, 2018)**

On February 14th, 2018 and after many inquiries to the court attempting to schedule a hearing or to obtain status of the default judgment as presented above and in correspondence with the Clerk **(Emails Morphew/Stevens, February 4-February 17, 2018)**,

From February 4 to February 6th, Morphew attempted to explain to Ms. Stevens that she was asking for a *judgment* hearing NOT a *damages* hearing as in the previous request for a hearing, and explained why she wanted a judgment hearing on the entry of default.

(Feb 4th) **Morphew**: Good afternoon, Ms. Stevens -

I would like to schedule the *judgement hearing* on the next available docket for my Motion for default judgement against Defendant David Collins on above referenced case.

Motion filed November 27, 2017; *Entry of default on November 27, 2017.* (Emphasis added)

(Feb 5th) **Stevens**: Mr. Morphew, I had explained to you before that the motion packet went upstairs to the Judge. The last time you inquired of this I explained this to you and you instructed me to not to withdraw the packet from the judge and set it for a hearing; but rather to leave it the way it was. Now you are asking again for a hearing? I do not have another term of court for motions until the end of April. Do you want me to withdraw the packet you submitted and set the motion for a hearing?

(Feb 6th) **Morphew**: Hi Becky,

[6] The deficiency was not corrected after the Clerk called such deficiency to his attorney's attention, but the Clerk failed or refused to strike the unsigned papers as required by Rule 11.

I'm so sorry if I'm confused. I thought there normally is a judgement hearing AND a damages hearing. Before, I had asked for a "damages" hearing which you said was not necessary since I had submitted the damages along with the motion.

This request is for a *"judgment" hearing*, with my reasoning for this request being the Default was entered on November 27,2017 and it's been over 2 months since its entry, I was afraid it was me who was holding up the "entry of judgement" by failing to request a hearing.

After reviewing SCRCP Rule 55, it seems a hearing for judgment is required since the defaulting party had previously "appeared" in this case through his attorney. Pursuant Rule 55(b)(1), "...a Judge, upon Motion...affidavit of amount due, shall enter Judgment..., if that party has been defaulted for failure to appear..." In this instance Mr. Collins has 'appeared' and he has not been defaulted for failure to appear, therefore see Rule 55(b)(2). Per Rule 55(b)(2), "*If the party... has appeared in the action*, the party shall be served with written notice of the motion...at least 3 days prior to the *hearing* on such application.

I feel that if a judgment hearing isn't conducted, then this would provide a clear and valid reason for appeal by the defaulting party, as this could be raised on issue as an abuse of discretion, and possibly delay this action and my pending action (for fraud/fraud on the court)from which this action arises.

So, yes, based on the reasoning above, I would like to set the *default judgment motion* for hearing on the next available docket. Per your response, I understand the next available docket for Motions is at the end of April.

Again I apologize profusely for any confusion and requests that produce any undue actions by this court.

Thank you for your assistance and have a great day!

(Feb 6) **Stevens:** The Order that was sent up to the Judge is an Order for Entry of Default and directs the Clerk of Court to set the matter for a damages hearing.
Isn't that what you want – a Damages Hearing?

On February 7, 2018 Morphew felt something was not as it appeared and asked specifically, "*On what date did the Clerk enter David Collins' default upon the calendar (file book)?*" and "*Exactly what <u>all</u> is being reviewed and ruled on by the Judge?*"

(Feb 7) **Morphew:** Ms. Stevens – I do not want to withdraw the motion packet and schedule any hearing until I can understand what exactly is being reviewed and ruled on by the judge, as I thought the judge was reviewing the *Motion* and *entry of default* in order to rule on entry of default judgment against Collins.

Again my profuse apologies for my confusion, but if you could please clarify some things for me, as it may help me understand in what state my default motion is at.

On what date did the Clerk enter David Collins' default upon the calendar (file book)?

Exactly what all is being reviewed and ruled on by the Judge?

Why is the Order "ENTRY OF DEFAULT/DAMAGES HEARING" being reviewed as you had already told me in your January 19th email (see below communications) that a damages hearing is not necessary (and not going to be scheduled unless I withdrew the motion packet).
Wouldn't this order be moot if no hearing is taking place?

...

I really appreciate all your help, and especially your assistance in this matter.

Five (5) days later, on February 12th, when Morphew received no response, she again emailed the Clerk asking directly, "*On what date did the Clerk enter David Collins' default upon the calendar (file book)?*" Her only reply to Morphew's direct questions was, "*We do not have a Default book anymore—we are computerized. Please refer to the Rules and statutes relating to defaults.*" The Clerk failed or refused to answer Morphew's administrative questions, instead her response was clearly condescending as Morphew had quoted in her email request *precisely* current Rule 55(a) from the SCRCP Rules regarding default. "SCRCP Rule 55(a): DEFAULT: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the Clerk shall enter his default upon the *calendar (file book)*." **(Emails, Morphew and Stevens, February 4 through February 12, 2018).**

Morphew felt it moot to make a third inquiry, as it may be considered harassment, and was assured the Clerk would have informed her if default was not entered or if she failed to enter default for *any reason* as entering default was *the Clerk's* administerial requirement; or at least inform Morphew if it was not entered and why in order to clear up any confusion or miscommunications.

Two days later, on February 14th, 2018, and though Morphew requested a hearing several times previously, Morphew received an email from the Chief Deputy Clerk stating the judge was issuing an Order denying her Motion for *Default Judgment*, and that all other motions not yet heard will be scheduled on the next Motion Roster **(Email Stevens to Morphew, February 14, 2018)**. The email did not raise issue of its entry, nor did it contest, deny, dismiss or relieve Collins of his default.

On February 23, 2018, said Order denying her Motion for *Default Judgment* was filed. No findings of fact, standard of review or law analysis was included in the Order to support its ruling. It further stated the Clerk was directed to schedule hearings for the pending Motions. Again, the trial court did not raise issue of its entry, nor did it contest, deny, dismiss or relieve Collins of his default (**Order denying Appellant's Motion for Default Judgment, February 23, 2018**). No scheduling notice provided.

To err on the side of caution, Morphew filed a *second* Motion for Entry of Default and Default Judgment against Collins on April 4th, 2018. (**2nd Motion for Entry of Default and Default Judgment, April 4, 2018**)

On May 12, 2018, Morphew received notice that a hearing was scheduled for May 29, 2018 to resolve pending Appellant and Respondents motions; included in that list was Morphew's *Motion for Entry of Default and Default Judgment* and her *Motion to Strike Collins Answer and Return to Motion*. Morphew asked the court to reschedule due to a pre-planned family vacation Memorial weekend. The court denied her request. Morphew cancelled her vacation in preparation for the hearing.

Unfortunately, due to an emergency room visit with her daughter very early on May 29th, Morphew was unable to attend the hearing, considering the circumstances and that the hearing was a 2 ½ hour drive. In respect of the opposing parties and the court, Morphew provided a hurried notice on or around 6:40 AM on May 29th to all (including the Judge, his [Clerk], his [secretary], and the Clerk of Court], that she would not be attending due to an emergency (**Morphew e-mail dated May 29, 2018**).

Though all parties including the court were given notice hours in advance of Morphew's inability to attend the hearing, the opposing parties still appeared. Unbeknownst to Morphew until this appeal *and* receiving the hearing transcript that indeed a hearing was held in Morphew's

absence[7]. It was discovered the opposing parties made several condemning, slanderous in nature or false accusations against Morphew or her character in what appears to be an attempt to demean her in the eyes of the trial court. Further, the trial court allowed testimony from the respondents and the Chief Deputy Clerk of Court in which they gave false evidence in order to relieve Collins of his default or its entry of, and all without Morphew present to oppose or defend herself. The opposing parties had even attempted to obtain a ruling to exempt the case from ADR[8] even though ADR had been previously deferred in an Order formerly submitted by the same judge in this same case. Again, all in Morphew's [excused absence].

Though all motions were continued, and though Collins' failed to present a motion or have a motion in the record requesting relief pursuant SCRCP Rule 55(c), Collins insisted the court hear his defense to his default. The trial court allowed it to "give him peace of mind." **(Hearing Transcript, May 29, 2018 Pg. 7 line 25 thru Pg. 8 line 3)** After several false statements from Collins [that he filed a motion requesting relief, and that he was currently engaged in discovery] and false testimony or evidence from the Clerk, including she 'didn't enter default because Collins filed an Answer[9]', he judge immediately and from the bench made his ruling, stating "*Alright, you're not in default.*" **(Hearing Transcript, May 29, 2018 Pg. 6 line 20 thru Pg. 8 line 4)**.

The false statements to the trial court include calling Morphew a repeated criminal, that she's avoiding service, she's acting improper in the litigation, and that she was refusing or preventing discovery, all which is false.

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[7] Until receiving the transcript for appeal, Morphew was unsure if a hearing was held or what motions were heard, if any. The Order failed to provide any testimony or evidence produced, and the Clerk failed to respond to Morphew's request for the court notes of the 'alleged' hearing when filing her 59(e) motion.

[8] **Trans. pg. 16 line 8 through pg. 21 line 21**

[9] This was the first time Morphew knew that default was not entered, or that there was any alleged issue with the entry of default.

"*She's somewhat of a recidivis*[10] *in this.*" **(Trans pg. 5 line 19)**

"*She's currently avoiding service* [of a supplemental proceeding]"
(Trans. pg. 5 line 19)

"*It's as if she wants to participate when in this string of litigation when it's convenient to her but not when it's convenient to us.*"
(Trans. pg. 9 line 23 through pg. 10 line 1)

"*...we had taken Mrs. Morphew's deposition several months ago I* [Collins] *guess. And I was the last one in the questioning line. And at that time she believed me to be in default and still to be represented by Mr. Scarafile which was clearly not the case. I had already submitted an answer to the Court. And she refused to answer my questions.*"[11] [12]
(Trans. pg. 15 lines 10-17)

Morphew states she is not a criminal, especially a repeated criminal, and objects to the apparent prejudice to her character, especially in her absence. Further she had no idea of any supplemental proceedings in the original case or that they had even tried to serve her, therefore was not avoiding service, especially since she has been told many times by the Master of Equity that that original case has ended; he even denied her motion for an order of protection [requesting relief from all trials, depositions, hearings, and court appearances in civil matters regarding the case for listed times] because he did not have jurisdiction as 'the case was ended'. Moreover, Morphew contends she has *never* missed a hearing or a filing time constraint in any of the cases, and has participated fully -- and possibly above and beyond the expectations of a pro se. It was

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[10] Legal Definition: a repeat criminal offender, convicted of a crime after having been previously convicted; Merriam Webster Dictionary: specifically : a habitual criminal.

[11] Collins was and is in default, and was still represented by Michael Scarafile at that time and didn't request to be relieved of representation until after the "deposition incident". Until time of the court order relieving Mr. Scarafile, he is considered counsel of record representing Collins is obligated to provide competent representation until relieved by the court (Rule 11(b) SCRCP requires that "[a]n attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the Court, and not otherwise." Motion to be relieved of counsel filed January 24, 2018 and Order filed 2 days later, January 26, 2018.

[12] Collins answer is invalid and is required to be struck from the record, as argued herein Brief, therefore Collins provided false evidence.

extremely prejudicial that the opposing party used the *only* time she was absent, and an excused absence to boot, to gain favor with the court by making Morphew look as if she was a criminal, harasser or intentionally refusing to participate. Morphew much rather have attended the hearing than the very frightening emergency room visit with her daughter.

Additionally, Morphew has never refused any discovery requests, or intentionally or in bad faith refused to answer any questions by the opposing counsel, though Collins focused the court into believing that Morphew, without justification or unlawfully, refused his discovery, specifically that she refused to answer his questions at her deposition. What he deliberately failed to inform the court was the fact he was in default AND represented by counsel at the time of Morphew's deposition, and that his counsel was not present.

Further, Collins made false statements material in the hearing stating he was not in default, he was not represented by Mr. Scarafile at the time of the deposition[13], and that he had filed an Answer[14,15]. At that time, Collins had been suspended from practice by the SC Supreme Court for fraud, which he plead guilty to, but he was still a prior experienced attorney and was well aware how depositions, defaults and the requirements to withdraw as counsel worked. Therefore it can only appear that he attempted to bully [or trick] Morphew, an unrepresented party, into answering his questions at the deposition, and consequently provide him with the means for the trial court to later "excuse" his default[16]. Collins had *full knowledge* of his default, that he was still represented

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[13] Morphew's deposition was on January 16, 2018. Mr. Scarafile did file a motion to withdraw from representing Collins until January 24th, after Morphew challenged Collins at her deposition. An Order granting his withdrawal was issued on January 26th, 2018.

[14] His Answer filed December 19, 2017 was not valid as it was not signed by his attorney and critically failed SCRCP Rule 11.

[15] Morphew properly proceeded to refuse to answer his questions, especially in light of the fact that he was in default or should have been in default, and there was a pending motion to strike his Answer due to its invalidity.

[16] Though Morphew did not fall for their "trick", Collins took advantage of Morphew's excused absence from the hearing and falsely stated he participated in discovery and '*depositions*' to convince the trial judge to relieve him of default or its entry of.

by counsel when filing legal documents without his attorney's name and signature, and the impropriety attending a deposition to question Morphew without his attorney present when he proceeded to perjure about those critical facts during two court proceedings. To allow Collins to succeed in avoiding punishment for violating SCRCP Rule 11 and his improper or unlawful actions is inexcusable. If Morphew had done the same, it's certain the repercussions would be heavy against her.

Also, the negative projection of Morphew to the judge in her absence was to undermine her character in order to support their position to have *all* their motions granted and Morphew's denied (or, again, to end the case).[17]. Morphew finds that the use of such slanderous actions by an opposing party to obtain favor with the court or demean Morphew's character especially in her absence is highly inappropriate and demonstrates discrimination, bias and partiality by the opposing parties, and by the trial court for allowing it.

To add 'salt to the wound', so to speak, though the judge and the opposing parties agreed to continue *all* motions, and though Collins' failed to present a motion or have a motion in the record requesting relief pursuant SCRCP Rule 55(c), Collins insisted the court hear defense to his default, and the court allowed it to "*give him peace of mind*" **(Hearing Transcript, May 29, 2018** Pg. 7 line 25 thru Pg. 8 line 3). After several false statements from Collins [that he filed a motion requesting relief, and that he was currently engaged in discovery] and false testimony or evidence from the Clerk, including 'she didn't enter default because Collins filed an Answer',[18] the judge

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[17] During the hearing, all parties agreed to a continuance of all motion if Morphew submitted proof to the court and opposing parties of her daughter's ER visit or sickness within 10 days of the Order. Said proof was mailed FedEx to the Court on June 4, 2018, and all motions, including Morphew's first Motion for Entry of Default, its Second Motion for Entry of Default and Judgment, and its Motion to Strike Def Collins Answer and Return to Motion, were first scheduled to be heard on August 6th but had to be rescheduled to October 1st due to a conflict in the judge's schedule

[18] The 1st time Morphew had knowledge or was given notice that entry was not completed and for that specific reason was on appeal after receiving the hearing transcript.

made his ruling, stating "*Alright, you're not in default.*" (**Hearing Transcript, May 29, 2018** Pg. 6 line 20 thru Pg. 8 line 4). The Motion for Entry of Default was on November 27th, 2017. Collins filings were on December 19th, 2017. Therefore, entry was required on November 27th pursuant Rule 55(a). Further, on December 19th the Clerk acknowledged Collins' filings were invalid, therefore the Clerk perjured herself or provided false evidence at the hearing that he had filed an Answer (**Email Clerk to Scarafile, et al December 19, 2017**).

An Order was issued on May 31st, 2018 ordering Morphew to provide proof of her ER visit, proof of her physical address, and *specifically* finding Collins not in default, though no findings of fact, standard of review or law analysis was included to support its ruling. Morphew provided proof of both conditions on June 4th, accordingly, the judge's 'pending' ruling on all motions, including Morphew's Motion for Entry of Default and Default Judgment and her Motion to Strike Collins Answer and Return to Motion, was removed and were rescheduled to be heard at a later date.

After receiving the Order, Morphew filed a Rule 59(e) motion objecting to its ruling relieving Respondent Collins of his default or finding good cause to relieve him of his entry of default. (**59(e) Motion, June 11, 2018**). Said motion was presented but not orally heard[19] on October 1, 2018, and was later ruled moot by Judge Murphy. Instead the trial court relieved Collins of Default by denying Morphew's 2nd motion for entry of default 'because he filed a timely motion to dismiss' [in 2016] (**Email Chandler Rowh to all parties, October 18, 2018**)(*See* Issue on Appeal "Did the trial court err or abuse its discretion in denying Appellant's 2nd Motion for Entry of Default against Respondent Collins, or relieving Collins of default, or its entry of?" Pg. 61 of Brief)

[19] When Morphew attempted to present her motion, the presiding judge chose to consider the filings (motions and responses) instead of an oral presentation.

Consequently, (as detailed below arguments) Morphew contends the Court erred or abused its discretion or process [ruling Collins not in default or that good cause exists to be relieved of any such entry of default] because: 1) a hearing conducted with the Plaintiff [excusably absent] violates her due process; 2) Collins failed to Answer or file a valid ANSWER to Morphew's Summons and Complaint; 3) Collins failed to request or file a motion pursuant Rule 55(c) to be relieved of Entry of Default; 4) Collins failed to present good cause to be relieved of his default or its entry of default; and 5) the testimony presented during the hearing by Collins and the Chief Deputy Clerk of Court to obtain this ruling is false or misrepresented, and should be considered fraud upon the court.

ARGUMENTS

A. The trial Court erred or abused its discretion [specifically] finding Respondent Collins not in default.

The ruling or Order of the lower court is void, unlawful or improper in-part as it is without valid evidentiary support or fails to have grounds to support a ruling specifically finding Collins not in default. Though the Clerk testified that she did not enter default because Collins filed an Answer, and Collins testified he had filed a motion for relief of default, and that he was currently engaged in discovery, therefore good cause is shown, the record shows to the contrary, specifically that Collins neither filed an Answer or valid Answer nor did he file or present a motion pursuant Rule 55(c) requesting relief from default[20], therefore Collins was not properly before the court when he presented defense to his default or when the court made its ruling. Likewise, *no* motion,

[20] Pursuant Rule 55(b)(1), "*An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.*" Neither an application for relief from default was made by motion, either in a filing or during the hearing, nor was a motion for relief stated in the written notice of the May 29th hearing, therefore Collins failed to be properly before the court to request relief or to provide the lower court jurisdiction or the inherent power to hear and adjudicate relief from default.

whether for default or relief from such default, *was before the court or ruled on* (**Hearing Transcript May 29, 2018**) (**Order, May 31, 2018**). An Order without evidentiary support or grounds in which to hear the subject matter before it, in this case, without a motion requesting relief from default or good cause shown, is void, as the lower court did not have the inherent power or jurisdiction to hear defense to be relieved or to make a ruling that Collins is not in default or to relieve him of entry of default. Indubitably, Collins neither made a claim for relief nor showed good cause to be relieved of his default to form a basis for Judge Dickson's order in part. "It is an error of law for a court to decide a case on a ground not before it." *Griffin v. Capital Cash*, 310 S.C. 288, 294, 423 S.E.2d 143, 147 (Ct.App.1992); see *Friedberg v. Goudeau*, 279 S.C. 561, 562, 309 S.E.2d 758, 759 (1983) (reversing the grant of summary judgment because the ground for summary judgment was not properly before the trial court). (A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it) *Skinner v. Skinner*, 257 S.C. 544, 550, 186 S.E.2d 523, 526 (1972). Such Order is void. Because Judge Dickson granted Collins relief where no motion for relief or relief pursuant Rule 55(c) was requested or on a ground he did not raise or argue or failed the good cause test, it was error for him to rule Collins not in default or good cause exists to be relieved of default or its entry of. (The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court) *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E. (2d) 535 (Ct. App. 1987. (An order based on an exercise of that discretion, however, will be set aside if it is controlled by some error of law or lacks evidentiary support) *Ricks v. Weinrauch, supra.*

Collins appeared in this case by filing a skeleton Motion to Dismiss pursuant Rule 12(b)(6) and 12(b)(8) (**Motion to Dismiss-- Michael Scarafile, Susan Nicholson, Carolina One Real Estate and David Collins, September 20, 2016**) but failed to Answer or otherwise defend the Summons and Complaint (as stated above FACTS and DISCUSSION and repeated herein), and

specifically before Morphew filed its combined Motion for Default Entry/ Judgment on November 27, 2017, therefore it cannot be denied Collins is in default. Just as important, Morphew provided an Affidavit in support of entry of default, therefore, pursuant to Rule 55(a) Default shall (or must) be entered by the Clerk. (**Affidavit In Support of Entry of Default, November 27, 2017**). SCRCP Rule 55(a) Entry. "When a party against whom a judgment for affirmative relief is sought has *failed to plead or otherwise defend* as provided by these rules and that fact is *made to appear by affidavit* or otherwise, the Clerk *shall* enter his default upon the calendar (file book)." (Emphasis added)

Even so, the entry of default is of no consequence. (Whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the Clerk was required to perform once the default was made to appear by the affidavit of Mrs. Thynes) *Thynes v. Lloyd,* 294 S.C. 152, 363 S.E.2d 122 (1987). (Entering default is a ministerial act to be automatically performed once an affidavit shows the defendant has failed to comply with the requirements of the rules) *Stark Truss Co. v. Superior Const. Corp.*, 602 SE 2d 99 (2004). Entry was completed or should have been completed as of November 27, 2017, therefore it cannot be denied by the Court. Once verified and entered by the Clerk, and not objected to by the defaulting party or court, entry of default cannot be denied or the defendant cannot be found "not in default" at a later time unless there was some error of law in its entry and such error is supported by evidence. Neither the lower court nor Collins raised any issue or raised issue with an error of law in its entry or required entry, as argued herein Brief.

B. The trial court erred or abused its discretion or process in finding good cause exists to set aside entry of default or any such entry of default against Defendant Collins.

As argued above, Collins is in default. In order to relieve defendant from entry of default, the movant must file a motion pursuant Rule 55(c) requesting such relief and for good cause

shown. It is a well-known rule that a court may set aside an entry of default for good cause shown. Rule 55(c), SCRCP. Collins failed to file or present a motion or motion pursuant Rule 55(c) requesting relief from default or entry of, therefore Collins was neither before the court properly when he presented his defense nor did the lower court have jurisdiction to hear or rule Collins not in default or that good cause exists to relieve him of default.

Even IF this court allows Collins' defense to be presented, Morphew argues Collins failed to demonstrate good cause existed to set aside default or its entry of and failed to give reasons why vacation of the default entry would serve the interests of justice as required by SCRCP Rule 55(c). Again, if relief is not requested pursuant motion Rule 55(c), then good cause fails to exist or cannot be shown, therefore relief cannot be given. Nevertheless, the Honorable Judge Dickson somehow *specifically* found good cause exists to set aside Collins entry of default.

The standard for relief of default requires a party seeking relief from an entry of default under Rule 55(c) to 1) file a motion, and 2) *provide an explanation for the default* and 3) *give reasons why vacation of the default entry would serve the interests of justice.* The Court will then consider whether the default was the result of the defendant's culpable conduct. Determination of whether good cause exists to set aside an entry of default depends upon the court's applying its discretion with proper regard to the peculiar circumstances surrounding the case before it. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.,* 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App. 1989). See *Sundown Operating Co. v. Intedge Indus., Inc,* 383 S.C. 601, 681 S.E.2d 885, (S.C. 2009); *Wilder v. Blue Ribbon Taxicab Corp,* 396 S.C. 139, 719 S.E.2c 703 (S.C. Ct. App. 2011); see also *White Oak Manor, Inc. v. Lexington Ins. Co.,* 407 S.C. 1, 12, 753 S.E.2d 537, 543 (S.C. 2014) (describing the standard for

relief from default as two pronged: first *requiring an explanation for the default* and *why setting aside the default would serve the interests of justice*, and second *requiring the moving party to present evidence* with regards to the factors set forth in Wham) (Emphasis added). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995).

Alternately, Morphew argues the trial court need make specific finding of fact for each factor for finding good cause, find facts specifically and state separately its conclusions of law, particularly in this instance because the Order stated that it "*specifically*" found Collins not in default or good cause exists to set aside his entry of default. Regardless, no Answer or valid Answer has been filed, and nowhere has relief been requested or good cause shown.

> Under SCRCP 52 (a), "[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." This Court has previously determined this requirement to be directory and that noncompliance would not form the basis for invalidating a judgment. *May v. Cavender*, 29 S.C. 488, 7 S.E. 489 (1888) (interpreting Section 291 Code of Laws of South Carolina); see also *Borg Warner Acceptance Corp. v. Darby*, 296 S.C. 275, 372 S.E. (2d) 99 (Ct. App. 1988). Rather, 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. See *Pawleys Island Civic Ass'n. v. Johnson*, 292 S.C. 208, 355 S.E. (2d) 541 (Ct. App. 1986) (interpreting Section 15-35-110 Code of Laws of South Carolina 1976).

Though the lower court made a ruling on testimony of the defaulting party and the Clerk alone (no exhibits presented), the evidence or testimony is false. Because a hearing took place in Morphew's excused absence and the court order failed to adequately state the basis for r the result it reached, Morphew argues this court should vacate or void the trial court order in part as specified herein. Ultimately, the court's ruling fails as it is not supported by any evidence or valid evidence or any motion requesting relief and should be considered void. "If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1Freeman on Judgments, 120c.) (An illegal order is forever void). Failure of the defaulting party to request relief or to demonstrate good cause in order to be relieved is a critical failure of a court order granting such relief and must be vacated.

Further, in this particular instance, the judge's failure to enumerate or adequately make specific findings or specific findings of the factors (as enumerated 1-3 above in *Wham v. Shearson Lehman Bros., Inc.*) is an abuse of discretion. Meaning, the lower court neither addressed the factors nor was its order supported by a motion for relief.

C. The trial court erred or abused its discretion or process, or violated Morphew's due process by conducting a hearing without Plaintiff present or while the disposition on all pending motions was stayed or rescheduled for a future date.

Appellant Morphew argues the lower court erred or abuse its discretion or process, or violated Appellant's due process by conducting a hearing, or hearing a defaulting party's defense without Appellant present. Further, the disposition of *all* pending motions was stayed, and then rescheduled for a future date.

During the hearing on said appealed Order, the lower court ruled all pending motions in this case to be rescheduled if Morphew could prove within 10 days of the Order of her emergency visit with her daughter. If she failed, then the Respondents' motions would be granted and all

Appellant's motions would be denied. **(Hearing Transcript, May 29, 2018) (Order May 31, 2018**, pg. 2, para. 1, 3 and 2 respectively).

Though all motions were on hold or pending 10 days, specifically through June 10th, 2018, the lower court improperly continued with a hearing, heard testimony and *specifically* ruled Collins not in default from the bench. Morphew argues hearing *any* testimony from any of the defendants at all, especially hearing and adjudicating default while the motions regarding the default were pending or stayed until a future date, is improper and an abuse of discretion. Further, to do so without Morphew present or without hearing the pre-conditional Motions to Strike [Collins' Answer and Return to Motion] and Morphew's Motion for Default and Default Judgment *first* is an abuse of discretion or violates the court's processes and/or Morphew's due process or caused further delay, has severely prejudiced Morphew.

If Appellant Morphew had been allowed to be present or allowed her due process to be heard or heard on its Motion for Entry of Default and Default Judgment and her Motion to Strike Defendant's Answer and Return to Motion *before* hearing and making its ruling, she would have brought to the attention of the court: that 1) Chief Deputy Clerk, Becky Stevens misrepresented or failed to inform Morphew that Collins entry of default had not been completed on November 27, 2017; 2) that the Clerk made false statements or misrepresentations or presented false evidence to the court in regards to entry of default against Collins and the validity of Collins' filings; 3) that the Clerk should not have even accepted Collins filings to be filed; 4) that Collins made false statements or misrepresentations or presented false evidence to the court in regards to his default or entry of; 5) that Collins had failed to Answer Morphew's complaint; 6) that there was no motion requesting relief of default before the court (i.e., Collins had failed to move for relief of default or failed to present a motion or sufficient motion for relief of said entry of default); 7) that Morphew had a pending motion to strike Respondent's return to motion and his Answer due to

their invalidity; 8) Morphew would have objected to the evidence, arguing evidence not yet deemed valid [21] is inadmissible to be used as evidence or in a court ruling, and 9) by the SCRCP Rule 55 or by law entry was complete or should have been completed and cannot be denied, and 10) default judgment should be entered. Instead, the trial court chose to rule Collins not in default in Morphew's absence *and* while the determination on *all* motions or any related motions specific to his default was conditional or pending to a date in the future.

As argued herein Brief, such ruling was based on false testimony or evidence, without the defaulting party properly before the court or without a motion before the court requesting such relief, and for reasons critically insufficient or nonsensical to do so.

D. The trial court erred or abused its discretion or violated Morphew's due process by failing to hear or consider Morphew's pending motions and evidence regarding the Respondent's Default before making a ruling based solely on testimony of the Respondent and the Chief Deputy Clerk of Court.

As stated above and repeated herein, if Appellant Morphew had been allowed to be present or allowed due process to be heard or heard on its Motion for Entry of Default and Default Judgment *and* her Motion to Strike Defendant's Answer/Return to Motion before finding Collins not in default or that good cause exists to relieve him of his default or its entry of, she would have brought to the attention of the court that both Collins *and* the Chief Deputy Clerk of Court, Becky Stevens made false statements or misrepresentations or presented false evidence to the court in regards to entry of default against Collins or to the validity of Collins' filings.

[21] **(Email Clerk to Scarafile, et al. December 19, 2017)**: email from Deputy Clerk to Collins' attorney, Michael Scarafile, stating *"Perhaps this matter needs to be addressed with the Hon. Maite' Murphy (in light of Judge Goodstein's recusal). Until then, I am not sure if the documents Mr. Collins filed today can be considered valid filings.*

Specifically, Collins gave false testimony, misrepresentation or false evidence presented by testifying he filed an Answer [or valid Answer], he filed a motion to be relieved from default, and he was currently engaged in discovery.

> MR. COLLINS: "So one thing I would like to know is exactly what my status is as far as default. *I filed a responsive pleadings upon getting served with these notices of default.* I need to know sort of what we've got on the Court's file as far as my status." **(Transcript, pg. 6 line 25 through pg. 7 line 4)**
>
> MR. COLLINS: "*And I'm engaged in discovery.* So you know it's a good cause showing I think. And I think the motion I filed -- *I actually filed a motion to be relieved from default ...*" **(Transcript pg. 7 lines 20-23)**

As argued herein Brief, Collins did not file an Answer or valid Answer, was not or ever has been engaged in discovery in this case[22], and has filed no motion or motion pursuant Rule 55(c) requesting relief from default or its entry of, therefore Morphew argues the lower court's order is void as the defaulting party was not properly before the court and such order is based on false, perjured or misrepresented pertinent material, testimony or evidence.

Specifically, the false testimony or evidence and misrepresentations presented by the *Clerk* is that "Collins had filed an Answer or valid Answer", "had done so before Morphew's motion for default/judgment", and "because Collins filed an Answer it's the reason she failed to enter default" [on November 27, 2018]. The truth or fact remains on record that Collins filed an Answer *22 days AFTER* Morphew filed her motion to entry of default and judgment [i.e., 3 weeks after default or its entry of] BUT also the Answer was invalid as it was never signed by his attorney, and was

[22] Collins has participated in no depositions, issued no subpoenas, or requests for documents or admissions; Morphew cannot recall any discovery Collins is engaged in.

required to be struck from the record pursuant Rule 11. Regardless, as argued previously and repeated herein, entry of default was required to be entered pursuant Rule 55(a); consequently, the Clerk had no legal justification for its failure to enter default, therefore her testimony fails to support a ruling that Collins was not in default.

CLERK: "*And obviously the Clerk's office couldn't enter default because Mr. Collins did, in fact, file an answer*". **(Transcript pg. 7 line 17-19)**

Not only was the order based on false evidence and testimony, but the lower court allowed such defense to be presented without a motion for relief presented by the defaulting party, without Morphew present, AND for reasons critically insufficient. Those reasons specifically, Collins wanted "*peace of mind*" and "*status*" on his default.

MR. COLLINS: "*So one thing I would like to know is exactly what my status is as far as default. … I need to know sort of what we've got on the Court's file as far as my status.*" **(Transcript, pg. 6 line 25 through pg. 7 line 4)**

MR. COLLINS: "… *But I would like to have at least that issue resolved really since it's not dipositive of any of the issues. But it gives me peace of mind.*"

THE COURT: "All right. You're not in default."

MR. COLLINS: "Thank you." **(Transcript May 29, 2018 pg. 7 line 20 through pg. 8 line 5)**

Maybe most importantly, the record shows that Collins was represented by counsel, Michael Scarafile, at the time he filed his "Answer" and a "Return to Motion" on December 19, 2017, but both filings were not signed by his attorney, therefore were invalid and violated Rule 11. Further, the Clerk had issued an email to Collins counsel the day of the filings stating the filings were invalid, therefore the filings should not have been accepted for filing by the Clerk or should

have been stricken from the record when it wasn't immediately remedied (**Motion to Strike Def. Collins Answer and Return to Motion, January 30, 2018**). Both Collins and the Clerk (therefore the judge) had knowledge of this fact or should have had knowledge, thus such acceptance of the filings or their validity is a violation of Title 30, Code of Laws of South Carolina 1.26 [Pro Se Filings When Party is Represented by an Attorney].

> (Since there is no right to "hybrid representation" that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel. *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). Because petitioner was represented by counsel, the pro se motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity... We also take this opportunity to remind judges and Clerks of court of our directive in Foster *not to accept substantive documents,* with the exception of motions to relieve counsel, filed pro se by a party who is represented by counsel.) *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010)(emphasis added).

Even so, such deficiency was not remedied after Collins' attorney was given immediate notice *by Ms. Stevens herself.* Pursuant SCRCP Rule 11(a), both filings were invalid and were required to be struck from the record if not promptly signed by his attorney, and the Clerk had full knowledge of this fact before later providing its false testimony.

> Rule 11(a), SCRCP provides: "Every pleading, motion or other paper of a party represented by an attorney *shall be signed* in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose

address and telephone number shall be stated." "If a pleading, motion or other paper is not signed or does not comply with this Rule, *it shall be stricken unless it is signed promptly* after the omission is called to the attention of the pleader or movant." Rule 11(a), SCRCP (emphasis added).

Ms. Stevens failed or intentionally failed to strike those filings. Even so, such striking is a ministerial task and failure to do so does not render the filings valid or part of the record, especially in light of her notice of the deficiency and Morphew's pending motion to strike those filings due to their invalidity.

If the lower court had allowed Morphew to be present or if it had considered Morphew's Motion for Default/Judgment and it Motion to Strike [Collins' filings] then it would not have declared Collins not in default, instead it would have known that it did not have the inherent power or jurisdiction to relieve Collins of default, or that Collins failed to Answer the complaint *and* failed to request relief of default pursuant Rule 55(c) or failed to show good cause to be relieved of his default. Accordingly, it would have most likely entered default judgment against Collins or have been required to.

Because the court violated Morphew's due process, abused its discretion, or violated the court rules, an officer of the court and the Respondent presented perjured and false evidence in a court proceeding, therefor leading the lower court to make an unlawful ruling and causing substantial prejudice to Morphew. Morphew has been severely prejudiced in defending the lower court's Order/ruling and its appeal, and has been caused undue time, cost and stress in what is already turbulent litigation, not to exclude further delay in the proceedings.

E. The Chief Deputy Clerk of Court failed or intentionally failed to enter default against Respondent Collins or failed or intentionally failed to strike the Respondent's Answer and its Return to Motion, then used the unlawful or invalid filings' presence on the record to commit fraud on the court.

As stated in the facts and history, and argued herein Brief, Morphew contends Collins is in default; but that the Chief Deputy Clerk of Court, Becky Stevens, failed or intentionally failed to enter default against Collins and then to inform Morphew that default had not been completed. Further, Collins Answer and its Return to Motion ("filings") violated Rule 11 and were required to be struck from the record. The Clerk had specific knowledge of the fact the filings were not promptly signed or ever signed by Mr. Scarafile, the Clerk failed or intentionally failed to do so.

> On Dec 19, 2017, at 2:51 PM, Becky Stevens BStevens@dorchestercountysc.gov> wrote:
>
> *Mr. Scarafile,*
>
> *Mr. Collins filed today the attached documents. The Court file shows that on September 20, 2016 you filed a Motion to Dismiss on behalf of several defendants, including Mr. Collins – thereby making you his attorney of record. I do not see where there is an Order Relieving you as Mr. Collins' attorney. Please let me know what the status is as parties are not supposed to be filing documents when they are represented.*
>
> *Becky Stevens*
> *Chief Deputy Clerk of Court*
> *Dorchester County Clerk of Courts Office*
>
> On Dec 19, 2017, at 4:32 PM, Becky Stevens <BStevens@dorchestercountysc.gov> wrote:
>
> Mr. Scarafile,
>
> I am confused because the Court's file shows Smith & Closser as representing Dudek, Cross, yourself, Nicholson and Carolina One Real Estate pursuant to the Notice of Appearance filed on February 17, 2017. Is there an Order of Substitution of Counsel that did not get sent to the Court? Perhaps this matter needs to be addressed with the Hon. Maite' Murphy (in light of Judge Goodstein's recusal). *Until then, I am not sure if the documents Mr. Collins filed today can be considered valia filings.*
>
> Becky Stevens

(Email Clerk to Scarafile, et al. December 19, 2017)(emphasis added)

Rule 11(a), SCRCP provides: "Every pleading, motion or other paper of a party represented by an attorney *shall be signed* in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated." "If a pleading, motion or other paper is not signed or does not comply with this Rule, *it shall be stricken unless it is signed promptly* after the omission is called to the attention of the pleader or movant." Rule 11(a) SCRCP (emphasis added).

Even so, when the Clerk failed or intentionally failed to strike the filings when the papers were not signed promptly after the Clerk's notice, Morphew filed a Motion to Strike Collins' Answer and Return to Motion due to their invalidity, and requested sanctions or reasonable expenses incurred (**Motion to Strike Def. Collins Answer and Return to Motion, January 30, 2018**). Said motion was pending and scheduled to be heard at the time the lower court ruled Collins not in default or that good cause exists to relieve him of entry of default, therefore reasoning all opposing parties or their counsel, the judge and the Clerk had immediate knowledge of the pending motion before testifying or making its ruling.

Even with such intimate knowledge that Collins' filings were invalid, the Clerk still proceeded to 'validate' his Answer and misrepresent as if it were filed properly or filed before default or its entry of. The Clerk informed the judge that she couldn't enter default [on November 27, 2017] because Collins filed an Answer. Such false testimony from a court officer provided the material and pertinent evidence for the trial judge to find Collins not in default at the hearing in Morphew's excused absence.

If Morphew were present or if the lower court allowed Morphew its due process or maybe even considered her pending motions first, the outcome most likely would have been significantly different. Regardless of the false testimony, an invalid filing or a filing not yet deemed valid is inadmissible to support a ruling or as evidence, therefore, the lower court erred or abused its

discretion ruling Collins not in default or that good cause exists to relieve Collins of default or entry of such when its filings were invalid or insufficient, or when pre-conditional motions regarding Collins default and his filings have not yet been ruled on. The Clerk had complete knowledge of the falsities and had a duty to disclose the facts truthfully and fully, therefore the judge had complete knowledge or should have had knowledge of these facts.

Morphew further argues the Answer and Return to Motion's improper or unlawful presence in the court records was, along with the Clerk's and Collins' false testimony of their 'validity', committed in order to obtain a ruling in Collins' favor, or to gain an advantage for the subsequent grant of summary judgment to Collins (see **Issue on appeal Granting Respondent Collins Motion to Dismiss, Pg. 82 of this Brief**). Therefore, it appears the Clerk intentionally failed to enter default and strike the filings from the record in order to assist the trial court in its goal to dismiss Morphew's complaint in its entirety.

Further, it's clear Collins and the Clerk conspired to commit such unlawful acts in order to obtain relief. Where an officer of the court has a duty to disclose and to tell the truth, but instead conceals material and pertinent evidence and/or makes material and pertinent statements known to be false in order to obtain an unlawful ruling or ruling in a litigant's favor, that is fraud on the court[23], and this court should find both Collins and Stevens in violation of such and impose sanctions that this court finds appropriate. Again, if Morphew had been allowed to be present before the trial court allowed Collins to make his unlawful and perjured defense or before it made its ruling, she would have been able to object to the evidence; or prevent the perjury, misrepresentation or fraud on the court. Due to the substantial disregard for court rules and of the

[23] The Clerk, as an officer of the court, hid the truth, made a false statement, it was material and pertinent to the case, she did so with knowledge it was false, did so with intention and intent to prejudice Morphew, causing a delay in the proceedings and undue stress, costs and time of both the courts and Morphew. Morphew was not there to make clear the falsities, therefore had no knowledge of the statements or of their falsity.

judicial system and its processes by court officers, it appears the actions were intentional or in order to gain an advantage for an opposing party.

Additionally, Morphew struggles with the fact that Judge Dickson, Becky Stevens or Respondent Collins are guilty of recklessness, oppression, fraud on the court, or denial of due process or prejudice in their actions against Morphew. The trial judge not only refused to hear what Morphew had to say either orally, or written within her motions for default/judgment and its motion to strike respondent's filings, but it also - in her *excused absence*- heard and instantly ruled from the bench Collins not in default without a motion for relief presented, and for reasons not supported by good cause[24,25].

Morphew contends the actions of the lower court and its' officers as argued herein are highly improper, an abuse of discretion and process, violated Morphew's due process, and equally presents an unquestionable appearance of bias, prejudice or partiality. This impropriety combined with the improper or unlawful Order plus the email sent from the Clerk to the opposing parties and presiding judge celebrating Morphew's case dismissal and the opposing parties' win, Morphew questions whether or not this court or its officers have ever been impartial, unbiased or unprejudiced in any of its actions or rulings where Morphew was or is involved, and raises issue of any order or ruling by the Dorchester County Court and its officers being valid or fair. Based on the appearance of partiality or bias by the lower court and its officers, Morphew respectfully asks this court to keep in mind this as it reviews this appealed case and the 2 other appealed cases Morphew has pending against one (1) or more of the same respondents. **(Email Clerk to opposing parties, October 18, 2018)**; (*See*, Appellate Case No. 2018-000507)(*See*, Appellate Case No. 2017-001393).

[24] Collins *"asked for a status"* or a ruling on his default, and that *"it would give him peace of mind"*
[25] Collins stated he was 'engaged in discovery' and that is good cause to be relieved of default.

A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. *Sabariego v Maverick*, 124 US 261, 31 L Ed 430, 8 S Ct 461, and, is not entitled to respect in any other tribunal. "Even the most rudimentary of due process procedures gives the opportunity to be heard . . . to anyone directly affected by [an] official's action." *(Lockyer v. City & County of San Francisco* (2004) 33 Cal.4th 1055, 1108.) The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. *Hanson v Denckla*, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228.

"*Defendants who have been treated with unfairness, bias and the appearance of prejudice by this Court, and the opposing counsel, leaves open the question of how an uninterested, lay person, would question the partiality and neutrality of this Court: "...our system of law has always endeavored to prevent even the probability of unfairness.*" In re *Murchinson*, 349 U.S. 133, 136 (1955). *Marshall v. Jerrico*, 100 S. Ct. 1610, 446 U.S. 238 (where the court had a duty to ensure fairness but failed, or refused to ensure that fairness). (Emphasis added)

Morphew argues the Order of May 31, 2018 was grounded on fraud or fraud on the court and should be void, therefore "all proceedings founded on the void judgment are themselves regarded as invalid". (Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process) Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 - *Klugh v. U.S.*, 620 F.Supp., 892 (D.S.C. 1985). (Where Due Process is denied, the case is void) *Johnson v. Zerbst*, 304 U.S. 458 S Ct.1019; *Pure Oil Co. v. City of Northlake*, 10 Ill. 2D 241, 245, 140 N.E. 2D 289 (1956) *Hallberg v. Goldblatt Bros.*, 363 Ill. 25 (1936) A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative

by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. 30A Am Jur Judgments 44, 45.

CONCLUSION

Due to the facts and arguments provided herein, the Order of May 31st should be deemed void or in part, void, or is an abuse of discretion, an error of law, or lacks evidentiary support and must be vacated accordingly. As argued previously, the lower court did not have jurisdiction or the inherent power to deny default or its entry of, therefore its Order is in part void, precisely "*...Collins is not in default or good cause exists to set aside any such entry of default* ..." and must be vacated accordingly and remanded back to the trial court for further proceedings.

Appellant contends the improper or unlawful actions of the lower court and its officers cannot be construed to do substantial justice to Morphew or support in any way the court's *specific* ruling relieving Collins of Default or entry of Default. In fact, the lower court's general acceptance that Collins 'filed a timely or valid Answer and motion requesting relief', was engaged in discovery, or has shown good cause to be relieved of his default, all without allowing Morphew her due process or considering Morphew's Motion for Default/Judgment and Motion to Strike Collins Answer and Return to Motion [or the evidence provided therein] substantially prejudices Morphew. On top of its contention that the lower court violated her due process when a hearing was held in her [excusable] absence, the lower court or its officers' actions or its Order undermines the judicial system, its processes and public policy. Morphew respectfully asks this court:

- To Void the order of May 31st, 2018 in part, specifically its ruling Collins "not in default or good cause exits to set aside any such entry of default,";

- Additionally and based on a voided order in part, any additional proceeding or order founded on such to be regarded as invalid or void, specifically the Order denying Morphew's 2nd Motion for entry of default and default judgment, *and* the Order of November 15, 2018 granting Collins' Motion to Dismiss (converted to Summary Judgment) to Collins;
- Find Respondent Collins in Default and the order to state Defendant Collins has been found in Default and is hereby entered on November 27, 2017;
- If this Court finds the Chief Deputy Clerk failed to enter default as required, order that entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Plaintiff, but instead an error of the court;
- Order default judgement to be entered; and because no valid Answer or request for relief from default pursuant Rule 55(c) has been filed or timely filed, Appellant requests default judgment entered and damages awarded as such, and impose sanctions that this court finds appropriate.
- Sanction Collins for his fraudulent or unlawful actions as it deems proper;
- Sanction Becky Stevens, as an officer of the court for her fraudulent or unlawful actions or non-actions as it deems proper; and
- Provide for any other relief this court deems proper.

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3. Did the trial court err or abuse its discretion in denying Appellant's 2nd Motion for Entry of Default against Respondent Collins, or relieving Collins of default, or its entry of?

In this action for fraud or fraud on the court and several other causes of action, Appellant, Molly M. Morphew, pro se, appeals the trial court's decision to deny its 2nd Motion for Entry of Default and Judgment against David Collins, specifically denying entry of default because he filed a timely motion to dismiss.

Appellant Morphew appeals.

ADDITIONAL FACTS and HISTORY

Pursuant to Rule 4 SCRCP, a copy of the Summons, together with a copy of the Complaint, was served upon the Respondents by certified mail, restricted delivery, return receipt requested on August 24, 2016, and service of process was deemed complete, but specifically on Respondent Collins on August 26, 2016. On September 20, 2016, a Motion to Dismiss was filed by Collin's Attorney, Michael C. Scarafile. The Motion to Dismiss was heard and granted in part and denied in part on November 7, 2016, and an Order was filed on January 31, 2017. Respondent has not appealed or contested the ruling.

After several months, with many various Motions and Answers submitted, including several Motions for reconsideration, none which Collins was a party to, a scheduling Order was filed on November 7, 2017. Discovery ensued. Collins has not conducted any discovery or participated in any depositions[25], and has not been a party to or involved in or is currently involved in any discovery prior to, or after, his default or entry of on November 27, 2017.

Shortly after the entry of a scheduling order, Morphew filed a Motion for Default Entry and Judgment against Collins. (**Motion for Default Entry and Default Judgment, November 27, 2017**).

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[26] Though Collins was present at Morphew's deposition and attempted to question her, Morphew refused his questioning as he was represented by counsel and his attorney was not present. Collins became very belligerent, informed Morphew she had to answer his questions, then threatened Morphew with charging her with all costs associated with holding another deposition if she refused. Morphew ended her deposition.

On December 8, 2017, Morphew personally appeared at the Courthouse to inquire about the status of the Default Judgment. The Clerk informed Morphew that the Judge's "assistant" (no name provided) had picked up the Motion and accompanying documents 'last Friday' (December 1, 2017) but "the Judge was 'out all week signing Orders; she would be back next week." On this same day, and though not required to do so but in the interest of good faith and fair dealings, Morphew served its motion for entry of default and default judgment upon the defaulting party's attorney of record, Michael Scarafile.

On December 19, Collins, though represented by counsel at that time, instead *personally* filed an Answer to the complaint and a response to Morphew's default motion (**Collins Answer, December 19, 2017**)(**Return to Motion, December 19, 2017**). The filings failed to contain his attorney's [name] or signature. Due to the failure, the filings were required to be struck from the record pursuant SCRCP Rule 11(a)). On that same day, Chief Deputy Clerk of Court, Becky Stevens, sent out an email to Collins' attorney, Michael Scarafile, and cc'ing all counsel of record and Morphew, pro se, informing him of his client's violation of Rule 11 SCRCP and that the filings were invalid (**Email Clerk to Scarafile, et al. December 19, 2017**). The filing deficiency was never corrected or remedied, and the Clerk failed to strike the filings from the record as required by SCRCP Rule 11(a)

On January 30, 2018, when the deficiency wasn't corrected, and the Clerk refused or failed to strike Collin's "Answer" and "Return to Motion", Morphew filed a Motion to Strike both filings due to, including but not limited to, its violation of Rule 11(a), specifically its filing did not contain his attorney of record's name or signature, therefore making the filings invalid[27]. Further,

[27] The deficiency was not corrected after the Clerk called such deficiency to his attorney's attention, but the Clerk failed or refused to strike the unsigned papers as required by Rule 11.

the filings failed to meet the statutes or timeliness, and were not sufficient. **(Motion to Strike Def. Collins Answer and Return to Motion,** January 30, 2018)

On February 14th, 2018 and after many inquiries to the court attempting to schedule a hearing or to obtain status of the default judgment as presented above and in correspondence with the Clerk **(Emails Morphew/Stevens, February 4-February 17, 2018)**, Morphew received an email from the Clerk stating the judge was issuing an Order denying her Motion for Default Judgment, and that all pending motions will be scheduled on the next Motion Roster **(Email Stevens to Morphew, February 14, 2018)**.

On February 23, 2018, said Order denying her Motion for Default Judgment was filed stating, "*Plaintiff's Motion for Default Judgment filed November 27, 2017 is hereby denied. The Clerk is hereby instructed to set all pending motions to be heard at the next available Motion Roster.*" No findings of fact, standard of review or law analysis to support its ruling was provided in said Order. **(Order denying Appellant's Motion for Default Judgment, February 23, 2018)**. When Collins still failed to file an Answer, and as a precaution she was properly before the court, Morphew filed a 2nd Motion for Entry of Default and Default Judgment against Collins. **(2nd Motion for Entry of Default and Default Judgment, April 4, 2018)**.

On May 12, 2018, Morphew received notice that a hearing was scheduled for May 29, 2018 to resolve pending Appellant and Respondents motions; included in that list was Morphew's *Motion for Entry of Default and Default Judgment* and her *Motion to Strike Collins Answer and Return to Motion.* Morphew asked the court to reschedule due to a pre-planned family vacation Memorial weekend. The court denied her request. Morphew cancelled her vacation in preparation for the hearing.

Unfortunately, due to an emergency room visit with her daughter very early on May 29th, Morphew was unable to attend the hearing; considering the circumstances and that the hearing was

a 2 ½ hour drive. In respect of the opposing parties and the court, Morphew provided a hurried notice on or around 6:40 AM on May 29th to all (including the Judge, his [Clerk], his [secretary], and the Clerk of Court], that she would not be attending due to an emergency **(Morphew e-mail dated May 29, 2018).**

Though all parties including the court were given notice hours in advance of Morphew's inability to attend the hearing, all opposing parties still appeared. Unbeknownst to Morphew, a hearing was still held in her absence[28]. Later on appeal, and in receipt of the hearing transcript, it was discovered the trial court, *in Morphew's excused absence and without a motion on the record, or Collins presenting a motion, requesting relief pursuant Rule 55(c)*[29], allowed Collins to present defense to his default, specifically to "give Collins peace of mind.[30]" After [false] statements from Collins and [false] testimony or evidence from the Clerk, the judge immediately and from the bench made his ruling, stating "*Alright, you're not in default.*" **(Hearing Transcript, May 29, 2018, Pg. 6 line 20 thru Pg. 8 line 4)**.

Two (2) days later, an Order was issued on May 31st, 2018 *specifically* finding Collins not in default or good cause existed to relieve him of default, and ordered Morphew to provide proof of her daughter's ER visit and provide proof of her address. Said Order provided no reasoning, findings of fact, standard of review or law analysis, and is not supported by grounds in which to rule as such (i.e., no motion or a motion requesting relief pursuant Rule 55(c) in the record or presented; no Answer or valid or timely answer or pleading filed by Collins; false testimony or evidence provide in a hearing without Morphew present **(Order, May 31, 2018).**

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[28] Until receiving the transcript on appeal, Morphew was unsure if a hearing was actually held or what motions were heard, if any. The Order failed to provide any testimony or evidence produced, and the Clerk failed to respond to Morphew's request for the court notes at the hearing when filing her 59(e) motion.

[29] Collins was not properly before the court.

[30] **Hearing Transcript, May 29, 2018 Pg. 7 line 25 thru Pg. 8 line 3**

Morphew provided proof of both conditions on June 4th, 2018. Accordingly, the judge's 'pending' ruling on all motions, including Morphew's *Motion for Entry of Default and Default Judgment* and her *Motion to Strike Collins Answer and Return to Motion*, was removed and were rescheduled to be heard at a later date.

After receiving the Order, Morphew filed a 59(e) motion objecting to its ruling relieving Respondent Collins of his default or finding good cause to relieve him of his entry of default. **(59(e) Motion, June 11, 2018).**

On October 1, 2018 a hearing was held on all pending motions. Included was Morphew's [1st] Motion for Entry of Default and Default Judgment, Motion to Strike Collins Answer and Return to Motion, 59(e) Motion, and its 2nd Motion for Entry of Default and Default Judgment. Morphew orally presented its [1st] Motion for Entry of Default and Default Judgment, and its Motion to Strike Collins Answer and Return to Motion but when she attempted to present its *59(e) Motion* and *2nd Motion for Entry of Default and Default Judgment*, the presiding judge stated she would review the filings and make her determination.

On October 18, 2018 the trial court provided notice via email to all parties granting four (4) Respondents' motions[31] (i.e., Summary Judgment); and denying in part Appellant's 2nd Motion for Entry of Default and Default Judgment, specifically denying *Entry* of Default against Collins. The 10 remaining Appellant and Respondents' motions, including Morphew's [1st] Motion for Entry of Default and Default Judgment, its Motion to Strike Collins Answer and Return to Motion, and its 59(e) Motion, were ruled 'moot' due to the court's ruling on the other five (5) **(Email Chandler Rowh [to all parties, October 18, 2018).**

[31] Summary judgment in favor of Respondent David Collins is especially an issue, as argued within this Brief. Morphew alleges the trial court's conversion pursuant Rule 12(b)(6) is improper or violated the SCRCP Rules because it had no grounds in which to 'convert', and failed to give notice before hearing that it was going to consider any 12(b)(6) motion as summary judgment or consider any matters outside the pleadings. Respondent Collins neither had a motion to dismiss nor presented matters outside the pleadings.

On November 13, 2018 an Order DENYING Morphew's 2nd Motion for Entry of Default [and Judgment] was issued.

ARGUMENTS

This PORTION OF THE APPEAL arises out of the Judge's decision to DENY Appellant Morphew's *2nd* Motion for Entry of Default/Default Judgment for the sole reason Respondent Collins filed a timely motion to dismiss on September 20, 2016, "*This matter is before the court on Plaintiff's 2nd Motion for Entry of Default Against Defendant David Collins. Plaintiff's Motion is hereby DENIED, since Defendant David Collins timely filed a Motion to Dismiss on September 20, 2016*" **(Order Denying Appellant's 2nd Motion for Entry of Default and Judgment, November 13, 2018).** Said Order provided no reasoning, findings of fact, standard of review or law analysis.

A. The trial court erred denying Appellant's Motion for Entry of Default and Judgment against Respondent Collins solely for the reason he filed a timely motion to dismiss.

Collins appeared in this case by filing a Motion to Dismiss pursuant Rule 12(b)(6) and Rule 12(b)(8) on September 20 2016 **(Motion to Dismiss-- Michael Scarafile, Susan Nicholson, Carolina One Real Estate and David Collins, September 20, 2016)** but failed to Answer or otherwise defend the Summons and Complaint, and specifically before Morphew filed its combined Motion for Default Entry/Judgment **(Motion-- Entry of Default and Judgment, November 27, 2017)**. Just as important, Morphew provided an Affidavit in support of entry of default, therefore, pursuant to Rule 55(a) Default *shall* (or must) be entered by the Clerk. **(Affidavit In Support of Entry of Default, November 27, 2017)**. "When a party against whom a judgment for affirmative relief is sought has *failed to plead or otherwise defend* as provided by

these rules and that fact is *made to appear by affidavit* or otherwise, the Clerk *shall* enter his default upon the calendar (file book)." SCRCP Rule 55(a) (Emphasis added).

Even so, the entry of default is of no consequence. (Whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the Clerk was required to perform once the default was made to appear by the affidavit of Mrs. Thynes (*Thynes v. Lloyd,* 294 S.C. 152, 363 S.E.2d 122 (Ct.App.1987) (Entering default is a ministerial act to be automatically performed once an affidavit shows the defendant has failed to comply with the requirements of the rules) *Stark Truss Co. v. Superior Const. Corp.*, 602 SE 2d 99 - SC: Court of Appeals 2004. Entry was completed or should have been completed as of November 27, 2017, therefore it cannot be denied by the Court. Once verified and entered by the Clerk, and not objected to by the defaulting party or court, entry of default cannot be denied or the defendant cannot be found "not in default" at a later time unless there was some error of law in its entry and such error is supported by evidence. *Thynes*, supra

Again, Collins failed to request relief pursuant Rule 55(c), and neither the trial court nor Collins raised any issue or issue with an error of law in its entry or required entry, specifically grounded on the fact Collins filed a timely motion to dismiss. Instead, the trial court's actions, as described in detail below, confirm entry of default was complete or should have been entered on November 27, 2017:

1) On February 23, 2018, three months after the required entry of default and seven (7) months prior to this hearing, the trial court issued an Order (without holding a hearing) denying *Default Judgment*. The Order did not relieve Collins of his default or the *entry* of default, nor did it raise issue with an error of law in its entry based on Collins' timely filing of a motion to dismiss. The

Order only denied default *judgment,* accordingly affirming entry of default was complete or should have been completed as of November 27, 2017.

2) Between the filing of Morphew's motion for Entry of Default and Judgment on November 27, 2017 and the trial court's Order denying *Default Judgment* issued February 23rd, 2018, there was a string of communications, including emails, between the Clerk and Morphew where Morphew regularly checked on the status of default *judgment* and attempted to schedule a judgment hearing. She stated several times her concern in the delay scheduling a hearing on default *Judgment* "since the entry of default against Collins was on November 27, 2017" **(Email, Morphew and Stevens, January 23, 2018); (emails, Morphew and Stevens, February 4 through February 14, 2018).** Not once, even when Morphew directly asked the Clerk what date default was entered, did the Clerk indicate or inform Morphew entry had not been completed nor did it inform her that default was not or could not be entered because Collins 'filed a timely motion to dismiss.'

3) Further, during a hearing on May 29, 2018 the Clerk informed the trial court that Morphew's motion for entry of *default judgment* was previously denied by Judge Murphy "because it needed to be scheduled for a hearing." At no time did the trial court raise any issue or issue with an error of law in its entry, or specifically based on Collins' timely filing of a motion to dismiss. **(Hearing transcript, May 29, 2018) (Order, May 31, 2018)**

> "*Judge Murphy signed a form four denying her motion for entry of default judgment and indicated that it needed to be heard.*"

(Hearing Transcript, May 29, 2018 Pg. 7 lines 13-15). (Emphasis added)

The Clerk's testimony supports that the trial court considered *entry* complete and only *judgment* needed to be heard.

Regardless, filing a "timely motion to dismiss or a motion to dismiss pursuant Rule 12(b)(6) or 12(b)(8)" is neither an 'Answer' or a responsive pleading nor is it compliant with the Rules of Civil Procedure, therefore not grounds or a valid reason to deny Appellant's Motion for Entry of Default. Morphew contends the trial court's order or ruling was an error of law or lacks evidentiary support, therefore is an abuse of discretion, unlawful or improper and should be vacated or reversed. (The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court) *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E. (2d) 535 (Ct. App. 1987). (An order based on an exercise of that discretion, however, will be set aside if it is controlled by some error of law or lacks evidentiary support) *Ricks v. Weinrauch, supra.*

To reiterate, in this instance and pursuant SCRCP Rule 7, an *Answer* was required of the defendant. Collins never filed an Answer or valid Answer. Though Collins filed a skeleton Motion to Dismiss, specifically and technically a 'one-sentence Rule 12(b) motion', a motion to dismiss is not an answer or responsive pleading as required by SCRCP Rule 7, Rule 12 or Rule 8, but instead a motion to dismiss is only a pre-answer motion where certain defenses can be raised *prior* to a pleading or Answer. A motion under Rule 12 *only alters the deadline for defendant's Answer*. If the motion to dismiss is denied or denied in part, the defendant must still serve their answer, usually within a shortened amount of time, and in this case within 15 days of the notice of the court's action (i.e., Order denying said motion), SCRCP Rule 12(a). Collins failed to file an Answer or valid answer; SCRCP Rule 7(a), states if the case is applicable, there must be an Answer, "There *shall* be a complaint and an *answer*; ...No other pleadings shall be allowed, ...

(Emphasis added). SCRCP, Rule 12 clearly denotes an Answer must be served, but that a Motion to Dismiss pursuant 12(b) would alter the time to *answer* until a Motion 12(b) was heard and ruled on."*A defendant shall serve his answer* within 30 days after the service of the complaint upon him, ... The service of a motion permitted under this rule *alters these periods of time* as follows, ... (1*) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action;...*" **SCRCP, Rule 12(a)** (Emphasis added)

Rule 12 also states every defense to a cause of action must be asserted in the Answer, except there are 8 defenses that can be raised in *a motion prior to the Answer*.

> "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, *shall be asserted in the responsive pleading* thereto if one is required, *except that the following defenses may at the option of the pleader be made by motion:* (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. *A motion making any of these defenses shall be made before pleading* if a further pleading is permitted." **SCRCP, Rule 12(b)** (Emphasis added)

Fundamentally, an Answer is "[t]he response of a defendant to the plaintiff's complaint, denying in part or in whole the allegations made by the plaintiff." Black's Law Dictionary 91 (6th ed.1991). In form, an answer "shall state in short and plain terms the facts constituting his defenses to each cause of action asserted and shall admit or deny the averments upon which the adverse party relies." Rule 8(b), SCRCP. Furthermore, each denial "shall fairly meet the substance of the averments denied." *Id.* Where the defendant "is without knowledge or

information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial." *Id.* As with all pleadings, an answer "shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRCP.

Collins' Motion to Dismiss further fails as a responsive pleading as it does not mention or deny any of the specific allegations of fraud or fraud on the court, or *any* allegations within the complaint's causes of action set forth in Morphew's complaint. Instead, the motion merely *repeats two (2) defenses* under Rule 12(b), specifically 12(b)(6) and 12(b)(8), and failed to state with particularity the grounds therefor. Even under a very liberal standard, such a motion does not constitute a denial, either specific or general, to Morphew's allegations. In fact it also fails as a motion to dismiss and should be voided (**Plaintiff's Brief in Opposition to Defendants Scarafile, Collins, et al Motion to Dismiss 12(b)(6) and 12(b)(8), October 4, 2016**).

Due to the reasons above, the trial court had no grounds for denying Appellant's motion for entry of default or relieving Collins of his default or entry of for the sole reason Collins filed a timely Motion to Dismiss, and should be reversed, voided or vacated accordingly. Further, Appellant asks this Court to find Respondent Collins in Default and to record such entry as applicable per Rule 55(a). If this Court finds the [Chief Deputy] Clerk failed to enter default as required, Morphew petitions this Court to order entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Plaintiff, but instead an error of the court. Additionally, Plaintiff requests said Order to state Respondent Collins has been found in Default and is hereby entered on November 27, 2017 and that default Judgment is to be entered accordingly and damages, and any other damages this court finds appropriate, awarded as such.

Finally, Morphew argues because the Respondent is in default or the Order of November 13, 2018 is void, an abuse of discretion, an error of law, or lacks evidentiary support and must be vacated accordingly, the subsequent Order Granting his Motion to Dismiss (i.e., Summary

Judgement to Collins via conversion Rule 12(b)(6)) (as argued, Pg. 81 of this Brief) is improper and must also be reversed or vacated.

B. The trial court erred denying Appellant's 2nd Motion for Default and Default Judgment against Respondent Collins or relieving Collins of default or its entry before properly ruling on a preceding or pending motions.

Morphew argues the trial court erred or abused its discretion or process by failing to properly rule Morphew's 1st Motion for Entry of Default and Default Judgment and its 59(e) Motion, before ruling on a later motion when the preceding motion(s)' dispositions were pre-conditional or preceding it. Instead the trial court ruled the preceding motions moot. (**Email Chandler Rowh to all parties, October 18, 2018**). If the trial court had properly ruled the pending motions or ruled them first as presented it would have found that default cannot be denied or relieved, as argued previously.

At the hearing on October 1, 2018 Morphew presented her [1st] Motion for Default and Judgment filed November 27, 2017, and stated her 2nd Motion was filed "just in case." (**Hearing transcript-- October 1, 2018 Pg. 14 Lns. 19-21**). When she attempted to present its 59(e) motion, the trial court stated that it would review the filings to make its' determination. On November 13, 2018 the trial court issued an Order denying Morphew's 2nd Motion for Default and Judgment instead of properly ruling first on her [1st] Motion for Default and Judgment and her 59(e) motion.

Morphew argues both motion's proper dispositions were pre-conditional to the denial of its 2nd Motion for Entry of Default/Default Judgment. As argued herein Brief, in February of 2018 the trial court denied Default Judgment because it needed to be heard. Said motion was scheduled to be heard on May 29, 2018, but Morphew was unable to attend due to a family emergency. A hearing was still held, without Morphew present, and at which no motion or petition was filed,

presented or heard requesting Collins' relief from default. Instead the trial court allowed Collins to argue a defense to his default. On May 31st an Order was issued stating only '*the court specifically finds Collins not in default or that good cause exists to relieve him of default or the entry of.*' The Order neither contained findings of fact, standard of review or law analysis to support its ruling nor did it appear at the time that a motion to be relieved of default was filed, presented or ruled on to support its ruling. Morphew filed a 59(e) Motion objecting to Collins relief of default, but since the order had no facts or law analysis Morphew could not properly defend. In fact, Morphew was not sure a hearing even took place until she received the transcript for this appeal **(Order May 31, 2018); (59(e) Motion, June 11, 2018).** The 59(e) motion was heard on October 1, 2018.. All pending motions, including Morphew's [first] Motion for Entry of Default and Judgment, and its' 59(e) Motion were rescheduled.

Based on the record, anc two (2) pending motions, a final ruling on Collins default was to be properly dispositioned on Morphew's 59(e) Motion or her 1st Motion for Default Judgment. 'Skipping' over a proceeding, or dispositioning the motions as 'moot' while ruling Collins 'not in default' solely for an improper, or unlawful, reason is an abuse of discretion and violates SCRCP Rules or the judicial process. Therefore, the trial court erred or abused its discretion or process by ruling 'moot' a pre-conditional, or preceding, motion and such order should be reversed or vacated accordingly.

Morphew admits she has been unable to locate case references where a party has filed two (2) separate motions for entry of default and judgment, a 59(e) motion, and all were pending and heard at the same time. Even locating a case remotely similar has been impossible.

Even if no error or abuse is found in regards to the trial court ruling on the 2nd Motion instead of the preceding motions first, the facts are: 1) Collins failed to file an Answer pursuant SCRCP Rule 7 and Rule 12, therefore he is in default; 2) entry of default was accomplished or was

required to be entered on November 27, 2017 pursuant Rule 55 and cannot be denied ; 3) Collins failed to request relief pursuant Rule 55(c); 4) the trial court never raised issue or denied entry due to an error of law, specifically due to a timely motion to dismiss even after several opportunities to do so prior to its November 13th ruling; 5) Collins neither raised issue with entry of default or raised issue to an error of law, or specifically due to a timely motion to dismiss nor did he file a motion pursuant Rule 55 to be relieved of entry or its entry of for same. Thus, entry of default cannot be denied or the defendant cannot be found "not in default" at a later time unless there was some error of law in its entry and such error is supported by evidence. There was no error of law in its entry or its requirement of its entry, and there is no evidence which would support an error of law, therefore entry is complete and should have been entered, and only default judgment is left to be dispositioned.

Due to the facts and arguments provided herein, there were no grounds in which the trial court could deny entry of default, or the trial court did not have jurisdiction or the inherent power to deny entry of default, therefore its Order/ruling of November 13, 2018 denying Appellant's 2nd Motion for Entry of Default and Default Judgment is an abuse of discretion, an error of law, lacks evidentiary support, or is void and must be vacated accordingly. Consequently, Appellant also asks this court to vacate the appealed Order of November 15, 2018 granting summary judgment to Collins. Even so, a defaulting party cannot be granted summary judgment.

Morphew also petitions this Court to find Respondent Collins in Default and to record such entry as applicable per Rule 55(a). If this Court finds the Chief Deputy Clerk failed to enter default as required, Morphew petitions this Court to Order entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Plaintiff, but instead an error of the court. Additionally, Plaintiff requests said Order to state Respondent Collins has been found in Default

and is hereby entered on November 27, 2017 and that default Judgment is to be entered accordingly and damages awarded as such.

C. The trial court denied Appellant's 2nd Motion for Entry of Default, or relieve Respondent Collins of default or its entry of, in order to dispose of Appellant's case in its entirety.

Motions for Default are not uncommon, and with the exceptional knowledge of judges and officers or the availability of discovering that knowledge in regards to the rules regarding defaults, Morphew struggles with the lower court's ruling in regards to its denying Morphew's motion for entry of default. When combining an ruling denying Appellant's motion for entry of default/judgment solely for the reason respondent filed a timely motion to dismiss, followed by a ruling two (2) days later in which the trial court [improperly] granted Summary Judgment to Collins disposing of all remaining causes of action against him, as argued herein Brief, PLUS an email between the Clerk of Court and the judge/its' law Clerk/opposing counsel(s) "celebrating" the win of the opposing parties or the case being disposed of (**Email Clerk to opposing parties, October 18, 2018**), it appears the trial court's goal was to rule in favor of the opposing represented parties and to dispose of Morphew's case in its entirety. Meaning, in order for the trial court to dispose of Morphew's case in its entirety, Collins would have to be granted Summary Judgment[32]. Because Collins was in default, and Summary Judgment cannot be granted to a defaulting party, Collins would have to be found 'not in default' or relieved of his default first, hence the prior ruling denying Appellants motion for entry of default against Collins[33,34] [two (2)

[32] Along with the other nine (9) Respondents that were granted same.
[33] Though all motions were heard at the same time, the order denying entry of default against Collins was filed 2 days before the other trial court's Orders.
[34] Order on appeal, denying Morphew's Motion for Entry of Default and Default Judgment

days] *before* granting Collins Summary Judgment[35] **(Order granting Motion to Dismiss-- David Collins, November 15, 2018).**

Regardless, it's apparent the trial court was trying to avoid this case.

MS. NEUSCHAFER: It may help us -- Mrs. Stephens, is there a -- I believe the next motions -- the next scheduled motions is not until August; is that correct?

THE CLERK: Right. That's with you.

THE COURT: That's with me, too. Cool.

(WHEREUPON. there was laughter.)

THE COURT: All right. So I can't escape this no matter what I do.

MR. COLLINS: Neither can we.

(Hearing Transcript, May 29, 2018 Pg. 11 Ln. 17 thru Pg. 12 Ln. 1)

In anticipating an end to Morphew's case, it appears they were willing to do anything to dispose of Morphew's case, include violating the rules themselves or making rulings contrary to the evidence and the rules, standards or precedents in law and equity of the South Carolina courts[36] as argued herein Brief.

Again, Collins failed to Answer Morphew's Summons and Complaint *and* failed to request relief from his default pursuant Rule 55(c). Nonetheless, the trial court has attempted to find a way around his critical failings by improperly relieving him of default in the absence of Morphew's presence at hearings or intentionally providing relief though contrary to the rules of the South Carolina courts. Also, it appears the judge's Order failed to contain facts and conclusions of law because there are no facts specially or conclusions of law that could support its rulings denying Morphew's motion for entry of default and default judgment or a Rule 12(b)(6) conversion to summary judgment.

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[35] The Order granting Collins Summary Judgment is also on appeal and was unlawful or improper.

[36] Rule 12, Rule 55, Rule 11, Rule 7, Rule 8; due process; Maxims, "he who seeks equity must do equity"; and "he who seeks equity must come with clean hands"

The only purpose Morphew can find for the trial court's improper rulings is they could find no other way to relieve Collins of default so that it could dispose of the case in its entirety and the case would " be over" or out of the trial court's hands. There are clear and substantial errors and an apparent showing of prejudice or bias by the trial court and its officers. Such an appearance would tend to lead a normal person or pro se party to question whether the hearings and rulings in this instant case have been unbiased and impartial, and whether any past or future actions involving Morphew have been or will be unbiased or impartial. "*Defendants who have been treated with unfairness, bias and the appearance of prejudice by this Court, and the opposing counsel, leaves open the question of how an uninterested, lay person, would question the partiality and neutrality of this Court.*"*...our system of law has always endeavored to prevent even the probability of unfairness.*" In re *Murchinson*, 349 U.S. 133, 136 (1955). *Marshall v. Jerrico*, 100 S. Ct. 1610, 446 U.S. 238 (where the court had a duty to ensure fairness but failed, or refused to ensure that fairness). (Emphasis added)

Based on the arguments herein Brief, Morphew questions the partiality or bias of the trial court and its officers and can only reason Morphew's case was an apparent 'thorn in its side' that it was more than happy to rid of, even if an injustice served or at the severe prejudice or damage to Morphew or to the courts themselves, and asks this court to consider this in its review and ruling of this appeal.

Further, Morphew has three (3) other cases currently on appeal against two (2) of the Respondents, Stephen Dudek and Doreen Cross, including the original action in which this appeal arose from, and respectfully asks this court to carefully review Morphew's evidence and arguments in those rulings by the trial court, too. It appears not to matter the rules that have been, or are still being, broken by Dudek and Cross and the co-respondents, or the material and critical evidence presented in the prior action, in this current action, or any subsequent actions, the trial

court continues to turn a blind eye to the evidence and the respondents failings and unlawful behavior. Instead, it chooses to peg Morphew as the "criminal or harasser"[37] because she continues her fight to right an injustice done, done not only to her but also to the courts, the judicial system and/or public policy. [38] As asserted many times before the courts, Morphew believes the truth, proper and lawful rulings, and righting an injustice is far more important than the trouble it takes to get it or to end vexatious litigation, and it was the trial court's job to properly and fairly hear and adjudicate a proceeding before it, regardless of the complexity or issues it raises. A case for fraud and fraud on the court should be especially concerning to the courts as it is a violation against their own process or system.

CONCLUSION

Since no answer or valid answer or responsive pleading was filed or served, Respondent's September 2016 motion to dismiss fails as a defense or responsive pleading to a summons and complaint, and Respondent failed to request relief pursuant Rule 55(c), neither Appellant's 1st *or* 2nd Motion for Entry of Default and Default Judgement can be denied, especially for the sole reason Respondent timely filed a motion to dismiss, nor can Respondent be relieved of default or entry of Default. Ultimately, the court's ruling fails as it is not supported by any ground in which it can deny Appellant's motion for entry of and default judgment nor is it supported by the rules or evidence in the record of the trial court. It also appears any such defense it used to deny Appellant's motion or relieve Respondent of default and/or judgment has been waived by the court, and the Respondent himself, since that defense was never raised by either. The order should be void. "*If a court grants relief which under the circumstances it hasn't any authority to grant,*

[37] **Hearing Transcript, May 29, 2018** Pg. 5 Ln. 19

[38] The record shows that Morphew has done nothing but present the truth, follow the rules, and respect the judicial system and its processes.

its judgment is to that extent void." (1Freeman on Judgments, 120c.) (An illegal order is forever void).

Due to the facts and arguments provided herein, the Order of November 13, 2018 is VOID, an abuse of discretion, an error of law, or lacks evidentiary support and must be vacated accordingly. Further, any additional proceeding or order founded on an invalid or voided order is also to be regarded as invalid or void, specifically the appealed Order/ruling Granting Summary Judgement to Collins.

Therefore, Appellant petitions this Court to find Respondent Collins in Default and to record such entry as applicable per Rule 55(a). If this Court finds the Chief Deputy Clerk failed to enter default as required, Appellant petitions this Court to Order entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Appellant, but instead an error of the court. Further, Appellant requests said Order to state Respondent Collins has been found in Default and is hereby entered on November 27, 2017 and that default Judgment is to be entered accordingly and damages awarded as such.

Further, if this court finds Respondent in default or reverses Appellant's motion for entry of default, Appellant petitions this court to vacate or reverse the subsequent action granting summary judgment to Collins on November 15, 2018.

Appellant also requests costs against Respondent for having to defend this action, and sanctions against the Respondent for failing to follow the rules of the court, violating Rule 11, and/or its intentional disregard for the processes of the courts, or any damages or sanctions as this court deems appropriate.

4. **Did the trial court err or abuse its discretion or process by granting Respondent Collins' Motion to Dismiss?**

On November 15, 2018 the trial court granted Respondent Collins' Motion to Dismiss as to all remaining causes of action pursuant SCRCP Rule 12(b)(6) for Summary Judgment under SCRCP Rule 56 ('conversion').

Morphew first objects and as argued above, Collins is in default, and as such his rights to defend the case was terminated. Consequently, summary judgment cannot be granted. Further, the Order of November 15, 2013 was improper due to pending discovery and/or the causes of action were already previously ruled on by another judge in the same civil action, and not appealed or contested, therefore should be reversed an remanded back to the trial court for further proceedings.

Regardless, the trial court's order is void as Collins neither filed a motion to dismiss nor did he, or *any* respondent, file a motion to dismiss pursuant 12(b)(6) in which could be heard and converted to summary judgment. Further, the trial judge gave no notice it was going to consider converting a 12(b)(6) motion to summary judgment nor were matters outside the pleading presented by Collins or presented in which the trial court gave notice it was going to consider for a conversion, therefore the Order fails for violation of SCRCP Rules and that there are no grounds to support a Rule 12(b)(6) conversion to Summary Judgment.

An Order in violation of a S.C. Rule of Civil Procedure or which it has no grounds in which to support is void and must be vacated. Indubitably, Respondent Collins made no claim for relief as to the remaining causes of action, therefore cannot be relieved of such. Lastly, *specific* reasons for dismissal must be in the first document Collins filed with the court, otherwise that issue is considered waived. The first (*and only*) document or valid document Collins filed with the court was his Motion to Dismiss pursuant SCRCP Rule 12(b)(6) and Rule 12(b)(8) on

September 20, 2016. Collins' 2016 motion failed to specify any reasons or specify with particularity any reasons for dismissal or, therefore has waived those issues in which the trial court initially granted him relief in January 2017 (**Motion to Dismiss-- Michael Scarafile, Susan Nicholson, Carolina One Real Estate and David Collins, September 20, 2016);(Order granting in part Collins; Scarafile, Nicholson, Carolina One's Motion to Dismiss, January 31, 2017**). Because his first document failed to provide any explanation as to the nature of the motion and the reasons therefor, as a result fails the SCRCP Rules and is not valid, and any issue in which the trial court now grants Collins is also waived, notwithstanding the fact Collins had no motion to dismiss before the court to support a Rule 12(b)(6) conversion. For these reasons Morphew argues the trial court erred or abused its discretion or process deciding a case on a ground not before it, therefore violated SCECP Rules, and especially when Collins was not properly before it, or because Collins is in default.

"It is an error of law for a court to decide a case on a ground not before it." *Griffin v. Capital Cash*, 310 S.C. 288, 29[illegible], 423 S.E.2d 143, 147 (Ct.App.1992); see *Friedberg v. Goudeau*, 279 S.C. 561, 562, 309 S.E.2d 758, 759 (1983) (reversing the grant of summary judgment because the ground for summary judgment was not properly before the trial court). A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it. *Skinner v. Skinner*, 257 S.C. 544, 550, 186 S.E.2d 523, 526 (1972). In this instance, there was no motion to dismiss before it to "convert" to or treat as summary judgment; therefore it was error of law or an abuse of discretion for Judge Murphy to grant Collins' [non-existent] Motion to Dismiss or a conversion to summary judgment.

Further, a conversion of a motion to dismiss pursuant Rule 12(b)(6) to Summary Judgment is improper or unlawful if Defendant failed to present matters outside the pleading and/or the trial court failed to give notice to all parties, especially Morphew, of its conversion. Rule 12(b) clearly

states "...If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, *matters outside the pleading are presented to* and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, *and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion* by Rule 56." SCRCP Rule 12(b).

> (Providing notice prior to the hearing is essential under Rule 56(c): "The [summary judgment] motion shall be served at least ten days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing...." Rule 56(c), SCRCP. In fact, County's proposed order dated October 10, 1997, provides for express notice of the 12(b)(6) conversion 30 days before a hearing. However, there is no evidence in this case suggesting Doctors had any notice prior to the hearing, in compliance with Rule 56, SCRCP, that the trial court would look beyond the pleadings in considering County's 12(b)(6) motions) *Baird v. Charleston County*, 333 S.C. 519, 511 SE 2d 69 (1999)

Again, Collins did not serve a motion to dismiss or a motion to dismiss pursuant Rule 12(b)(6) therefore he did request relief nor raise any issues or matters outside the pleadings. Moreover, the trial court did not give notice to the parties that it was going to consider any matters outside the pleadings and it failed to give notice that it was going to hear any 12(b)(6) motion as a motion for summary judgment. The first time Morphew had notice of its action was on its Order. Thus, *any* matters that it may have considered were improper, and the judge unlawfully converted a [*non-existent]* 12(b)(6) motion into summary judgment, especially without informing the Appellant.

Even so, Morphew argues Collins is in default and cannot be relieved of his default or the entry of, as argued previously and repeated herein. As a result, the trial court erred or abused its

discretion granting him summary judgment, as summary judgment is not available to a defaulting party.

> It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. *Howard v. Holiday Inns Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978); *Schenk v. National Health Care, Inc.*, 322 S.C. 316, 471 S.E.2d 735 (Ct.App.1996); *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 334 S.E.2d 523 (Ct.App.1985). (In *Morgan's Inc. v. Surinam Lumber Corp.*, supra, this Court pointed out that there is a difference between a defendant being declared in default and subsequently having judgment entered against him for damages. By defaulting, a defendant forfeits his "right to answer or otherwise plead to the complaint." *Morgan's Inc. v. Surinam Lumber Corp*, 251 S.C. 66, 160 S.E.2d 193. In essence, the defaulting defendant has conceded liability, therefore cannot be relieved of such.

Be that as it may, and as argued herein Brief, it is contended "a circuit judge cannot grant relief which has been previously sought from another circuit judge and denied by him." Rule 60, Rules of Practice for the Circuit Courts of South Carolina. This is especially true when neither the prior ruling has been appealed or contested nor has any relief been sought (i.e., no subsequent motion to dismiss or pursuant Rule 12(b)(6)).

Previously, Judge Jefferson had denied, in part, the Respondent's Motion to Dismiss on the very causes of action Judge Murphy later granted, *and* without Collins requesting relief or filing a subsequent motion to dismiss pursuant Rule 12(b)(6). Such action not only violates Rule 60, but fails on its face by law. **(Motion to Dismiss-- Michael Scarafile, Susan Nicholson, Carolina One Real Estate and David Collins, September 20, 2016); (Order granting in part Collins, Scarafile, Nicholson, Carolina One's Motion to Dismiss, January 31, 2017);(Order granting**

Motion to Dismiss-- David Collins, November 15, 2018). The general rule is that a trial judge cannot vacate an order by another judge in the same case; even if the change is based on a correct assessment that first judge erred. Otherwise, the second judge would be acting "in the role of a one-judge appellate court." It's true that one trial judge cannot overrule an order entered by another judge either on a legal question or, in the absence of substantial changed circumstances, on a discretionary matter. In other words, a party cannot effectively seek "appeal" of a ruling at the trial level. As our Supreme Court has put it: "[I]t is well established in our jurisprudence that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action." *Fontaine v. Peitz*, 291 S.C. 536, 354 SE 2d 565 (1987) (The rule applies to district court as well); *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501 (1972); Denial of a motion to dismiss affects a substantial right because it necessarily affects the final judgment, therefore "the matter was then res judicata and no appeal lies from one superior court judge to another." *Revis v. Ramsey*, 202 N.C. 817, 164 S.E. 358 (1932). Ultimately, the prior Order denying the Collins' Motion to Dismiss on several causes of action was a considered decision that appeared well reasoned, was not contested *and* has not been appealed; therefore the current Order granting summary judgment to Collins is improper or an abuse of discretion of another judge to overrule the original decision, especially when the trial court did not vacate the prior order, no motion for relief pursuant Rule 12(b)(6) or new evidence was presented by Collins that would allow the court to even reconsider the prior ruling, and no notice was given prior to the hearing that the trial court would be considering a 12(b)(6) Motion as summary judgment nor what matters outside the pleading were going to be considered.

Due to the failings or errors argued, Morphew raises issue it appears the trial court judge' first denied Morphew's Motion for Default against Collins then immediately after, without a

ground before it, relieved Collins of any [remaining] causes of action solely to dispose of her case in its entirety. Though all motions were heard on the same day, the trial court judge issued an [improper or unlawful] order denying Morphew's 2nd motion for entry of default and default judgment on November 13, 2018 and then *two (2) day later* on November 15, 2018 issued another [improper or unlawful] order disposing of any remaining causes of action against him via "summary judgment". Meaning, the trial court Judge had to find Collins not in default first *before* summary judgment could be granted, because it needed to grant him summary judgment in order to wholly dispose of the Appellant's entire case. Based on the issues on appeal and especially combined with the Clerk of Court's email to the opposing parties and the presiding judge or her law Clerk celebrating the "win" of the opposing parties, or the case being over, Morphew contends 'disposing of the case' in favor of the opposing parties has obviously been the ultimate goal of the trial court even if it meant violating or bending SC laws and rules, an injustice, or to the severe prejudice to Morphew, the judicial system or public policy. This behavior of the trial court, its officers, or the opposing parties displays extreme bias, partiality and prejudice and should not be ignored in this court's review where the law, character and integrity play a role in the improper or fraudulent actions resulting to an injustice or damages to the South Carolina judicial system or to Morphew. (**Email Clerk to parties, October 18, 2018**[39]). Moreover, and most regretfully, Morphew has no confidence that the trial court or its officers are without bias or partiality, and has no confidence that any prior, current or future actions or proceedings before the trial court that include Morphew has been or will be heard and adjudicated fairly or lawfully.

CONCLUSION

[39] Her email not only violates this Court's rules and undermines the judicial system, it also prejudices the Appellant.

Due to the facts and arguments provided herein, the Order of November 15, 2018 "granting Collins' [non-existent] Motion to Dismiss via conversion pursuant Rule 12(b)(6) as to all the remaining causes of action is void, an abuse of discretion, an error of law, or lacks evidentiary support and must be vacated accordingly. Morphew also requests costs against Respondent for having to defend this action, and sanctions against the Respondent for failing to follow the rules of the court and its intentional disregard for the processes of the courts, as this court deems appropriate. Additionally, the Appellant respectfully asks this court to further consider any appeal or issue on appeal before it regarding Morphew due to the appearance of bias and partiality from the trial court or its officers.

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5. Did the trial court err or abuse its discretion in granting summary judgment/motion to dismiss to Respondents on the very same causes of action another judge in the same case denied in a previous motion to dismiss?

The trial court granted summary judgment/motion to dismiss in November 2018 to all Respondents regarding several causes of action another judge in the same case denied in a previous order(s) **(Order denying in part Motion to Dismiss- Michael Scarafile, Susan Nicholson, Carolina One Real Estate and David Collins, January 31, 2017);(Amended Order denying in part Motion to Dismiss-- First Federal and Allison Williams, February 13, 2017);(Order denying in part Motion to Dismiss-- Stephen Dudek and Doreen Cross, January 31, 2017);(Amended Order denying in part Motion to Dismiss-- Wooddy Law Firm and Carrie Boyer, April 3, 2017);(Order granting Summary Judgment-- Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, November 15, 2018);(Order granting Summary Judgment-- First Federal and Allison Williams, November 15, 2018);(Order granting Summary Judgment—Wooddy Law Firm and Carrie**

Boyer November 13, 2018).(Order granting Motion to Dismiss-- David Collins, November 15, 2018).

Appellant Morphew appeals.

First, and specifically to Respondent Collins, as argued previously, Collins is in default and/or the Order granting Collins summary judgment via conversion pursuant Rule 12(b)(6) is void, therefore the Order granting Collins relief is improper or void. If so, this argument may be moot only in regards to Collins.

Regardless, as to all Respondents, it is contended that "a circuit judge cannot grant relief which has been previously sought from another circuit judge and denied by him." Rule 60, Rules of Practice for the Circuit Courts of South Carolina. This is especially true when the prior ruling has not been appealed or contested.

Previously, Judge Jefferson had denied, in part, the Respondent's motion(s) to dismiss on the very causes of action Judge Murphy in the same case later granted in the respondents' motion(s) for summary judgment, therefore a violation of Rule 60 occurred. Further, the previous ruling DENYING IN PART their motion(s) to dismiss has not been vacated, contested or appealed; therefore the current ruling(s) granting summary judgment is a violation of Rule 60. The cases applying Rule 60 are distinguishable, for they involve submission of the same issue based on the same facts to a second judge after the first judge had ruled. *See, e.g., Dukes & Dukes, Inc. v. Hygrade Food Products Corp.*, 236 S.C. 69, 113 S.E.2d 254 (1960); *Andrick Development Corp. v. Maccaro*, 280 S.C. 103, 311 S.E.2d 95 (1984).

The general rule is that a trial judge cannot vacate an order by another judge in the same case; even if the change is based on a correct assessment that first judge erred. Otherwise, the second judge would be acting "in the role of a one-judge appellate court." It's true that one trial judge cannot overrule an order entered by another judge either on a legal question or, in the

absence of substantial changed circumstances, on a discretionary matter. In other words, a party cannot effectively seek "appeal" of a ruling at the trial level. As our Supreme Court has put it: "[I]t is well established in our jurisprudence that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action." *Fontaine v. Peitz*, 291 S.C. 536, 354 SE 2d 565 (1987) (The rule applies to district court as well); *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501 (1972). Denial of a motion to dismiss affects a substantial right because it necessarily affects the final judgment, therefore "the matter was then res judicata and no appeal lies from one superior court judge to another." *Revis v. Ramsey*, 202 N.C. 817, 164 S.E. 358 (1932)

Ultimately, the prior Order denying in part the Respondents' motion(s) on several causes of action was a considered decision that appeared well reasoned, was not contested and has not been vacated or appealed; therefore the current order(s) granting summary judgment to the respondents is improper or an abuse of discretion of another judge to overrule the original decision, especially when no new evidence was presented by the Respondents that would allow the court to reconsider a prior ruling.

Due to the reason here, Morphew asks this court to vacate or void the trial court's order(s) of November 13th and November 15th, 2018 granting summary judgment/motion to dismiss to Respondents on the remaining Appellant's causes of action from which the prior Judge denied, and remand back to the trial court for further proceedings.

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6. Did the trial court err or abuse its discretion in granting summary judgment/motion to dismiss to Respondents when discovery had not yet been completed?

Appellant contends granting Summary Judgment to Respondents First Federal, Allison Williams, Wooddy Law Firm, Carrie Boyer, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Stephen Dudek and Doreen Cross, and granting Collins' motion to dismiss, was premature or improper, or that there exists a genuine issue of material fact, therefore its Order(s) for Summary Judgment/Motion to Dismiss should be reversed or vacated accordingly **(Order granting Summary Judgment—First Federal and Allison Williams November 15, 2018); (Order granting Summary Judgment—Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Stephen Dudek and Doreen Cross November 15, 2018); (Order granting Summary Judgment—Woodcy Law Firm and Carrie Boyer November 13, 2018); (Order granting Collins' Motion to Dismiss November 15, 2018).**

Summary judgment was premature because Appellant had three (3) pending motions to compel discovery documents or deem admissions admitted. The three (3) motions regarding one or more of the opposing parties' lack of response or refusal to merit discovery directly apply to all respondents and were heard the same time the respondents' motion(s) for Summary Judgment **(Motion to Deem Admissions Admitted and Affidavit** – First Federal 2/16/18) ; **(Motion/ Compel Discovery Responses** - Cross 1/30/18); **(Motion to Deem Admissions Admitted and Affidavit** – Cross 2/1/18). The judge granted summary judgment to the respondents and declared moot the discovery motions **(Email Chandler Rowh to all parties, October 18, 2018).**

When summary judgment was granted, substantial discovery pending on the merits had not occurred; the respondents had not responded as to admissions and documents requested regarding the material and pertinent allegations in the complaint and to their own defenses, directly affecting the respondents. The respondents' refusal or failure to comply with discovery and the trial court's prevention of that discovery leaves issues open, such as whether the past and/or *continued actions* (after trial) of the respondents are fraud, extrinsic fraud or rises to the level of extrinsic fraud.

Additionally, pending discovery could reveal additional liability or the extent of Respondents' liability in the alleged failure [in law and/or equity] of the trial court's November 6, 2014 Order **(Order-- granting specific performance to the Dudeks and Morphew, November 6, 2014 Case No. 2013-CP-18-0183)**, the prevention of Morphew's performance of her sales contract with the Ferros or the prevention of her legal right to the property, and whether the Dudeks are bona fide purchasers (*See,* Constructive Trust -- Morphew v. Dudeks, pending Appellate Case No. 2017-000507), and the damages and/or continuing damages to Morphew, including unlawful ejection out of her home and being held in contempt (*See,* Morphew v. Dudeks, et al., pending Appellate Case No. 2017-001393), the undue stress, time and costs to defend this action, and the loss of time, work and money defending subsequent complaints against its clients, including its **(Complaint-- Trespass Upon Easement[40]-- Morphew v. Stephen Dudek and Doreen Cross Civil Case No. 2018-CP-1801661)**. By declaring the discovery motions moot, and not compelling such pending discovery first, the trial court failed to give Morphew its full opportunity to pursue or complete merits discovery. Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); *see also Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. 10A Wright & Miller, *Federal Practice and Procedure* § 2741, p. 543 (1983); 6 *Moore's Federal Practice* 56.02[6], p. 56-39 (2d ed. 1990); *see, e.g., First Chicago Int'l v. United Exchange Co.*, 836 F. (2d) 1375 (D.C. Cir. 1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner*

[40] Stephen Dudek and Doreen Cross breached their water easement to Morphew's neighboring property by physically destroying the water line that has been providing water to [her property] since 1998.

& Smith, Inc., 756 F. (2d) 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So. (2d) 951 (Ala. 1988); *Gangadean v. Leumi Fir. Corp.*, 13 Ariz. App. 534, 478 P. (2d) 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So. (2d) 564 (Fla. Dist. Ct. App. 1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W. Va. 140, 267 S.E. (2d) 440 (1980); *cf.* Rule 56(f), S.C.R.C.P

Given that, (1) the trial court erred when it assumed that pending merits discovery was 'moot', (2) Appellant was not at fault in the respondents failure to provide discovery on the merits; and (3) the outstanding admissions and document requests were sufficient to inform the trial court that further discovery was needed, and in the absence of a waiver, summary judgment is appropriate only after Appellant has had a full opportunity to conduct discovery, it was premature for the trial court to dismiss the case against the Appellant without first permitting discovery on the merits.

Due to the reasons stated above, Appellant asks this court to reverse the trial court's order(s) granting summary judgment/motion to dismiss to Respondents and remand to the trial court for discovery and development of Appellant's theories of recovery.

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7. Did the trial court err in granting in-part Respondents Michael Scarafile, Susan Nicholson, David Collins and Carolina One Real Estate's Motion to Dismiss when its motion lacked any argument, was totally unsupported or failed SCRCP Rules?

Respondents filed a motion to dismiss pursuant SCRCP Rule 12(b)(6) and 12(b)(8) but Appellant argues the motion is improper as the defenses within its motion lack any argument and are totally unsupported (Motion to Dismiss-- Michael Scarafile, Susan Nicholson, Carolina One Real Estate and David Collins, 9/20/2016). Though Respondents call out the nature of the motion, there's no explanation as to the nature of the motion and the reasons therefor. Meaning, it fails to

plead with particularity the grounds for relief or on what grounds its request for dismissal is based as required by the South Carolina Rules of Civil Procedure, SCRCP Rule 7(b), hence Respondents failed to show that Appellant could prove no set of facts demonstrating that the conduct alleged in the complaint was insufficient to constitute a cause of action. "An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, *shall state with particularity the grounds therefor,* and shall set forth the relief or order sought." SCRCP Rule 7(b) (emphasis added). A motion to dismiss must: 1) Be in writing, 2) State with particularity the grounds for the motion, and 3) Set out the relief or order sought. Though the Motion states the rule in which it is brought under, the motion does not comply with SCRCP Rule 7(b) as a one-sentence Rule 12b motion fails to satisfy the particularity requirement of Rule 7(b)(1), Fed.R.Civ.P.,[41] because the motion "failed to state even one ground for granting the motion and thus fails to meet the minimal standard of 'reasonable specification.'" A motion must include specifics and details, not just a general statement. The language at issue "failed to state even one ground for granting the motion." *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010) quoting *Martinez v. Trainor*, 556 F.2d at 819 (1977) (quoting 2-A Moore's Federal Practice (3rd ed. 1975). Therefore, Respondents' motion not only fails as a motion, it fails to show that the plaintiff could prove no set of facts demonstrating that the conduct alleged in the complaint was insufficient to constitute a cause of action. For these reasons above, the Respondent's motion lacks merit for grounds of dismissal.

Even under the motion's unsupported standards, Appellant's Complaint is so thoroughly particularized that it must survive. Appellant asks this court to reverse the trial court Order of January 31, 2017 granting in part the Respondent's motion to dismiss on Appellant's Second, Fourth, Fifth, Sixth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Sixteenth Cause of

[41] The federal rule 7(b)(1) is substantively the same as South Carolina's Rule 7(b)(1).

Action in regards to Collins; Appellant's Second, Fifth, Sixth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, and Eighteenth Cause of Action in regards to Michael Scarafile, Susan Nicholson, and Carolina One; and remand back to the trial court for further proceedings.

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8. Did the trial court err or abuse its discretion in granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss in-part to Appellant's Cause of Action for Declaratory Judgement That No Contract Exists, and Cause of Action for Tortious Interference with Existing Contractual Relations pursuant Rule 12(b)(8)?

The lower court order granted Respondents Dudek and Cross' Motion to Dismiss in regards to Appellant Morphew's cause of action for Declaratory Judgement That No Contract Exists, and cause of action for Tortious Interference with Existing Contractual Relations pursuant Rule 12(b)(8), specifically, "*she previously and identically asserted against the Dudeks these two claims based on the same or similar facts.*"

In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Rule 12(b)(8), SCRCP.

Under Rule 12(b)(8), dismissal is appropriate when another action is pending between the same parties for the same claim. At the time the lower court issued its ruling, the action in which it referenced *was not pending*. In its Order, the lower court stated, "*On appeal, the Court of Appeals affirmed the decision of the Master in Equity by Order dated, January 11, 2017.*" **(Order denying in part Motion to Dismiss-- Stephen Dudek and Doreen Cross, January 31, 2017).** Accordingly, the elements required to dismiss a cause of action based on rule 12(b)(8) had not been met, therefore dismissal of Morphew's Thirteenth and Eighteenth cause of action was inappropriate.

Even so, the lower court stated Morphew previously and *identically* asserted against the Dudeks in the Prior Civil Actions *these two claims* based on the same or similar facts. Morphew's

cause of action for Declaratory Judgement That No Contract Exists is not covered in the first case nor was that issue ever raised; and its cause of action for Tortious Interference with Existing Contractual Relations was withdrawn before being heard at trial, therefore did not exist or was not pending. Despite that, the Tortious Interference with Existing Contractual Relations claim against Respondents in their individual capacities was not *identically* asserted as the claim in the first proceeding, as the facts supporting its cause of action are different. In the prior action, Appellant asserted the Dudeks refusal to sign the termination notice prevented her from performing her sales contract. In the current action, Appellant asserted the Dudeks and its co-respondents knew the Dudeks' time is of the essence sales contract was invalid or non-negotiable after November 30, 2012 or at the time the Dudeks made initial application for mortgage credit, therefore had been denied lending [at their own hand] and had no legal right to the property or to compel specific performance, instead committed fraud or fraud on the court to obtain an unlawful or void ruling for specific performance; therefore, Morphew's sales contract was and should be ruled the only valid or legal sales contract. Consequently, the Respondents have tortuously interfered with her performance of her sales contract. **(Morphew Complaint—Original action, Morphew v. Dudeks, Ferros January 31, 2013 Case No. 2013-CP-18-000183); (Fraud/Fraud on the Court Complaint—current action, Morphew v. Dudeks, et al. August 24, 2016)**

For these reasons, or on a void order in which this instant action arose from, Appellant asks this court to reverse or vacate the lower court's order granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss in-part to Appellant's Thirteenth Cause of Action for Declaratory Judgement That No Contract Exists, and Eighteenth Cause of Action for Tortious Interference with Existing Contractual Relations and remand back to the lower court for further proceedings.

9. Did the trial court err in granting Respondents First Federal, Allison Williams, Michael Scarafile, David Collins, Susan Nicholson, and Carolina One Real Estate's Motion to Dismiss in-part to Appellant's Cause of Action for Declaratory Judgement That No Contract Exists pursuant res judicata?

The lower court order granted Respondents Motion(s) to Dismiss in regards to Appellant Morphew's Cause of Action for Declaratory Judgement That No Contract Exists., specifically, "*Here, all of the issues raised in Plaintiffs Complaint arose during the course of the underlying suit and were either asserted, or could have been asserted during the previous lawsuit. Accordingly, her claims are barred by the doctrines of res judicata and issue preclusion. Moreover, to the extent that any of the alleged actions by Defendants were newly-discovered evidence uncovered during the course of underlying suit, any claims related to this information should have been brought before the trial or appellate court pursuant to Rules 59 and 60(b) of the South Carolina Rules of Civil Procedure.* See also *Gray v. Bryant*, 298 S.C. 285, 286-87, 379 S.E.2d 894, 895 (1989) (noting that Rule 59 and 60(b) should be read together with regard to motions for new trial due to newly-discovered evidence.)." **([Amended] Order Motion to Dismiss-- Defendants First Federal and Allison Williams, February 13, 2017); Order Motion to Dismiss-- Defendants Michael Scarafile, Susan Nicholson, David Collins and Carolina One Real Estate, January 31, 2017);**

Appellant Morphew appeals.

First; and as argued herein Brief, Morphew asserts that extrinsic fraud exists, therefore res judicata cannot bar its collateral attack on the original action's judgment granting specific performance to the Dudeks. "*Unless extrinsic fraud exists, res judicata can be asserted to bar a collateral attack on a judgment.*" *Aaron v. Mahl*, 381 S.C. 381,593,674 S.E.2d 482,486 (2009); *Evans v. Gunter*, 294 S.C. 525,529,366 S.E.2d 44, 46.

Second, both doctrines of res judicata and issue preclusion require the same parties. First the Respondents were not parties to the original litigation, therefore res judicata fails as a defense. Plus, Respondents First Federal and Allison Williams false promise they were extending credit to the Dudeks [per their time is of the essence sales contract or specific performance] is collateral to the prior action.

Third, the cause of action 'Declaratory Judgement That No Contract Exists' was neither the same cause of action as in the former action nor was that an issue raised or actually litigated in the former action (**Morphew Complaint, Original action, January 31, 2013 Civil Case No. 2013-CP-18-0183); (Dudek Complaint, January 15, 2013 Civil Case No. 2013-CP-180074).**

And finally, even if the issue was actually litigated and determined by a *valid*[42] and final judgment, relitigation of the issue can be allowed or considered under certain circumstances. As argued herein Brief, unfairness or injustice resulted, or public policy requires it, thus would be considered an "exception." As the South Carolina courts have so pointed out in *Mr. T:*

> "As indicated, these preclusion concepts have been subjected to exceptions to their application. This court, in *Pye v. Aycock*, 325 S.C. 426, 437-38, 480 S.E.2d 455, 460-61 (Ct.App. 1997), adopted the Restatement (Second) of Judgments § 28 (1982), which states in pertinent part:
>
> > Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:
> >
> > (5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be

[42] Issue of VOID Order of November 6, 2014 is raised herein Brief.

precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

The mere presence of the various exceptions, many of which are founded in equity principles, warrants affording the parties the opportunity to develop the record. As articulately stated in *People v. Plevy,* 52 N.Y.2d 58, 64, 436 N.Y.S.2d 224, 417 N.E.2d 518, 521 (1980) (citation omitted), preclusive doctrines are "not to be rigidly or mechanically applied and must on occasion, yield to more fundamental concerns."[7] More precisely, the application of res judicata and collateral estoppel "may be precluded where unfairness or injustice results, or public policy requires it." *Nelson v. QHG,* 354 S.C. 290, 315, 580 S.E.2d 171, 184 (Ct.App.2003) rev'd in part, 362 S.C. 421, 608 S.E.2d 855 (2005) citing *State v. Bacote,* 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998); *Carrigg v. Cannon,* 347 S.C. 75, 552 S.E.2d 767 (Ct.App.2001).

Mr. T v. Ms. T, 378 S.C. 127, 662 S.E2d 413 (2008)

Nat'l Sur. Co. v. State Bank of Humboldt, 120 F. 593 (8th Cir.1903). In essence, the rule merely reflects many of the considerations attendant to an equitable analysis. Further, since the independent action referenced in the rule is one in equity, the court may consider equitable defenses such as laches, unclean hands, and whether an adequate legal remedy exists; we do not suggest this list is exclusive. However, what we do suggest is that equity only intervenes when the circumstances so require, but to do so, a court must be aware of all of the circumstances before it acts. Thus, the parties must be allowed to develop the record accordingly.

Even if the parties were the same, Morphew argues res judicata cannot bar her independent action because when two actions are between the same parties upon different causes of action, the former judgment is conclusive only as to those issues *actually* determined, not what could have been determined:

The plea of res judicata and estoppel brings into play what is sometimes referred to as the dual aspects of the doctrine of res judicata. As pointed out in 46 Am. Jur.

(2d), Judgments, Section 396, "there is a wide difference between the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand, or cause of action, and its effect to preclude the relitigation of particular facts or issues in another action between the same parties on a different claim or cause of action. Although there is virtual unanimity of agreement on this distinction, confusion frequently arises from variations in nomenclature applied thereto. The two aspects of the doctrine do not necessarily have the same consequences, the effect of a judgment upon a subsequent controversy between the parties being more limited where the controversy is based upon a different cause of action than where it is based upon the original cause of action."
Both aspects of res judicata involve the theory of estoppel and it is said that the more recent tendency is to describe the rule precluding the relitigation of particular issues in a subsequent action on a different cause of action as "collateral estoppel by judgment" as distinguished from the "direct estoppel by judgment" where the prior and subsequent cause of action are identical. 46 Am. Jur. (2d), Judgments, Section 397.

Regardless of the nomenclature used, our decisions recognize this dual aspect of the doctrine of res judicata.

In *Wold v. Funderburg*, 250 S.C. 205, 157 S.E. (2d) 180, we restated the long established general rule that, in order to sustain the plea of res judicata the following three basic elements must be established: (1) identity of parties; (2) identity of the subject matter; and (3) an adjudication of the issue in the former suit.

The dual aspect of the doctrine derives largely from the application of the foregoing third element. The rule as to the conclusiveness of the prior adjudication has a different application where the prior and subsequent causes of action are identical and where the subsequent action is on a different cause of action. This distinction was pointed out in *Johnston-Crews Co. v. Folk*, 118 S.C. 470, 111 S.E. 15.

The Court held in Johnston-Crews that, where the two action are between the same parties on identical causes of action, the former adjudication is conclusive, not only

the precise issues raised and determined, but of such as might have been raised affecting the main issue. Where, however, the two actions are between the same parties upon different causes of action, a different effect is given the prior judgment. In the latter instance, the former judgment is conclusive only as to those issues actually determined.

Johnston-Crews succinctly states the foregoing principles as follows:
"The rule granting conclusiveness to a judgment in regard to issues of fact which could properly have been determined in the action is limited to cases involving the same cause of action. Where a second action is upon a different claim, demand, or cause of action, the established rule is that the judgment in the first action operates as an estoppel only as to the [issues,] points or question actually litigated and determined, and not as to matters not litigated in the former action, even though such matters might properly have been determined therein." *Griggs v. Griggs*, 214 S.C. 177, 51 S.E. (2d) 622, (where the Court quoted extensively from American Jurisprudence, including the following now found in 46 Am. Jur. (2d), Judgment, Section 418)

"In other words, the rule precluding relitigation of issues which might have been raised in the prior action applies only where the two actions involve the *same cause of action*; but all questions which were actually litigated in the prior action *and determined* by the judgment are conclusive in any subsequent action between the parties, or their privies, regardless of whether the subsequent action involves the same or a different cause of action."

Lowe v. Clayton, 264 S.C. 75, 212 SE 2d 582 (1975)

The prior action between the Appellant, sellers Ferro and co-respondents Dudeks involved the right of the Dudeks to compel Specific Performance and their legal liability to sign the termination notice so Morphew could perform her contract or close escrow, while the present action seeks damages and to set aside the specific performance decree on the ground of fraud, that the Order of November 6, 2014 is void, and the fact they came to the courts with unclean hands

and conspired to deceive or commit fraud or fraud on the court, along with the co-respondents, to obtain a ruling contrary to the precedents, rules and statutes of law or equity.

The two actions in regards to the Respondents were not the same parties and not based upon the same cause of action and; if the present action is barred, it must be upon the ground that the issue now presented was identical, and if so, the 'identical' issue was litigated and properly determined in the prior action. Therefore, res judicata or issue preclusion does not apply to which might have been raised in the prior action.

Additionally, the lower court also declared that Morphew "*should*" have made a motion for a new trial based on newly discovered evidence pursuant SCRCP Rule 59 and 60(b), quoting *Gray v. Bryant, 298 S.C. 285, 286-87, 379 S.E.2d 894, 895 (1989)* (noting that Rule 59 and 60(b) should be read together with regard to motions for new trial due to newly-discovered evidence).

Nowhere does the trial court state it was *required* nor does it provide a ruling, statute or precedent to support its contention. Morphew has been unable to locate any cases similar to this present action which a Plaintiff's action was barred by res judicata or its failure to file a Rule 59 or 60(b) motion instead of filing an independent action. The trial court relied on *Gray v. Bryant,* but that case is not even similar to the case at hand. Unlike this current case, in *Gray* the Appellant filed a 59(e) motion for a new trial, and the issue was whether the motion was timely. In this instant action, Morphew discovered the fraudulent facts and evidence in January 2015, over 2 ½ months after the Order was issued, making it impossible to file a Rule 59 motion for a new trial. Even if possible, a 59(e) motion would most likely have been ineffective as the record shows the sellers/pro se defendants had already petitioned the trial court to consider the new evidence and as

their closing statement[43] but the master declared he was not going to consider it [petition/evidence/Ferro closing statements], only the attorneys' statements (**Ferro Petition, September 9, 2014**); (**Email- Ferro, September 9, 2014**). Though Morphew and the Ferros raised the issues on appeal, this court did not consider or rule on them, instead only affirmed the lower court's ruling based on its standard of review "*that the broad scope of review in an action of equity does not require it to disregard the findings at trial or to ignore the fact the master was in a better position to assess the credibility of the witnesses*", therefore affirming without considering or reviewing the fraud, or without its own view of the preponderance of the evidence. (**Opinion No. 2017-UP- 019, Filed January 11, 2017 Appellate Case No. 2014-002633**). Further, Rule 60 does not mandate a litigant file a motion 60(b), but instead states "*This rule 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.*" This current 'independent' action was filed during the pendency of the appeal of the prior action.

Even so, Morphew has raised issue herein Brief for this court to declare the November 6, 2014 Order void in-part, specifically in its granting specific performance in favor to the Dudeks. In its argument, the record shows that regardless of the fraud, whether intrinsic or extrinsic, perpetrated by the Respondents or co-respondents, the ruling was contrary to the rules, statutes or precedents of equity and obtained by substantial perjury, the suborning of perjury, forgery, misrepresentations, concealment and/or false promises of the all respondents as a whole, or the refusal to speak or disclose the truth by any one (1) respondent. Meaning, *if just <u>one</u> (1) respondent* on this appeal spoke or disclosed the truth the Dudeks were not ready, able and willing to tender payment as required to compel specific performance, or were denied lending because

[43] The Master had asked for closing statements over 2 months after the trial. The Defendants Ferro, who were pro se, issued the petition as their closing statement, but the Master stated he was not going to consider their evidence and was only going to consider the attorney's closing statements.

they let their sales contract expire before making initial application and therefore rendering said contract invalid or non-negotiable, we wouldn't be here today with this court attempting to untangle the legal problems presented in the substantial litigation caused by the respondents.

Of course, if this court finds Respondent Collins in default or that default or its entry of was relieved in error by the trial court as argued herein Brief, this argument in regards to Appellant's Cause of Action for Declaratory Judgement That No Contract Exists in regards to Collins may be moot, and Appellant petitions this Court to find Respondent Collins in Default and to record such entry as applicable per Rule 55(a). If this Court finds the Chief Deputy Clerk failed to enter default as required, Appellant petitions this Court to Order entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Appellant, but instead an error of the court. Further, Appellant requests said Order to state Respondent Collins has been found in Default and is hereby entered on November 27, 2017 and that default Judgment is to be entered accordingly and damages awarded as such.

If not, and regardless, for these reasons above, or on a void order in which this instant action arose from,[44] Appellant asks this court to reverse the lower court's order granting Respondents David Collins, First Federal, and Allison Williams' Motion to Dismiss in-part to Appellant's Thirteenth Cause of Action for Declaratory Judgement That No Contract Exists, and remand back to the lower court for further proceedings.

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10. Did the trial court err or abuse its discretion in granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss in-part to Appellant's Cause of Action for Breach of Contract Accompanied by Fraudulent Act?

[44] *See,* Issue #1 -VOID order, Pg. 20 of this Brief.

The lower court order granted Respondents Dudek and Cross' Motion to Dismiss in- part in regards to Appellant Morphew's cause of action for Breach of Contract Accompanied by Fraudulent Act because the "*lower court lacked jurisdiction to hear any claim that was already litigated and decided by the Master in Equity.*" **(Order granting in part Defendants Stephen Dudek and Doreen Cross' Motion To Dismiss, January 31, 2017).**

Appellant agrees that the lower court usually lacks jurisdiction to hear a claim that was already litigated and decided by the Master in Equity, but in this instant action the breach of contract accompanied by a fraudulent act by the Dudeks was not a claim already litigated or decided by the Master. In this current action, said breach of contract is not a claim against the *sellers* Ferro as in the original action, but a separate and subsequent breach by Respondents *Dudek* not yet heard or adjudicated. In its current cause of action Morphew claims the Dudeks breached their contract as they were to proceed with closing on or after November 15, 2014 for specific performance but failed to do so. "Per SC Rule 241(b)(4), orders, judgments, decree or decision[s] on appeal that direct the sale or delivery of possession of real property as provided in S.C. Code Ann.§ 18-9-170, are not stayed on appeal." There was no stay on the order compelling specific performance[45], the Dudeks failed to proceed with closing, therefore a breach of contract and contempt of the court order, caused by their own fraud, and a matter not previously on appeal. Morphew further alleged the *Respondents own fraud* prevented them from proceeding with the closing, meaning in order to close escrow, First Federal needed a closing order from the lower court before they would accept the 'new' application for mortgage credit. The Dudeks *prior and continuing fraud is directly related to their own critical breach,* therefore this current claim for

[45] The Respondents even tried to force a stay on their purchase of the property in their attempt to obtain a court ruling ordering Morphew and the Ferros to purchase a supersedeas bond (*See*, **Defendants Dudek Motion for Supersedeas Bond and Contempt Civil Case No. 2013-CP-18-00183)**

breach of contract was not encompassed in the prior action, either on appeal or as a cause of action, therefore can be heard.

For these reasons, or on a void order in which this instant action arose from,[46] Appellant asks this court to reverse the lower court's order granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss in-part to Appellant's Ninth Cause of Action for Breach of Contract Accompanied by Fraudulent Act and remand back to the lower court for further proceedings.

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11. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, and David Collins on Appellant's claim of fraud or fraud on the court?

As argued herein Brief, Morphew contends the trial court's order for summary judgment dismissing its cause of action "Fraud, Extrinsic Fraud – Fraud on the Court" was improper due to pending discovery and/or this cause of action was already previously ruled on by another judge in the same civil action, and not appealed or contested, therefore should be reversed an remanded back to the trial court for further proceedings.

Regardless, the trial court order awarded summary judgment to Respondents reasoning Appellant has been unable to create a genuine issue of material fact with respect to the essential elements of fraud on the court, specifically "*nondisclosure of material facts, and even perjury, amount only to intrinsic, not extrinsic, fraud,*" especially when "*the documents Plaintiff alleges were concealed were, in fact, provided to her attorney shortly before a previous trial* [the original action's trial]."

Appellant Morphew appeals.

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[46] *See,* Issue #1 -VOID order, Pg. 20 of this Brief, repeated herein.

In its Order, the trial court based its ruling to dismiss Morphew's fraud, extrinsic fraud, and fraud on the court cause of action that the false testimony or nondisclosure of material facts by the Respondents in a previous trial is intrinsic, not extrinsic, fraud therefore its cause of action for fraud and fraud on the court fails. **(Order granting summary judgment, First Federal and Allison Williams, November 15, 2018); (Order granting summary judgment, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, November 15, 2018); (Order granting Defendant Collins' Motion to Dismiss, November 15, 2018).**

Morphew agrees that normally South Carolina courts have found that "nondisclosure of material facts", and even "perjury", amount only to intrinsic, not extrinsic, fraud, but the original case was not only acts of perjury and/or nondisclosure of material facts, it encompassed substantial acts of perjury and/or nondisclosure of material facts, plus misrepresentation, subornation of perjury, forgery. presenting false promises, conspiracy to commit fraud, and intentional concealment of documents – all material and critical to the case, that if the truth was told or the concealed documents had been revealed during discovery or at trial such action(s) would have ended the Dudeks' case—or the trial judge would have been unable in law and equity to grant specific performance to the Dudeks. Instead, an order was issued that fails on its face or is contrary to the rules, statutes or precedents of law and equity.

A. In regards to Respondent Collins:

First, and specifically to Respondent Collins, and as argued previously herein Brief, Collins is in default *and/or* the Order granting Collins Motion to Dismiss [i.e., granting summary judgment via conversion pursuant Rule 12(b)(6)] is void, therefore this argument in regards to Collins is moot. Even so, Collins filed a frivolous complaint, and with intent to deceive, gave false testimony, suborned perjury from his clients and the co-respondents in this current case, forged financial documents, presented false evidence, concealed

critical facts and documents that would have rendered the lower court without the power or ability to compel specific performance in favor of the Dudeks and prevented Morphew from presenting her case fully and fairly, prevented her from her legal right to the property and induced a ruling that fails on its face or contrary to the rules, statutes or precedents of the South Carolina courts. These substantial actions perpetrated by an officer of the court is extrinsic fraud, and is admitted as such in the trial court's order on appeal: (Under South Carolina law, fraud on the court has been defined as "the species of fraud which does, or attempts to subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjuding cases that are presented for adjudication." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1998)) **(Order granting Defendant Collins' Motion to Dismiss, November 15, 2018 pg. 3, Section I).** Further, neither Morphew nor the courts had reason to anticipate fraudulent testimony or the suborning of, especially from an officer of the court, who has taken an oath as an attorney to uphold the highest standards as such, including: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous"; A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false; (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the

proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal; In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client. Further, the circumstances of the case(s) in this instant called for 'perfect good faith and full disclosure' from his clients and the witnesses. It wasn't until after trial and on appeal that Morphew discovered "practically all of the material testimony or evidence introduced in the trial of the aforesaid case was false, perjured, fabricated and fraudulent," with Collins having complete knowledge of the truth during the whole litigation.

B. In regards to Respondents First Federal and Allison Williams:

When a lending institution or its representative/witness had full knowledge that its' clients were denied lending, and the Respondents had initially shown concern about being dragged into the litigation in the first place[47], but instead took advantage of their heightened position and exploited the trust and confidence the judge, sellers and/or Morphew reposed in their evidence, and the fact they relied wholly on the Respondents' testimony, especially their false promise they officially agreed to loan the Dudeks the money or were extending them mortgage credit, which is a position collateral to the issue at hand, is extrinsic fraud[48]. In fact, the Judge's "reliance" on that false promise was *critical* to the trial court's ability or inherent power to adjudicate specific

[47] Williams and First Federal knew on January 18, 2013 there was another buyer (knowing specifically it was Morphew does not change the issue) and there was concern FF would be pulled into the lawsuit, and Williams suggested the legal department review the Dudek file (**email Williams/Mortgage Department, January 18, 2013**).

[48] The Dudeks sales contract was expired when the Dudeks made initial application for financing on December 5, 2012. First Federal should not have even accepted the Dudek application when they had no valid claim to the property, therefore the Respondents improperly or unlawfully accepted an invalid sales contract for processing.

performance in favor of the Dudeks; and critical to Morphew's performance of her sales contract, her due process or the ability to present her case fully.

The Respondents 1) represented that a valid and negotiable sales contract existed when in fact none existed[49]; 2) The Respondents represented or created the appearance that the Dudeks were 'ready, able and willing' to tender payment or were approved lending per their time is of the essence sales contract as required to compel or order specific performance when in fact the Dudeks were *denied* lending for their failure to present to Respondents a valid and negotiable sales contract; and 3) the Respondents in its concealments and perjury made or represented a *[false] promise* that they had approved and were providing mortgage credit to the Dudeks when in fact they had denied them lending (**10-day adverse letter from First Federal, January 3, 2013**) and shortly after closed their file the day they found out their clients were in litigation and they may get pulled into it (**Denial Letter(s), Dudek and Cross, January 31, 2013**)(**Email Williams/Mortgage Department, January 18, 2013**). Again, such promise concerned a matter which at the time of the trial in that action was collateral to the issues being tried, therefore fraud on the court. Their actions or non-actions also prevented Morphew from performing her sales contract, prevented her due process or prevented her from fully presenting her case; hence 'it's inequitable for the victor to retain his advantage'.

C. In regards to Michael Scarafile, Susan Nicholson and Carolina One Real Estate:

When a real estate agent and its employer have full knowledge that its clients failed to obtain financing, and were denied mortgage credit because its clients let their time is of the essence sales contract expire before making initial mortgage application, they first have a duty to disclose to the sellers or its agent of any contractual conditions its clients contract failed or were

[49] The Dudeks' sales contract expired November 30, 2012, six (6) days before the Dudeks made *initial* application for financing on said property. Meaning, at all times material, a valid sales contract was not in existence or First Federal has never been in possession of a valid sales contract.

unable to perform, ESPECIALLY their financing condition since it was precedent to any seller condition. Instead they tried to cover up their clients' critical breach, demand actions from the sellers when their clients' no longer had a legal claim to the property, then under oath, failed to disclose those facts *and* provided false evidence or testimony by asserting its clients had secured financing and were ready to close [but it was the sellers' fault they couldn't].

The Respondents, an official agency under strict rules and conduct imparted on them by the state of South Carolina, who were not parties to the case and had full knowledge how a real estate contract works, especially one they 'wrote', and that their clients were denied lending, took advantage of their heightened position and exploited the trust and confidence the sellers, the judge and Morphew reposed in their testimony or evidence; and the fact they, *especially* the trial court judge, relied wholly on the Respondents and co-respondents' testimony, especially the assertions their client [the Dudeks] were "ready and able" to close escrow[50] per their sales contract or specific performance. In fact, the Judge's "reliance" on their assumed honesty, combined with the co-respondents' (lender) false promise they were extending mortgage credit to their clients and were ready to close, was *critical* to the trial court's ability, inherent power or jurisdiction to adjudicate specific performance in favor of the Dudeks; and critical to Morphew's due process or the ability to present her case fully *and fairly*, and its ability to perform her sales contract or close escrow.

Consequently, the Respondents' along with its co-respondents' perjury not only misled the receivers, but impinged directly upon the administration of justice.

[50] **(Email, Respondent Scarafile President and Chief Counsel of Carolina One) , December 18, 2012)**

The Respondents, 1) represented that a valid and negotiable sales contract existed when in fact none existed[51]; 2) represented or created the appearance that their client the Dudeks were 'ready, able and willing' to tender payment or were approved lending per their sales contract as required when in fact the Dudeks were *denied* lending for their failure to present to First Federal a valid and negotiable sales contract; 3) that the Respondents, its clients, the closing attorney and the lender were ready to close but were prevented by the sellers, and 4) in its concealments and misrepresentations or perjury made or represented or supported their co-respondent/lender, First Federal/Allison Williams' *[false] promise* that they had approved and were providing mortgage credit to the Dudeks when in fact they had denied them lending **(10-day adverse letter from First Federal)** for failure to have a valid and negotiable sales contract **(Denial Letter(s), Dudek and Cross)**. Again, such perjury and misrepresentations concerned a matter which at the time of the trial in the prior action was critical to the Dudeks ability to compel specific performance and the inherent power or jurisdiction of the trial court to rule specific performance in favor of the Dudeks, which appears has led to a VOID order. Their actions or non-actions also prevented Morphew from her legal right to the property *and* her due process from fully *and fairly* presenting her case. Hence 'it's inequitable for the victor to retain his advantage.'

Even so, the extent Respondents First Federal, Allison Williams, Susan Nicholson, Carolina One, Michael Scarafile and David Collins reached in order to represent such a façade goes well beyond a simple perjured statement or falsity and cannot be denied. It's not only fraud on the court but fraud to the judicial system, or should rise to such level.

> "Consequences are not always conclusive against a rule of positive law; and here the equity of the case is clear."

[51] The Dudeks' sales contract expired November 30, 2012, six (6) days before the Dudeks made *initial* application for financing on said property. Meaning, at all times material, a valid sales contract was not in existence or First Federal has never been in possession of a valid sales contract, consequently no lawful or proper mortgage transaction existed.

> "It is said that the refusal to enjoin the enforcement of judgments on the ground of perjury is a necessary choice between the evils of injustice in individual cases and the encouragement of vexatious litigation. But a party seeking redress is required to exhaust first his legal remedies, to be free from fault, and clearly to establish the perjury without which judgment would not have gone against him. *It is submitted that with these safeguards against undue litigation the lesser evil is to follow the equity of the matter.*"
>
> 22 Harvard Law Review 600, 601, 602 (note).

In its Order or judgment on appeal dismissing Morphew's cause of action for fraud, extrinsic fraud, and fraud on the court, the trial court states, "*Speaking directly on the issue at hand, the Supreme Court held that the charge of perjury or false swearing on the part of a party or his witnesses "is a species of intrinsic, not extrinsic, fraud," and affords no grounds for equitable interference with a judgment. Corley v. Centennial Const. Co.*, 247 S.C. 179, 189, 146 S.E.2d 609, 614 (1966). The trial court calls out *Corley v. Centennial Const. Co.*, but this instant action differs greatly from *Corley*.

In *Corley*, there was only one (1) instance of *perjured* or *false testimony* given in behalf of the appellant, and the sole contention of the respondents is that the judgment rendered against them in the rescission action was based upon specifically the testimony to the effect that "the dwelling which the appellants contracted to build for the respondents had been inspected and approved by the Federal Housing Administration" was false and no final approval of the construction of such building has ever been made by said Administration. The trial court in that case ruled the allegation that a witness perjured himself or gave false testimony is insufficient because the materiality of the testimony, and the opportunity to attack it, was open at the trial. In *Corley*, the respondents were fully aware of the falsity before trial. According to their *complaint and their testimony*, the respondents had direct and informed knowledge that the Federal Housing Administration's approval had not been given in the construction of their dwelling. (In the

complaint and testimony, the respondents admitted they and their lawyer spoke to the FHA directly on the phone before trial and were told the dwelling had not yet been approved).

First, unlike *Corley*, Morphew or its attorney did not have knowledge at trial that the Dudeks contract had expired and therefore they were *denied* lending. It was the Ferros who discovered the evidence and filed a petition as their closing statement against their individual case with the Dudeks[52], but it was on appeal that Morphew discovered the fraud. Regardless, it was *after* trial when the evidence or fraud was discovered, a fact the lower court acknowledged in its Order of 2-21-18, "*The supposed fraud was known to Morphew and the Ferros after trial.....*" **(Order, Constructive Trust – Morphew v. Stephen Dudek and Doreen Cross Pg. 8 Para. 1- Appellate Case No. 2018-000507)**. Though Morphew assumed some documents had been provided before the trial, she states that she had no idea what her attorney had knowledge of before trial or what had even been provided to her attorney, but clearly stated in her deposition and at the hearing that he neither had a complete file nor did he have the denial letter[53] 'because if he did he would have produced it. The denial letter would have ended the Dudeks' case for specific performance or produced a far different ruling.

> "*I don't know what John Massalon actually had. The only thing that I know that he did have was that notebook[54], and what was in it was not that complete thing[55]*"
> **(Morphew Deposition, pg. 121 lines 18-21)**

[52] **Ferro Petition, September 9, 2014**

[53] The concealment of the denial proves all respondents knew in January 2013 that the Dudeks time is of the essence sales contract was expired (invalid and non-negotiable) and therefore were denied lending; Hence, tendering payment was impossible, a closing was not able to be scheduled, and therefore the Dudeks could not lawfully compel specific performance; but none of them testified the truth or disclosed such information during the litigation of the original action. If any one of them had, it would have prevented the 'labyrinth' of litigation, subsequent complaints and damages to all parties and the courts in which the respondents have been insistently complaining of.

[54] Notebook Massalon had at trial.

[55] A file Morphew received from Massalon in January 2015 to prepare for its appeal in 2015.

"I don't know what he had at the trial except for this notebook[56] *, and it was not – there was no denial letter. There was nothing like that. Or else, I'm sure if he had seen that, that would have been a red flag."*

(Morphew Deposition, pg. 124 lines 6-10)

A. ...because I don't know what Mr. Massalon received. I don't know if it was a complete file, a partial file, because there was documents that weren't at trial or weren't at -- and I don't know.

Q. You had Mr. Massalon's file, correct?

A. I had a file he sent to me. I don't know if it's complete or if it was the one he had at trial or what he used or when he got those documents in that file, but that's what I used.

Q. So we'll agree that Mr. Massalon received –

A. A file.

Q. -- the pertinent loan file from First Federal less than 24 hours before trial. And again, I'm just quoting what you said to the court of appeals.

A. It's true. But I can't confirm if it was the complete one or not. I have no idea. I don't even know if this[57] *is complete. It said it is, but --*

Q. Keep getting off on tangents, which is easy to do in this case.

(Morphew Deposition, pg. 105 line11 through pg. 106 line 7)

"There was no proof. I had been asking for that ever since the trial and after -- after this evidence was discovered. I didn't have this evidence in my hand.

Whether my attorney had it, it's not complete. Because I can guarantee you that John Massalon is an excellent attorney and if he had had that denial letter and a lot of this information he would have surely have presented it in court... So and if I had had this evidence it would be clear -- if I had had this before trial or even a day after trial and I knew of it I would have presented it."

(Hearing Transcript, October 1, 2018, Morphew testimony, Pg. 47 line 15 through Pg. 48 Line 5)

[56] Id. 6
[57] Id. 7

Even though Morphew testified over and over again that her attorney did not have knowledge or possession of the concealed documents at trial, the trial court ignored her testimony and instead quotes one (1) excerpt from Morphew's deposition as its sole support to find "in fact" Morphew's attorney received the concealed documents before trial:

> A. *Specifically for Ms. Allison Williams and First Federal.*
>
> *Q. And that came from Mr. Massalon's file?*
>
> *A. From -- yes, a book.*
>
> *Q. All right. So when you went through Mr. Massalon's file and you put, like you said, two and two together, you came to the opinion that Ms. Williams' testimony on the stand was fraudulent?*
>
> *A. Can you repeat that?*
>
> *Q. When you went through Mr. Massalon's file and the documents that he had in there and you reviewed the transcript of the testimony at the trial in preparation of your appeal, that's when you discovered that Ms. Williams' testimony was fraudulent?*
>
> *A. Yes.*
>
> *Q. And it was based on the documents that were in Mr. Massalon's file, and the testimony at trial?*
>
> *A. Comparing the two.*
>
> *Q. Yes.*
>
> *A. Yes.*
>
> **(Morphew Deposition, Pg. 80 lines 1-23)**

Nowhere does Morphew state, or does this excerpt presume to present, the fact Morphew's attorney received or had the concealed documents in his possession before trial. In fact, as demonstrated above, Morphew's testimonies clearly affirm the contrary. Further, this excerpt would appear to confirm the opposing attorneys' knowledge and endorsement that Williams' testimony was indeed *fraudulent* or that the opposing parties actually had full knowledge of the truth at trial and intentionally concealed that truth. Again, Morphew stated in her complaint and

deposition that said perjured testimony was wholly unknown to her at the time of the trial and was not able to be discovered by the use of due diligence she vigorously attempted.[58] Moreover, and again unlike *Cory*, it's [evident] Morphew did not have knowledge of the [concealed] denial letters and other documents before trial[59], for if she did she *unquestionably* would not have been silent. Such evidence was known to be critical to the Dudeks' claim for specific performance and would have caused their defeat or else they would not have concealed those facts or documents. Instead, they knew if revealed, a trial would never have taken place, or the Dudeks would have lost their case and be held liable for all damages by filing a frivolous and unlawful complaint and in their prevention of the Morphew closing. With the denial letter and other concealed documents in hand, the trial court would have granted specific performance solely to Morphew instead of "*first to the Dudeks*"[60], as the record now clearly shows the Dudeks failed to meet the rules, statutes or precedents of law and equity in their breach of contract claim for specific performance **(Order-- granting specific performance to the Dudeks and Morphew, November 6, 2014**

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[58] Either in initial discovery with the Dudeks (several meetings and depositions) or by the issuance of two (2) separate subpoenas and a phone call to First Federal (not excluding the failure of the Dudeks or its attorney to provide initial discovery or disclosure also) where they stated they didn't have any customers of those names nor any loans, though the concealed documents later revealed that the Dudeks were customers and had been customers for years they had financed their current residence and even refinanced it to come up with the $50K deposit on the property in question. Further those concealed documents also revealed all respondents knew the Dudeks had been denied lending and their sales contract was not valid after November 30, 2012. Moreover, co-respondent Collins informed the sellers and Morphew his clients had secured financing and were ready to close but could not due to lack of a CL-100 or a cleared CL-100. The concealed documents also revealed Cross produced a [forged] financial document at her deposition, an 'approval' letter-- dated *44 days before* the Dudeks even made initial application for financing --from Respondent Williams indicating the Dudeks had applied for lending and had approval. It's apparent no one wanted to provide Morphew with any documents or material facts regarding the Dudeks or their inability to pay the purchase price, for if they did it would have revealed the Dudeks did not have a case for breach of contract nor the ability to compel specific performance, and there would not been a trial or they would have failed at trial, and we wouldn't be here today in this current case

[59] **Order, Constructive Trust Appellate Case No. 2018-000507**

[60] In its Order, the master granted specific performance to the Dudeks AND Morphew, but first to the Dudeks and second to Morphew [if the Dudeks failed to close].

Case No. 2013-CP-18-0183); (*See,* Morphew v. Stephen Dudek, et al., Appellate Case No. 2014-002633); (*See,* Morphew v. Stephen Dudek, et al., Appellate Case No. 2017-001393)

Morphew contends she did not know what testimony the Respondents would offer at said trial, and neither she nor the courts had reason to anticipate its non-disclosure and false and perjured testimony especially from a federally insured bank, its loan officer, a real estate agency, its' President and Chief Counsel, a real estate agent, and an officer of the court, all who were not litigants and were only at trial to represent its client's and provide factual testimony regarding the Dudeks' financial status, contract performance or closing ability of their clients [and co-respondents] Dudek, or its clients' ability to tender payment or close escrow per their time is of the essence sales contract. It wasn't until she had discovered on appeal that "practically all of the material testimony or evidence introduced in the trial of the aforesaid case was false, perjured, fabricated and fraudulent"; and specific to this appeal on summary judgment granted to the Respondents FF and Williams, that Respondents perjured, or concealed material facts (concealed facts that were contrary to the testimony or answers to the subpoenas); that the Respondents had intentionally concealed critical documents, and that except for such false testimony and concealments, the co-respondents Dudek and Cross would never have obtained a verdict granting them Specific Performance.

An order that fails on its face or is based solely on false evidence that is material and critical to the remedy is equal to an error of law or an order based on factual conclusions that are without evidentiary support, therefore is an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990) (An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support).

There appears to be no valid or judicious reason why the Respondents would perjure themselves, or conceal the material and critical facts of its clients' financial status or their clients' failure to perform their contract precedent conditions over and over again. They were not litigants in the case, they were under oath in the subpoenas or at trial, and the Dudeks financial status, performance of their time is of the essence sales contract, or their ability to tender payment for the property was the crux of the [specific performance] case(s). So why did they make false promises, perjure, forger, present false evidence and conceal the truth or material documents? Morphew raises this compelling question, and argues the Respondents were specifically at trial to fairly or properly present its clients' case, truthfully represent its clients, or provide to the judge, the sellers/Defendants Ferro and Morphew the truth regarding the facts specific to the Dudeks' financial status, ability to tender the purchase price for the property/close escrow per specific performance, or their performance of their time is of the essence sales contract's conditions. The Respondents had a duty to speak while under oath or in a court proceeding, therefore their false statements, suborning of perjury, and/or concealment or non-disclosure of the material facts or documents becomes fraudulent especially where there is a duty to speak.

> "Non-disclosure is fraudulent when there is a duty to speak." *Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct.App.1993). "Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens S. Natl. Bank of S.C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972); accord *Manning v. Dial*, 271 S.C. 79, 83, 245 S.E.2d 120, 122 (1978); *Jacobson v. Yaschik*, 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967).

"We have held that nondisclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other. The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) *where one party expressly reposes a trust and confidence in the other* with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, *such a trust and confidence in the particular case is necessarily implied*; (3) *where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties. Warr v. Carolina Power & Light Co.*, 237 S.C. 121, 115 S.E. (2d) 799; *Gordon v. Fidelity & Casualty Co.*, 238 S.C. 438, 120 S.E. (2d) 509. (Emphasis added)

The Respondents were not parties to the case but had a pecuniary interest in making the statements and promises and had superior knowledge of the facts of the Dudeks' transaction and were in the best position to know the Dudeks' financial status in regards to their ability to tender payment for the property per their sales contract, or of the Dudeks' ability to perform their sales contract or if a closing could or would take place. Due to these facts, the Respondents had an additional duty of care owed to the courts and any opposing party, especially Morphew. "If the Defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful inquiry, the law places on him a duty of care with respect to representations made to plaintiff." *AMA Management Corp. v. Strasburger*, 309 S.C. 223, 420 S.E.2d 874. "The duty

of care is not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care a reasonable man would take in the circumstances." *Id.*

The Respondents were under oath in the regards to the subpoenas and under oath on the stand at trial, and had a duty to speak[61]. Both the courts and Morphew expressly reposed a trust and confidence in the Respondents to provide the documentation requested in the subpoenas and to provide the truth to the facts in their sworn testimony or evidence at trial. The position of trust and confidence in Respondents First Federal and Williams, as a loan officer of a federally insured bank, and in Respondents Susan Nicholson, Michael Scarafile and Carolina One as a substantial commercial real estate company, a lawyer or sales agent, was exploited. It was clear that the opposing parties (including Morphew) and the trial court judge relied on the testimony of the Respondents and would not consider such a witness to lie, conceal or misrepresent under oath, therefore there was no question at the time that their statements would be anything but true, and reliance on said testimony was justified; or the misrepresentations by Respondents induced the sellers, Morphew or the court(s) to refrain from discovering the true facts regarding whether its clients were ready and able to tender payment for the property or had performed all conditions precedent within their time is of the essence sales contract before or during trial. But if the Respondents had been honest or disclosed the truth before trial or at trial, and as required by law or its duty to disclose under the circumstances, it's most likely a trial would never had happened or Morphew would have been in a position to present her case fully *and fairly* or been provided

[61] Respondents falsely testified a closing didn't or couldn't take place because of the sellers, and presented false testimony that its clients had been approved, could close or were ready to close escrow or tender payment, presented a false promise to extend credit, and that the Dudeks performed their contract, all the very essence of the specific performance remedy in regards to the original case(s). Morphew's case specifically was reliant on the Dudek's ability to compel specific performance therefore extending to the trial court's ability to adjudicate specific performance in their favor, and also whether the Dudeks critically breached their sales contract which would make them legally liable to sign the termination notice so Morphew could perform her contract. **(Morphew Complaint, Original action, January 31, 2013 Civil Case No. 2013-CP-18-0183).**

her due process. Ultimately, the Respondents' false promises or failure to disclose is extrinsic fraud, or should be considered by this court to be extrinsic fraud.

Moreover, the Dudeks' performance of their sales contract or their transaction with the Respondent(s) and whether it failed or not, was specific and necessary and called for 'perfect good faith and full disclosure' from the Respondents. The Respondents' absolute disclosure went to the very core of the original case(s) and the trial court's jurisdiction or inherent power to adjudicate specific performance in favor of the Dudeks. Consequently, their failure to disclose, combined with their perjury, misrepresentation, forgery, and their false promise they had approved the Dudeks and were extending lending to the Dudeks pursuant their 2012 sales contract, was committed with the intent to deceive or perpetuate a fraud upon the Court and resulted in an unlawful ruling or a ruling contrary to the rules, statutes or precedents of the South Carolina Courts, goes beyond inexcusable, and is extrinsic, or rises to the level of extrinsic, fraud.

Morphew contends if none of the Respondents had a duty to speak or tell the truth or disclose material facts or documents critical in a civil action, or if they cannot be held liable for such unlawful acts, then what purpose do rules of conduct to prevent an attorney from concealing critical documents to a case or critical to a court's ability to adjudicate in said client's favor serve? Or what purpose does the rules of discovery for subpoenas or swearing under oath to 'tell the truth, the whole truth and nothing but the truth" in a court proceeding serve? At what level of perjury, concealment, misrepresentation, forgery and false promises must be accomplished before a party can be held accountable for such blatant disregard for the judicial system and its processes? And what level of due diligence is required or how many times must a litigant ask a question before a trial court will not punish said litigant for reposing a trust and confidence in a witness that had a duty to speak to provide the truth of the matter which they have ultimate knowledge of with reference to the particular transaction in question? Meaning, why is Morphew being punished for

an opposing party and its witnesses' unlawful acts when she is not at fault for their actions or non-actions and did everything in her power to discover the facts before trial; and *then* reposed a trust--the very same trust the judge relied on when making his ruling -- in the Respondents testimony and evidence while under oath? And maybe most important, why must a judgment that was obtained by such fraudulent and reprehensible conduct, and that is so unlawful and contrary to the precedents[62], rules and statutes of law, equity and good conscience, or that is an injustice, be allowed to stand?

Appearing from the record, the only reason that can be presumed is the Respondents committed these unlawful acts because they had a pecuniary interest in closing the transaction, they had to cover up their own business failings, and/or simply because of the friendship between the Respondents and the Dudeks. Or perhaps they didn't think that they'd 'get caught' or be called out, or be held liable if they did, especially since all respondents to this appeal conspired or supported in some way or testified the same false "story" or façade that has led to the spider web of litigation.. Regardless, there is no lawful excuse for the Respondents behavior. A witness, especially a commercial and public federally insured bank, a public real estate agency, or their employees, should be held liable for failing to tell the truth, failing to provide the concealed documents and facts in its subpoenas and on the stand at trial, or failing to disclose the truth or documents in their representation of their client-- or the transaction as a whole -- when they had a duty to do so.

IF the Respondents told the truth or even followed their own business rules and processes in the first place, processes which would have protected them from this very issue or prevented them from fraud or "being pulled into the litigation" (as Williams raised to her superior on January 18, 2013), we wouldn't be here today.

[62] "He who seeks equity must do equity" and "he who comes into equity must come with clean hands"

"The file is in litigation... The attorneys are in negotiation... I think someone there should speak to our attorney about how to proceed. We could get drawn into this law suit....

(Email Williams to Sandi Steele, January 18, 2013)

It's apparent Williams was seriously concerned about their actions and possible liability. Further, it's obvious their legal department was informed of the situation in January 2013, but at a minimum was involved prior to trial in June 2014 when Williams was subpoenaed to testify.[63] It can only appear that Williams was again suborned by its own attorneys to commit perjury and conceal the truth or documents, especially when she admitted at trial she destroyed any evidence she had though she knew of the litigation right before the Dudeks file was [quickly] and officially closed in January 2013. Such action would tend to display guilt or the hiding of evidence that would cause injury to the litigant's case.

MR. MASSALON: "*The subpoena that we sent Judge, we subpoena them twice and when you look at them you can see we did it about a year ago and it just ask for any or all bank documents, tangible things of any description whatsoever, electronic or otherwise relating to them. Initially we got back a letter that said we don't have anything which is kind of odd.*"

DEF. ALLISON WILLIAMS: "*Any documents that I would have had I probably would have destroyed anyway.*"

(Trial transcript, June 111-12, 2014, pg. 221-222 Civil Case No. 2013-CP-1800183)

Further, and based on the number of times the Respondents had attempted to conceal material facts and documents, and are still concealing their *continued* fraud, Morphew contends their actions or non-actions should be considered fraud on the court and be held liable.

[63] Morphew has actual knowledge that before, and after, any bank employee attends a trial, deposition or any court proceeding in which that employee is a representative of its employer, and testifying on behalf of a client's transaction with that bank, that employee is required to be briefed by legal representation of that institution.

Second, unlike *Corley* where there was only <u>one</u> *(1) instance of just perjury or mistake of the perjurer*, the Respondents' actions here entail *many* acts of *intentional* perjury, but also includes, but not limited to, false swearing, forgery, misrepresentation, conspiracy, suborning of said perjury or false swearing by an attorney(s), false promises, and concealment of material facts and documents, all critical to its clients' lawful ability, and the trial court's inherent power to adjudicate, specific performance.

Meaning, in order for its clients' to prevail on their complaint for specific performance in law and equity, it first had to be represented to the trial court the presence of a valid and negotiable sales contract, that the Dudeks complied with their financing condition or conditions precedent within said sales contract, and that a lender (or in this case, First Federal) had approved its clients for financing, and that all were ready to close (i.e., Dudeks were 'ready, able and willing' to tender payment per specific performance). Their actions were pre-meditated and intentional in order to deceive the trial court [and Morphew], that without such promise and concealments would confirm the Dudeks had critically breached all conditions of their sales contract, their sales contract was no longer valid and negotiable, the Dudeks were never ready, able and willing to tender payment on or before their sales contract expired or at the exact moment they compelled specific performance, there had been a violation of all rules, statutes or precedents of equity; and consequently would have rendered the trial court without the inherent power or jurisdiction to rule in the Dudeks' favor or ended the Dudeks case for specific performance.

Maybe just as important, the perjury here was not committed solely "to dissolve a litigant's excuse for their refusal to perform a contract" as in the case of *Corley*, but instead in this action the perjury was committed to *create a condition or conditions precedent* that would support a trial court's ability to order specific performance or allow a litigant to obtain an unlawful ruling or a ruling contrary to the precedents established within the trial court's jurisdiction; or to obtain

property, that at all times material, had no legal right/claim to. In layman's terms, if meeting the rules and statutes of equity for specific performance are pre-conditional, required or critical before a court of equity has jurisdiction or power to adjudicate specific performance, then by the same rules and statutes of equity the granting of such a remedy to the Dudeks was improper or unlawful, thus the Order is void in-part and should be vacated accordingly. Morphew contends a judgment obtained in a state court in circumstances where its enforcement will be contrary to recognized principles of equity and the standards of good conscience, or where it is no longer equitable or is unlawful, is a serious injustice and must be corrected, regardless of any fraud or the type of fraud involved.

If the prior ruling is allowed to stand, the courts are then overturning their own precedents, especially without a compelling reason to do so, therefore setting a new precedent. It then would appear that any ruling, especially for specific performance, that has relied on the equity maxim "He who seeks equity must do equity" and "he who comes into equity must come with clean hands," can be overturned. Such cases include, *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000); *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997); *Norton v. Matthews,* 249 S.C. 71, 152 S.E.2d 680 (1967); *Provident Life and Acc. Ins. Co. v. Driver*, 317 S.C. 471, 451 S.E.2d 924 (1994); *Taff v. Smith*, 114 S.C. 306, 103 S.E. 551 (1920); *New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc.*, 291 F.2d 471 [5th Cir. 1961])(where the court denied relief because the Giants did not come into equity with clean hands).

The Respondents had full knowledge of the truth but continued to commit fraud. During and after trial, the Respondents were fully aware of the unlawful or improper actions being committed and contributed significantly to it and any damages, including any additional liability

or damages in the subsequent complaint(s) arising from the original action, even damages to its own clients and themselves.

Finally, unlike in *Corley*, Morphew's complaint alleges their fraud or fraud on the court(s) has continued *after* trial. Now, due to subsequent actions after the trial, specifically that the Dudeks proceeded to close on the property in question even with the possibility of an appeal on the original action or its ruling for a closing order, and with actual notice of Morphew's claim to the property, she alleges further and specific fraud has occurred. (*Reference*, original action, Appellate Case No. 2017-001393); (*Reference* Constructive Trust -- Morphew v. Stephen Dudek and Doreen Cross, pending Appellate Case No. 2017-000507). In those cases, and in support of this instant complaint alleging 'continuing fraud', Morphew claims the Dudeks obtained the property unlawfully or fraudulently, and are not bona fide purchasers. Morphew has compelled discovery that includes any and all documents, communications, etc., electronic or otherwise, in reference to the 2017 closing, but the Respondents and/or co-respondent(s) refuse to provide any discovery. The pending discovery motions were ruled moot at the same time the trial court provided notice of this judgment granting summary judgment to the Respondents (as argued herein Brief). Based on the above, *Corley* does not support the trial court's position and should not be controlling.

Even if this court were to assume based on precedent that any fraud alleged is only intrinsic in nature, the judgment and prior finding of 'ready, able and willing' are nonetheless vulnerable to attack outside of the fraud context under Rule 60 and through an independent action if the appropriate circumstances are present. Morphew argues her independent action is not restricted to only the ground of fraud. This court has noticed such in *Mr. T*:

> "While the most common ground for an independent action is for fraud, the rule is not restricted to only that ground. The structure of this rule and its use of the word

"or" indicate to this court two potential independent action attacks on a judgment, order or proceeding: 1) one based on such rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake or 2) one based in equity for fraud upon the court. See, 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE. & PROCEDURE § 2868 (2d ed.1995).

The Eighth Circuit characterized the independent action as follows:

> The indispensable elements of such a cause of action are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law.

Basically an independent action presents a judgment which ought not, in equity and good conscience, to be enforced whether it be for special circumstances that deserve such relief or for fraud upon the court; In essence, the rule merely reflects many of the considerations attendant to an equitable analysis. Further, since the independent action referenced in the rule is one in equity, the court may consider equitable defenses such as laches, unclean hands, and whether an adequate legal remedy exists. *Nat'l Sur. Co. v. State Bank of Humboldt*, 120 F. 593 (8th Cir.1903). The court may also consider other policy doctrines as it deems appropriate. However, what the Supreme Court has suggested is that equity only intervenes

when the circumstances so require…(*Mr. T v. Ms. T*, 378 S.C. 127, 662 S.E.2d 413 (2008).

In this instance, Morphew argues "circumstances so require". The Dudeks *completely* failed the maxims of equity, "He who seeks equity, must do equity," *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 SE 2d 287 (2000) (where Ingram, seeking specific performance, was not able to tender the purchase price on either the date his lease expired or on the date he brought the action for specific performance), and "he who comes into equity must come with clean hands." *New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc.*, 291 F.2d 471 [5th Cir. 1961])(where the court denied relief because the Giants did not come into equity with clean hands).

At a minimum, the Dudeks must demonstrate that they were ready and willing to perform their part of the contract (i.e. willing to tender the purchase price) on November 30, 2012, the date the sales contract expired, or on January 15, 2013, the date they brought the action for specific performance. The record indicates that the Dudeks were not in a position to pay the Ferros the purchase price for 788 E. Butternut Rd. on either date (as already argued herein appeal). Further, the Dudeks intentionally waited until their sales contract expired before making initial application, never remedied their invalid and non-negotiable sales contract, were denied lending for this failure, therefore were never ready or able to tender payment per their claim for specific performance filed January 15, 2013. It's also very clear the Respondents First Federal and Allison Williams never officially agreed to loan them the money, and they had no written loan agreements.

This is outlined in *INGRAM v. KASEY'S ASSOCIATES*:

> "Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. *King v.*

Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984) (citing *Monteith v. Harby*, 190 S.C. 453, 3 S.E.2d 250 (1939)). In order to compel specific performance, a court of equity *must* find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Gibson v. Hrysikos*, 293 S.C. 8, 358 S.E.2d 173 (Ct.App. 1987) (citing *Thomson v. Scott*, 6 S.C. Eq. (1 McCord Eq.) 32 (1825)). At a minimum, Ingram must demonstrate that he was ready and willing to perform his part of the contract (i.e. ready and willing to tender the purchase price) on February 28, 1994, the date the lease expired, or on March 14, 1994, the date he brought the action for specific performance. The record indicates that Ingram was not in a position to pay Kasey's the purchase price for Remy's on either date."

Ingram admits that prior to February 28, 1994 he did not have the purchase money in any depository account either under his control, his attorney's control, or in any escrow account. Ingram also admits that in order to close on the property he would have to "scramble around and see if [he] could raise up the money." Although Ingram claims he had several sources who could provide the purchase money, as of March 14, 1994, none of his identified lenders officially agreed to loan him the money, and he had no written loan agreements. In fact, several lenders admitted they did not even have access to the money to loan Ingram.

Specific performance is unsound in this case because Ingram lacked the ability to perform his part of the contract on the date the lease expired and on the date he

sought specific performance. See 71 Am.Jur.2d Specific Performance § 201 (1973) ("[C]omplainant in an action for specific performance must aver that he has performed his part of the contract or that he is willing and ready to perform it, and that he has performed all conditions precedent to the taking effect of the obligation of the defendant, including the payment to be made thereon, or some valid excuse for his failure to perform or offer to perform.").

INGRAM v. KASEY'S ASSOCIATES, 531 S.E.2d 287, 340 S.C. 98 (2000).

Though the Respondents testified the Dudeks were approved for mortgage credit and First Federal was going to provide the purchase money, First Federal never officially agreed to loan them the money, and had no written loan agreement. Not only was there no official agreement or written loan agreement, but on the contrary the record shows First Federal actually DENIED them mortgage credit and closed their file, *and all at the Dudeks own hand.*

As in *Giants, Inc.*, a recent discussion of this maxim by the United States Supreme Court is also controlling here:

> "The guiding doctrine in this case is the equitable maxim that 'he who comes into equity must come with clean hands.' This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be the abettor of iniquity.' *Bein v. Heath*, 6 How. 228, 247 [12 L. Ed. 416]. Thus while 'equity does not demand that its suitors shall have led blameless lives, *Loughran v. Loughran*, 292 U.S. 216, 229 [54 S. Ct. 684, 689, 78 L. Ed.

1219], as to other matters, it does require that they shall have *acted fairly* and without fraud *or deceit* as to the controversy in issue. *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245 [54 S. Ct. 146, 147, 78 L. Ed. 293]; *Johnson v. Yellow Cab [Transit] Co.*, 321 U.S. 383, 387 [64 S. Ct. 622, 624, 88 L. Ed. 814]; 2 Pomeroy, Equity Jurisprudence (5th Ed.) §§ 379-399.

"This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is 'not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion.' *Keystone Driller Co. v. General Excavator Co., supra*, [290 U.S. 240] 245, 256 [54 S. Ct. 146, 147, 148, 78 L. Ed. 293]. Accordingly one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor.

"Moreover, where a suit in equity concerns the public interest as well as the private interests of the litigants this doctrine assumes even wider and more significant proportions. For if an equity court properly uses the maxim to withhold its assistance in such a case it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public. The determination of when the maxim should be applied to bar this type of suit thus becomes of vital significance. See *Morton Salt Co. v. [G. S.] Suppiger Co.*, 314 U.S. 488, 492-494 [62 S. Ct. 402, 405, 406, 86 L. Ed. 363]." *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814, 815, 65 S. Ct. 993, 997, 998, 89 L. Ed. 1381.

> Earlier the Supreme Court said in *Deweese v. Reinhard*, 165 U.S. 386, 390, 17 S. Ct. 340, 341, 41 L. Ed. 757: "* * * A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity." Here the plaintiff's whole difficulty arises because it admittedly took from Flowers what it claims to be a binding contract, but which it agreed with Flowers it would, in effect, represent was not in existence in order to deceive others who had a very material and important interest in the subject matter. If there had been a straightforward execution of the document, followed by its filing with the Commissioner, none of the legal problems now presented to this court to untangle would exist. We think no party has the right thus to create problems by its devious and deceitful conduct and then approach a court of equity with a plea that the pretended status which it has foisted on the public be ignored and its rights be declared as if it had acted in good faith throughout.

New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc., 291 F.2d 471 [5th Cir. 1961.

Here, the Dudeks substantial display of unclean hands is demonstrated. First, they waited until their sales contract expired before making initial application, then waited *5 more days* before signing and returning the application to the Respondents First Federal or Williams. Next they failed to provide a *signed legible* and VALID sales contract; failed to provide the signed contract extension addendum requested at application; failed to respond to Respondent First Federal's 10-day adverse letter; refused to provide lending documents to the sellers, its agent or Morphew in discovery; lied, perjured, misrepresented, and concealed material facts or documents over and over

again including in counsel to counsel meetings, depositions, answers, trial, motions, in subsequent actions and on several appeals. Additionally, they conspired with the Respondents First Federal and Williams, and other co-respondents to commit perjury, forgery, misrepresentation, false promises, or false evidence in order to obtain an unlawful or improper ruling. And now, the Dudeks have unlawfully obtained the property and are attempting to avoid service on a subsequent and separate action where they have breached their contract to provide water easement to Morphew (a provision contained in the Dudeks' sales contract in the said original action), and physically assaulted her property so that it is now inhabitable and has forced Morphew to secure alternate living arrangements and expend undue substantial stress and costs until resolved by the trial court (**Complaint-- Trespass Upon Easement -- Morphew v. Stephen Dudek and Doreen Cross Civil Case No. 2018-CE-1801661**). It should be further noted that in their attempt to avoid service of this separate complaint they committed other unlawful actions by actually taunting the serving officer, a Dorchester County Deputy, over the phone, exclaiming "*good luck finding me*"; and when finally agreeing to meet the serving officer to obtain the summons and complaint, they set up a time and place to do so, then intentionally failed to show up (**Certificate of Non-Service-Doreen Cross, Dorchester County Sheriff's Dept., December 19, 2018**). This again displays deceit, and a total disregard for the judicial system, and now law enforcement. As in the original action, the Dudeks in their intentional avoidance of service of documents (they have full k knowledge of its contents) are again preventing Morphew's due process.

The Dudeks failed to come to the original action with clean hands, and with substantial assistance of the Respondents, deceitfully obtained an unlawful ruling, continued their fraud by obtaining property through such deceit, and still continue their blatant disregard for the judicial system -- and now law enforcement.

The deception (perjury, fraud, forgery, withholding or concealing evidence, and conspiracy, together and as a whole) committed to use the judicial process unlawfully displays an intentional and unlawful disruption of the judicial system, and should be addressed by the courts. "*...tampering with the administration of justice in the manner indisputably* [shown here] *involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.*" (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 245-46, 64 S.Ct. 997 (1944).

Appellant Morphew holds the Respondents knew and were willingly part of this deception, made false promises, and therefore liable for their significant part in said fraud and fraud on the court for, including but not limited to, undermining the integrity of the judicial system, preventing Morphew from obtaining the property (property only she had a legal right to or a legal right to close escrow on her sales contract), violating her constitutional right of due process or from fully *and fairly* presenting her case during trial, the loss of her home, the embarrassment, stress and cost of [unlawful] ejectment, and loss of work, time, and money, and all which caused and is still causing undue emotional stress. Plus, as argued herein, Morphew contends the Respondents are substantially liable for all damages in the original action and all subsequent actions that currently exist or may exist in the future. They had a duty to speak, the knowledge and means to prevent their clients and themselves from this position they are now in, but intentionally failed to do so, therefore are in no position to request relief when they caused or could have prevented the issues upon this court today.

Here, all respondents to this appeal conspired to falsely represent specific conditions, critical to compel specific performance, were present, and did so "in order to deceive others who had a very material and important interest in the subject matter."[64] Specifically, the false conditions or façades that were created are: 1) the existence of a valid and negotiable sales contract after November 30, 2012, 2) the existence of a mortgage loan agreement or even the *ability* of the co-respondent First Federal to approve mortgage credit to the Dudeks for 788 E. Butternut Rd., 3) the existence of a legal mortgage closing transaction or that Wooddy Law Firm could or was able to schedule a closing, and 3) that the sellers prevented them from closing and caused the Dudeks' inability to close escrow or perform their sales contract. All of which *directly* affected Morphew's ability to close on her contract[65], the sellers and Morphew's ability to fully *and fairly* present their cases, and the court's ability or inherent power to adjudicate specific performance in favor of the Dudeks[66]. If not for these actions and non-actions, Morphew would have been awarded specific performance first and only.

If there had been a been a straightforward execution of the sales contract as agreed; or if the Dudeks had complied with the time is of the essence contingencies, specifically their financing contingency; or if all *or even just one* of the opposing litigants had provided the truth or documentation in discovery or at trial "none of the legal problems now presented to this court to untangle would exist."

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[64] *Giants v. Chargers, supra*

[65] Morphew had a closing date but could not perform until the Dudeks signed the termination request, or litigation ended in her favor.

[66] The trial court, in order to adjudicate specific performance, was required to find the Dudeks were 'ready, able and willing' (i.e., to tender payment for the property)

Morphew argues no matter what alleged failings the court finds in regards to this instant action and its causes of action, the substantial and unlawful behavior of the 10 respondents,[67] and their apparent conspiracy to commit such unlawful acts and use of the judicial process in a manner to obtain a ruling that fails in law and/or equity clearly meets the requirements *"rare, special, exceptional or unusual circumstances that may warrant equitable relief,"* particularly when such a ruling is an injustice, and is against all recognized principals of equity, the standards of good conscience and public policy, and should be rendered void. (We think no party has the right thus to create problems by its devious and deceitful conduct and then approach a court of equity with a plea that the pretended status which it has foisted on the public be ignored and its rights be declared as if it had acted in good faith throughout) *New York Football Giants, Inc., supra.* "Do such actions and the Respondents' complete disregard for the judicial system rise above the trial court's "basic" claim that the "*perjury*" and "*concealment of material facts*" by the Respondents only rise to intrinsic fraud?

There are genuine issues of material fact for a jury, including *but not limited to:* Was Morphew's reliance on the misrepresentations of the Dudeks' lender reasonable as a matter of law? Can a reasonable person dismiss the actions of the respondents as only perjury, therefore only intrinsic fraud? Does the ending of litigation take precedent over the rules, statutes and precedents already established in our courts?

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[67] From frivolous and unlawful filings from the very beginning over 5 years ago to substantial perjury, concealment, suborning of perjury and concealment, misrepresentations, and making false promises, that are the very core of the case(s). All respondents knew the truth but all testified or have been litigating or asserting equally the same false facts. "Conspiracy" cannot be denied as it's very clear if the respondents had not come together and plotted to tell the same false facts, the ruling would have been very different. There are no documents or validated evidence to support a ruling for specific performance in the Dudeks favor, and such is an obstruction of justice; Also, the conspiracy is continuing as 10 separate "entities" who had and have complete knowledge of the truth 'stick to the same false story and facts' by again committing perjury and misrepresentation in their answers and filings in this instant case. Further, conspiracy continues as none of the respondents have felt the need to 'come clean' or tell the truth, and such is further obstruction of justice.

CONCLUSION

Due to the reasons stated herein, or that Morphew asks this court to reverse the trial court Order of November 15, 2018 granting summary judgment to First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, Carolina One and David Collins, and declare the trial court Order of November 6, 2014 in-part void[68], declare fraud on the court, award damages and apply sanctions as this court deems appropriate, and remand back to the trial court for further proceedings in this instant action, and/ or retrial of the original action, if necessary.

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12. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents Wooddy Law Firm and Carrie Boyer on Appellant's claim of fraud or fraud on the court?

As argued previously herein Brief, Morphew contends the trial court's order for summary judgment dismissing its cause of action "Fraud, Fraud- Fraud on the court" was improper due to pending discovery and/or this cause of action was already previously ruled on by another judge in the same civil action, and not appealed or contested, therefore should be reversed an remanded back to the trial court for further proceedings.

Regardless, the trial court granted summary judgment to Wooddy Law Firm and Carrie Boyer on Morphew's cause of action fraud and/or fraud on the court, reasoning, Appellant not only failed to make a showing sufficient to establish whether Respondents had the requisite intent, but Appellant has also failed to show the existence of any representations made to any court by Respondents either orally or through documentary evidence, both of which are essential elements for fraud on the court. Therefore, for those reasons, granted their Motion for Summary Judgment

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[68] Leaving Morphew as the sole grantee of specific performance

as to Appellant's cause of action for fraud on the court (**Order granting Summary Judgment to Wooddy Law Firm and Carrie Boyer, November 13, 2018**)

Morphew appeals.

In this case, summary judgment was not granted in regards to the 'fraud' portion of this cause of action, only 'fraud on the court', therefore granting the Respondents motion for summary judgment against Appellant's *entire* cause of action for "Fraud, Extrinsic Fraud-Fraud on the Court," hence dismissing its entire case, was improper. (Order, pg. 4 para. 2)

Regardless, as argued herein Brief, Wooddy Law Firm was not legally disclosed by the lender or First Federal as the closing attorney or able to represent the Dudeks in the closing transaction because at all times material the Dudeks had no legal claim to the property and there was no mortgage closing transaction in existence. Because of this failure, there never was a closing transaction to prepare for, consequently Wooddy Law Firm was not justified, or within the law, to engage themselves as the 'closing attorney', demand any actions or documents from any party to the [non-existent] transaction, or continue in this current action to represent themselves as the closing attorney when they have full knowledge they had no legal standing or justification to do so or that their clients had no legal claim to the property in question. Meaning, their communications, representations, or 'requirements for closing' was unjustified, false and only a façade. Morphew argues their unlawful and unjustified actions were meant to deceive and assist the Dudeks to cover up their critical failures[69] and then used in a legal proceeding.

The Respondents, because they represented themselves as the 'closing attorney' for the lender and the Dudeks until May 2017, and because this instant complaint had been initiated for almost a year prior, it can be properly assumed they had knowledge of or should have had

[69] Fail to initially apply for lending before their sales contract expired, secure financing per their time is of the essence sales contracts, and failure to close escrow.

knowledge of another buyer, and the litigation that followed. Further, they do not dispute the allegations and did nothing to rectify or tell the truth or provide any documentation in discovery in this action to defend the allegations, except that their actions "are normal business proceedings preparing for a closing.'

Again, Morphew raises issue with a *real estate or closing attorney*-- well versed and seasoned in the rules and statutes of a time is of the essence sales contract that has expired and a buyers' ability to compel specific performance of such contract-- acting as an oblivious or 'innocent party' in the background. To create a closing transaction before its clients had even applied for financing, then demand actions to be performed or represented to be performed by the sellers and/or repairs made to a home its clients no longer had a legal right to (i.e., *after the sales contract had expired*), and then demand proof that the repairs had been made, is unlawful and should not be accepted as 'normal business proceedings.' Instead, as an attorney alleging to hundreds and hundreds of real estate closings, assumedly most involving a mortgage loan, the Respondents would know whether they were justified or legally justified to officially represent themselves as "the closing attorney" and demand actions from a party on a home that the Dudeks neither had a legal right[70] to or had been denied lending at their own hand, therefore knowing its clients fail in their ability to compel specific performance.

The Respondents had knowledge its co-respondents the Dudeks, Susan Nicholson, Michael Scarafile, Carolina One, and David Collins presented the four (4) pieces of communication in discovery and at trial to provide evidence "the Dudeks, First Federal and Wooddy Law Firm were ready to close, that a title search had been completed but that Wooddy demanded proof repairs or repairs in regards to the CL-100 in order to close". The Respondents did nothing to raise issue with the falsities and their assumptions as received by the court or Morphew in the prior litigation

[70] The record shows the Dudek sales contract expired November 30, 2012

or in this instant action. Though they made no oral statement to the court themselves in the original litigation, they had knowledge their written communications were presented as false evidence in a legal proceeding. Even though they knew that their clients no longer had a contract on the property in question and were denied lending they did nothing to prevent such misrepresentations or fraudulent actions of its clients, and have continued to conceal those material facts or perjure themselves in this instant action. *State v. Bullock*, 54 S.C. 300, 311-12, 32 S.E. 424, 428-29 (1899) ("It is not necessary to state how the instrument could have been used for the purpose of fraud. It is enough if it appears from the character of the instrument, together with the provisions of the statute, that it might have been so used in connection with other facts, real or simulated, either then existing, or with which it was to be afterwards connected." (citation omitted). Now, even though the Respondents backed out as the closing attorney in the Dudeks closing transaction in 2017, their silence supported the alleged fraudulent purchase of the property by the Dudeks, and prevented Morphew from obtaining the property she claims she had a legal right to (*See,* Constructive Trust, Morphew v. Dudeks, Appellate Case No. 2018-000507); (*See,* Appellate Case No. 2017-001393)

Such communications and misrepresentations were used in the fraud or continuing fraud on the court. As declared by the trial court in this action, the Respondents don't deny their actions, they just testify the actions are just normal closing procedures and were justified under such. Morphew alleges a material question of fact remains whether the Respondents had standing to legally represent themselves as the closing attorney 'preparing for a closing' when the fact in the record shows its clients had no sales contract, no valid application for financing, and were denied lending at their own hand (i.e., no legal claim to the property). Therefore, were the Respondents without justification or legal standing to make such representations or demands? Further, if they lacked standing or justification, if and what liability do the Respondents have 1) in

their failure to speak up, 2) in the alleged void Order granting specific performance to the Dudeks, 3) in the prevention of Morphew to obtain the property in which she had legal claim to or perform her contract, 4) in damages resulting in such prevention, or 5) what liability do the Respondents have in the subsequent actions against its alleged clients and co-respondents Stephen Dudek and Doreen Cross (*See,* Constructive Trust -- Morphew v. Stephen Dudek and Doreen Cross, pending Appellate Case No. 2017-000597); **(Complaint-- Trespass Upon Easement -- Morphew v. Stephen Dudek and Doreen Cross Civil Case No. 2018-CP-1801661).**

Even so, there appears to be no valid or judicious reason why Wooddy Law Firm or Carrie Boyer would present themselves as the closing attorney or demand repairs to the property in questions before the Dudeks even made initial application for financing, or before the lender, co-respondent First Federal, contacted them with a clear to close or had been provided their name by the Dudeks as the closing attorney preferred. They were not litigants in the case, they were attorneys, 'representing' the Dudeks, and with superior knowledge of time is of the essence sales contracts, the requirements to compel specific performance, and its 'alleged clients' ability to close or if a closing was tentative to making repairs. The Respondents, especially after engaging themselves directly with the sellers, had a duty to speak to the sellers (the other party to the transaction) in the prior litigation, and have a duty to speak the truth in this instant case. They have also failed to provide any evidence or support their 'silent' affirmation or clients' testimony that a [mortgage] closing transaction was legally in affect or that they and their 'clients' were ready to close in 2012 but it was a sellers breach that caused that failure. Their perjury and non-disclosure of the material facts and documents becomes fraudulent especially where there is a duty to speak.

> "Non-disclosure is fraudulent when there is a duty to speak." *Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct.App.1993). "Non-disclosure becomes fraudulent

concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens S. Natl. Bank of S.C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972); accord *Manning v. Dial*, 271 S.C. 79, 83, 245 S.E.2d 120, 122 (1978); *Jacobson v. Yaschik*, 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967).

"We have held that nondisclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other. The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) *where one party expressly reposes a trust and confidence in the other* with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, *such a trust and confidence in the particular case is necessarily implied*; (3) *where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties. Warr v. Carolina Power & Light Co.*, 237 S.C. 121, 115 S.E. (2d) 799; *Gordon v. Fidelity & Casualty Co.*, 238 S.C. 438, 120 S.E. (2d) 509. (Emphasis added)

Wooddy Law Firm and Carrie Boyer were not parties to the case but had a pecuniary interest in making the false statements and misrepresentations and obviously had superior knowledge of the facts of the Dudeks' [non-existent] transaction and were in the best position to provide guidance to the Dudeks; or because they engaged the sellers previously, had a legal liability, whether a transaction was existent or not, to the sellers to let them know if a closing was

not taking place or what was required in order to schedule a closing. As already argued herein brief, Morphew was directly affected by the failure to disclose to the sellers first.

Due to these facts, the Respondents had an additional duty of care owed to the courts and Morphew. "If the Defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful inquiry, the law places on him a duty of care with respect to representations made to plaintiff." *AMA Management Corp. v. Strasburger*, 309 S.C. 223, 420 S.E.2d 874 (1992). "The duty of care is not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care a reasonable man would take in the circumstances." *Id.*

Appearing from the record, the only reason that can be presumed the Respondents committed these unlawful or unjustified acts is because they had a pecuniary interest in closing the transaction, because of the friendship between the Respondents and the Dudeks, and/or perhaps they didn't think what they did was any real concern or that they'd be questioned, or be held liable if they did, especially since all respondents to this entire appeal supported in some way conspired or testified the same false "story" or façade. Nonetheless, an attorney, especially one that engaged themselves, unlawful or not, therefore placed any liability at their own will, should be held answerable for providing false information that was used in a legal proceeding, and then failing to disclose the truth or documents when they had a duty to do so. IF the Respondents had been honest, not acted outside the scope of their representation of their client or supported their clients fraudulent actions, or if they had disclosed the prior closing status of their clients at the start of this action, they wouldn't be here today or Morphew wouldn't be in this position today.

Appellant Morphew holds that the Respondents knew and were willingly part of this deception and therefore liable for their significant part in said fraud and fraud on the court for,

including but not limited to, undermining the integrity of the judicial system, preventing Morphew from her lawful right to the property or closing escrow on her sales contract, violating her constitutional right of due process or preventing Morphew from fully *and fairly* presenting her case during trial, the loss of her home, the embarrassment, stress and cost of [unlawful] ejectment, loss of work, time, and money, all which caused and is still causing undue emotional stress. Plus, as argued herein, Morphew contends the Respondents should be held liable in part for the damages in the original action and subsequent actions that currently exist or may exist in the future. They had a duty to speak, the knowledge and means to prevent their clients and themselves from this position they are now in, but intentionally failed to do so, therefore are in no position to request relief when they caused or could have prevented the issues upon this court today.

Here, all respondents to this appeal conspired to falsely represent specific conditions, critical to compel specific performance, were present, and did so "in order to deceive others who had a very material and important interest in the subject matter."[71] Specifically, the false conditions or façades that were created are: 1) the existence of a valid and negotiable sales contract after November 30, 2012, 2) the existence of a mortgage loan agreement or even the *ability* of the co-respondent First Federal to approve mortgage credit to the Dudeks for 788 E. Butternut Rd., 3) the existence of a legal mortgage closing transaction or that Wooddy Law Firm could or was able to schedule a closing, 3) and that the sellers prevented them from closing and caused the Dudeks' inability to close escrow or perform their sales contract. All of which *directly* affected Morphew's ability to close on her contract[72], the sellers and Morphew's ability to fully *and fairly* present their cases, and the court's ability or inherent power to adjudicate specific

[71] *Giants v. Chargers, supra*

[72] Morphew had a closing date but could not perform until the Dudeks signed the termination request, or litigation ended in her favor.

performance in favor of the Dudeks[73]. If not for these actions and non-actions, Morphew would have been awarded specific performance first and only.

If there had been a been a straightforward execution of the sales contract as agreed; or if the Dudeks had complied with the time is of the essence contingencies, specifically their financing contingency; or if all *or even just one* of the opposing litigants had provided the truth or documentation in discovery or at trial "none of the legal problems now presented to this court to untangle would exist."

Morphew argues no matter what alleged failings the court finds in regards to this instant action and its causes of action, the substantial and unlawful behavior of the 10 respondents,[74] and their apparent conspiracy to commit such unlawful acts and use of the judicial process in a manner to obtain a ruling that fails in law and/or equity clearly meets the requirements *"rare, special, exceptional or unusual circumstances that may warrant equitable relief,"* particularly when such a ruling is an injustice, and is against all recognized principals of equity, the standards of good conscience and public policy, therefore should be rendered void. (We think no party has the right thus to create problems by its devious and deceitful conduct and then approach a court of equity with a plea that the pretended status which it has foisted on the public be ignored and its rights be declared as if it had acted in good faith throughout). *New York Football Giants, Inc., supra*

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[73] The trial court, in order to adjudicate specific performance, was required to find the Dudeks were 'ready, able and willing' (i.e., to tender payment for the property)

[74] From frivolous and unlawful filings from the very beginning over 5 years ago to substantial perjury, concealment, suborning of perjury and concealment, misrepresentations, and making false promises, that are the very core of the case(s). All respondents knew the truth but all testified or have been litigating or asserting equally the same false facts. "Conspiracy" cannot be denied as it's very clear if the respondents party to the original case had not come together and plotted to tell the same false facts the ruling would have been very different, as there is no documents or validated evidence to support a ruling for specific performance in the Dudeks favor, and such is an obstruction of justice; Also, the conspiracy is continuing as 10 separate "entities" who had and have complete knowledge of the truth 'stick to the same false story and facts' by again committing perjury and misrepresentation in their answers and filings in this instant case. Further, conspiracy continues as none of the respondents have felt the need to 'come clean' or tell the truth, and such is further obstruction of justice.

Due to the reasons stated herein, Morphew asks this court to reverse the trial court Order of November 13, 2018 granting summary judgment to Wooddy Law Firm and Carrie Boyer, declare the trial court Order of November 6, 2014 in-part void[75], declare fraud on the court, award damages and apply sanctions as this court deems appropriate, and remand back to the trial court for further proceedings in this instant action, and/ or retrial of the original action, if necessary.

The trial court's opinion implies that the dispositions here made is justified by uncontradicted facts, but the record demonstrates beyond question that serious controverted issues ought to be resolved before the Respondents may have relief.

Viewing the evidence in the light most favorable to Morphew, it can be said that the Respondents along with their co-respondents made a false promise they were the closing attorney for the transaction, were preparing for the closing, and that if not repairs made *and* proved a closing would not take place. They concealed material and pertinent facts, and gave false evidence or made false statements and misrepresentations critical to their clients' ability to compel specific performance, which directly affected the trial court's ability, inherent power or jurisdiction to rule specific performance in favor of the Dudeks. Such actions or non-actions are fraudulent and were made with the actual intent to deceive, though maybe not initially, the court into making an unlawful ruling or ruling contrary to the precedents of not only the South Carolina Courts but generally all state and federal courts. Given the fact that Morphew was repeatedly told before during and after trial, even after the appellate court ruling, that the Dudeks had secured lending and were ready, able and willing to close but the evidence shows otherwise, as a matter of law, there is genuine issue of material fact of whether the Respondents had justification to make such false promises, demands, and representations, and then failed to disclose the truth, with the actual intent to deceive, and what, if any, fiduciary duties or duty of care were owed by Wooddy

[75] Leaving Morphew as the sole grantee of specific performance

Law Firm or Carrie Boyer in the prior litigation or to Morphew and the courts in this instant action. Further, a question lies if the duty to speak or disclose were breached resulting in a question of liability. Such presents a jury question(s). *Spence v. Wingate,* 385 S.C. 316, 684 S.E.2d 188 (Ct.App.2009) (Spence III); *Accord Smiley v. Woodmen of the World Life Ins., 249 S.C. 461, 154 S.E.2d 834 (1967)* (jury question as to whether life insurance applicant misrepresented his health with intent to deceive insurer notwithstanding insured's answering "no" to numerous questions regarding hospital treatment and medications, when insured had in fact been hospitalized for six days the year prior to his application).

In order to be entitled to summary judgment, Wooddy Law Firm would have to demonstrate that there is no genuine issue of material fact of their justification, legal standing, liability, or duty of care and that they did not make false promises or misrepresentations, or that they did not suppress evidence, or make a false statement with any intent to deceive, regardless of the deceived, and that the statements did not materially or critically affect the ability of their clients' and the trial court in regards to awarding Specific Performance is a matter for the jury in this case, therefore Respondents Wooddy Law Firm and Carrie Boyer were not entitled to summary judgment.

CONCLUSION

Based on the arguments herein or on a void order in which this instant action arose from, vacate or reverse the lower court's ruling granting summary judgment in favor of Respondents Wooddy Law Firm and Carrie Boyer in all its causes of actions and remand back to the lower court for further proceedings.

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13. Did the trial court err or abuse its discretion in granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss in part to Appellant's Cause of Action for Fraud, Extrinsic Fraud- Fraud on the Court; its' Cause of Action for Bad Faith and Unfair

Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud; and its' Cause of Action, Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive?

The lower court order granted Respondents Motion to Dismiss in-part in regards to Morphew's cause of action for Fraud, Extrinsic Fraud- Fraud on the Court due to the doctrine of res judicata, specifically, "*Plaintiff does not assert a factual allegation beyond what occurred leading up to or during the Prior Civil Actions. She had knowledge of these facts at all relevant times leading up to and during the Prior Civil Actions, thus her current claims involve "issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." As such, Defendants to Motion to Dismiss Plaintiffs First, Seventh, and Twelfth Causes of Action is granted*" and "*In looking at Plaintiff's factual allegations, this Court finds that Plaintiff has made a claim for intrinsic fraud, as opposed to extrinsic fraud. Accordingly, Plaintiff's First Cause of Action is also barred by res judicata.*"

In its Order, the lower court reasons that all the factual allegations asserted in its complaint were facts Morphew knew at all times relevant leading up to the trial and at trial, therefore are only issues that could have been raised in the original action, therefore barred by res judicata. "Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Judy v. Judy, 393* S.C. 160, 172, 712 S.E.2d 408,414 (2011). Even so, it found no evidence of extrinsic fraud, only intrinsic, therefore accordingly is barred by res judicata **(Order granting in part Defendants Stephen Dudek and Doreen Cross' Motion To Dismiss, January 31, 2017)**

Appellant Morphew appeals.

In order for res judicata to operate as a bar to a lawsuit, the following elements need to be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the

issue in the former suit. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467,419 S.E.2d 217 (1992).

Res judicata cannot bar Morphew's complaint based on its asserting that its current claims involve "issues which could have been raised in the former suit," because when two actions are between the same parties upon different causes of action, the former judgment is conclusive only as to those issues *actually* determined, not what could have been determined.

> The plea of res judicata and estoppel brings into play what is sometimes referred to as the dual aspects of the doctrine of res judicata. As pointed out in 46 Am. Jur. (2d), Judgments, Section 396, "there is a wide difference between the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand, or cause of action, and its effect to preclude the relitigation of particular facts or issues in another action between the same parties on a different claim or cause of action. Although there is virtual unanimity of agreement on this distinction, confusion frequently arises from variations in nomenclature applied thereto. The two aspects of the doctrine do not necessarily have the same consequences, the effect of a judgment upon a subsequent controversy between the parties being more limited where the controversy is based upon a different cause of action than where it is based upon the original cause of action."
>
> Both aspects of res judicata involve the theory of estoppel and it is said that the more recent tendency is to describe the rule precluding the relitigation of particular issues in a subsequent action on a different cause of action as "collateral estoppel by judgment" as distinguished from the "direct estoppel by judgment" where the prior and subsequent cause of action are identical. 46 Am. Jur. (2d), Judgments, Section 397.
>
> Regardless of the nomenclature used, our decisions recognize this dual aspect of the doctrine of res judicata.
>
> In *Wold v. Funderburg*, 250 S.C. 205, 157 S.E. (2d) 180, we restated the long established general rule that, in order to sustain the plea of res judicata the following three basic elements must be established: (1) identity of parties; (2) identity of the subject matter; and (3) an adjudication of the issue in the former suit.

The dual aspect of the doctrine derives largely from the application of the foregoing third element. The rule as to the conclusiveness of the prior adjudication has a different application where the prior and subsequent causes of action are identical and where the subsequent action is on a different cause of action. This distinction was pointed out in *Johnston-Crews Co. v. Folk*, 118 S.C. 470, 111 S.E. 15.

The Court held in Johnston-Crews that, where the two action are between the same parties on identical causes of action, the former adjudication is conclusive, not only the precise issues raised and determined, but of such as might have been raised affecting the main issue. Where, however, the two actions are between the same parties upon different causes of action, a different effect is given the prior judgment. In the latter instance, the former judgment is conclusive only as to those issues actually determined.

Johnston-Crews succinctly states the foregoing principles as follows:
"The rule granting conclusiveness to a judgment in regard to issues of fact which could properly have been determined in the action is limited to cases involving the same cause of action. Where a second action is upon a different claim, demand, or cause of action, the established rule is that the judgment in the first action operates as an estoppel only as to the [issues,] points or question actually litigated and determined, and not as to matters not litigated in the former action, even though such matters might properly have been determined therein." *Griggs v. Griggs*, 214 S.C. 177, 51 S.E. (2d) 622, (where the Court quoted extensively from American Jurisprudence, including the following now found in 46 Am. Jur. (2d), Judgment, Section 418)

"In other words, the rule precluding relitigation of issues which might have been raised in the prior action applies only where the two actions involve the *same cause of action*; but all questions which were *actually litigated* in the prior action *and determined* by the judgment are conclusive in any subsequent action between the parties, or their privies, regardless of whether the subsequent action involves the same or a different cause of action."
Lowe v. Clayton, 264 S C. 75, 212 SE 2d 582 (1975)

The prior action between the Appellant, sellers Ferro and the Dudeks involved the ability of the Dudeks to compel Specific Performance and their legal liability to sign the termination notice, while the present action seeks damages and to set aside the specific performance decree on the ground of fraud, that the Order of November 6, 2014 is void, and the fact they came to the courts with unclean hands and conspired to deceive or commit fraud or fraud on the court to obtain a ruling contrary to the precedents, rules and statutes of law and equity. The prior cause of action was for Breach of Contract against Sellers Ferro to compel Specific Performance, where the current causes of action are not and do not include any prior cause of action litigated and adjudicated. The two actions were not based upon the same cause of action and, if the present action is barred, it must be upon the ground that the identical issue now presented was determined in the prior action.

Notwithstanding, it appears the lower court erred in assuming, because Morphew asserted the fraudulent action or facts in her complaint, she had knowledge of those facts at all times material or at trial. Morphew argues her complaint does not assert the facts she had knowledge of before and at the time of the trial, but instead presents the material and critical facts discovered after trial. As argued previously herein appeal, the false evidence and concealed facts or documents were wholly unknown to her at the time of the trial and were not able to be discovered even by use of the due diligence she vigorously attempted.[76]; Moreover, it's [evident] Morphew

[76] Either in initial discovery with the Dudeks (several meetings and depositions) or by the issuance of two (2) separate subpoenas and a phone call to First Federal (not excluding the failure of the Dudeks or its attorney to provide initial discovery or disclosure also) where they stated they didn't have any customers of those names nor any loans, though the concealed documents later revealed that the Dudeks were customers and had been customers for years (they had financed their current residence and even refinanced it to come up with the $50K deposit on the property in question). Further those concealed documents also revealed all respondents knew the Dudeks had been denied lending and their sales contract was not valid after November 30, 2012, therefore had no legal right or claim to the property after their time is of the essence sales contract expired. Moreover, co-respondent Collins informed the sellers and Morphew his clients had

did not have knowledge of the [concealed] denial letters and other documents before trial[77], for if she did she *unquestionably* would not have been silent. Such evidence was known to be critical to the Dudeks' claim for specific performance and would cause their defeat or else they would not have concealed those facts or documents. Instead, they knew if revealed a trial would never have taken place, or they would have lost their case and be held liable for all damages filing a frivolous and unlawful complaint and in their prevention of the Morphew closing/performing her contract or Morphew's legal right to the property.

With the denial letter and other concealed documents in hand, the lower court would have had no choice but to grant specific performance solely to Morphew instead of "*[first] to the Dudeks*"[78], as the Dudeks failed to meet the rules, statutes or precedents of law and equity in their breach of contract claim (**Order granting Specific Performance to the Dudeks and Morphew, November 6, 2014 Civil Case No. 2013-CP-18-0183**); (*See,* Morphew v. Stephen Dudek, et al., pending Appellate Case No. 2017-001393). Without knowledge of the actual or true financial status of the Dudeks, there was no way she could have raised issue to any acts of perjury, fraud, conspiracy, misrepresentation, false evidence, or false promises, etc. before or at trial.

Morphew did not know what testimony the Respondents would offer at trial, and neither she nor the courts had reason to anticipate false and perjured testimony, especially from a federally insured bank and its loan officer (co-respondents First Federal and Allison Williams) and its agent

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secured financing and were ready to close but could not due to lack of a CL-100 or a cleared CL-100. The concealed documents also revealed Cross produced a [forged] financial document at her deposition, an 'approval' letter-- dated *44 days before* the Dudeks even made initial application for financing --from Respondent Williams indicating the Dudeks had applied for lending and had approval. It's apparent no one wanted to provide Morphew with any documents or material facts regarding the Dudeks or their inability to pay the purchase price, for if they did it would have revealed the Dudeks did not have a case for breach of contract nor the ability to compel specific performance, and there would not have been a trial or they would have failed at trial, and we wouldn't be here today in this current case or the subsequent cases.

[77] **Order, Constructive Trust Appellate Case No. 2018-000507** (where the same trial court stated "*the supposed fraud was known to Morphew and the Ferros after trial...*")

[78] In its Order, the master granted specific performance to the Dudeks AND Morphew, but first to the Dudeks and second to Morphew [if the Dudeks failed to close or the termination of their sales contract].

(co-respondent Susan Nicholson), who were not litigants and were only at trial to provide factual testimony regarding the financial status, contract performance or ability to tender payment by their clients, Respondents Dudek. It wasn't until she had discovered on appeal that "practically all of the material testimony or evidence introduced in the trial of the aforesaid case was false, perjured, fabricated and fraudulent."

It's apparent that if the truth was told or the concealed documents had been revealed during discovery or at trial, such action(s) would have ended the Dudeks' case or produced a far different ruling -- for the Dudeks failed all rules and statutes of equity precedent to their ability to compel specific performance, and the lower court would have no jurisdiction or inherent power to adjudicate specific performance in the Dudeks' favor. Consequently, the record confirms said Order is void in part, specifically ruling specific performance in favor of the Dudeks. An order that fails on its face or is based solely on false evidence that is material and critical to the remedy, or based on factual conclusions that are without evidentiary support, is equal to an error of law, therefore is an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990) (An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support)

As to the Plaintiff's factual allegations within its complaint being intrinsic fraud, as opposed to extrinsic fraud, Morphew disagrees. Not only is there substantial acts of perjury, conspiracy, misrepresentations forgery, concealment of critical documents by attorney(s) along with the subornation of perjury by attorney(s), but also a false promise by a third party /witness that was *critical* to the remedy sought (collateral to the original action), all intentionally committed to prevent Morphew from performing her contract, her legal right to the property, presenting her case fully *and* fairly, and to deceive the trial judge to obtain an unlawful or void

ruling, or a ruling contrary to the precedents established within the trial court's jurisdiction [79]. Consequently, the Dudeks and its co-respondents' perjury, subornation of perjury and other fraudulent conduct not only misled the receivers, but impinged directly upon the administration of justice, and prevented Morphew her due process or from fully *and fairly* presenting her case, hence 'it's inequitable for the victor to retain his advantage'.

In layman's terms, if meeting the rules, statutes and precedents of equity for specific performance are pre-conditional or critical before a court of equity has jurisdiction or power to adjudicate specific performance, then by the same rules, statutes and precedents of equity the granting of such a remedy to the Dudeks was improper or unlawful, thus the Order is void or void in-part and should be vacated accordingly. A judgment obtained in a state court in circumstances where its enforcement will be contrary to recognized principles of law and equity, the standards of good conscience, or where it is no longer equitable or unlawful, is a serious injustice and must be corrected, regardless of any fraud or type of fraud involve.

Moreover, if the prior ruling is allowed to stand, the courts are then overturning their own precedents, especially without a compelling reason to do so, therefore setting a new precedent. It then would appear that any ruling, especially for specific performance, that has relied on the equity maxim "He who seeks equity must do equity" and "he who comes into equity must come with clean hands," can be overturned. Such cases include, *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000); *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472

[79] Meaning, in order for the Dudeks to prevail on their complaint for specific performance in law and equity, they had to first represent to the trial court the presence of a valid and negotiable sales contract, that they complied with their financing condition within said sales contract, and especially critical that they were approved for financing and were ready to close (i.e., 'ready, able and willing' to tender payment per specific performance). Their actions were pre-meditated and intentional in order to deceive the trial court [and Morphew], that without such promise and concealments would confirm the Dudeks had critically breached all conditions of their sales contract, were never ready, able and willing, had violated all rules and statutes of equity, and consequently would have rendered the trial court without the inherent power or jurisdiction to rule in the Dudeks' favor or ended their case for specific performance.

(1997); *Norton v. Matthews*, 249 S.C. 71, 152 S.E.2d 680 (1967); *Provident Life and Acc. Ins. Co. v. Driver*, 317 S.C. 471, 451 S.E.2d 924 (1994); *Taff v. Smith*, 114 S.C. 306, 103 S.E. 551 (1920); *New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc.*, 291 F.2d 471 [5th Cir. 1961])(where the court denied relief because the Giants did not come into equity with clean hands).

The Respondents and their attorney(s) had full knowledge of the truth but continued to commit fraud. During and after trial, the Respondents were fully aware of the unlawful or improper actions being committed and contributed significantly to it and any damages, including any additional liability or damages in the subsequent complaint(s) arising from the original action, even damages to themselves.

Even if this court were to assume based on precedent that any fraud alleged is intrinsic in nature, the judgment and prior finding of 'ready, able and willing' are nonetheless vulnerable to attack outside of the fraud context under Rule 60 and through an independent action if the appropriate circumstances are present. Morphew argues her independent action is not restricted to only fraud and fraud on the court.

"While the most common ground for an independent action is for fraud, the rule is not restricted to only that ground. The structure of this rule and its use of the word "or" indicate to this court two potential independent action attacks on a judgment, order or proceeding: 1) one based on such rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake or 2) one based in equity for fraud upon the court. See, 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE. & PROCEDURE § 2868 (2d ed.1995). Basically an independent action presents a judgment which ought not, in equity and good conscience, to be enforced whether it be for special circumstances that deserve such relief or for fraud upon the court; In essence, the rule merely

reflects many of the considerations attendant to an equitable analysis. Further, since the independent action referenced in the rule is one in equity, the court may consider equitable defenses such as laches, unclean hands, and whether an adequate legal remedy exists. *Nat'l Sur. Co. v. State Bank of Humboldt*, 120 F. 593 (8th Cir.1903). The court may also consider other policy doctrines as it deems appropriate. However, what the Supreme Court has suggested is that equity only intervenes when the circumstances so require....(*Mr. T v. Ms. T*, 378 S.C. 127, 662 S.E.2d 413 (2008).

In this instance, Morphew argues "circumstances so require". The Dudeks *completely* failed the maxims of equity, "He who seeks equity, must do equity," *Ingram v. Kasey's Associates*, 340 S.C. 98, 531 SE 2d 287 (2000) (where Ingram, seeking specific performance, was not able to tender the purchase price on either the date his lease expired or on the date he brought the action for specific performance), and "he who comes into equity must come with clean hands." *New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc.*, 291 F.2d 471 [5th Cir. 1961])(where the court denied relief because the Giants did not come into equity with clean hands).

At a minimum, the Dudeks must demonstrate that they were ready and willing to perform their part of the contract (i.e. willing to tender the purchase price) on November 30, 2012, the date the sales contract expired, or on January 15, 2013, the date they brought the action for specific performance. The record indicates that the Dudeks were not in a position to pay the Ferros the purchase price for 788 E. Butternut Rd. on either date as argued herein Brief. Further, the Dudeks intentionally waited until their sales contract expired before making initial application, never remedied their expired, invalid or non-negotiable sales contract, were *denied lending*, therefore were *never* ready or able to tender payment per their claim for specific performance filed January 15, 2013 and consequently had no legal right to the property after November 30, 2012. It's also

very clear their lender/co-respondents never officially agreed to loan them the money, and they had no written loan agreements.

This is outlined in *INGRAM v. KASEY'S ASSOCIATES*:

> "Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984) (citing *Monteith v. Harby*, 190 S.C. 453, 3 S.E.2d 250 (1939)). In order to compel specific performance, a court of equity *must* find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Gibson v. Hrysikos*, 293 S.C. 8, 358 S.E.2d 173 (Ct.App. 1987) (citing *Thomson v. Scott*, 6 S.C. Eq. (1 McCord Eq.) 32 (1825)). At a minimum, Ingram must demonstrate that he was ready and willing to perform his part of the contract (i.e. ready and willing to tender the purchase price) on February 28, 1994, the date the lease expired, or on March 14, 1994, the date he brought the action for specific performance. The record indicates that Ingram was not in a position to pay Kasey's the purchase price for Remy's on either date."
>
> Ingram admits that prior to February 28, 1994 he did not have the purchase money in any depository account either under his control, his attorney's control, or in any escrow account. Ingram also admits that in order to close on the property he would have to "scramble around and see if [he] could raise up the money." Although Ingram claims he had several sources who could provide the purchase money, as of

> March 14, 1994, none of his identified lenders officially agreed to loan him the money, and he had no written loan agreements. In fact, several lenders admitted they did not even have access to the money to loan Ingram.
>
> Specific performance is unsound in this case because Ingram lacked the ability to perform his part of the contract on the date the lease expired and on the date he sought specific performance. See 71 Am.Jur.2d Specific Performance § 201 (1973) ("[C]omplainant in an action for specific performance must aver that he has performed his part of the contract or that he is willing and ready to perform it, and that he has performed all conditions precedent to the taking effect of the obligation of the defendant, including the payment to be made thereon, or some valid excuse for his failure to perform or offer to perform.").

INGRAM v. KASEY'S ASSOCIATES, 531 S.E.2d 287, 340 S.C. 98 (2000).

Though the Respondents and co-respondents testify the Dudeks were approved by First Federal and such were going to provide the purchase money, First Federal never officially agreed to loan them the money, and they had no written loan agreement. Not only does the record show they did not have any official agreement or written loan agreement, but it shows to the contrary that co-respondents First Federal actually DENIED them mortgage credit and closed their file, all at the *Dudeks own hand.*

As in *Giants, Inc.*, a recent discussion of this maxim by the United States Supreme Court is also controlling here:

> "The guiding doctrine in this case is the equitable maxim that 'he who comes into equity must come with clean hands.' This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks

relief, however improper may have been the behavior of defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of iniquity.' *Bein v. Heath*, 6 How. 228, 247 [12 L. Ed. 416]. Thus while 'equity does not demand that its suitors shall have led blameless lives, *Loughran v. Loughran*, 292 U.S. 216, 229 [54 S. Ct. 684, 689, 78 L. Ed. 1219], as to other matters, it does require that they shall have *acted fairly* and without fraud *or deceit* as to the controversy in issue. *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245 [54 S. Ct. 146, 147, 78 L. Ed. 293]; *Johnson v. Yellow Cab [Transit] Co.*, 321 U.S. 383, 387 [64 S. Ct. 622, 624, 88 L. Ed. 814]; 2 Pomeroy, Equity Jurisprudence (5th Ed.) §§ 379-399.

"This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is 'not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion. *Keystone Driller Co. v. General Excavator Co.*, supra, [290 U.S. 240] 245, 256 [54 S. Ct. 146, 147, 148, 78 L. Ed. 293]. Accordingly one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor.

"Moreover, where a suit in equity concerns the public interest as well as the private interests of the litigants this doctrine assumes even wider and more significant proportions. For if an equity court properly uses the maxim to withhold its assistance in such a case it not only prevents a wrongdoer from enjoying the fruits

of his transgression but averts an injury to the public. The determination of when the maxim should be applied to bar this type of suit thus becomes of vital significance. See *Morton Salt Co. v. [G. S.] Suppiger Co.*, 314 U.S. 488, 492-494 [62 S. Ct. 402, 405, 406, 86 L. Ed. 363]." *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814, 815, 65 S. Ct. 993, 997, 998, 89 L. Ed. 1381.

Earlier the Supreme Court said in *Deweese v. Reinhard*, 165 U.S. 386, 390, 17 S. Ct. 340, 341, 41 L. Ed. 757: "* * * A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity." Here the plaintiff's whole difficulty arises because it admittedly took from Flowers what it claims to be a binding contract, but which it agreed with Flowers it would, in effect, represent was not in existence in order to deceive others who had a very material and important interest in the subject matter. If there had been a straightforward execution of the document, followed by its filing with the Commissioner, none of the legal problems now presented to this court to untangle would exist. We think no party has the right thus to create problems by its devious and deceitful conduct and then approach a court of equity with a plea that the pretended status which it has foisted on the public be ignored and its rights be declared as if it had acted in good faith throughout.

New York Football Giants, Inc. v. Los Angeles Chargers Football Club, Inc., 291 F.2d 471 [5th Cir. 1961

Here, the Dudeks substantial display of "unclean hands" is demonstrated. First, they waited until their sales contract expired before making initial application, and then waited *5 more days* before signing and returning the application to the Respondent First Federal. Next, the Dudeks failed to provide a *signed legible* and VALID sales contract; failed to provide the signed contract extension addendum requested at initial application; failed to respond to Respondent FF's 10-day adverse letter for same; refused to provide lending documents to the sellers, its agent or Morphew in discovery; lied, perjured, misrepresented, and concealed material facts or documents over and over again including in counsel- to- counsel meetings, depositions, answers, trial, motions, in subsequent actions and on several appeals. Additionally, the Dudeks conspired with the co-respondents First Federal and Williams, and other co-respondents, including Wooddy Law Firm, who Morphew alleges had no legal standing to represent to the sellers, courts or Morphew as the closing attorney for a closing when there was no [mortgage] closing transaction ever in existence, to commit perjury, forgery, misrepresentation, false promises, or false evidence in order to obtain an unlawful or improper ruling. Further, the Dudeks have now unlawfully obtained the property and are attempting to avoid service on a subsequent and separate action by Morphew where they have breached their contract to provide water easement to Morphew (a provision contained in the Dudeks' sales contract in the said original action), physically assaulted her neighboring property so that it is now inhabitable, and has forced Morphew to secure alternate living arrangements and expend undue substantial stress and costs until resolved by the lower court (*See,* Constructive Trust – Morphew v. Stephen Dudek and Doreen Cross, pending Appellate Case No. 2017-000507) (**Complaint – Trespass Upon Easement -- Morphew v. Stephen Dudek and Doreen Cross Civil Case No. 2018-CP-1801661**). It should be further noted that in their attempt to avoid service of this separate complaint they committed other unlawful actions by actually taunting the serving officer, a Dorchester County Deputy, over the

phone, exclaiming "*good luck finding me*"; and when finally agreeing to meet the serving officer to obtain the summons and complaint, they set up a time and place to do so, then intentionally failed to show up **(Certificate of Non-Service- Doreen Cross, Dorchester County Sheriff's Dept., December 19, 2018)**. This again displays deceit, and a total disregard for the judicial system, and now law enforcement. As in the original action, the Dudeks are again preventing Morphew's due process.

In all, the Dudeks failed to come to the original action with clean hands, and with substantial assistance of the Respondents, deceitfully obtained an unlawful ruling, continued their fraud by obtaining property through their deceit, and continue their blatant disregard for the judicial system -- and now law enforcement.

The deception (perjury, fraud, forgery, withholding or concealing evidence, and conspiracy, together and as a whole) committed to use the judicial process unlawfully displays an intentional and unlawful disruption of the judicial system, and should be addressed by the courts. "*...tampering with the administration of justice in the manner indisputably* [shown here] *involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.*" (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 245-46, 64 S.Ct. 997 (1944).

Appellant Morphew holds the Respondents knew and were willingly part of this deception and therefore liable for their significant part in said fraud and fraud on the court for, including but not limited to, undermining the integrity of the judicial system, preventing Morphew from her

legal right to the property or performing her sales contract, violating her constitutional right of due process or preventing Morphew from fully *and fairly* presenting her case during trial, the embarrassment, stress and cost of [unlawful] ejectment, the loss of use of her home, and substantial loss of work, time and money, all which caused and is still causing undue emotional stress. Plus, as argued herein, Morphew contends the Respondents are substantially liable for all damages in the original action and all subsequent actions that currently exist or may exist in the future. They had a duty to speak, the knowledge and means to prevent themselves and their co-respondents from this position they are now in, but intentionally failed to do so, therefore are in no position to request relief when they caused or could have prevented the issues upon this court today.

Here, all respondents to this appeal conspired to falsely represent specific conditions were present, conditions critical to compel specific performance, and did so "in order to deceive others who had a very material and important interest in the subject matter."[80] Specifically, the false conditions or façades that were created are: 1) the existence of a valid and negotiable sales contract after November 30, 2012, 2) the existence of a mortgage loan agreement or even the *ability* of the co-respondent First Federal to approve mortgage credit to the Dudeks for 788 E. Butternut Rd., 3) the existence of a valid mortgage closing transaction or that Wooddy Law Firm could or was able to schedule a closing, 3) and that it was the sellers who prevented them from closing and caused the Dudeks' inability to close escrow or perform their sales contract. All of which *directly* affected Morphew's ability to close on her contract[81], the sellers and Morphew's ability to fully *and fairly* present their cases, and the court's ability or inherent power to adjudicate

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[80] *Giants v. Chargers, supra*

[81] Morphew presented a closing date but could not perform until the Dudeks signed the termination request, or litigation ended in her favor.

specific performance in favor of the Dudeks[82]. If not for these actions and non-actions, Morphew would have been awarded specific performance first and only.

If there had been a been a straightforward execution of the sales contract as agreed; or if the Dudeks had complied with the time is of the essence contingencies, specifically their financing contingency, or if all *or even just one of* the opposing litigants had provided the truth or documentation in discovery or at trial "none of the legal problems now presented to this court to untangle would exist."

Morphew argues no matter what alleged failings the court finds in regards to this instant action and its causes of action, the substantial and unlawful behavior of the 10 respondents[83], and their apparent conspiracy to commit such unlawful acts and use of the judicial process in a manner to obtain a ruling that fails in law and/or equity, clearly meets the requirements *"rare, special, exceptional or unusual circumstances that may warrant equitable relief"*, particularly when such a ruling is an injustice, against all recognized principals of equity, standards of good conscience and public policy, therefore should be rendered void.

In this case, applying the doctrine of res judicata tends to disregard both the interests of individual litigants in having their claims adjudicated on the merits and the interest of society

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[82] The trial court, in order to adjudicate specific performance, was required to find the Dudeks were 'ready, able and willing' (i.e., to tender payment for the property) (**Order – Granting specific performance to the Dudeks and Morphew November 6, 2014**)

[83] From frivolous and unlawful filings from the very beginning over 5 years ago to substantial perjury, concealment, suborning of perjury and concealment, misrepresentations, and making false promises, that are the very core of the case(s). All respondents had specific knowledge of the truth but all testified or have been litigating or asserting equally the same false facts critical to an order for specific performance. "Conspiracy" cannot be denied as it's very clear if the respondents party to the original case had not come together and plotted to tell the same false facts the ruling would have been very different, as there is no documents or validated evidence to support a ruling for specific performance in the Dudeks favor, and such is an obstruction of justice; Also, the conspiracy is continuing as 10 separate "entities" who had and have complete knowledge of the truth 'stick to the same false story and facts' by again committing perjury and misrepresentation in their answers and filings in this instant case. Further, conspiracy continues as none of the respondents have felt the need to 'come clean' or tell the truth, and such is further obstruction of justice.

generally in fair procedure, especially if the prior order which the granting of specific performance first to the Dudeks is void as the doctrines of res judicata do not apply to a void order.

Even if not the case, the balancing of certainty and predictability against justice and truth, a conflict as old as legal systems, is dramatically demonstrated when a court applies the doctrine of res judicata in such a manner that it operates seemingly blind to the facts. It appears, the solution to this dilemma, though not a fully satisfactory one, lies in rationalizing an occasional unsatisfactory result by recognizing that truth is a relative concept, and that justice can only prevail with a balancing of competing interests. Though if not without the doctrine of res judicata, the courts would be never ending in litigation, there are some instances in which a judgment should be denied the preclusive defect (*Nonparties and Preclusion by Judgment: The Privity Rule Reconsidered,* by John K. Morris; California Law Review, Volume 56 Issue 4 Article 5 August 1968). "It is not clear to what extent a judgment, not subject to collateral attack, will be denied preclusive effect. The following cases denied the prior judgment preclusive effect. *State ex rel. White Pine Sash Co. v. Superior Court,* 145 Wash. 576, 261 P. 110 (1927) (court will or will not enforce res judicata rules as justice in the particular case requires); *Greenfield v. Mather*, 32 Cal. 2d 23, 194 P.2d 1 (1948) (res judicata will not be used under special circumstances-here the court made an obvious factual error in the first action). Again, as argued, in the prior action the result was not just an unsatisfactory result but a ruling *contrary to the precedents established within the trial court's jurisdiction.*

Though Morphew disagrees its allegations are only intrinsic in nature, Morphew asks this question of the court, "Doesn't such actions and their complete disregard for the judicial system rise above the lower court's "basic" claim that the Appellant has made no claim for extrinsic fraud? Should the fraudulent party be awarded for their unlawful conduct and abuse of the legal system, while the innocent party punished for its honesty and compliance? (We think no party has

the right thus to create problems by its devious and deceitful conduct and then approach a court of equity with a plea that the pretended status which it has foisted on the public be ignored and its rights be declared as if it had acted in good faith throughout) *New York Football Giants, Inc., supra*

Additionally, Morphew contends that since the prior action, the filing of this instant action and pending discovery, the Respondent have continued their fraud in their failure to disclose the truth and have created an additional injustice with substantial damages in the Dudeks unlawfully obtaining the property in question, and consequently destroying Morphew's ability to inhabit its own neighboring property (*Reference* Constructive Trust -- Morphew v. Stephen Dudek and Doreen Cross, pending Appellate Case No. 2017-000507); **(Complaint-- Trespass Upon Easement -- Morphew v. Stephen Dudek and Doreen Cross Civil Case No. 2018-CP-1801661)**

Even so, Morphew has raised issue for this court to declare the November 6, 2014 Order void in-part, specifically in its granting specific performance in favor to the Dudeks. (Issue #1 Pg. 20 of this Brief). In its argument, the record shows that regardless of the fraud perpetrated by the Respondents or co-respondents, whether intrinsic or extrinsic, the ruling was contrary to the rules, statutes or precedents of equity and obtained by substantial perjury, the suborning of perjury, forgery, misrepresentations, concealment and false promises of the respondents as a whole or any one (1) respondent's refusal to speak or disclose the truth.

CONCLUSION

Due to the reasons stated herein, or on a void order in which this instant action arose from,[84] Appellant asks this court to reverse the trial court Order of January 31, 2018 granting Respondents Stephen Dudek and Doreen Cross' Motion to Dismiss against Appellant's cause of

[84] *See,* argument #1 -VOID order, Pg. 20 of this appeal, repeated herein.

action for fraud, fraud on the court, declare the lower court Order of November 6, 2014 in-part void, declare fraud on the court award damages and apply sanctions as this court deems appropriate, and remand back to the lower court for further proceedings in this instant action, and retrial of the original action, if necessary.

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14. Did the trial court err in granting Respondents First Federal, Allison Williams, Wooddy Law Firm, Carrie Boyer, David Collins, Michael Scarafile, Carolina One Real Estate and Susan Nicholson's Motion to Dismiss in-part to Appellant's Cause of Action for "Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive?"

The lower court order granted in-part Respondents' Motion(s) to Dismiss in regards to Appellant's Cause of Action, Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive because "*The Cause of Action plead by Plaintiff asserts that, through testimony and discovery, the Defendants deceived both the Plaintiff and the Court by making untrue assertions. As such, the Plaintiff pleads a claim of perjury rather than fraud.*" **([Amended] Order Granting in part Defendants First Federal and Allison Williams Motion to Dismiss, February 13, 2017); (Order Granting in part Defendants Michael Scarafile, Susan Nicholson, David Collins and Carolina One Real Estate's Motion to Dismiss, January 31, 2017); (Amended Order Granting In Part Defendants Wooddy Law Firm and Carrie Boyer's Motion To Dismiss, April 3, 2017)**

Appellant Morphew appeals.

Morphew argues its actions affirm far more than just "untrue assertions" by the Respondents. In fact, it includes false promise(s) and unlawful acts of concealment, suborned perjury, and misrepresentation in discovery and at trial, and *continuation* of said actions. More important, these promise(s) and acts were *critical* to its clients, co-respondents Stephen Dudek and

Doreen Cross' ability to compel specific performance AND therefore critical to the trial court's ability or inherent power to adjudicate such a remedy in favor of the Dudeks. Without the perjury, misrepresentations, false promise(s), and concealment the Dudek's would fail all conditions precedent to lawfully compel specific performance, and the lower court would not have had the jurisdiction or inherent power to rule in their favor.

Further, perjury IS fraud: In the state of South Carolina, Perjury is fraud, where "(the Supreme Court held that the charge of perjury or false swearing on the part of a party or his witnesses "is a species of... fraud," ...) *Corley v. Centennial Const. Co.*, 247 S.C. 179, 189, 146 S.E.2d 609, 614 (1966)(emphasis added). Moreover, such perjury was practiced in the very act of obtaining the judgment or such fraud prevented Appellant from having a full and fair opportunity to present its case therefore her allegations are proper and a claim for fraud under its cause of action for Fraud - Untrue assertion of fact (or equivalent].

Further, the perjury here was for the improper use of a process the Dudeks had no right or ability to bring, and was committed to prevent Morphew from its legal claim on the property or performing her sales contract as required, and to prevent Morphew from presenting her case fully and fairly. Additionally, the perjury was material and critical to the prior action and used to obtain a ruling contrary to the rules, statutes or precedents established by the South Carolina courts. Morphew contends a material question of fact remains whether the perjury or fraud claimed was substantially critical in regards to the remedy sought by the Dudeks in the prior action , and if so, such is extrinsic fraud or rises to the level of extrinsic fraud.

It's apparent that if the truth was told or the concealed facts and documents had been revealed during discovery or at trial, such action(s) would have ended the Dudeks' case or produced a far different ruling -- for the Dudeks failed all rules, statutes or precedents of law and equity precedent to their ability to compel specific performance, and precedent to the lower court's

ability, inherent power or jurisdiction to adjudicate specific performance in the Dudeks' favor. The record shows there is no valid evidence that supports the order ruling for specific performance in favor of the Dudeks. On the contrary, the record shows the order fails on its face and was based solely on false evidence or based on factual conclusions that are without evidentiary support. As argued herein Brief, the Dudeks sales contract expired or was no longer valid or negotiable after November 30, 2012; therefore the Dudeks were denied lending for failure to complete their mortgage application. After expiration, the Dudeks no longer had any legal claim to the property, and consequently did not have the ability to make any demands of the sellers, especially to compel specific performance. Without a valid or legal claim to the property, therefore lack of the lawful ability to compel specific performance, the Dudeks were improperly before the trial court or the trial court did not have the jurisdiction or inherent power to adjudicate specific performance in the Dudeks' favor. Consequently, said Order is void in part, specifically to its ruling specific performance in favor of the Dudeks. An Order that fails on its face or based solely on false evidence that is material and critical to the remedy, or based on factual conclusions that are without evidentiary support, is equal to an error of law, therefore is an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990) (An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support)

There appears to be no valid or judicious reason why the Respondents would make false promises, perjure themselves or conceal the material and critical facts of its clients' financial status over and over again. They were not litigants in the case, they were under oath in the subpoenas and at trial, and the Dudeks financial status or ability to tender payment for the property, and their performance of their contract conditions, was the crux of the [specific performance] case(s). The Respondents were specifically at the trial to provide to the judge and

all parties facts specific to the Tudeks' performance of their time is of the essence sales contract and their ability to tender the purchase price for the property per specific performance. Further, they had a duty to speak while under oath, therefore their perjury and non-disclosure of the material facts *and documents* becomes fraudulent, especially where there is a duty to speak.

> "Non-disclosure is fraudulent when there is a duty to speak." *Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct.App.1993). "Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens S. Natl. Bank of S.C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972); accord *Manning v. Dial*, 271 S.C. 79, 83, 245 S.E.2d 120, 122 (1978); *Jacobson v. Yaschik*, 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967).
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> "We have held that non-disclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other. The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) *where one party expressly reposes a trust and confidence in the other* with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, *such a trust and confidence in the particular case is necessarily implied*; (3) *where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties. Warr v. Carolina Power & Light Co.*, 237 S.C. 121, 115 S.E. (2d) 799; *Gordon v. Fidelity & Casualty Co.*, 238 S.C. 438, 120 S.E. (2d) 509. (Emphasis added)

The Respondents were not parties to the case but had a pecuniary interest in making the statements and promises and had superior knowledge of the facts of the Dudeks' transaction and were in the best position to know the status of the Dudeks' sales contract and their financial status in regards to their ability to tender payment for the property per their sales contract. Further, specific to Respondent Collins, a reasonable person would agree that the Respondent had not only a duty of care to Morphew, but to the Defendants Ferro and the trial court judge. Both the courts and Morphew expressly reposed a trust and confidence in the Respondent to present the case and speak the truth, or persuade its clients and its witnesses, to the facts in their sworn testimony at trial. Due to these facts, the Respondents had an additional duty of care owed to the courts, Ferros and Morphew during discovery and at trial.

> (If the Defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful inquiry, the law places on him a duty of care with respect to representation s made to plaintiff). *AMA Management Corp. v. Strasburger*, 309 S.C. 223, 420 S.E.2d 874; (The duty of care is not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care a reasonable man would take in the circumstances.)" *Id.*
>
> (The duty of care is not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care a reasonable man would take in the circumstances.)" *AMA Management Corp. v. Strasburger*, 309 S.C. 223, 420 S.E.2d 874 (1992).

In this circumstance, especially in a court proceeding under oath, a reasonable person would agree that the Respondents had not only a duty of care to Morphew, but to the Defendants Ferro and maybe most critically, the trial court judge. Both the courts and Morphew expressly

reposed a trust and confidence in the Respondents to provide truth and the documentation requested in discovery, the subpoenas and to provide the truth to the facts in their sworn testimony at trial. The position of trust and confidence in Respondents First Federal and Williams as a federally insured bank/loan officer, in Respondents Scarafile, Nicholson and Carolina One, as a substantial commercial real estate company/lawyer/sales agent; in Respondents Wooddy Law Firm and Carrie Boyer as a closing attorney, and in Respondent Collins as an officer of the court, was exploited. It was clear that the opposing parties (including Morphew) and the trial court judge relied on the testimony or representations of the Respondents and would not consider an officer of the court or a witness to lie, conceal or misrepresent under oath, therefore there was no question at the time that Respondents' statements would be anything but true, and reliance on their testimony was justified; or the misrepresentations by Respondents induced the sellers, Morphew or the court(s) to refrain from discovering before or during trial the true facts regarding whether mortgage credit was actually extended to the Dudeks or its clients were ready and able to tender payment for the property, or whether they had performed all conditions precedent within their time is of the essence sales contract. Further, each had a duty of care to their employer/company/court/federal entity to prevent fraud, whether committed by their clients or themselves. But if the Respondents had followed their own oaths, standards or processes from the very beginning or had been honest and disclosed the truth before trial or at trial, and as required by law or its duty to speak or disclose under the circumstances, it's most likely a trial would never had happened, or Morphew would have been in a position to present her case fully *and fairly*, or the trial judge would have granted specific performance only to Morphew, instead of second to the Dudeks.

The Dudeks' performance of their sales contract or their transaction with the Respondent(s) and whether it failed or not, was specific and necessary and called for 'perfect good

faith and full disclosure' from the Respondents. The Respondents' absolute disclosure went to the very core of the original case(s) and the trial court's jurisdiction or power to adjudicate. Consequently, their failure to disclose, combined with their perjury, misrepresentation, forgery, and a false promise First Federal was extending credit to the Dudeks on their sales contract (an issue collateral to the prior litigation), and that was committed with the intent to deceive or perpetuate a fraud upon the Court resulting in an unlawful ruling or a ruling contrary to the rules, statutes or precedents of the South Carolina Courts, goes beyond inexcusable, and is extrinsic, or rises to the level of extrinsic, fraud.

If none of the respondents in this case had a duty to speak or tell the truth or disclose material facts or documents critical in a civil action, or if they cannot be held liable for such unlawful acts, then what purpose do rules of conduct to prevent an attorney from concealing critical documents to a case or critical to a court's ability to adjudicate in said client's favor serve? Or what purpose does the rules of discovery for subpoenas or swearing under oath to 'tell the truth, the whole truth and nothing but the truth" in a court proceeding serve? At what level of perjury, concealment, misrepresentation, forgery and false promises must be accomplished before a party can be held accountable for such blatant disregard for the judicial system and its processes? And what level of due diligence is required or how many times must a litigant ask a question before a trial court will not punish said litigant for reposing a trust and confidence in a witness that had a duty to speak to provide the truth of the matter which they have ultimate knowledge of with reference to the particular transaction in question? Meaning, why is Morphew being punished for an opposing party and its witnesses' unlawful acts when she is not at fault for their actions or non-actions and did everything in her power to discover the facts before trial; and *then* reposed a trust--the very same trust the judge relied on when making his ruling -- in the Respondents testimony and evidence while under oath? And just as important, why must a judgment that was obtained by

such fraudulent and reprehensible conduct, and that is so unlawful and contrary to the precedents,[85] rules and statutes of law and equity, and good conscience, or a ruling that is an injustice, be allowed to stand?.

Here, the Respondents falsely represented specific conditions critical to compelling or adjudicating specific performance was present. They did so "in order to deceive others who had a very material and important interest in the subject matter."[86] Specifically, they represented a [false] existence of a valid and negotiable sales contract after November 30, 2012, the [false] existence of a mortgage loan agreement, and the ability of FF to even approve mortgage credit to the Dudeks for 788 E. Butternut Rd.[87]. Combined with the [false] testimony that the sellers prevented them from closing, the false conditions and testimony directly affected Morphew's ability to perform her contract , the sellers and Morphew's ability to fully *and fairly* present their cases, and the court's ability to adjudicate specific performance in favor of the Dudeks.[88] If not for these actions and non-actions, the original case would not have gone to trial or only Morphew would have been awarded specific performance *first*, instead of second to the Dudeks, and would not have had to be involved in years of litigation, and undue costs, stress and time. Further, the trial court would not have been deceived in making an unlawful ruling or ruling contrary to the rules, statutes and precedents of law or equity.

Morphew argues that there are genuine questions of material fact as to whether the allegations are 'just perjury of the intrinsic kind', whether the perjury or fraud claimed was

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[85] "He who seeks equity must do equity" and "he who comes into equity must come with clean hands"
[86] *Giants v. Chargers, supra*
[87] (We think no party has the right thus to create problems by its devious and deceitful conduct and then approach a court of equity with a plea that the pretended status which it has foisted on the public be ignored and its rights be declared as if it had acted in good faith throughout) *New York Football Giants, Inc., supra*
[88] The trial court, in order to adjudicate specific performance, was required to find the Dudeks were 'ready, able and willing' (i.e., to tender payment for the property)

substantially critical in regards to the remedy sought by the Dudeks in the prior action,[89] and if so, is such extrinsic fraud or rises to the level of extrinsic fraud; does the Respondents' actions include an issue collateral to the prior issue and/or acts which would be considered extrinsic fraud; and did the Respondents have a duty to speak or a duty of care owed Morphew or the trial court and whether those duties were breached resulting in a question of liability. Such presents jury question(s). *Spence v. Wingate*, 385 S.C. 316, 684 S.E.2d 188 (Ct.App.2009) (Spence III); *Accord*, *Smiley v. Woodmen of the World Life Ins.*, 249 S.C. 461, 154 S.E.2d 834 (1967) (jury question as to whether life insurance applicant misrepresented his health with intent to deceive insurer notwithstanding insured's answering "no" to numerous questions regarding hospital treatment and medications, when insured had in fact been hospitalized for six days the year prior to his application). Further, regardless of intrinsic or extrinsic fraud, there is a question whether or not the Respondents are liable for the damages due to their unlawful actions.

Notwithstanding the arguments here, and maybe most importantly, Appellant has raised issue for this court to declare the November 6, 2014 Order void in-part, specifically in its granting specific performance in favor to the Dudeks in the original action. (*See*, Issue #1, Pg.20 of Brief). The record shows that regardless of the type of fraud, intrinsic or extrinsic, perpetrated by the Respondent or co-respondents, the ruling was unlawful or contrary to the rules, statutes or precedents of equity and law, and was obtained by perjury, the suborning of perjury, forgery, misrepresentations, concealment and false promises of the respondents as a whole, or the refusal to speak or disclose the truth by any one (1) respondent. Meaning, if just one (1) respondent on this appeal spoke or disclosed the truth the Dudeks were not "ready, able and willing" to tender

[89] The perjury was required and known to be critical to the Dudeks' claim for specific performance or else they would have told the truth. Meaning, if the truth were actually revealed, a trial would never have taken place, or the Dudeks would have ost their case and be held liable for all damages by filing a frivolous and unlawful complaint and in their prevention of the Morphew closing.

payment as required to compel specific performance, or that the Dudeks were denied lending because they let their sales contract expire before making initial application and therefore rendering said contract invalid or non-negotiable, or if it was revealed that the Dudeks had no legal claim to the property after November 30, 2012 due to said expired sales contract, we wouldn't be here today with this court attempting to untangle the legal problems presented in the substantial litigation caused by the respondents and their unlawful behavior, and at no fault of the Appellant.

Of course, if this court finds Respondent Collins in default or that default or its entry of was relieved in error by the trial court as argued herein Brief, this argument in regards to Appellant's Cause of Action for "Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive may be moot.

CONCLUSION

If this court instead finds Collins not in default or relieves him of default or its entry of, and due to the reasons above, or on a void order in which this instant action arose from,[90] Appellant asks this court to reverse the trial court Orders-- Amended Order Granting in part Defendants First Federal and Alison Williams Motion to Dismiss, February 13, 2017; Order Granting in part Defendants Michael Scarafile, Susan Nicholson, David Collins and Carolina One Real Estate's Motion to Dismiss, January 31, 2017; Amended Order Granting In Part Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss, April 3, 2017-- all granting in part the Respondents Motion(s) to Dismiss on Appellant's Twelfth Cause of Action, and remand back to the trial court for further proceedings.

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[90] *See,* Issue #1 -VOID order, Pg. 20 of this Brief, repeated herein.

15. Did the Trial court err in granting Respondent Michael Scarafile, Susan Nicholson David Collins, Carolina One, First Federal and Allison Williams' Motion to Dismiss in-part regarding Appellant's Cause of Action – Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct?

The lower court order granted Respondents' Motion(s) to Dismiss in regards to Appellant Morphew's Cause of Action – Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct, specifically, "*the Plaintiff was not a party to contract between Collins, Nicholson, Scarafile, or the Buyers Dudek and Cross*"; "*...and not a party to the loan concerning Defendant First Federal, the contingent financing institution for the Buyers Dudek and Cross, and Defendant Williams, the loan officer for the First Federal. As the Plaintiff was not a party to that transaction, there could be no duty owed to her and no fiduciary relationship created between [the Respondents] and the Plaintiff. As such, the Plaintiffs Tenth Cause of Action fails*"..." **(Order granting in part Defendants Michael Scarafile, Susan Nicholson, David Collins and Carolina One Real Estate's Motion to Dismiss, January 31, 2017);(Amended Order granting in part Defendants First Federal and Allison Williams' Motion to Dismiss, February 13, 2017).**

Appellant Morphew appeals.

Though Morphew was neither a direct party to the contract between Respondents Michael Scarafile, Susan Nicholson and Carolina One Real Estate (as a whole "Respondents") and its' client and co-respondent, the Dudeks, nor a direct party to the to the loan concerning Respondents First Federal, the contingent financing institution for the Buyers Dudek and Cross, and Respondent Williams, the loan officer for the First Federal, she was not required to be a party to the sales contract or loan for a duty of care or fiduciary duty to speak the truth or disclose critical

and material facts or documents to the sellers, the courts or herself.[91] Even so, as the South Carolina court(s) also agree, a fiduciary relationship that has not yet been defined can arise from circumstances of the parties. "Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring." *Island Car Wash, Inc.*, 292 S.C. at 599, 358 S.E.2d at 152 (1987). A fiduciary relationship has been defined by the South Carolina Courts to be ["A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence"] *Island Car Wash, Inc. v. Norris*, 292 S.C. 595,599,358 S.E.2d 150, 152 (1987). No case example has been able to be located that is similar or even remotely similar to the extraordinary actions or circumstances of the original action in which this present action arose.

The trial court in this current action specifically ruled because Morphew was not a party to the transaction(s), there was no duty owed to her and no fiduciary relationship created. Morphew disagrees. In the prior action, Respondent Collins *first* had a duty to speak or duty to disclose the truth or not mislead to the sellers or its agent by the governing rules of its professional conduct and also in good faith and fair dealings to an opposing party, *then* to Morphew as an opposing party in discovery and at trial, and *finally* to the court or trial judge as an officer of the court, and SCRCP Rules to provide the [true] facts regarding the ability of its clients to compel specific performance, the status of the Dudeks' time is of the essence sales contract, the status of the

[91] The ability of Morphew to perform her sales contract was, at all times material, directly related to the ability of the Dudeks to tender payment/ perform their sales contract or compel specific performance, which in turn was directly related to the trial court's ability, inherent power or jurisdiction to order specific performance in favor of the Dudeks. Hence a fiduciary relationship clearly arose from the circumstances of the case or the parties.

Dudeks' mortgage loan or approval of mortgage credit (or lack of); or especially a duty of care not to mislead, perjure, or suborn perjury during a court proceeding. Collins was not a litigant in the case, had superior knowledge of its clients' lack of ability to close escrow in 2012, therefore knew he was litigating a frivolous and unlawful complaint. Further, Collins, as an officer of the court, was under oath during the court proceeding and so 'accepted or induced the confidence place in him' by the judge *and* all parties, thus creating a fiduciary duty and a duty to speak.

In regards to First Federal and Allison Williams, they had a duty to speak or duty to disclose to Morphew the financial status of their client's and co-respondents, Stephen Dudek and Doreen Cross, or their ability to tender payment for the property, first, in the two (2) separate subpoenas issued requesting as such, and second, at trial as a witness to disclose to both Morphew and the Master of Equity [true] facts regarding the loan transaction between them and the Dudeks, such as application, approval, issues, and their clients ability to tender payment [per specific performance]. First Federal or Allison Williams were not litigants in the case, they were under oath in the subpoenas and at trial, and the Dudeks financial status or ability to tender payment for the property was the crux of the [specific performance] case(s), therefore they had a duty to speak.

In regards to Respondents Michael Scarafile, Susan Nicholson and Carolina One Real Estate, they first had a duty to speak or duty to disclose the truth to or not mislead the sellers or its agent by the governing rules of its professional conduct and also in good faith and fair dealings to the other party (sellers), then to Morphew as a litigant at trial, and finally to the court or trial judge as an officer of the court, and by the SCRCP Rules or under oath to provide the [true] facts regarding the ability of its clients to perform their contract or compel specific performance, the performance and status of the Dudeks' time is of the essence sales contract, the status of the Dudeks' mortgage loan or approval of mortgage credit (or lack of); or especially a duty of care not to mislead, perjure, or suborn perjury during a court proceeding. Scarafile, Nicholson and

Carolina One were not litigants in the case, as a whole they were under oath in representing their clients and at trial, and the Dudeks performance of their time is of the essence sales contract and ability to tender payment for the property was the crux of the [specific performance] case(s), therefore they had a duty to speak.

Overall, both the sellers Ferro (defendants in the original action) and Morphew (Plaintiff in the original action) trusted and relied on the Respondents' disclosure all known facts or information that was significant and material in regards to the transaction which in turn that reliance directly affected Morphew's ratification and ability to perform her contract, and her due process to fully and fairly present her case. As argued previously herein Brief, at trial the Ferros, Morphew *and* the court substantially trusted and relied on the Respondents' disclosure all known information that was significant and material, and in this instance especially critical to the full, fair or lawful ability to compel, present or adjudicate the specific performance of the time is of the essence sales contract(s). Under such circumstances, a fiduciary relationship arose and the Respondents' 'silence' or non-disclosure should be fraud, and such fraud that induces an unlawful judgment or ruling contrary to the precedents of the South Carolina courts is invalid or void. "Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud." *Ellie v. Miccichi*, 358 S.C. 78, 100, 594 S.E.2d 485, 497 (quoting *Anthony v. Padmar, Inc.*, 320 S.C. 436, 449, 465 S.E.2d 745, 752 (Ct.App.1995)); To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing. *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986); Ellis, 358 S.C. at 509, 595 S.E.2d at 822. The evidence must show the entrusted party actually accepted or induced the confidence placed in him. *Regions Bank*, 354 S.C. at 671, 582

S.E.2d at 444; *State v. Parris*, 353 S.C. 582, 593, 578 S.E.2d 736, 742 (Ct.App.2003); *Brown v. Pearson*, 326 S.C. at 423, 483 S.E.2d at 484 (1997).

The Dudeks' financial status or ability to tender payment for the property or close escrow per their '*time is of the essence*' contract was the crux of the combined [specific performance] case(s). The record clearly shows the Dudeks made initial application with an expired sales contract (i.e., no legal claim to the property). The critical breach or failure was never remedied and therefore the Dudeks failed to complete their mortgage application and consequently were denied lending. Strictly, Respondents Allison Williams and First Federal should not have accepted the Dudeks' application in the first place, Respondent Collins should have not filed a frivolous claim and was required to discourage fraudulent behavior of his clients, and Respondents Scarafile, Nicholson and Carolina One should have disclosed to the sellers its clients expiration or inability to close escrow as its' clients, and co-respondents Dudeks had no legal claim or rights to the property at that time. Since this defect was not apparent to the court, the sellers or Morphew, and not within the reach of their diligent attention and observation, the Respondents were under a duty to disclose this information. The Respondents' evidence makes out a case of actionable fraud sufficient to carry the case to the jury.

Additionally, Morphew's ability to close escrow or to present her case *fully and fairly* had *everything* to do with disclosure of the truthful facts, specifically as to whether or not the Dudeks had the right or ability to compel specific performance or if they had a legal obligation to sign the termination request. In turn, the trial court's ability or jurisdiction to adjudicate specific performance in favor of the Dudeks has *everything* to do with to do with disclosure of truthful facts, specifically the Dudeks' ability to compel specific performance in the first place or whether at all times material they had a legal claim to the property. For these reasons, the testimony and evidence offered by the Respondents was *critically material*, therefore they had a duty to speak or

disclose [the truth] to the courts, the sellers (other party to Morphew's sales contract), and/or Morphew and such failure is fraud. Perjury, misrepresentations, false promises, and non-disclosure of the material facts and documents become fraudulent especially where there is a duty to speak.

"Non-disclosure is fraudulent when there is a duty to speak." *Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct.App.1993). "Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens S. Natl. Bank of S.C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972); accord *Manning v. Dial*, 271 S.C. 79, 83, 245 S.E.2d 120, 122 (1978); *Jacobson v. Yaschik*, 249 S.C. 577, 585, 155 S.E.2d 601, 605 (1967).

> "We have held that non-disclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other. The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties. *Warr v. Carolina Power & Light Co.*, 237 S.C. 121, 115 S.E. (2d) 799 (1960); *Gordon v. Fidelity & Casualty Co.*, 238 S.C. 438, 120 S.E. (2d) 509 (1961). (Emphasis added); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 SE 2d 432 (2003).

Additionally, the Respondents were not a party to the case but had a pecuniary interest in the false statements and promises, and had superior knowledge of the facts of the Dudeks'

transaction. The Respondents were in a best position to know the Dudeks performance of their time is of the essence sales contract, the status of said contract, and their ability to close escrow or tender payment for the property on or before November 30, 2012 [when the sales contract expired] or on January 15, 2013 [the day the Dudeks compelled specific performance], therefore the Dudeks' ability to compel specific performance. Due to these facts, the Respondents had an additional duty of care owed to the courts and Morphew.

> "If the Defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful inquiry, the law places on him a duty of care with respect to representation s made to plaintiff." *AMA Management Corp. v. Strasburger*, 309 S.C. 223, 420 S.E.2d 874. "The duty of care is not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care a reasonable man would take in the circumstances." *Id.*

Both the trial court and Morphew expressly reposed a trust and confidence in the Respondents to provide the truth or disclose facts during discovery, in the evidence, or in its or its clients or its witnesses' sworn testimony at trial. Instead, the Respondents committed perjury, suborned perjury, misrepresented, conspired to fraud, concealed, and failed its duty to speak or duty of care. Moreover, the Dudeks' performance of their sales contract or their transaction(s) with the Respondents and whether it failed or not, was specific and necessary and called for 'perfect good faith and full disclosure' from the Respondents. The Respondents' absolute disclosure went to the very core of the original case(s) and the trial court's jurisdiction or power to adjudicate specific performance in favor of the Dudeks.

Morphew argues she did not know what testimony the Dudeks and its witnesses (Respondents) would offer at said trial, and neither she nor the courts had reason to anticipate its

non-disclosure, suborning of perjury, and its their false and perjured testimony or false evidence especially from a commercial real estate company or a federally insured financial institution, or its employees/agents, who were not litigants and were only at trial to provide factual testimony regarding the financial status of their clients [and co-respondents] Dudek. Again, Morphew's performance of her contract was directly related to the Dudeks' legal claim to the property and their ability to compel specific performance, and argues the Respondents took advantage of their superior position knowing the Master would repose its trust and confidence in that position, and if not for the extreme dishonesty and exploitation by the Respondents, a trial would never have taken place or the trial court's ruling would have been decidedly different. Further, if not for the [unlawful] ruling obtained by the deceit, exploitation and dishonesty of the Respondents, the Dudeks would not have obtained the property in question in 2017, and there would not be three (3) *subsequent* actions resulting from the fraud and continuing fraud.

CONCLUSION

For the reasons above, Morphew contends fiduciary relationship(s) were formed, and the Respondents owed a duty of care and a duty to disclose to the sellers, Morphew *and* the trial court and such failure is fraudulent. Appellant asks this court to reverse the trial court's order granting the Respondents Motion(s) to Dismiss in-part to Appellant's Tenth Cause of Action – Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct, and remand back to the lower court for further proceedings.

Of course, if this court finds Respondent Collins in default or that default or its entry of was relieved in error by the trial court as argued herein Brief, this argument --in regards to Collins only-- may be moot and Appellant would petition this Court instead to find Respondent Collins in Default and to record such entry as applicable per Rule 55(a). If this Court finds the Clerk failed

to enter default as required, Appellant petitions this Court to Order entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Appellant, but instead an error of the court. Further, Appellant requests said Order to state Respondent Collins has been found in Default and is hereby entered on November 27, 2017 and that default Judgment is to be entered accordingly and damages awarded as such.

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16. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, David Collins, and Carolina One Real Estate on Appellant's claim of Tortious Interference with Existing Contractual Relations?

As argued herein Brief, Morphew contends the trial court's order for summary judgment dismissing its cause of action "Tortious Interference with Existing Contractual Relations" was improper due to pending discovery and/or this cause of action was already previously ruled on by another judge in the same civil action, and not appealed or contested. Further, Morphew has raised issue the Master's November 6, 2014 Order granting specific performance to the Dudeks is in- part void. For these reasons, the Order(s) granting summary judgment/motion to dismiss to the Respondent(s) therefore shoulc be reversed and remanded back to the trial court for further proceedings.

Regardless, the trial court granted summary judgment to Respondents on Morphew's cause of action Tortious Interference with Existing Contractual Relations, reasoning Appellant has been unable to create a genuine issue of material fact with respect to *any* essential element of tortious interference with an existing contract **(Order granting Summary Judgment-- First Federal and Allison Williams, November 15, 2018); (Order granting Summary Judgment-- Michael**

Scarafile, Susan Nicholson and Carolina One Real Estate, November 15, 2018); (Order granting David Collins Motion to Dismiss, November 15, 2018).

Appellant Morphew appeals.

First, and specifically to Respondent Collins, and as argued previously herein Brief, Collins is in default *and/or* the Order granting Collins Motion to Dismiss [i.e., granting summary judgment via conversion pursuant Rule 12(b)(6)] is void, therefore this argument in regards to Collins is moot.

Even so, to recover under a cause of action for tortious interference with an existing contract, the elements are (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) resulting damages. In its Order the trial court claims Morphew has failed to set forth evidence to make a showing to establish any of these elements, which are essential to Plaintiff's case. Specifically finding in error 1) "*while Plaintiff had a contract, her contract was contingent upon the termination of the Dudek and Cross contract,* 2) *Since specific performance was ordered on the Dudek and Cross contract, Plaintiff's contract was not enforceable and thus could not have been, and was not, breached,* 3) *Despite all of this, Plaintiff has also failed to show a genuine issue of material fact with respect to the final three elements, since Plaintiff has failed to show any conduct on behalf of the Defendants [Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, and Carolina One Real Estate]which improperly extended beyond ordinary business practices"* or specifically in regards to Respondent Collins, *"Generally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party."*

Morphew argues 1) her contract or the *existence* of her contract was not contingent upon the termination of the Dudeks' contract, but instead her contract being the "primary contract" or the *performance* of her contract was contingent upon the termination of the Dudeks' contract. Further, 2) the Master in Equity in the original action also granted Morphew specific performance, finding Morphew was ready, able and willing to perform, had a valid and negotiable or enforceable sales contract, and that Morphew's contract was valid and negotiable and would only terminate if the Dudeks closed on the property[92] or their sales contract was terminated (**Order--granting Specific Performance to the Dudeks and Morphew, November 6, 2014 Civil Case No. 2013-CP-18-0183**), therefore Morphew's contract was enforceable, and at a minimum through June 2, 2017. Moreover, the Dudek "closing" or its validity is on appeal in the original action, and in the separate Constructive Trust action. Combined with the issue of a void order in part (Order of November 6, 2014 granting specific performance to the Dudeks), the question of 'breach' or enforceability of Morphew's contract is pending or is a material question of fact for the jury. Nevertheless, Morphew alleges the trial court erred and that its contract could have and was breached, and such breach was caused by the all respondent's improper or unlawful actions.

In this instant action and the actions on appeal, Morphew contends the Dudeks intentionally and unlawfully or without legal justification prevented her closing (causing a breach *and* tortious interference with contractual relations) by failing to sign the termination release as legally required, and then by filing a lis pendens to prevent Morphew's closing followed by a complaint four (4) days later for specific performance when they had no lawful claim to the property or legal right or ability to compel specific performance. The Respondents significantly caused the sellers' and Morphew's failure to perform their sales contract by committing fraud on the court or by perjury, forgery, misrepresentations and their false promise they were ready to

[92] The decision to order a closing on the property is currently on appeal. (*See*, Appellate Case No. 2017-001393)

close and were extending the Dudeks credit; or the Dudeks were ready, able and willing to tender payment per specific performance. By presenting false evidence and false promises to lead to the master to find in favor of their client they intentionally procured the sellers and Morphew's failure to perform her contract and prevented Morphew from her legal right to the property. Whether or not the Respondents actions or non-actions advanced or significantly contributed to Morphew's, or the seller's, breach or failure to perform the Morphew contract is a question of fact to be resolved by the jury. See W. Prosser & E. Keeton, Handbook of the Law of Torts § 129 (5th Ed. 1984).

Further, as argued in this instant action and herein Brief, the Dudeks were *denied lending,* and *at their own hand*, therefore critically failed to meet the rules, statutes or guidelines of equity (especially for specific performance) or failed 'to do equity'. Consequently, the order in part granting them specific performance is void. Any ruling from a void order or arises from a void order is therefore unenforceable and must be reversed. Morphew contends the ruling granting the Dudeks specific performance is unlawful and must be reversed. There are questions herein appeal or issues on appeal in subsequent actions whether the Dudeks grant of specific performance or obtaining the property in question, was improper, unlawful, obtained by fraud, or void, therefore a material question in fact remains and summary judgment is improper.

"With respect to the final three elements", the trial court found Morphew "failed to show any conduct on behalf of the [Respondents First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, and Carolina One Real Estate] which improperly extended beyond ordinary business practices." Morphew argues strenuously the unlawful actions and deceit of Respondents as outlined in its complaint and herein Brief are *not* within any 'ordinary business practices', let alone a federal lending institution, commercial real estate company and officers of the court, all under rules regulations to prevent unlawful or fraudulent conduct. That the Dorchester County

courts, specifically Judge Murphy, should find their [improper and fraudulent] actions[93] acceptable is far beyond Morphew's understanding. Such a finding by the judge can only raise issue to its impartiality or its ability to discern between what is 'acceptable' or what is proper conduct, particularly conduct considered by courts to be *criminal* in nature, and such appearance of partiality should be especially considered by this court.

Specifically in regards to Respondent Collins, "*Generally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party,*" it quotes *Edelco, Inc. v. Charleston County School Dist.*, 372 S.C. 470, 642 S.E.2d 726 (2007) (quoting *Southern Contracting, Inc. v. H.C. Brown Constr. Co.*, 317 S.C. 95, 102, 450 S.E.2d 602, 606 (Ct. App. 1994). First, in the cases referenced the defendant was the actual litigant in the action, not like in this instant case where the defendant (Collins) is a litigant in a *subsequent* action arising from a previous action in which Collins was the attorney. Second, *Edelco* does not represent a contract between an attorney and its client. Further, neither case referenced contains matter in which an attorney files a frivolous complaint, suborns perjury, conceals critical and material facts and documents to a prior case, litigates a case in which said attorney has complete knowledge that its clients' had no valid or legal claim to the property in which it sought; nor do they represent an attorney committing and encouraging its clients and witnesses to commit fraudulent acts to seek an order that its clients have no ability to compel, or

[93] Including in their actions is accepting an illegible, expired sales contract or a legible but unsigned expired sales contract as a valid and negotiable sales contract to extend mortgage credit to the Dudeks; Intentionally concealing or failing to provide material and critical documents, documents that were the very core of the case, in discovery or at trial; Intentionally concealing or failing to disclosure material facts in discovery and at trial; Intentionally committing perjury, conspiracy, forgery, and misrepresentation, in a court or court proceedings (in the original litigation and in this instant action); and representing a false promise that they approved and were extending credit to the Dudeks in 2012. Such actions are fraudulent and lead to an unlawful or improper ruling, the violation of Morphew's due process and the unlawful prevention of her right to the property.

an fails all rules, statutes and precedents of law and equity, as alleged in Morphew's current complaint for fraud and fraud on the court. Respondent Collins, as an attorney at the time[94], had an obligation as an officer of the court to prevent fraudulent behavior of his clients or its own fraud on the court, which took precedent over his own contractual rights with his clients.

CONCLUSION

Of course, if this court finds Respondent Collins in default or that default or its entry of was relieved in error by the trial court as argued herein Brief, this argument in regards to Appellant's Cause of Action for Tortious Interference with Existing Contractual Relations specifically to Collins may be moot, and Appellant petitions this Court to find Respondent Collins in Default and to record such entry as applicable per Rule 55(a). If this Court finds the Chief Deputy Clerk failed to enter default as required, Appellant petitions this Court to Order entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Appellant, but instead an error of the court. Further, Appellant requests said Order to state Respondent Collins has been found in Default and is hereby entered on November 27, 2017 and that default Judgment is to be entered accordingly and damages awarded as such.

Further, due to the reasons stated herein, Morphew asks this court to reverse the trial court Order(s) of November 15, 2018 which granted summary judgment or a motion to dismiss to the Respondent(s) as to the Appellant's cause of action for Tortious Interference with Existing Contractual Relations, and remand back to the trial court for further proceedings.

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17. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents Wooddy Law Firm and Carrie Boyer on Appellant's claim of Tortious Interference with Existing Contractual Relations?

[94] Collins was suspended from practice by the Supreme Court in 2016 for fraud in which he pleaded guilty to in a separate action in which Morphew was not a party to.

As argued herein Brief, Morphew contends the trial court's order for summary judgment dismissing its cause of action "Tortious Interference with Existing Contractual Relations" was improper due to pending discovery and/or this cause of action was already previously ruled on by another judge in the same civil action, and not appealed or contested, therefore should be reversed an remanded back to the trial court for further proceedings.

Regardless, the trial court granted summary judgment to Wooddy Law Firm and Carrie Boyer on Morphew's cause of action Tortious Interference with Existing Contractual Relations, reasoning Appellant has been unable to create a genuine issue of material fact with respect to *any* essential element of tortious interference with an existing contract. Morphew disagrees.

To recover under a cause of action for tortious interference with an existing contract are (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) resulting damages. In its Order the trial court claims Morphew has failed to set forth evidence to make a showing to establish any of these elements, which are essential to Plaintiff's case. Specifically finding in error 1) "*while Plaintiff had a contract, her contract was contingent upon the termination of the Dudek and Cross contract,* 2) *Since specific performance was ordered on the Dudek and Cross contract, Plaintiff's contract was not enforceable and thus could not have been, and was not, breached,* 3) *Despite all of this, Plaintiff has also failed to produce evidence to establish either the third or fourth element, intentional procurement or absence of justification. The communications upon which Plaintiff bases this and all other causes of action against these Defendants cannot be considered improper under South Carolina law. In fact, Plaintiff, in her depositon, admits she has no other evidence that these communications were sent for any other purpose but preparing for a real estate closing. Pltf's Depo, pg. 22, lns. 8-12. For the same reason, Plaintiff has also failed to*

show a genuine issue of material fact with respect to absence of justification." **(Order granting Summary Judgement, Wooddy Law Firm and Carrie Boyer, November 13, 2018)**

Morphew argues 1) her contract or the *existence* of her contract was not contingent upon the termination of the Dudeks' contract, but instead her contract being the "primary contract" or the *performance* of her contract was contingent upon the termination of the Dudeks' contract. Further, 2) the Master in Equity in the original action also granted Morphew specific performance, finding Morphew was ready, able and willing to perform, had a valid and negotiable or enforceable sales contract, and that Morphew's contract was valid and negotiable and would only terminate if the Dudeks closed on the property[95] or their sales contract was terminated **(Order--granting specific performance to the Dudeks and Morphew, November 6, 2014 Case No. 2013-CP-18-0183),** therefore Morphew's contract was enforceable, and at a minimum through June 2, 2017. Moreover, the Dudek "closing" or its validity is on appeal in the original action, and in the separate Constructive Trust action. Combined with the issue of a void order in part (Order of November 6, 2014 granting specific performance to the Dudeks), the question of 'breach' or enforceability of Morphew's contract is pending or is a material question of fact for the jury. Nevertheless, Morphew alleges the trial court erred and that its contract could have and was breached, and such breach was caused by the all respondents improper of unlawful actions.

Regardless, Morphew asserts herein Brief the trial court in the original action erred in its ruling granting specific performance to the Dudeks and that its' Order failed both in law and equity therefore is void. Consequently, the Morphew contract was breached, and such breach was caused by the respondents. This is a material question of fact for the jury.

Morphew also argues 3) intentional procurement and absence of justification, in which the trial court in this action ruled "*the communications* [*upon which* Appellant] *bases this and all*

[95] The decision to order a closing on the property is currently on appeal. (*See,* Appellate Case No. 2017-001393).

other causes of action against these Respondents cannot be considered improper under South Carolina law." It found such conclusion as fact by referencing a page from Morphew's deposition, declaring Morphew admitted "*she has no other evidence that these communications were sent for any other purpose but preparing for a real estate closing. Pltf's Depo., pg. 22, lns. 8-12. For the same reason, Plaintiff has also failed to show a genuine issue of material fact with respect to absence of justification.*" First, the evidence presented by the trial court fails to support its finding of fact of admittance by Morphew (**Morphew deposition pg. 22, lines 8-12**). Second, as stated previously, the communications (engagement to all parties as the closing attorney in the [mortgage] closing transaction that did not exist, its request for repairs to be performed on a home the Dudeks neither owned nor had a legal right to, *and* its required proof to be provided the repairs had been done) were dishonest, improper or unlawful as Wooddy had knowledge the Dudeks hadn't yet applied for lending, the Dudek sales contract had expired, Wooddy hadn't been named to the lender as the closing attorney [to a closing involving a mortgage loan], or there was no closing transaction in existence in which to justify 'preparing for a real estate closing'.

In this instant action and the actions on appeal, Morphew supports its allegations that the Dudeks intentionally and unlawfully or without legal justification prevented her performance of her sales contract or closing escrow (hence causing a breach *and* tortious interference with contractual relations) by failing to sign the termination release as legally required, and then by filing a lis pendens to prevent Morphew's performance of her sales contract, followed by a complaint four (4) days later for specific performance when they had no legal right to the property or ability to compel specific performance.

The Respondents Wooddy Law Firm and Carrie Boyer, at the request of the co-respondents Nicholson/Dudeks provided false evidence[96] (or 'communication') that they were preparing for the closing and required proof that damages [re CL-100] have been repaired". Such evidence was presented in the underlying action to support the Dudeks' assertion that they, their lender, and their closing attorney were ready to close but the sellers- in their failure to provide proof the CL-100 damages were repaired (i.e., a 'cleared' CL-100) or any repairs were made- caused the buyers failure to close on or before November 30, 2012, or to project fault for their failure to close escrow onto the sellers when the Dudeks had critically breached their sales contract or were denied lending for their failure to have possession of or to obtain a valid and negotiable sales contract.

By providing false evidence to the Dudeks which the Dudeks used to convince the master to compel specific performance in their favor, and their lack of duty of care to the sellers by failing to inform the sellers of the infinite delay or issue of a closing, they intentionally procured the sellers and Morphew's failure to perform the Morphew contract and her legal claim to the property. Whether or not Wooddy Law Firm or Carrie Boyer had legal justification or standing in their actions or non-actions, or whether those actions or non-actions advanced or significantly contributed to Morphew's, or the seller's, breach or failure to perform the Morphew contract is a question of fact to be resolved by the jury. See W. Prosser & R. Keeton, Handbook of the Law of Torts § 129 (5th Ed. 1984).

Further, as argued in the instant action and herein Brief, the Dudeks sales contract was invalid and non-negotiable, the Dudeks had no legal claim to the property and consequently were *denied lending,* and *at their own hand;* therefore the Dudeks critically failed to meet the rules,

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[96] Email, Nicholson/Carrie Boyer/Wooddy Law Firm December 5, 2012; Email, Nicholson/Carrie Boyer/Wooddy Law Firm December 12, 2012; Closing Attorney engagement letter/Seller Ferro response, November 27, 2012.

statutes or guidelines of equity (especially for specific performance to a time is of the essence sales contract) or failed 'to do equity.' As a result, Morphew argues the Order granting them specific performance is in-part void. The Respondents, as the 'self-appointed' closing attorney as represented through March 2017, had knowledge of this fact but did nothing to initially inform the sellers, then the courts in the original action. Moreover, as defendants in this current action, and in its summary judgment action have not denied the facts and allegations of the complaint, but instead represent their actions were 'normal and part of their everyday representations and actions in a closing transaction." Morphew argues the Respondents are not able to claim they were the "closing attorney" or that their actions were 'normal actions preparing for a closing' [along with the lender, First Federal] when the record clearly shows there was no closing or mortgage closing transaction in which the Respondents had legal standing to act. Without a closing transaction, or legal standing, and without the Dudeks valid or legal claim to the property, any actions, demands or communications by the Respondents (therefore their clients and vise versa) is improper, and becomes unlawful when such actions or communications are used in a legal proceeding.

Morphew argues the Respondents cannot rest their defense that their actions were normal actions in a closing transaction when their clients' sales contract had expired and was no longer valid or negotiable, or that their client had been *denied lending at their own hand*, therefore not ready, able and willing to tender payment in order to compel specific performance. Meaning, as a professional closing attorney for many years in South Carolina it can be assumed that Wooddy Law Firm has superior knowledge of South Carolina sales contracts for real property using a mortgage loan to purchase, and knowledge of the rules and statutes required to meet the ability to compel specific performance for real property. It can also be assumed Wooddy had superior knowledge of the closing ability of its' clients; and in representing themselves as the '*closing attorney representing the Dudeks in the mortgage transaction to close escrow*" must have had

direct and continuous communications with co-respondent First Federal and Allison Williams. Further, throughout this current action, it can also be assumed Wooddy had direct communications with all its co-respondents and knew of their false testimony or suborning of perjury that the Dudeks were ready and able to tender payment for the property per specific performance, and they, First Federal and the Dudeks were ready to close escrow but could not schedule a closing because of the sellers. Wooddy or Boyer have never objected to or corrected the trial testimony of it co-respondents stating that they were ready to tender payment and schedule a closing per their sales contract (**Wooddy/Boyer Answer to Complaint**, Case No. 2016-CP-2185), neither have they appealed the prior trial court's order in which it denied their motion to dismiss regarding Appellant's claim of Tortious Interference with Existing Contractual Relations **(Amended Order, Motion to Dismiss Wooddy Law Firm and Carrie Boyer, April 3, 2017).**

Even so, there are questions herein appeal or issues in this Brief whether, (1) the Dudeks sales contract terminated on November 30, 2012; (2) whether there was a [valid][mortgage] closing transaction; (3) whether Wooddy Law Firm was or is liable for "creating" a closing transaction when there was no legal justification to do so; (4) whether the Respondents are liable for representing or continuing to "represent" and make requirements for a closing transaction when there was no legal justification to do so (i.e., there was no legal [mortgage] closing transaction in existence and/or its clients no longer had a legal claim to the property); (5) was Wooddy [obligated or had a duty of care][97] to inform the sellers, its agent, or the courts of the Dudek's lack of a closing date or lack of their ability to close escrow, and (6) whether their actions or failure to inform, intentional or not, contributed to Morphew's failure to obtain the property in which she had a legal claim to or perform her contract.

[97] Since they appointed themselves as the closing attorney and then have been representing themselves as the legal closing attorney for the Dudeks in their 2012 sales contract in the prior litigation and this instant action.

CONCLUSION

Due to the reasons stated herein, on a void Order, or that material questions in fact remain, Morphew asks this court to reverse the trial court Order/ruling of November 13, 2018 which granted summary judgment to the Respondents Wooddy Law Firm and Carrie Boyer as to the Appellant's cause of action for Tortious Interference with Existing Contractual Relations, and remand back to the trial court for further proceedings.

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18. Did the trial court err or abuse its discretion in granting summary judgment in favor of Respondents First Federal, Allison Williams, David Collins, Wooddy Law Firm, Carrie Boyer, Stephen Dudek, Doreen Cross, Michael Scarafile, Susan Nicholson and Carolina One Real Estate on Appellant's claim of Intentional Infliction of Emotional Distress?

The trial court order granted summary judgment to First Federal, Allison Williams, David Collins, Wooddy Law Firm, Carrie Boyer, Stephen Dudek, Doreen Cross, Michael Scarafile, Susan Nicholson and Carolina One Real Estate in regards to Morphew's claim of Intentional Infliction of Emotional Distress; reasoning Appellant has been unable to raise a genuine issue of material fact as to each element of this claim.

In regards to Respondent David Collins, and as argued previously herein Brief, Collins is in default *and/or* the Order granting Collins Motion to Dismiss [i.e., granting summary judgment via conversion pursuant Rule 12(b)(6)] is void, therefore this argument in respect to Collins may be moot.

In regards to Respondents Stephen Dudek and Doreen Cross, Morphew contends their motion fails SCRCP rules and therefore is invalid. Though the Dudeks state in their motion, "*Motion for Summary Judgment is based on the fact that there is no genuine reason as to any material fact and the Defendants are entitled to judgment as a matter of law*", and that "*This*

Motion will be supported by Rule 56, South Carolina Rules of Civil Procedure, affidavits to be subsequently filed....." Morphew argues their motion fails Rule 56 as they failed to submit a separate, short, and concise statement of material facts about which there are no genuine issues to be tried, or failed to submit their affidavit. Further, the Motion itself does not set forth the true facts upon which Respondents seeks a summary judgment. Rather the Motion states only "there is no genuine reason as to any material fact and Defendants are entitled to judgment as a matter of law." Therefore, their Motion for Summary Judgment should be denied. **(Motion for Summary Judgment, Defendants' Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, February 14, 2018); (Plaintiff Response In Opposition to Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate Motion for Summary Judgment March 5, 2018).**

In regards to Wooddy Law Firm and Carrie Boyer, the trial court granted summary judgment to Wooddy Law Firm and Carrie Boyer on Morphew's cause of action Intentional Infliction of Emotional Distress, reasoning Appellant "*failed to present any evidence of 'extreme and outrageous' conduct*" but also "*failed to present any evidence of any conduct which was directed at her*". "Instead, "*Plaintiff relies on a few communications between Defendant Boyer and co-Defendants which discuss preparing for a real estate closing, a common business activity that is not only tolerated but encouraged in a civilized society. In addition, Plaintiff has also failed to raise a genuine issue of material fact as to whether her "emotional distress" is sufficiently severe.*" Morphew argues the "communications" between the Respondents and its co-respondents were unjustified, dishonest, improper or unlawful and could not possibly "*be a common business activity that is not only tolerated but encouraged in a civilized society,*" as the trial court asserts. Meaning, Morphew agrees the actions of the respondents may be considered common business activity..." IF a valid closing transaction or mortgage closing transaction was in place or active at

all times material. Instead, as argued in above and repeated herein, the communications (i.e., official engagement letter to all parties as the closing attorney in the closing transaction, and its request for repairs to be performed-- on a home the Dudeks neither owned nor had a legal right to-- *and* its requirement proof of repairs needed to be provided to Wooddy) were dishonest, improper or unlawful as Wooddy had knowledge the Dudeks hadn't yet applied for lending, the Dudek sales contract had expired, its clients had no legal claim to the property, Wooddy hadn't been named to the lender as the closing attorney [to a closing involving a mortgage loan], or there was no closing transaction or mortgage closing transaction in existence in which to justify "preparing" for a real estate closing, therefore Wooddy Law Firm and Carrie Boyer had no legal standing in the alleged closing transaction.

Wooddy Law Firm's main purpose is real estate closings, therefore they have or should have superior knowledge of sales contracts (especially ones that are 'time is of the essence') and their expiration, mortgage loan closings, and its legal justifications in any communications or actions proper for such closings. This court should not disregard actions that fail to be fully justified or that are unlawful or dishonest and used as evidence or support in a legal proceeding against a third party, or contributed in an unlawful ruling or ruling contrary to the rules, statutes or precedents of the courts.

Further, Morphew argues the co-respondents, sales agent Susan Nicholson and the Dudeks had "requested" Wooddy to engage themselves as the closing attorney to present a façade the Dudeks appear to be ready to close but for the repairs (in the email/evidence *"as requested"*)(i.e., to provide an excuse in the Dudeks' failure to close before their time if of the essence sales contract expired) **(Email Rick Willis/Susan Nicholson, November 27, 2012)(Wooddy Engagement letter/ Ferro response, November 27, 2012).** The co-respondents Dudeks initially needed evidence or support that they, First Federal, and Wooddy Law Firm were ready to close

but it was not their fault in the delay for a closing. Hence, the excuse "repairs were required before a closing could take place." Meaning, the Respondents knew the Dudeks were not going to close per their time is of the essence sales contract, knew the Dudeks were at fault, but still provided the "proof" its clients needed to provide the sellers or to a court it was no fault of the Dudeks but instead the fault of the sellers. Further, the Respondents have known since 2012 that its clients did not have a valid sales contract at all times material, had no legal claim to the property, were denied lending or had failed all ability to compel specific performance, and therefore they had no legal justification to initiate or represent themselves as the closing attorney, or make demands to the sellers in a non-existent [mortgage] closing transaction.

Given Wooddy Law Firm had no legal justification in its actions and have failed their duty to speak or disclose in the original action and in the current action, the unlawful communications, dishonesty and conspiracy of the Respondents and co-respondents is reprehensible, especially if it is considered to "*be a common business activity that is not only tolerated but encouraged in a civilized society,*" as the trial court ruled.

Notwithstanding above, all Respondents failed to raise issue to Morphew's claim of Intentional Infliction of Emotional Distress against the Respondents in its motion(s) or at the hearing, and specifically, whether their dishonesty or conduct rose to the level of "extreme and outrageous," or that Appellant failed to raise a genuine issue of material fact as to whether her "emotional distress" is sufficiently severe.

Even so, in its Order(s), the trial court specifically points out that the "*dishonesty, and especially without the existence of any special relationship, cannot rise to the level of 'extreme and outrageous' conduct*". To recover for a claim of intentional infliction of emotional distress, plaintiff must show extreme and outrageous conduct which intentionally or recklessly causes severe emotional distress to another. *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981). The

question of whether the conduct arose to the level of "extreme and outrageous is a question of law reserved for the court. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984). **(Order granting Summary Judgment-- First Federal and Allison Williams, November 15, 2018); (Order Granting Summary Judgment-- Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, November 15, 2018); (Order granting Summary Judgment-- Wooddy Law Firm and Carrie Boyer, November 13, 2018); (Order granting Motion to Dismiss-- David Collins, November 15, 2018).**

Dishonesty is defined as "disposition to defraud or deceive" and "FRAUD"[98] and in this instance the dishonesty by the Respondents *is fraud*. "Our case law instructs that a deceptive act is any act which has a tendency to deceive. *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App.2000). "Even a truthful statement may be deceptive if it has a capacity or tendency to deceive." *Wogan v. Kunze*, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct.App.2005) (citations omitted). Fraud in itself, especially fraud on the court, is extreme and outrageous or reprehensible and is not normally tolerated by the courts. Though a special relationship is not required, one did exist, as Morphew's performance of her contract was *directly* related to the Dudeks' breach of contract, and their ability or inability to compel specific performance. If that's not enough, then the right of the courts and Morphew to hear and rely on the Respondents testimony and evidence was critical. As argued herein Brief, the Respondents' fraud or substantial dishonesty and false promises deceived Morphew, preventing her from performing her sales contract and/or presenting her case fully *and fairly*, and deceived the trial court into making an unlawful ruling in law and equity or a ruling contrary to recognized principles of law or equity, the standards of good conscience or to the precedents established

[98] Definition of dishonesty: 1 : lack of honesty or integrity : disposition to defraud or deceive 2 : a dishonest act : FRAUD (Merriam-Webster Dictionary)

within the trial court's jurisdiction where it is no longer equitable. Such an Order is Void. Further, the Respondents continued their fraud to enable the Dudeks to obtain the property though they were not bona fide purchasers, resulting in a subsequent action for Constructive Trust and an appeal of the closing order in the original action in which this action arose.

Such actions are not just "dishonest" as the trial court put it, but is substantial fraud, and such fraud is *extreme* and *outrageous* or is reprehensible. The Respondents improper or fraudulent actions have caused many parties, including the sellers, Morphew and the South Carolina Courts excessive costs or damages and should not be tolerated. Such fraudulent actions covered the fact the lower court did not have the inherent power or jurisdiction to rule specific performance in favor of the Dudeks.

Morphew also argues the Respondents took advantage of their superior position knowing the Master would repose its trust and confidence in that position, and if not for the extreme dishonesty, concealment and exploitation by the Respondents, Morphew would have performed her sales contract, closed on the property, and a trial would never have taken place or the trial court's ruling would have been decidedly different. Further, if not for the ruling obtained by the deceit, exploitation and dishonesty of the Respondents, the Dudeks would not have obtained the property in question, and there would not be three (3) subsequent actions resulting from the fraud and continuing fraud of the co-respondents and Respondents.

Further, considering the same judge --who found that the actions or conduct of the Respondents[99] alleged by Morphew in her complaint "*did not improperly extend beyond ordinary business practices*" – also determined here the same Respondents' fraud or 'dishonesty' was not

[99] Including but not limited to, perjury, fraud, forgery, misrepresentations, making false promises in a court proceeding, concealment of material facts and documents, excepting invalid and expired sales contracts for mortgage processing, etc.

extreme and outrageous, Morphew argues that reasonable persons may differ and is a clearly a question for the jury.

> "[T]he court determines, in the first instance, whether the defendant's conduct may reasonably be regarded as sufficiently extreme and outrageous to permit recovery; only where reasonable persons may differ will the question proceed to the jury." *Hubbard & Felix*, supra, at 346-47 (citing *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (Ct.App.1984), quashed (as to *Equifax*), 287 S.C. 190, 336 S.E.2d 472 (1985)).

Lastly, the trial court determined Morphew "*has also failed to raise a genuine issue of material fact as to whether her "emotional distress" is sufficiently severe,*" and *"[t]o permit a plaintiff to legitimately state a cause of action by simply alleging, "I suffered emotional distress" would be irreconcilable ...*". "*In particular, Plaintiff attempt to establish emotional distress on her testimony that she discussed stress-related symptoms with both a gynecologist and an eye doctor, and that she was prescribed medication for ulcers roughly twelve years ago...*"

Morphew has provided more than a mere allegation as the trial court has stated, instead has previously disclosed to the Respondents her symptoms and the several ailments determined by her doctors, such as anxiety, problems with her eyes (dry eyes, intense pain, floaters) , and high blood pressure, all due to stress and particularly due to the extensive litigation (**Morphew deposition, pg. 229-231**).

As to the order's inference that Morphew attempted to use an incident from many years ago to justify the amount of stress she has endured, specifically when she took medicine for ulcers 12 years ago, Morphew contends such finding was incorrect or was used out of context. Meaning, it is apparent Morphew did not or did not intend to use that incident in an attempt to establish emotional distress in this present action. Instead, Morphew's testimony in the deposition

was only an answer to a question "*Have you ever been prescribed any medication for mental health conditions*?" imposed by Amy Neuschafer, attorney for co-respondents Wooddy Law Firm and Carrie Boyer **(Morphew deposition Pg. 232)**.

Q: Have you ever been prescribed any medication for mental health conditions?

A. Stress.

Q. What were you prescribed?

A. For ulcers, Paxil at one time briefly. That was a long time ago.

Q. Do you know who prescribed that?

A. No, I can't remember.

Q. About how long ago was it?

A. That was probably 12 years ago, 13.

Regardless, several months before their motion to dismiss, during Morphew's deposition, Morphew had communicated her distress and doctor's visits and provided the several specifics regarding the doctors to opposing counsel. At that time all counsel informed Morphew they had a right to get the medical records due to her allegations.

Q. And you understand it's because you have alleged that these symptoms are related to this lawsuit or the conduct alleged in this lawsuit that we are going to have a right to get these medical records? **(Morphew Deposition, pg. 230-231)**

The Respondents did not raise issue or dispute Morphew's allegations or testimony in its deposition in its motion for summary judgment or at the hearing in regards to this cause of action against them. The Respondents had been aware of her stress and had an opportunity to discover the validity of her testimony or the allegations made in the complaint since her deposition almost two (2) years before the hearing. Morphew's allegations and testimony in regards to her emotional distress was under oath, therefore considered as the truth, and if they did doubt it they

had the opportunity to obtain those records or demand proof thereof. No action has been taken by the Respondents.

As a pro se party and litigant under oath, whose full time job is not being a lawyer and has not the resources and education of a lawyer but is expected to navigate the judicial system and its processes under the heightened circumstances and facts of this case and the subsequent actions, and against a "myriad of deceivers" and their counsel "trained to win"[100], Morphew's testimony of severe stress and its effect should be more than sufficient under the circumstances, especially in the absence of the Respondents action to discover any untruth. Morphew argues reasonable persons would agree.

Nonetheless, Morphew finds it hard to believe that a judge, with intimate knowledge the difficulties and stress defending a case can cause an attorney-- let alone a pro se party without the knowledge and resources at its fingertips, can so easily wave its hand at Morphew's assertions of distress. To subjectively diminish the possibility that 6 plus years of litigation (4 plus being pro se), including appeals, thousands of pages of writings on top of hundreds of hours of research, hearings, trials, traveling, communications, costs, and loss of time would not cause stress 'sufficiently severe enough,' is insulting, especially in light of the judge's statement at the hearing presuming Morphew must have had legal counsel help or legal training, and basically applauded Morphew's "attorney" standard in all her pleadings.

> THE COURT: *"Well, did you ever seek advice of counsel? You had a previous attorney. It appears that you have had some assistance, unless you have legal training in the drafting of all of your pleadings."*

[100] In what Appellant's opinion of the litigation could be compared to…'a game of chess in the dark with only Morphew blindfolded"

Morphew's efforts to reach an 'attorney's standard' did not happen overnight, nor did it come without its consequences... severe distress. Combined with the excessive time it's taken in her attempt to right this injustice with an eight hour+ work day and a family, including a daughter with a substantial medical concition, most pro se litigants would have already caved in to the stress and anxiety. As a pro se party and litigant under oath, especially under the circumstances and facts of this case and the subsequent actions, Morphew's assertions should be more than adequate that a normal person would reasonably believe her stress to be "sufficiently severe."

Nonetheless, the Dudeks intentionally failed 'equity' in so many ways that that this court should consider their actions alone as fraud on the court, which is extreme and outrageous or reprehensible in itself. Such failures include; critically breaching by intentionally failing to apply and secure financing per their time is of the essence sales contract; allowing their sales contract to expire before making initial application; knowingly filing a frivolous complaint and motions; using the legal system improperly or without legal justification, providing false testimony or evidence in their answers, depositions, motions and testimony at trial; forging documents; conspiring with others to perjure, misrepresent and conceal their true financial status or their ability to tender payment per specific performance; concealing material and critical documents specific to the trial court's abil_ty, inherent power or jurisdiction to order specific performance in their favor; and providing false evidence in order to declare the sellers acted in bad faith and unfair dealings or caused the Dudeks their breach(s) or failure to close per their sales contract. They also unlawfully closed or obtained the same property in question with full knowledge of Morphew's claim to the property, therefore are not bona fide purchasers (*See,* Constructive Trust - - Morphew v. Stephen Dudek and Doreen Cross, pending Appellate Case No. 2017-000507).

CONCLUSION

Due to the reasons above, there are material questions of fact present, including but not limited to, 1) whether the Respondents' conduct of perjury, forgery, misrepresentations, concealment of material and critical facts and cocuments, conspiracy to commit fraud, and false promises may reasonably be regarded as sufficiently extreme and outrageous or reprehensible to permit recovery, and 2) whether Morphew's assertions of emotional distress stress resulting from the actions of the respondents to this appeal and the uncontested specific effects of said stress as testified are sufficient to rise above a "bald assertion." Both are questions for the jury, therefore Appellant asks this court to reverse the trial courts order(s) for summary judgment/ granting motion to dismiss on Appellant's cause of action for Intentional Infliction of Emotional Distress and remand back to the trial court for further proceedings.

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19. Did the trial court err or abuse its discretion in granting summary judgment or motion to dismiss in favor of Respondents First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, David Collins, Wooddy Law Firm and Carrie Boyer on Appellant's claim of conspiracy to defraud?

As argued herein Brief, Morphew contends the trial court's order for summary judgment dismissing its cause of action "Conspiracy to Defraud" was improper due to pending discovery and/or this cause of action was already previously ruled on by another judge in the same civil action, and not appealed or contested, therefore should be reversed an remanded back to the trial court for further proceedings.

Regardless, the trial court granted summary judgment to Respondents Wooddy Law Firm and Carrie Boyer on Morphew's cause of action Conspiracy to Defraud, reasoning "*Plaintiff has failed to present any evidence that Defendants were aware of Plaintiff's back-up contract for the property or that their conduct was for the primary purpose of injuring the Plaintiff, as opposed to*

engaging in the ordinary course of business. In fact, at her deposition, Plaintiff admitted that she has no evidence that these communications were made for any other purpose but preparing for a real estate closing. Pltf's Depo.: pg. 22, lns. 8-12. Despite all of this, Plaintiff fails to establish, or even allege, special damages. For these reasons, the Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for ... conspiracy to defraud is granted." **(Order granting Summary Judgment—Woodly Law Firm and Carrie Boyer, November 13, 2018).** Morphew has more than argued the actions were unlawful, improper or unjustified, as at all times material Wooddy Law Firm was not or was never at all, "legally" the closing attorney representing the Dudeks in a mortgage closing transaction as there was no closing transaction or valid closing transaction in existence. As argued previously, the Dudeks did not have a valid and negotiable sales contract at initial application for mortgage credit and the expired contract was never remedied, therefore the Dudeks were denied lending. Meaning, there was never a closing transaction in place that would require a closing attorney, the Dudeks had no legal right to the property or to demand a closing, therefore Wooddy Law Firm had no legal standing or justification in its representation as the closing attorney or that they were ready to schedule a closing but for fault of the sellers. Further, their correspondence requiring any action from the sellers or against their property was unlawful and unjustified.

Notwithstanding, Woody Law Firm and Carrie Boyer made false requests/demands under the circumstances with no justification in doing so and at the request of the co-respondents Dudeks/Nicholson, which now appears to support fraud resulting in an injustice or unlawful ruling in which the Master in the original action lacked the ability, inherent power or jurisdiction to rule specific performance in favor of the Dudeks. The Respondents, with this knowledge, have done nothing to rectify their actions and instead have presented themselves in the original litigation, and this instant action, as "the closing attorney" who, with the Dudeks and First Federal, was ready to

close in 2012 per specific performance. Such conspiracy and continued conspiracy has now led to the Dudeks obtaining the property, which the Dudeks and are now involved in subsequent actions for Constructive Trust and Trespass Upon Easement. Morphew argues the ruling fails as it is not supported by evidence or because a genuine issue of material fact exists as to the Respondents liability, or whether or not special damages are or could be present due to the conspiracy and *continued* actions of the Respondents.

In regards to Respondents First Federal, Allison Williams, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, and David Collins the trial court granted its Motion(s) for Summary Judgment/Motion to Dismiss on Appellant Morphew's claim of conspiracy to defraud because "*Plaintiff has not made a showing, or even alleged, special damages, which is an essential element for a cause of action for civil conspiracy. In fact, Plaintiff, in her deposition, admitted that all of the causes action, together, support her claim for damages and that if he civil conspiracy claim were dismissed, the damages sought would not change. Pltf'sDepo., pgs. 298-99.*" **(Order granting Summary Judgment-- First Federal and Allison Williams, November 15, 2018); (Order granting Summary Judgment—Stephen Dudek, Doreen Cross, Michael Scarafile, Susan Nicholson and Carolina One Real Estate, November 15, 2018); (Order granting Motion to Dismiss—David Collins, November 15, 2018).**

Specifically to Respondent Collins, and as argued previously herein Brief, Collins is in default *and/or* the Order granting Collins Motion to Dismiss [i.e., granting summary judgment via conversion pursuant Rule 12(b)(6)] is void, therefore this argument in regards to Collins is moot, and the Order granting Collins Motion to Dismiss should be vacated or reversed and default judgment/damages rendered and remanded back to the trial court for further proceedings.

Even so, in all Order(s) herein issue on appeal, the trial court relies on two (2) pages from Morphew's deposition, but nowhere on those pages does it reference her civil conspiracy claim or

the damages sought, especially stating "all of the causes action, together, support her claim for damages and that if he civil conspiracy claim were dismissed, the damages sought would not change". **(Morphew Deposition, Pgs. 298-299)**. Additionally, Morphew has not been directed to make a showing of special damages or whether or not she has alleged special damages. Instead, the trial court relies on a non-existent statement, even if made, is ambiguous in that it could be construed alternately as "if the civil conspiracy claim were dismissed, the damages sought in the remaining causes of actions would still remain." Morphew argues the ruling fails as it is not supported by evidence or that a genuine issue of material fact exists as to whether or not special damages are or could be present due to the conspiracy and *continued* actions or conspiracy of the Respondents.

CONCLUSION

Due to the reasons herein, or on a void order in which this current action arose, Morphew asks this court to reverse the trial court Order(s) of November 13th and 15th, 2018 which granted summary judgment/motion to dismiss to the Respondents First Federal, Allison Williams, David Collins, Wooddy Law Firm, Carrie Boyer, Michael Scarafile, Susan Nicholson and Carolina One as to the Appellant's cause of action for conspiracy to defraud, and remand back to the trial court for further proceedings.

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20. Addressing Appellant's Cause of Action – Perjury, Obstruction of Justice, violating South Carolina Rules of Professional Conduct, Forgery/falsifying documents with intent to defraud in regards to Respondents.

The lower court order granted Respondents David Collins, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Stephen Dudek, Doreen Cross, First Federal, Allison

Williams, Wooddy Law Firm and Carrie Boyer's Motion(s) to Dismiss in regards to Appellant Morphew's Cause of Action – Perjury, because "perjury is a criminal offense, and Obstruction of Justice because Obstruction is a common law criminal offense– both being criminal charges therefore not a basis for civil liability; the violation of South Carolina Rules of Professional Conduct because the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation; Forgery/ falsifying documents with intent to defraud because they are brought under Rules of Professional Conduct and are rules intended for guidance and disciplinary purposes, not to form the basis for civil litigation; **(Order Granting in part Defendants Michael Scarafile, Susan Nicholson, David Collins and Carolina One Real Estate's Motion to Dismiss, January 31, 2017); (Order Granting in part Defendants Stephen Dudek and Doreen Cross Motion to Dismiss January 31, 2017); ([Amended] Order Granting in part Defendants First Federal and Allison Williams' Motion to Dismiss, February 13, 2017); (Amended Order Granting in part Defendants Wooddy Law Firm and Carrie Boyer's Motion to Dismiss April 3, 2017).**

Morphew submits these actions are not civil 'causes of action'. Though not appealing its decision and only addressing the allegations, Morphew raises issue its facts and allegations under the cause of action survive, though the cause of action does not. Meaning, these actions may not form the *basis* for civil litigation, but the facts or allegations support surviving causes of action and any Respondents' liability (See first paragraph of each cause of action, "*all allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.*" **(Complaint, Fraud and Fraud on the Court, etc. – Morphew v. Stephen Dudek, Doreen Cross, et al. August 24, 2016).**

Committing unlawful acts, especially ones that are *criminal* in nature or display violations of professional conduct, should not be ignored in this court's review where character and integrity

play a role in the Respondent's liability to an injustice or damages to the courts or Morphew, or where sanctions for such conduct are allowed in a civil setting.

Further, the trial court found in error that "the purported perjury claim contains no specific allegations directed at the defendants.". Morphew contends there are many allegations of perjury or the subornation of directed at the Respondent, including but not limited to below, and should not be ignored in this court's review. **(Complaint, Fraud/Fraud on the court, etc. - 2016-CP-1801706 – Morphew v. Stephen Dudek, et al *attachments absent).**

In regards to David Collins, including but not limited to:

#59. (Subornation of perjury)(Cross and Dudek Deposition): Dudek and Cross had secured lending per their sales contract; had not breached their sales contract; had a valid contract and were ready, able and willing to close [escrow or tender payment].

#93a-w Under Cause of Action - PERJURY : (*All* Defendants)

Including but not limited to this perjury:

1. Collins stated he had never seen the CL-100 report;
2. Dudek and Cross applied for lending per contract;
3. Dudek and Cross had been approved lending per contract;
4. Dudek and Cross were **ready, able** and willing to close per contract;
5. Dudek and Cross were ready to close on December 14th, 2012;
6. Dudek and Cross were ready to close and could schedule a closing the week of December 24th, 2012
7. First Federal didn't order the appraisal because they were waiting on the recorded survey;
8. The sellers refused to provide required lender and/or closing attorney required documents in order to close;
9. Dudek and Cross could not close per contract because of the sellers;
10. The Contract Extension Addendum was not required (by their lender).

#129

It should also be noted that the Respondent represented or continued to represent a frivolous complaint, with knowledge that its clients' closing transaction or mortgage closing

transaction was invalid at all times material, and that his clients had no legal right to make demands of the sellers after November 30, 2012 (when his clients' time is of the essence sales contract expired), December 16, 2012 (when his clients received the termination request from the sellers), or January 18th, 2013 (the official date his clients' lender/co-respondents *officially* denied them lending and closed their mortgage file for failure to present a valid and negotiable sales contract/failed to complete their initial application) – *all dates when the transaction was no longer in existence or had expired, and its clients no longer had a legal right or claim to the property.* Such actions were unlawful and/or not lawfully justified. Meaning, any demands or liability made on the sellers or their property, including any demand to close, make repairs or provide documentation, and any liability placed on the sellers for breach or in the Dudeks' failure to close escrow, was unlawful or not legally justified. Further, any representation or litigation of specific performance by himself or his clients was unlawful after November 30, 2012[101] and is fraudulent or fraud on the court.

In regards to Stephen Dudek and Doreen Cross, including but not limited to:

#58a: *Answer to Complaint*: Dudek and Cross [stated they] had loan approval but could not close because they never got a CL-100.

#59a: Per Dudek and Cross *deposition*: Dudek and Cross claim they had secured lending per contract, and/or had not breached their contract and/or they had the valid contract and/or were, and were still ready, able and willing to close [escrow].

#93a-w Under Cause of Action - perjury : (All Defendants, meaning Dudek and Cross falsely or fraudulently testified during the trial or at depositions)

Including but not limited to:

1. Dudek and Cross [testified they] had:
    a. applied for lending per contract;
    b. secured lending per contract;
    c. were ready, able and willing to close per contract;
    d. were ready to close on December 14th, 2012;

[101] Including filing a complaint for breach of contract compelling specific performance and the trial court's ruling ordering the Ferros to specifically perform the time is of the essence sales contract.

e. First Federal didn't order the appraisal because they were waiting on the recorded survey;
f. the sellers refused to provide required lender and/or closing attorney required documents in order to close;
g. they could not close per contract because of the sellers;
h. the Contract Extension Addendum was not required (by their lender).

Again, also includes all allegations in the prior and subsequent paragraphs.

In regards to First Federal and Allison Williams:

#93a-wUnder Cause of Action - perjury : (*All* Defendants)
Including but not limited to this Perjury:

1. Dudek and Cross applied for lending per contract;
2. Dudek and Cross had done everything they could to secure financing per contract.
3. Dudek and Cross had been approved lending per contract;
4. Dudek and Cross were **ready, able** and willing to close per contract; (i.e., First Federal had approved them and were extending them mortgage credit)
5. Dudek and Cross were ready to close on December 14th, 2012;
6. First Federal didn't order the appraisal because they were waiting on the recordec survey;
7. First Federal couldn't continue with the loan because they were waiting on the reco ded survey;
8. Williams turned in the (initial) application file [to underwriting] on October 31, 2012.
9. First Federal was "cleared to close" on December 20, 2012
10. The sellers refused to provide required lender and/or closing attorney required documents in order to close;
11. Dudek and Cross could not close per contract because of the sellers;
12. The Contract Extension Addendum was not required (by lender).

In regards to Stephen Dudek and Doreen Cross, including but not limited to:

#93a-w Under Cause of Action - PERJURY : (*All* Defendants)

Including but not limited to this perjury:

1. Dudek and Cross applied for lending per contract;
2. Dudek and Cross had been approved lending per contract;
3. Dudek and Cross were **ready, able** and willing to close per contract;
4. Dudek and Cross were ready to close on December 14th, 2012;
5. Dudek and Cross were ready to close and could schedule a closing the week of December 24th, 2012
6. First Federal didn't order the appraisal because they were waiting on the recorded survey;
7. The sellers refused to provide required lender and/or closing attorney required documents in order to close;
8. Dudek and Cross could not close per contract because of the sellers;
9. The Contract Extension Addendum was not required (by their lender).

It should also be noted that the fact the Respondents represented or continue to represent themselves as the buyer's agent to the 2012 "transaction" or to make demands of the sellers after November 30, 2012 (when their clients' time is of the essence sales contract expired or when their clients failed to have any legal claim to the property), December 16, 2012 (when they received their clients' termination request from the sellers), or January 18th, 2013 (the official date its clients' lender/co-respondent *officially* denied them lending and closed their mortgage file for failure to present a valid and negotiable sales contract/failed to complete their initial application) – *all dates when the transaction was no longer in existence or had expired, and its clients no longer had a legal right or claim to the property* – was unlawful or not legally justified. Meaning, any demands or liability made on the sellers or their property, including any demand to close,[102] make repairs or provide documentation, and any liability placed on the sellers for breach or in the Dudeks' failure to close escrow, was unlawful or not legally justified. Further, any representation Carolina One was 'the' real estate agent for the Dudeks purchase transaction, or *any* representations or evidence presented that a transaction or legal purchase transaction was valid or

[102] Including filing a complaint for breach of contract compelling specific performance and an Order ordering the Ferros to specifically perform the time is of the essence sales contract.

in existence after November 30, 2012 is fraudulent and fraud on the court, and an obstruction of justice.

Though Morphew's complaint was not wholly dismissed on this action, committing unlawful acts, especially ones that are criminal in nature or display violations of professional conduct, especially to such an extreme or have caused substantial damage to third parties, the judicial system, its clients or themselves, should not be ignored in this court's review where character and integrity play a role in the improper or fraudulent actions resulting to an injustice or a ruling contrary to the rules, statutes and precedents of the South Carolina court'(s) jurisdiction.

CONCLUSION

Due to the arguments presented above, Morphew asks this court to consider the facts and allegations of the perjury and misrepresentations committed when considering liability or the extent of in regards to the Respondents in the original action, this current action, and any subsequent action which arose from its actions.

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21. Is Respondent David Collins liable for and can be sanctioned in a civil action for violation of ABA Rules of Professional Conduct, Rule 3.3, Rule 4.1, and 8.4(c)?

The lower court order granted Respondent David Collins Motion to Dismiss in regards to Appellant Morphew's Cause of Action – Violation of ABA Rules of Professional Conduct, Rule 3.3 Candor Toward the Tribunal, 4.1 Truthfulness in Statements to Others, 8.4(c) Misconduct: lawyer misconduct by committing a criminal act involving moral turpitude, because none of which state a valid cause of action as the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation. **(Order Granting in part Defendants Michael**

Scarafile; Susan Nicholson, David Collins and Carolina One Real Estate's Motion to Dismiss, January 31, 2017)

Morphew submits violating Rules of Professional Conduct are not "civil causes of action" but contends an attorney can or may be held liable for such actions.

Appellant would ask this court to take notice committing unlawful acts that are criminal in nature, or acts that display violations of professional conduct, especially by an officer of the court, specifically actions that involve Candor toward the Tribunal, Truthfulness in Statements to Others, lawyer misconduct by committing a criminal act involving moral turpitude, even if neither is a civil cause of action, should not be ignored in this court's review where character and integrity play a role in the Respondents' liability to an injustice or damages to the courts or Morphew, and where sanctions for such conduct are allowed in a civil setting.

Further, Morphew has alleged conspiracy and actions that indicate liability to a third party, and such liability for conspiracy where, in addition to representing his client, they breached some independent duty to the sellers, which consequently led to a breach to an independent duty to a third party, in this case Morphew *and* the courts, or acted in his own personal interest, outside the scope of his representation of the client[103]. The South Carolina Supreme Court and other states have held an attorney can or may be held liable for such actions.

> A number of jurisdictions recognize that an attorney may be held liable where he acts in bad faith or for his own personal motivations. *See generally Annotation* 97 ALR 3rd 688 (attorney's liability for abuse of process); *Annotation* 46 ALR 4th 249 (attorney's liability for malicious prosecution). *See also* RESTATEMENT (SECOND) OF TORTS § 674, comment d (attorney who acts without probable cause for an improper purpose is subject to same liability for the wrongful use of civil proceedings as any other person). Moreover,

[103] As argued previously, the Respondents had a pecuniary interest in the transaction.

several courts have held that an attorney may be held liable arising out of a conspiracy with his client. *See e.g., Wolfrich Corp. v. U.S. Automobile Assn.,* 149 Cal. App.3d 1206, 197 Cal.Rptr. 446 (1983) (attorneys may be liable for participation in tortious acts with their clients, and such liability may rest on a conspiracy); *Doctors' Co. v. Superior Court,* 49 Cal.3d 39, 260 Cal.Rptr. 183, 775 P.2d 508 (1989); *Fraidin v. Weitzman,* 93 Md.App. 168, 611 A.2d 1046 (1992) (attorney liable for conspiracy if actively involved in wrongful conduct). Additionally, attorneys have been held liable for fraud and conversion in conjunction with their representation of clients. *See, e.g., L & H Airco, Inc. v. Rapistan Corp.,* 446 N.W.2d 372 (Minn.1989) (attorney who makes affirmative misrepresentations to an adversary or conspires with his or her client may be held liable for fraud); *Pew v. First National Bank,* 827 F.2d 1488 (11th Cir.1987); *Bongard v. Winter,* 516 So.2d 27 (Fla.App.1987); *Guilleaeau v. Jenkins,* 182 Ga.App. 225, 355 S.E.2d 453 (1987) (implying that an attorney may be sued by an adversary for fraud); *LaBarre v. Gold,* 520 So.2d 1327 (Miss.1987) (attorney liable for conversion for improperly paying real estate proceeds only to his client); *Gaar v. North Myrtle Beach Realty Co., Inc.,* 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct.App.1986), (finding that an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client).

Morphew argues that the record shows that David Collins, counsel for co-respondents Dudek had acted outside the scope of his representation of his clients as he had no justification or legal standing to demand any actions from the sellers Ferro, including a closing[104] when tendering

[104] Especially without any closing date offered or the ability to offer a closing.

payment for the property or performing their time is of the essence sales contract was impossible for his clients under the current circumstances, threaten litigation, or place blame for its clients failure to close escrow. His clients' time is of the essence sales contract was invalid or non-negotiable at all times material; at their own hand, his clients' had not and could not secure financing to purchase the property; and his clients had received the termination notice from the sellers, therefore the Dudeks had no legal claim or right to the property after November 30, 2012 and at the time they filed the [frivolous] action for breach of contract/specific performance **(Stephen Dudek and Doreen Cross Complaint, Breach of Contract for Specific Performance, January 15, 2013 Civil Case No. 2013-CP-180074) (*reference*, Appellate Case No. 2014-002633)(*reference*, Appellate Case No. 2017-001393).**

The circumstances and evidence in the record clearly show Collins filed a frivolous complaint, and with intent to deceive, gave false testimony, suborned perjury from his clients and the co-respondents in this current case, forged financial documents, presented false evidence, concealed critical facts and documents that would have rendered the lower court without the power or ability to compel specific performance in favor of the Dudeks and prevented Morphew from presenting her case fully and fairly, prevented her from her legal right to the property and induced a ruling that fails on its face or contrary to the rules, statutes or precedents of the South Carolina courts. These substantial actions perpetrated by an officer of the court is extrinsic fraud, and is admitted as such in the trial court's order. (Under South Carolina law, fraud on the court has been defined as "the species of fraud which does, or attempts to subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1998)). Further, neither

Morphew nor the courts had reason to anticipate fraudulent testimony or the suborning of, especially from an officer of the court, who has taken an oath as an attorney to uphold the highest standards as such, including: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous"; A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false; (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal; In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client. Further, the circumstances of the case(s) in this instant called for 'perfect good faith and full disclosure' from his clients and the witnesses. It wasn't until after trial and on appeal that Morphew discovered "practically all of the material testimony or evidence introduced in the trial of the aforesaid case was false, perjured, fabricated and fraudulent," with Collins having complete knowledge of the truth during the whole litigation.

If not for these violations and fraudulent conduct of the Respondent, or if the Respondent had acted within the scope of his representation of their clients, honestly and lawfully, or within the rules of conduct or just told the truth, there would have never been a trial and Morphew would have been able to close on the property in January 2013 and we would not be here today; or

Morphew would have been able to present her case fully *and fairly*, and the trial court would have been able to adjudicate a fair and *proper* ruling.

Taken as a whole, obvious displays of *any* violation during the litigation of a court proceeding by an attorney, particularly those which support fraudulent behavior, is clearly a showing of contempt for the rules and conduct in which it took an oath to uphold. Committing unlawful acts, especially ones that display violations of professional conduct, though not a cause of action, should not be ignored in this court's review where character and integrity play a role in the improper or fraudulent actions resulting to an injustice or damages. Further, this court should take note that Respondent Collins was indefinitely suspended by the Supreme Court and plead guilty to acts of *fraud* in 2016 resulting in a judgment of $450,000 in another representation or separate case **(Suspension Notice, David Collins, July 20, 2016).**

CONCLUSION

Though Morphew's complaint was not wholly dismissed on these actions, she contends that the respondent may, and should, be held liable and asks this court to rule as such and provide relief as it finds appropriate.

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22. Addressing Appellant's Cause of Action – Violation of Federal Rules and Regulations of Banking Rules and Regulations (FDIC) in regards to Respondents First Federal and Allison Williams.

The lower court order granted Respondents First Federal and Allison Williams' Motion to Dismiss in regards to Appellant Morphew's Cause of Action – Violation of Federal Rules and Regulations of Banking Rules and Regulations (FDIC) because FDIC does not allow such violations as a private right of action (stating that "[t]his section may not be construed as creating

any private right of action"). 12 U.S.C.A. § 1831g. **([Amended] Order Granting in part Defendants First Federal and Allison Williams' Motion to Dismiss, February 13, 2017).**

Morphew submits FDIC does not allow violation of Federal Rules and Regulations of Banking Rules and Regulations as a private right of action, and does not appeal the trial court's decision to dismiss the cause of action but instead only presents that its facts and allegations under these causes of action survive, though the cause of action does not. Meaning, though Morphew submits its Fifteenth cause of action is not a private right of action, the facts or allegations support surviving causes of action, the Respondents' liability, and any arguments currently on appeal; and especially Morphew's argument in its cause of action on appeal, "Tortious Interference with Existing Contractual Relations" where the trial judge concluded that "*Plaintiff has failed to show any conduct on behalf of the Defendants Allison Williams and First Federal which improperly extended beyond ordinary business practices.*". **(Fraud/Fraud on the Court Complaint—current action, Morphew v. Dudeks, et al. August 24, 2016).**

Morphew has complete knowledge that First Federal, just like any federally insured lending institution, has banking rules and regulation in place to prevent prejudice, bias and fraud. It also has in place strict processes guiding them in the mortgage loan process that insures exact compliance as required by those same rules and regulations, which the lender is regulated by federal agencies such as the Federal Reserve/Federal Reserve Board, the Office of the Controller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC). Morphew is sure these agencies would differ in the trial court's opinion that the Respondents' fraudulent actions, such as perjury, making false promises, conspiracy, forgery, and concealment is not conduct "which improperly extended beyond ordinary business practices." Morphew is also confident if its own rules and regulations were followed initially, or if they had told the truth or disclosed in the subpoenas or at trial, we wouldn't be here in this mess of litigation today.

CONCLUSION

Though violating banking policies and procedures is not a private cause of action, its' actions should not be ignored in this court's review where character and integrity play a role in the improper or fraudulent actions resulting to an injustice or substantial damages.

Morphew asks this court to take note that all facts and allegations under this cause of action has been repeated under Appellant's Eighteenth cause of action for Tortious Interference with Existing Contractual Relations[105], therefore should not be ignored but considered when reviewing issue on appeal, Tortious Interference with Existing Contractual Relations .

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23. Are Respondents Michael Scarafile, Susan Nicholson or Carolina One Real Estate liable for and can be sanctioned in a civil action for their actions violating the Real Estate Code of Conduct?

The lower court order granted Respondents Michael Scarafile, Susan Nicholson and Carolina One Real Estate's Motion to Dismiss in regards to Appellant Morphew's Cause of Action – Violation of the Real Estate Code of Conduct Section 40-57-137 Real estate brokerage company duties to client; agency relationship; applicability of common law: (H)(4), (H)(6)(b), (H)(6)(c); (K), (O)(2)(e), (0)(4); Section 40-57-140(8); Duty to act fairly; and Duty of good faith and fair dealing; tortious conduct." S.C. Code Ann.§ 48-1-250 because there is no indication that the statutes cited give rise a cause of action. **(Order on Appeal, Granting in part Defendants Michael Scarafile, Susan Nicholson, David Collins and Carolina One Real Estate's Motion to Dismiss, January 31, 2017)**

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[105] See first paragraph of each cause of action, "*all allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.*"

Morphew submits violations of the Real Estate Code may not be a right of action, but considering a real estate agency has been given certain attorney rights by the Supreme Court or that an attorney representing the real estate agency is one of the Respondents, they can be held liable for their actions violating such codes if those actions are in bad faith or fraudulent.

Morphew has alleged conspiracy and actions that indicate liability to a third party, and such liability for conspiracy where, in addition to representing its client, they breached some independent duty to the sellers which consequently led to a breach to an independent duty to a third party, in this case Morphew *and* the courts, or acted in its own personal interest, outside the scope of representation of the client[106]. The South Carolina Supreme Court and other states have held an attorney can or may be held liable for such actions.

> A number of jurisdictions recognize that an attorney may be held liable where he acts in bad faith or for his own personal motivations. *See generally Annotation* 97 ALR 3rd 688 (attorney's liability for abuse of process); *Annotation* 46 ALR 4th 249 (attorney's liability for malicious prosecution). *See also* RESTATEMENT (SECOND) OF TORTS § 674, comment d (attorney who acts without probable cause for an improper purpose is subject to same liability for the wrongful use of civil proceedings as any other person). Moreover, several courts have held that an attorney may be held liable arising out of a conspiracy with his client. *See e.g., Wolfrich Corp. v. U.S. Automobile Assn.,* 149 Cal. App.3d 1206, 197 Cal.Rptr. 446 (1983) (attorneys may be liable for participation in tortious acts with their clients, and such liability may rest on a conspiracy); *Doctors' Co. v. Superior Court,* 49 Cal.3d 39, 260 Cal.Rptr. 183, 775 P.2d 508 (1989); *Fraidin v. Weitzman,* 93 Md.App. 168, 611 A.2d 1046 (1992) (attorney liable for conspiracy if actively involved in wrongful conduct). Additionally, attorneys have been held liable for fraud and conversion in

[106] As argued previously, the Respondents had a pecuniary interest in the transaction.

conjunction with their representation of clients. *See, e.g., L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372 (Minn.1989) (attorney who makes affirmative misrepresentations to an adversary or conspires with his or her client may be held liable for fraud); *Pew v. First National Bank*, 827 F.2d 1488 (11th Cir.1987); *Bongard v. Winter*, 516 So.2d 27 (Fla.App.1987); *Guillebeau v. Jenkins*, 182 Ga.App. 225, 355 S.E.2d 453 (1987) (implying that an attorney may be sued by an adversary for fraud); *LaBarre v. Gold*, 520 So.2d 1327 (Miss.1987) (attorney liable for conversion for improperly paying real estate proceeds only to his client); *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct.App.1986), (finding that an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client).

Morphew argues that the record shows that Michael Scarafile, Chief Counsel and President of Carolina One Real Estate, and therefore Carolina One and Susan Nicholson as its agent, had acted outside the scope of their representation of its clients as they had no justification or legal standing to demand any actions from the sellers Ferro, including a closing[107], or threaten litigation, or place blame for its clients failure to close escrow. Their and its clients' time is of the essence sales contract had expired and it was invalid or non-negotiable at all times material, consequently its clients' had not and could not secure financing to purchase the property; they had received the termination notice from the sellers, therefore its clients had no legal claim or right to the property after November 30, 2012 **(Email, Respondent Scarafile (President and Chief Counsel of Carolina One) , December 18, 2012)**. Due to the circumstances and evidence in the record, and

[107] Especially without any closing date offered or the ability to offer a closing

that the Respondents have not objected to or denied the evidence, the letter provided initially to the Ferros is 'just a baseless threat full of deceit' made without legal ground or justification, then used to support the false or misrepresented testimony of his agent[108] and his clients (and their lender) in a legal proceeding, such as stating that the Dudeks had complied with the conditions of their sales contract and had secured financing and were ready, able and willing to tender payment [as specific performance demands].. Further, with full knowledge of the fact its clients were denied lending because they had no valid or negotiable sales contract at initial application or all times material, they intentionally supported First Federal's false promise or guarantee they were extending mortgage credit to the Dudeks per their 2012 sales contract. Such issue is collateral to the prior action. Further, Morphew's ability to perform her contract or close escrow was directly affected by the Respondents' clients signing the termination notice. If not for these violations and fraudulent conduct of the Respondents, or if the Respondents had acted honestly and lawfully, within the rules of conduct or just told the truth, there would have never been a trial and Morphew would have been able to close on the property in January 2013 and we would not be here today; or Morphew would have been able to present her case fully *and fairly*, and the trial court would have been able to adjudicate a fair and *proper* ruling.

Taken as a whole, obvious displays of *any* violation during the litigation of a court proceeding by an attorney, or the suborning of perjury to its agent, particularly those which support fraudulent behavior, is clearly a showing of contempt for the rules and conduct in which it took an oath to uphold. Committing unlawful acts, especially ones that display violations of professional conduct, though not a cause of action, should not be ignored in this court's review where character and integrity play a role in the improper or fraudulent actions resulting to an injustice or damages.

[108] Also, suborning of perjury

CONCLUSION

Though Morphew's complaint was not wholly dismissed on these actions, she contends that the respondent may, and should, be held liable and asks this court to rule as such and provide relief as it finds appropriate.

CONCLUSION

SUMMARY(OF THIS APPEAL) The trial court's opinion implies that the dispositions here made are justified by uncontradicted facts, but the record demonstrates beyond question that serious controverted issues ought to be resolved before the Respondents may have relief.

Viewing the evidence in the light most favorable to Morphew, it can be said that the Respondents supported or made a false promise First Federal were extending credit to the Dudeks, concealed material and pertinent documents, and gave false evidence or made false statements and misrepresentations *critical* to the Dudeks' ability to compel specific performance, which directly affected the trial court's jurisdiction or inherent power to rule specific performance in favor of the Dudeks. Such actions or non-actions are fraudulent and were made with the actual intent to deceive the court into making an unlawful ruling or ruling contrary to the precedents of not only the South Carolina Courts but generally all state and federal courts.

Morphew was repeatedly told before, during and after trial, even after the appellate court ruling, that the Dudeks had secured lending and were ready, able and willing to tender payment [on the date their sales contract expired, November 30, 2012, and on January 15, 2013 at the time of filing its complaint for specific performance]. Instead, the record or evidence in hand of all parties shows otherwise, as a matter of law or equity there are genuine questions of material fact present. Those issues include, but are not limited to, whether the Dudeks no longer had legal

rights to the property in question after November 30, 2012; whether or not a mortgage transaction or mortgage closing transaction was in existence at all times material or was ever in existence; whether the Order of November 6, 2014 is void; whether the Respondents made false promises or collateral to the issue; whether the committed perjury, misrepresentations, suppressed evidence or suborned perjury deceived the trial court to make a decision contrary to the precedents set by the South Carolina Courts , and what, if any, fiduciary duties or duty of care were owed by Respondents to Morphew *and* the courts, and whether those duties were breached resulting in a question of liability. Such presents a jury question(s). *Spence v. Wingate*, 385 S.C. 316, 684 S.E.2d 188 (Ct.App.2009) (Spence III); *Accord Smiley v. Woodmen of the World Life Ins.*, 249 S.C. 461, 154 S.E.2d 834 (1967) (jury question as to whether life insurance applicant misrepresented his health with intent to deceive insurer notwithstanding insured's answering "no" to numerous questions regarding hospital treatment and medications, when insured had in fact been hospitalized for six days the year prior to his application).

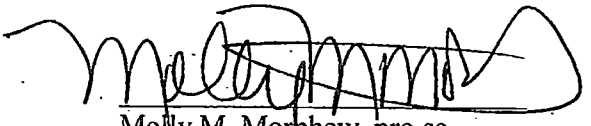
Besides default or unlawful orders, in order to be entitled to summary judgment, the Respondents would have to demonstrate that there is no genuine issue of material fact of their liability, duty of care and/or that they did not make a false promise to extend credit, or that they did not suppress evidence, suborn perjury or make a false statement with the actual intent to deceive and that those statements did not materially or critically affect the lawful ability of their clients *and* the trial court jurisdiction or inherent power in regards to compelling or awarding Specific Performance and are matters for the jury in this case, therefore Respondent(s) were not entitled to summary judgment granting motion(s) to dismiss, or relief from default.

Respondent Collins is in default and is not entitled to 'summary judgment', and neither he nor any Respondent contested or appealed the prior order of the trial court denying in-part their

motions to dismiss the same causes of action another judge in the same action granted in order(s) for summary judgment.

Due to these reasons or as argued herein Brief, or on a void order in which this instant action arose from,[109] Morphew asks this court to void, vacate or reverse the trial court's rulings granting summary judgment(s), motion(s) to dismiss or relief from default in favor of Respondent(s) as argued herein Brief, rule Collins in default and default judgment to be awarded, sanction as appropriate, and remand back to the lower court for further action.

Respectfully submitted,



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June 18, 2019

[109] *See,* Issue #1 -VOID order, Pg. 20 of this appeal, repeated herein.

Thomas and Lorraine Ferro
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843-327-1262

COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STEPHEN DUDEK AND DOREEN CROSS, Plaintiff, vs. THOMAS M. FERRO AND LORRAINE B. FERRO, Defendant	Case No.: 2013-CP-18-74 PLEADING STATEMENT

2014 SEP 10 AM 8:46
CLERK OF COURT
DORCHESTER COUNTY

Dated this 30th of August, 2014.

Due to the facts and testimonies brought to light during the last year and a half, we are now able to answer many of the questions we presented to the Plaintiffs through our "ANSWER" statement submitted February 4th, 2013. We are also able to see the seriousness to which we were blindsided by the Plaintiffs, and able to state our facts using concrete evidence to support them.

This "PLEADINGS" statement answers those questions and confirms our initial claim the Plaintiffs, Stephen Dudek and Doreen Cross are indeed in a serious Breach of Contract, their contract is null and void, and we had every legal right to request and receive a signed cancellation request.

For clarification: Plaintiffs (Stephen Dudek and Doreen Cross) = Buyers
Defendants (Thomas and Lorraine Ferro) = Sellers.

In the case Doreen Cross and Stephen Dudek vs. Thomas Ferro and Lorraine Ferro, we are proving:

- The testimony of the Plaintiffs (Buyers Dudek and Cross) that the reason they did not close per the Time is of the essence contract is because "the Ferro's lack of a clean CL-100, and is STILL the reason the closing still hasn't taken place", is erroneous.

- The complaint against the (Defendants) Sellers, Tommy and Lorraine Ferro, from (Plaintiffs) Buyers, Dudek and Cross, is frivolous and invalid, and that the Plaintiffs, Dudek and Cross are in breach of contract, and that the Defendants had every legal right to terminate the contract between themselves and the Plaintiffs.
- The contract between Cross/Dudek and the Ferro's is no longer valid as of December 16, 2012, and that the contract between Molly Morphew and the Ferro's is the valid contract to purchase 788 East Butternut as of December 16, 2012.

---

1. Since the Plaintiff's (Buyers), Stephen Dudek and Doreen Cross, did not apply for the loan for 788 E Butternut Rd before the TIME IS OF THE ESSENCE Contract date of November 30th, 2012, the contract expired and they were unable to secure lending with First Federal, regardless of a CL-100 clearance letter, due to the fact:
    a) First Federal does not process loan applications against an expired contract without an extension addendum or a new contract.
2. When the Plaintiffs applied for the loan on December 5th for 788 E Butternut Rd, First Federal required a formal Extension Addendum in order to **begin processing** the loan.
    - On December 5th, the Lender issued a Customer Loan Application Checklist that stated an "anticipated closing by 1/4/13" and required a signed extension addendum to process the loan (see ATTACHMENT 1).
    - **The fact the Plaintiffs had not yet applied for a loan on or before November 30th, the fact that First Federal would not begin processing their loan without the extension addendum, and the fact the Lender was giving an estimated closing date of 1-4-2013 was not communicated to the Defendants or their Agent.**
        - Instead, the replies to the Defendants and the Defendants Agent's questions about lending, the appraisal, closing, etc. before November 30th was met with answers such as "*I am inquiring about the appraisal from the lender but have not heard anything yet*" and "*the Lender can't give us an estimate on closing yet but it won't be at the end of this week* (Nov 30th)" and "*the Closing Attorney was waiting on the survey to be recorded before he could perform the title search, which he has now and it will take about a week to do*". Keep in mind that this is before

the loan was applied for so how can an appraisal be "checked on" if it hasn't been ordered yet? How can a Lender give an estimated closing date if the loan hasn't been applied for? And how can a Closing Attorney order a title search without the lender giving a clear to close to the attorney and requesting it from them? We as the Sellers were misled into thinking everything was being done per contract.

- By Law, if the Plaintiffs stated that they had not applied for their loan and allowed the contract to expire, making it impossible to obtain a loan without an extension or new contract, it would be an admission to a serious BREACH OF CONTRACT on the Plaintiffs part. This would open the Plaintiffs up for automatic and undisputed legal ramifications. Therefore they kept the Defendants in the dark thinking the Defendants would feel backed into a corner and have no choice but to close with the Plaintiffs.

3. First Federal **would not complete** the Plaintiff's application without an extension addendum (see ATTACHMENT 1, ATTACHMENT 2, ATTACHMENT 3 and ATTACHMENT 4).
4. First Federal finalized the loan as "Declined" on 1-18-13 due to receiving no response to the 10 day letter sent to the Borrowers to provide a signed extension addendum; application incomplete. **Loan was never secured for closing.**
5. Because the Plaintiffs applied for the loan AFTER the contract date, an extension addendum was required. In turn, because the Defendants refused to sign an extension addendum, the Plaintiffs could never secure a loan for closing. Again, it had nothing to do with the CL-100 Clearance Letter as the Plaintiffs keep telling the Defendants.
6. Defendants refused the extension addendum on Dec 3 (verbally) and on Dec 6 (see ATTACHMENT 5 faxed to Closing Attorney, Woody Law Firm, on Dec. 6).)
7. Defendants were informed by the Plaintiffs' Agent that the contract had a "no fault" extension clause within it and allowed the Plaintiffs until December 15th to close.
   - The "no-fault" extension clause (Paragraph 12) within the contract is stating "*if the closing did not take place due to no fault of either party, and it's agreed upon by both parties, then a 15 day extension to close will be granted.*"

- It also states that if both parties agree to the 15 day extension, "*Closing shall occur within this time extension, but* ***in no event*** *shall closing occur later than the above extension date.* ***Time is of the Essence.***" (see Paragraph 12 of the contract) **

    a) *In no event*", meaning 'in no circumstances whatever'. If the closing does not take place, the contract is automatically null and void.

8. Plaintiffs claimed the no-fault extension clause after they failed to close per the initial contract deadline of November 30th. (Susan verbally stated to Defendants on Dec 3 that the Plaintiffs had an automatic extension in the contract, and via e-mail dated December 16th--see ATTACHMENT 6)

9. Plaintiffs still filed a Lis Pendens on 1-11-13 (then a Complaint on 1-15-13) against the Defendants after they found out the Defendants had another Buyer (see ATTACHMENT 7), claiming the Defendants are at fault for the closing not taking place on or before November 30th and on or before December 15th , and are still at fault to this day.
**Defendants are confused as to how the Plaintiffs can claim a "no fault" extension and still be able to file a "fault" Complaint.

    - Either the Complaint is valid and the Plaintiffs cannot claim the extension, therefore an automatic BREACH of CONTRACT because Plaintiffs allowed the contract to expire before applying for their loan **EXPIRED CONTRACT**
    - OR the extension clause is valid which in turn would make the Complaint invalid and no longer a case against the Defendants, and the contract automatically null and void after 9pm December 15th. **EXPIRED CONTRACT**
    - In both cases, the contract is no longer valid.

10. The Plaintiff's (Buyers), Stephen Dudek and Doreen Cross', testify they were ready to close/had loan approval but the reason they did not close per the (**"Time is of the Essence"**) contract is because of:

    - "*the Ferro's lack of a clean CL-100, and is STILL the reason the closing still hasn't taken place*" (See ATTACHMENT 8).
    - "*couldn't close because they never got a CL-00*" (see ATTACHMENT 9),
    - "*seller did not provide a CL-100 Clearance Letter in a timely manner*" (see ATTACHMENT 10)

        a) Since the Plaintiffs did not apply for their loan on or before November 30th, lack of financing is what prevented them from closing on or before

the Time is of the Essence contract date of November 30th; it had nothing to do with a CL-100.

b) Inability of First Federal to process a loan on an expired contract without an extension addendum, plus the fact the Plaintiffs only had 10 days to close from the time they actually applied for the loan, is what prevented the Plaintiffs from closing on or before December 15th. It had nothing to do with a CL-100.

c) Per Doreen Cross' deposition testimony, she did not start lending because she was "*waiting until she was actually satisfied that something was being repaired properly*" (see ATTACHMENT 11). **This was not a repair contingency contract. **Breach of Contract.** It had nothing to do with a CL-100.

d) Not having a valid contract is what is still preventing them from being able to close (see ATTACHMENT 12). It had nothing to do with a CL-100.

11. The Defendants obtained a CL-100 (report) on or before November 30th, 2012, per contract requirement. (see ATTACHMENT 13)
12. The Contract did not state the Defendants had to provide a Clearance Letter, if applicable, to the Plaintiffs on or before November 30.
13. The Contract's CL-100 contingency states "Buyer's total satisfaction of the CL-100" which by law means, if the buyer is not satisfied with the CL-100 report, they have an option to terminate the contract and walk away with their earnest money, take the property as is, or negotiate repairs, per Paragraph 19(E).
14. The Plaintiffs had an option of requesting the Defendants to obtain one sooner but did not do so.
15. The Plaintiffs had an option of obtaining the report themselves, at any time, with the cost to be paid by the Defendants but did not do so.
16. Defendants provided the CL-100 report to the Closing Attorney, even though there was no closing set.
17. Plaintiffs agreed with Susan Nicholson on December 3rd that they felt all with the house was OK and "*the sellers have been very serious about doing what is necessary within reason to close*" and felt "*comfortable to have the mortgage company do what they need so we can close*". (See ATTACHMENT 14). This e-mail confirms the CL-100 is not

what held up the Plaintiffs from applying for a loan per contract, it was the Plaintiffs own satisfaction of the repairs they needed to see done to their approval.

18. Plaintiffs Agent erroneously communicated to the Defendants on December 5th that the bank is requiring repairs to be done and a CL-100 Clearance Letter provided. (See ATTACHMENT 15).
19. Plaintiffs Lender never required a CL-100 (see ATTACHMENT 1, 2, 3, 16 & 17).
20. Plaintiffs did not require a Clearance Letter for themselves, they wanted it to "satisfy the bank and Closing Attorney." (See ATTACHMENT 18). *Again, no requirement from the Lender; nor a requirement from the Closing Attorney via any e-mails/correspondence to Defendants or Defendants Agent.
21. If a Clearance Letter was needed by the Lender, then per contract, Paragraph 19(B), "*If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.*"
22. On December 3rd, Plaintiff's contractor was at the property but could not inspect the repaired termite damage due to the repair had just been treated/sprayed. Contractor stated he will have to "check his schedule and come back another time". Neither the Contractor nor the Plaintiffs/Plaintiffs Agent rescheduled with the Defendants.
23. The CL-100 was provided to the Closing Attorney via the Defendants Agent, Rick Willis, even though no closing date set.
24. The lack of obtaining lending per contract requirements is what prevented the Plaintiffs from closing on or before November 30th.

    - Despite negotiations in regards to the repairs or the Defendants, the Plaintiffs had a contractual obligation to apply for a loan within 10 days of contract ratification, supply the Defendants with an approval letter that contained no income, credit or asset issues within 20 days of contract ratification, and secure lending on or before November 30th. None of which these requirements were met by the Buyer. **Breach of Contract.**

    - The Plaintiff's (Buyers), Stephen Dudek and Doreen Cross', did not secure lending for closing on or before the Time is of the Essence contract date of November 30th, 2012 at no fault of the Defendants. Therefore, **Breach of Contract.**

- Plaintiffs did not apply for loan within 10 consecutive days from the execution date (October 24th) of the contract, per Time is of the Essence Paragraph 8. Therefore, **Breach of Contract**
- Plaintiffs applied for loan on December 5th, 42 days after contract execution and after the Time is of the Essence contract date of November 30th. Therefore, **Breach of Contract**.
- Plaintiffs did not provide the Defendants with written satisfactory loan approval within 20 consecutive days that contains no credit, income or asset conditions, per Time is of the Essence Paragraph 8. Therefore, **Breach of Contract**.
- Plaintiffs provided Defendants with an approval letter (dated December 12) on December 17th (after the cancellation request was sent) that contained credit, income and/or asset conditions (see ATTACHMENT 2).
- Plaintiffs never provided the Defendants with loan approval that contained no credit, income or asset conditions.
- Per South Carolina Real Estate Law, the Plaintiffs failure to comply with the lending terms (Time of of the Essence) of their contract is a serious Breach of Contract.
- Per South Carolina Real Estate Law, the Plaintiffs failure to close per the Time is of the Essence contract date, is a serious Breach of Contract. *especially if Time is of the Essence can be proved.

25. Plaintiffs stated they provided Defendants with another "approval" letter and "GFE", dated October 22nd, from their Lender (see ATTACHMENTS 19- EXHIBIT 2 & ATTACHMENT 20).
    - Documents are not an approval or GFE (see ATTACHMENT 21) nor were they provided to the Defendants or their Agent within 20 days of contract ratification, as stated by the Plaintiffs, because they were developed on 2/10/2013 @ 1:08 Sunday morning (see ATTACHMENT 20; Notice date/time of attachments)
26. Per testimony of the Plaintiffs, Dudek and Cross, their mortgage loan officer, Allison Williams, sent the October 22 e-mail (see ATTACHMENT 21) with above #12 attachments. **During the trial on June 12 and after it was pointed out that the attachments were dated 3 ½ months after the e-mails were sent and the time was 1:08 am Sunday morning, **Allison Williams stated "*that e-mail is not mine.*"**

27. The above "validity in question" October 22nd e-mail, along with pre-approval letter and Closing Cost Worksheet, were not contained in Lending File, nor notated as being sent in the notes section of the Lending File.

28. The Defendants believe the (e-mail) and documents are fraudulent.

29. Lending was cancelled and never secured or given a clear to close due to the application being incomplete (see ATTACHMENT 4, entry dated 1-18-2013 & ATTACHMENT 22 and ATTACHMENT 23).

30. An *extension addendum, not agreed on nor signed by* the Defendants, was added on 12-20-12 to the Plaintiffs First Federal loan file (see ATTACHMENT 4, entry dated 12-20-12 at 10:43am). The extension addendum was not valid, therefore should not have been included in the Plaintiff's lending file. (See ATTACHMENT 24).

31. A Repair Request Proposal, not agreed on nor signed by the Defendants, was added to the Plaintiff's loan file on December 20th (see ATTACHMENT 25 & ATTACHMENT 4, entry dated 12/20/2012 10:43am). The Repair Request Proposal was not valid, therefore should not have been added to the Plaintiff's lending file.

32. On January 12, 2013, First Federal Underwriters state that "*it has come to our attention that this file is a short sale*", making the extension addendum unnecessary, and the file "*is completely approved just waiting on short sale approval*" (see ATTACHMENT 4, entry dated 1/12/2013). Defendants states this contract was NEVER a short sale (reference Plaintiff's Contract) and is perplexed as to where that information came from.

33. Many statements and documents now provided here were supplied by First Federal 1 day before the trial even though they had 2 written subpoena's sent the prior year (one on March 4th , 2013 and again August 1st, 2013) and a verbal request March 13th, requesting all documents and e-mails for the Cross/Dudek loan on the 788 E Butternut property.

34. The reply to the written subpoena requests was "no accounts/loan or loan documents for the requested loan number, TMS number or Plaintiffs on file with First Federal" (see ATTACHMENT 26) though the loan #7100323356 was assigned to CROSS on 12/12/12 (see ATTACHMENT 2 and ATTACHMENT 23).

35. It wasn't until the Plaintiff's Mortgage Loan Officer, Allison Williams, was issued a subpoena to appear in court, along with a request provide all documentation for above stated loan that the prior requested documentation was "found" and sent less than 24 hours within the trial. Defendants did not receive them until after the trial due to be in transit at the time of delivery. These items are a major key to the case considering the

majority of the Defendants defense is lack of financing and not closing per the Time is of the Essence Contract terms.

36. The reply to the verbal conversation between Ryan Neville, Atty. and the First Federal representative, Sharon Raye Hester, was "*she could not (or would not) discuss* (Plaintiffs Lending) *with us*"

37. First Federal was never able to issue a clear to close to the Closing Attorney due to an incomplete application/lack of required documentation and a no response from the borrowers to a "10 day Letter" from Plaintiffs for request for initially requested extension addendum (see ATTACHMENT 4, entries dated 1/16/2013 and 1/18/2013).

38. Defendants were misled and deceived in order for the Plaintiffs to have "issues" to use for a re-negotiation and/or closing leverage.

- October 24th: Buyer states to her Agent that the land not subdivided and having to wait for a recorded survey may be a problem obtaining an appraisal. Allison Williams at First Federal is not sure but is confirming internally whether it will be or not (see ATTACHMENT 27). No documentation from Allison Williams or Doreen Cross provided for trial confirming either way. But e-mail from Susan to Doreen states "*if the home isn't subdivided in time it will be their (sellers) fault not yours.*" (See ATTACHMENT 28). *Note that the survey was performed the day after the contract was signed by the Defendants.
- Plaintiffs told their Agent if the Defendants "*threw in the barn and the extra acreage then they would guarantee a closing before November 30th*" in which the Agent responded that "***the trick is to get him to do that without any extra charge***". (See ATTACHMENT 28).
- On Nov. 16, Doreen states to Susan, "*Can we hold Eugene* (structural engineer) *liable if future information becomes available contradicting his report? It sounds like it will be a challenge to take the information from Tim and use it in the counter –offer. "(See ATTACHMENT 29).*
- October 24th: Plaintiffs Agent informs the Defendants that the recorded survey may hold up closing if not recorded in time.
    a) October 24th: Plaintiffs and Defendants, with Agents, stake out area to be subdivided for the surveyor.
    b) October 25th: Survey performed.
    c) November 20th: Survey recorded.

39. November 22nd: Plaintiff's Agent receives recorded survey.

40. November 26th: Plaintiff's Lender receives recorded survey from Plaintiff's Agent.

41. Buyer does not apply for loan or orders an appraisal on November 26th but instead waits for 13 days after Agent receives recorded survey before starting her lending and ordering an appraisal.

- Per Cross deposition on June 12, 2013, Plaintiff still did not apply for the loan even though the survey was in hand because of a "private" discussion between Cross and her Lender, Allison Williams, where Ms. Williams "*suggested that I wait until I started seeing that the seller was serious in giving me what I was actually asking for* (repairs, receipts, etc.) *and what he said he would do* (repairs) *before I told her to go ahead* (with the loan), *and I agreed with her.*" (See ATTACHMENT 11)**Defendants were not told this was happening. Instead they were being told all along that the Plaintiffs were working as hard as they could to obtain lending.
- First Federal does not require a recorded survey to perform an appraisal.
- If anything, the staked out land can be used by the appraiser and have the value subject to the recorded plat, which it means it would have to be recorded before final loan approval (see ATTACHMENT 30)

42. Defendants never refused a closing.

43. No closing date ever set or offered to Defendants even though being told many times the Plaintiffs were ready to close.

44. Plaintiff's Agent, Susan Nicholson, knew that her clients hadn't applied for a loan as of Nov. 16th (see ATTACHMENT 31).

45. Plaintiffs and Plaintiff's Agent knew by November 16th they would not be closing on or before the Time is of the Essence contract date of November 30th since they had not even applied for the loan. This was not communicated to the seller.

46. Plaintiffs Agent, Susan Nicholson, was at the Seller's house with Plaintiff's contractor from Vasko, the same day that Palmetto was spraying for termites down in the crawlspace (12-3-12). Defendants were expressing their concerns about the Plaintiffs making the deadline for the closing and Susan said "***I have had difficult clients like this buyer before and have had the deal not go through because of it***", where Seller, Tommy Ferro, told her that "*we have to close on time or the deal will be off. I have a backup buyer*" (although we did not at the time).

47. Defendants stated in writing (on 12-6-12) on the Request for Information letter from the Plaintiff's Closing Attorney, "*Need to close in 7 days or less or no closing.*" This page was faxed to the Closing Attorney, Woody Law Firm, on 12/6/12 (see ATTACHMENT 5).

48. On December 3rd, when the Plaintiff's Agent set in place the 15 day no fault extension clause with the Defendants, the Plaintiffs Agent knew at that time (since the loan hadn't been applied for) that they would not be closing per the extension clause but still claimed it with the Sellers. Defendants understand this is also an automatic BREACH of CONTRACT.

49. After receiving the cancellation request, the Plaintiff's Agent, Susan Nicholson, erroneously stated on 12-16-12: (see ATTACHMENT 32)

- "*The Buyers did everything they were asked to do with the lender*"
  - a) They did not apply for their loan per contract
  - b) They did not provide a signed agreed upon extension agreement as requested to process a loan against an expired contract.
- "*The Entire process was held up because of waiting on the recorded new survey.*"
  - a) First Federal did not require the survey to be recorded to start the loan or to have an appraisal performed.
  - b) Even if the survey held up the loan process, the loan was not applied for as soon as the recorded survey was received by the Agent. Instead it was 13 days later.
- "*Furthermore the CL100 still has not been cleared for closing...*"
  - a) Cleared for whom? The lender was not requesting it, the Closing Attorney did not send out a request to the Defendants or their Agent....
- "*Also, we are waiting on the bathroom leak to be cleared.*"
  - a) But Susan stated to Doreen per 12-3-12 e-mail that "*As for the damaged bathroom floor, the sellers are not wanting to do anything with that so I am getting a contractor to look at that to see what needs to be one to make the repairs to the damaged floor and if it's under $500 I will pay to have that done for you I usually give closing gifts so I thought I could cover that since we are pretty much down to that.*" *(see ATTACHMENT 14)*

b) The Plaintiff's Contractor looked at the bathroom leak and stated the owner had taken care of the leak and attached a quote for the repairs (see ATTACHMENT 33)

- *"The Buyers made application and supplied requested documentation from the lender in a timely manner from the time we ratified the contract."*
  a) Plaintiffs did not apply for loan until after the contract expired.
  b) Lender did not request anything until after the contract expired, when the loan was applied for on December 5th.
  c) The loan application was not sent to the Underwriters until December 11th to review the application.
- *"The contract clearly states that there is a 15 day extension, if at no fault of the buyer or seller, to close which would bring us to the 15th of December."*
  a) But her e-mail is dated December 16th. They are already past that date.
  b) No closing date set or presented to Defendants.
- *"We have everything we need to close hopefully this week pending the title work is clear from the Closing Attorney."*
  a) *"this week"* would mean by 9pm December 20th; but title work hadn't been started as of December 17th.
  b) What happened to all the above issues needed?
  c) No tentative closing date set by Closing Attorney.
  d) No closing date presented to Defendants or their Agent.
  e) Per First Federal loan package papers, First Federal needed a verbal verification of employment at least 10 days before closing on each applicant but could not obtain one on Doreen Cross until January 4th, 2014 due to the holiday closing of school district administrative offices. (see ATTACHMENT 34) *Not communicated to Defendants.

50. After receiving the cancellation request, the President/General Counsel for Carolina One Real Estate, Michael Scarfile erroneously stated: (per e-mail dated December 20th): (see ATTACHMENT 35)

- *"if Buyers were in default (of Paragraph 8 of contract), such default is pursuant of paragraph 16 which requires the Seller to provide "a 5 day written notice" which gives the Buyers the right to cure any default" and "the Sellers provided written notice on December 16th. However, the Buyers have provided such proof*

and are ready to close, both of which would be inside of the 5 day "right to cure" period."

a) No, proof would have been a closing date offered on or before December 21st, if the Plaintiffs were so ready to close, which it was not.

b) Proof was not provided. Defendants received "approval letter" on December 17th that contained many contingencies, including First Federal disclosures signed and dated, First Federal to request IRS transcripts for the last 2 years, Verbal verification of employment prior to closing, an appraisal ordered, reviewed and received by First Federal, and a legible copy of the sales contract and all addendums (including an extension addendum). *This did not provide the Defendants with a confident feeling at all.

- *"To work towards closing, and in the spirit of good faith, the Buyers are willing to pay $1300 towards the termite bond that the Sellers have committed to and to also schedule the closing, through an agreed upon Addendum to be executed between the parties, for the middle to end of next week to allow the Sellers to remain in the home through the Christmas Holidays."*

a) Defendants believe when reading the e-mail that if the Plaintiffs were serious then they would have presented them with a closing date, not "if you provide us with an extension we will be so gracious as to give you a closing date....".

b) After reading First Federals lending package documents, Defendants now know that the Plaintiffs could not have closed before the New Year, and again, feel they (the Defendants) were lied to.

c) Defendants had already moved so there was not need to allow them to "remain in the home through the Christmas Holidays." Again another tactic to buy more time on the Plaintiffs part.

51. The loan was not finalized and ready for a closing on or before December 20th due to the fact First Federal was still requesting documentation, including a legible copy of the sales contract, the extension addendum, and a signed Repair Request Proposal, and verbal Verification of Employment on the Plaintiffs which could not be completed until 1-4-13.

52. Defendants had every legal right to cancel the contract.

53. Per Atty. Joe Qualey, the Plaintiffs TIME IS OF THE ESSENCE contract was null and void as of December 16, 2012 (see ATTACHMENT 11).

54. Per Real Estate/Closing Attorney, Mark Weeks. Plaintiffs contract was no longer valid as of December 16th, 2012. (Morphew statement)

55. Per Attorney, John Massalon, Plaintiffs contract was no longer valid as of December 16th 2012. (Morphew statement)

56. Per First Federal on February 18th, "*The contract on the house is no longer valid.*" (See ATTACHMENT 36).

57. Per South Carolina Real Estate Law, the Plaintiffs failure to close per the **Time is of the Essence** no-fault extension paragraph of the contract automatically makes the contract null and void.

58. Per South Carolina Real Estate Law, a **Time is of the Essence** contract is upheld in court especially if there is a valid reason for the Time is of the Essence.

The Defendants, Thomas Ferro and Lorraine Ferro, testify pro se:

- We (the Defendants) have performed our contract requirements and did everything within reason to close.
- We (the Defendants) were not aware that the (Plaintiffs) Buyers, Doreen Cross and Stephen Dudek, did not have lending secured on or before November 30th, nor that they did not have lending secured on or before December 15th.
- It wasn't until after reviewing First Federal's documents after the trial that we are now aware the Plaintiffs never had lending secured for closing for ANY date, in the past or future.
- We (the Defendants) had a legal right to cancel the contract due to the Plaintiff's Breach of the Time is of the Essence contract.
- The complaint filed on January 15th, 2013 by Doreen Cross and Stephen Dudek against us (the Defendants) for Breach of Contract is not valid due to the fact the extension agreement they agreed upon, and contained within the contract (Paragraph 12), is a "no fault of either party" agreement. (The Plaintiffs) taking a no fault extension after failing to meet the initial contract date, knowing at the time they took it they would not meet the date, not closing on or before the December 15th date, and then filing a lawsuit against us (the Sellers) is contradictory, unethical and (possibly) not legal.
- Due to the documents produced from First Federal (1 day before the trial) and, combined with the e-mails between the Plaintiffs, Plaintiff's Agent, Plaintiff's Mortgage Loan Officer and/or the

Plaintiff's Closing Attorney, the facts show a severe lack of honesty, integrity and communication towards us (the Defendants) and our Agent through the life of the contract, and beyond.

- The Plaintiffs, their Agent and their Mortgage Loan Officer misled, lied to, and manipulated us (the Defendants) and our Agent.
- The Plaintiffs produced falsified documents in an attempt to meet their contract requirements.
- We (the Defendants) have been unjustly put on hold, not able to sell our home, not able to purchase a new home in our new location, caused undue stress, put in severe financial difficulties, caused us (the Defendants) a loss of a home and a loss of an investment home in Kentucky, and caused us (the Defendants) extensive loss of time and emotional pain.
- We (the Defendants) have signed a backup contract with Ms. Morphew, and will continue to honor it as agreed upon. She had shown all along she was serious to purchase our home. She has only shown us honesty and integrity. Ms. Morphew was ready to set a closing date within 1 month of signing. She was willing to spend her time and money to be ready per the contract requirements, knowing full well that the initial Plaintiffs might have produced a closing date within a reasonable time after receiving the cancellation notice.
- During a verbal "mediation"(between January 10th and January 18th) between our then lawyer, Joe Qualey, and the Plaintiff's lawyer, David Collins, we were offered $50,000 more to sell to Dudek and Cross. But again a closing date was not offered, only threats of being sued.
- After reading all documents produced before the trial, at the trial, and the First Federal e-mails and documents received less than 24 hours before the trial, we (the Defendants) stand by our initial cancellation request sent to the Plaintiffs, Dudek and Cross.
- We (the Defendants) wish to not sell to the previous Buyers (Plaintiffs Dudek and Cross). We (the Defendants) do not want anyone in the home we built and raised our children, who obviously will not appreciate it. We (the Defendants) do not want anyone in our home that would be less than honest and would conduct themselves the way the Buyers (Plaintiffs Dudek and Cross) have obviously done since signing the contract.

WHEREFORE, the Defendants ask the Court for judgment,

a. honor our contract with Ms. Morphew,
b. dismiss the complaint herein with prejudice,
c. dismiss the Lis Pendens against property stated in agreement,
d. grant written release from said Agreement,
e. in addition, Defendants pray that the Plaintiffs take nothing and the Defendants have judgment against the Plaintiffs and recover the costs of suit herein, and such other relief the court may deem proper.

VERIFICATION AND ACKNOWLEGEMENT

To the best of my knowledge, information and belief, the information contained in the document is well grounded in fact and is warranted by existing law.

I have not been determined by any court of South Carolina or in any other Sate to be a frivolous litigant or subject to an Order precluding me from serving and filing this document.

I am not serving or filing this document for any improper purpose, such as to harass the other party, nor to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.

Dated this 30 day of August, 2014

Thomas M. Ferro
5501 Carson St.
Denver, CO 80239

843-327-1262

Lorraine B. Ferro
5501 Carson St.
Denver, CO 80239

843-327-1262

MA LETICIA RODRIGUEZ DE BARRERA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134076128
MY COMMISSION EXPIRES DECEMBER 5 2017

2014 SEP 10 AM 8:16
CLERK OF COURT
DORCHESTER COUNTY, S.C.

NOTARY PUBLIC (SIGNATURE)

State of Colorado

County of Denver

On this 03 day of September, 20 14, before me a Notary Public, the undersigned officer, personally appeared Thomas M. Ferro and Lorraine B. Ferro, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained. In witness hereof, I hereunto set my hand and official seal.

Notary Public (PRINT)

Certificate of Service

I hereby certify that a true copy of the pleading was sent, postage prepaid, to the following attorneys on the _9th___day of September___, 2014:

David Athell Collins, Esq.
Attorney for the Plaintiffs
P.O. Box 40578
Charleston, SC 29423

2014 SEP 10 AM 8:46
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Molly M. Morphew, Plaintiff, v. Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile Defendants.	)	COURT OF COMMON PLEAS CASE NO.: 2016-CP-1801706 **PLAINTIFF'S MOTION AND AFFIDAVIT TO STRIKE DEFENDANT COLLINS' ANSWER AND RETURN TO MOTION**

FILED - RECORDED
2018 JAN 30 PM 2:14
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

COME NOW the Plaintiff, Molly M. Morphew, pro se, hereby compels this court to strike or dismiss with prejudice Defendant Collins' ("Defendant" or "Collins") Answer and Return to Motion. Additionally, even if they are considered valid, Defendant Collins failed to meet the timeliness of the Answer and failed to show 'good cause' to set aside the entry of default. Plaintiff respectfully submits that both Defendant's Answer and Return to Motion are invalid and asks the Court to strike or dismiss with prejudice the Defendant's filings.

INTRODUCTION

Plaintiff's motion for entry of default and judgment was filed following a sequence of events to be described more fully below, but that also included a group of occurrences whereby Plaintiff was unlawfully prevented from closing on her home caused by, as detailed in her Complaint, the Defendant (and co-defendants and its fraud on the court(s)/fraud). Plaintiff now submits this motion to strike or dismiss with prejudice Defendant Collins' Answer

-- submitted over four hundred and eighty-two (482) days after the service of Plaintiff's Summons and Complaint and three hundred and twenty-two (322) days since the Order on its Motion to Dismiss--, and its Return to Motion ("response") attempting to establish "good cause" as to why default should not be entered against him.

FACTS

Over a year ago, on August 24, 2016, and pursuant to Rule 4 (Process; Personal Service), Defendant was personally served with the Summons, Complaint and related papers in the above-captioned proceeding by certified mail, restricted delivery, return receipt requested on August 24, 2016, and service of process was deemed complete on Defendant on August 26, 2016. (See, Exhibit 2 – Proof of Service by certified mail and acceptance of David A. Collins by authorized person(s)). SCRCP 4(d)(8). On September 20, 2016, a Motion to Dismiss was filed by Attorney Michael C. Scarafile for Defendant on September 20, 2016. The Motion to Dismiss was heard and granted in part and denied in part on November 7, 2016, and an Order was filed as such on January 31, 2017, again satisfying 'personal service' pursuant Rule 4(d), "*Voluntary appearance by defendant is equivalent to personal service.*" On February 17, 2017, the Defendant's attorney, Mr. Scarafile, filed an Answer to include himself and two other co-defendants he was representing, but did not include Defendant Collins.

Since then there has been many other filings, motions, and/or discovery taking place, in which all have been served upon Defendant's counsel of record, Attorney Michael Scarafile.

On November 27, 2017, Plaintiff filed a Motion for Entry of Default and Judgement, along with a proposed Order, against Defendant Collins. Said entry was entered on November 27, 2017.

On December 8, 2017, Plaintiff served the Motion and the supporting affidavits/damages worksheet on all parties or their counsel of record. Defendant Collins 'personally' filed a Return to Motion and an Answer to Plaintiff's complaint on December 19, 2017.

PLAINTIFF'S MEMORANDUM TO ITS MOTION TO STRIKE OR DISMISS WITH PREJUDICE DEFENDANT'S ANSWER AND RETURN TO MOTION

This Court should strike Defendant Collins's Answer and Return to Motion because they are invalid, were filed untimely and inappropriately, and/or he failed to demonstrate "good cause" for failing to timely respond to Plaintiff's Complaint.

I. Defendant's Answer and response is invalid.

Pursuant SCRCP Rule 11(a), "Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated". "If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee." Plaintiff contends that the filings are not signed by its attorney of record, therefore the Defendant's Answer and Return to Motion are invalid. Due to the reasons so stated, the Plaintiff respectfully requests this court to strike or dismiss with prejudice the Defendant's Answer and Return to

Motion, and order to pay to the Plaintiff reasonable expenses incurred, as deemed appropriate by this court.

II. Defendant Collins has failed to present a viable explanation for why he did not timely respond to Plaintiff's Summons and Complaint and has failed to show "good cause" to set aside entry of default pursuant to Rule 55(c), SCRCP.

Defendant Collins has failed to meet his initial burden for relief under Rule 55(c), a showing of "good cause." The "good cause" standard requires that a party seeking relief from an entry of default must "provide an explanation for the default and give reasons why vacation of the default would serve the interest of justice." Sundown, 681 S.E.2d at 888. The good cause standard of Rule 55(c) requires, as a threshold burden, a party to put forth "an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Id. In the case at bar, Defendant Collins has failed to do so. His only explanation for his default is that because, 1) he was suspended from practice he had no access to his files, and 2) service was not perfected, as the paperwork was not sent with delivery restricted to him, and 3) that he had not been served with a copy of the Order granting the dismissal of many causes of action.

First of all, Defendant Collins has neither presented a Motion requesting relief nor the required affidavit to this court in support of his assertion(s) (See **attachment A**, Return to Motion), and second, in this lawsuit, Defendant Collins has appeared through his counsel of record[1] and has not challenged service, and yet his assertion before this Court would suggest that service was improper. Defendant Collins, by appearing in said lawsuit and not challenging service has waived any objection he may have. As such, the procedural posture of the case finds the issue of service as "final" since he is clearly

[1] (Reference to Defendants Motion to Dismiss and its corresponding Order)

represented by counsel and did not question his attorney's representation. Thus, the doctrine of collateral estoppel, Plaintiff would assert, prevents Defendant Collins from now suggesting service upon him was inappropriate 15 months later. In South Carolina, when service is completed in accordance with the rules, it is presumed that service was proper. Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897 (S.C. 1994) (citing 62B Am Jur. 2d Process § 111 (1990)). Thus, Defendant Collins was presumably served properly. The service does not become ineffective just because Defendant Collins's states it so. Particularly, since he has offered no such proof of his assertion(s). As Defendant Collins's only "good cause" offered involves the lack of proper service, Defendant Collins's filings should be denied.

As to defendants defense #3, Defendant Collins attorney of record and co-defendant, Michael Scarafile, received the Defendant's Order on its Motion to Dismiss and filed the required Answer[2], making Defendant's excuse that he personally had not received the Order moot, and need not be further addressed.

Additionally, Defendant Collins filing has not provided necessary facts showing that setting aside the default in question is in the interest of justice. However, Plaintiff would assert that the facts of the case at bar suggest the exact opposite: it is in the interest of justice to hold Defendant Collins accountable for his lack of response to Plaintiff's Summons and Complaint after they were served upon him in August of 2016.

Even more egregious about Defendant Collins's failure to respond to the Summons and Complaint in question is that he, though currently suspended from practicing as an attorney, was an accomplished lawyer for decades, and knows better the

[2] Defendant Collin's attorney of record and co-defendant, Michael Scarafile, failed to include his client, David A. Collins in the Answer after receiving the Order on Collins' Motion to Dismiss, but instead filed an Answer for himself and 2 other co-defendants.

repercussions when failing to respond to a Complaint and summons. Policy holds he should have made sure he himself or his own counsel was not failing in their legal responsibilities, meaning the defendant "did not give the [matter] the attention which an ordinary and prudent person, would give to important business." Collins or his attorney's contempt for the rules of procedure in court indicates this was *not* a "failure at an attempt" but rather a "failure to attempt" an answer. This issue would not have arisen had the rules been followed. Thus, Plaintiff suggests there is ample "guidance" for Collins and his attorney to know a party is not entitled to over 345 days to answer. Additionally, Collins was the defendant in another 'fraud' lawsuit, which he was charged in June 2017 with intent to defraud. Thus, Defendant Collins is by no means unfamiliar with official court paperwork and the consequences that they carry, whether as a defendant or an attorney.

As service is presumed proper, Defendant Collins would need to provide extrinsic evidence to show that service was not perfected. Plaintiff would assert that the mere assertion on his part does not qualify as extrinsic evidence in light of the proffered inaccuracies. Even Collins's so claimed inability to obtain his paperwork/files does not give him grounds for "good cause." That is not good cause. In June of 2016, Defendant Collins was temporarily suspended from practice and was issued a 'Receiver' (Mr. Pyre Lumpkin), who was appointed to be in charge of all his files, mail and accounts, and could be contacted for such. No communications from either Collins or his attorney suggests contact was attempted in order to obtain any information from Mr. Lumpkin nor is there any evidence that Defendant Collins or his attorney has attempted any form of discovery or fact finding in his defense. Plaintiff argues not only is this a failure to

demonstrate grounds for good cause, but their actions or non-actions suggest a complete disregard to his defense, the judicial process, and to the seriousness of this case.

Plaintiff has complied with all applicable rules of service to provide Defendant with notice of the lawsuit currently pending and should not be prejudiced by having Defendant Collins's current default vacated. Defendant Collins, who has come before this court with unclean hands with regards to the service of the summons and complaint, his ability to defend himself, and his complete disregard to the judicial process and the Plaintiff's complaint, should not be able to escape the consequences of his actions, or inactions, by having his default set aside.

III. The Wham factors do not support vacating Defendant Collins's entry of default.

Once "good cause" is established, a Defendant still must show how the Wham factors weigh in his favor in order to justify setting aside an entry of default. See Sundown Operating Co. v. Intedge Indus., Inc, 383 S.C. 601, 681 S.E.2d 885, (S.C. 2009); Wilder v. Blue Ribbon Taxicab Corp, 396 S.C. 139, 719 S.E.2d 703 (S.C. Ct. App. 2011); see also White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1, 12, 753 S.E.2d 537, 543 (S.C. 2014) (describing the standard for relief from default as two pronged: first requiring an explanation for the default and why setting aside the default would serve the interests of justice, and second requiring the moving party to present evidence with regards to the factors set forth in Wham). Additionally, a finding of fact as to each factor is not necessary on the record so long as there is sufficient evidentiary support on the record for finding the Defendant lacked good cause. Dixon v. Besco Eng'g Inc., 463 S.E.2d 636 (S.C. Ct. App. 1995). Plaintiff would present to the Court, through

the following arguments and any to be presented at a hearing on this matter, that Defendant Collins has not met either standard and his motion should be denied.

Plaintiff would assert that the Court does not need to reach the factors to deny Defendant Collins's responses as Plaintiff again argues the filings are invalid, and as no motion for relief has been submitted (as stated above). Furthermore, even if considered valid AND if construed as a motion, he has failed to meet the threshold of "good cause" set forth in Sundown; however, Plaintiff would offer the following information regarding how the factors weigh in favor of denying Defendant Collins's motion even if they were considered.

A. The timing of Defendant Collins's plea for relief weighs in favor of denying Defendant Collins's Motion.

Rule 12(a), SCRCP, provides: "A defendant shall serve his answer within 30 days after the service of the complaint upon him."

In the case at bar, Defendant Collins's plea was filed over four hundred and fifty-five days (455+) after he was personally served with the Summons and Complaint. Defendant Collins did not comply with the SCRCP Rule 12(A) deadline to answer Plaintiff's Summons and Complaint, even with Plaintiff waiting months before seeking default judgement after his time to respond passed. Additionally, Defendant Collins, through its attorney, filed and heard a Motion to Dismiss, but completely failed to file an Answer, and within 15 days of the filing of the Order on its Motion.

These facts weigh heavily against granting any sort of relief to the Defendant on its filing before the Court. In Sundown, the South Carolina Supreme Court affirmed a denial of a defendant's request for relief where it moved to set aside the default less than

a month after the deadline to answer passed, unlike the twelve plus (12+) months that lapsed in the case at bar. See Sundown, 681 S.E.2d at 889.

Additionally, if the shoe were on the other foot, and Plaintiff had allowed a statute of limitations to run for 12+ months before filing suit, it is unlikely that the Court would be willing to be so forgiving. The Courts have recognized that "[s]tatutes of limitations are not simply technicalities." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 404 (S.C. Ct. App. 1996). Statutes of limitations represent important public policy concerns as they "stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Id. (citation omitted). The statutes of limitations relieve courts of the burden of trying stale claims of individuals who have slept on their rights. See McKinney v. CSX Transp., Inc., 298 S.C. 47, 49–50, 378 S.E.2d 69, 70 (S.C. Ct. App. 1989). Deadlines for a defendant to answer a lawsuit are similar in nature to statutes of limitations. They move litigation forward, prevent evidence from being lost, ensures an eventual end to litigation, and punishes the negligence of the party who violates such a deadline. Thus, to adjudicate their case via default does not mean it is being disposed of as a technicality. Defendant Collins has slept on his rights and should not now be entitled to have those rights redeemed. Therefore, the untimely nature of his plea weighs in favor of denying his request for relief from entry of default.

B. Defendant has not made a showing of any meritorious defense.

In this instance, both Collins' Answer and Return to Motion ["response" or "plea"] are not valid, as he is represented and the filing(s) were not signed by his attorney or record, therefore no Motion or Answer ["defense"] has been filed. Additionally, Collins did not file the [invalid] 'plea' with a motion to be relieved from default, as no 'motion' requesting relief has been filed. Therefore, no meritorious defense has been 'submitted' and the question as

to whether or not the Defendant has made a showing of any meritorious defense in order to be relieved of its default is irrelevant or moot and need not be reviewed; but for the sake of argument Plaintiff provides its defense to this factor:

Even if the Answer itself was signed and submitted correctly, it is still invalid as it was not verified nor did it contain an affidavit. Alternately, even if Collins' plea could be construed as a 'motion', no affidavit or verified answer was attached to the plea.

Moreover, the only attempt Collins made in setting out a defense in its Answer was general affirmations and denials, or making general claims that he could not answer allegations because he does not have that information due to his 'receiver' appointed by the court has charge of his files. Therefore, Collins failed to make a showing under oath that he had a meritorious defense. Such conclusionary statements or lack of any facts cannot constitute the showing of a meritorious defense. (See **attachment B**, Defendants Answer)

"The showing of a meritorious defense is accomplished when allegations of defendant's answer, if established at trial, would constitute a complete defense to the action." United States v. $55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984); see Insurance Co. of America v. Packaging Coordinators, Inc., 2000 WL 1586081, at *1 (E.D. Pa. Oct. 24, 2000) (to assess whether the defendant has alleged facts which could constitute a meritorious defense, "the court may examine the defendant's answer, or if none was filed, the allegations in its motion to vacate the default judgment or set aside entry of default."). A defendant need not prove that it will win at trial. Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 74 (3d Cir. 1987). Rather, it is sufficient for a defendant to show that its defense is not "facially unmeritorious." Id. (quoting Gross v. Stereo Component Systems, Inc., 700 F.2d 120, 123 (3d Cir. 1983)). It is not enough, however, for a defendant to allege only "simple denials or conclusory statements." $55,510.05 in U.S.

Currency, 728 F.2d at 195.

C. Plaintiff will be prejudiced if the entry of default is set aside because of the unduly delay in the litigation.

Plaintiff filed suit in the case at bar on August 24, 2016, after realizing fraud was perpetrated on the court and an unlawful and uninformed ruling may have occurred. A scheduling conference had taken place and an Order issued. Scheduling in mediation, discovery and a trial will need to be rescheduled awaiting a ruling on the Defendants filings and any motions or appeals that could follow. She would certainly be prejudiced to now have to begin the process again, if Defendant Collins is let out of default. It has been over four hundred and eighty (480) days since suit was filed, and three hundred and twenty-two (322) days since the Order was filed on its Motion to Dismiss. At this point, only an invalid answer has been filed, no discovery conducted, and essentially no further investigation of the claim has been allowed.[3] Thus, to set aside entry of default at this juncture would add significant time to what has already amounted to a very long wait for Plaintiff. It is undisputed that the longer a case is delayed the memory of witnesses fades, documents and other evidence are more likely to be lost, meaning that Plaintiff's lawsuit has been entirely postponed. Thus, to restart the process at this point, a year and a half after filing the lawsuit, may make an accurate and fair shot at justice almost impossible for Plaintiff, weighing said factor in Plaintiff's favor. As such, the undue delay being caused completely by Defendant Collins has the significant threat of severely prejudicing Plaintiff, who has consistently met all deadlines and statutes required. Additionally, Plaintiffs has been affected by the undue extra bills and other expenses she incurred as a result of the Defendants unlawful actions in question. This includes being unlawfully

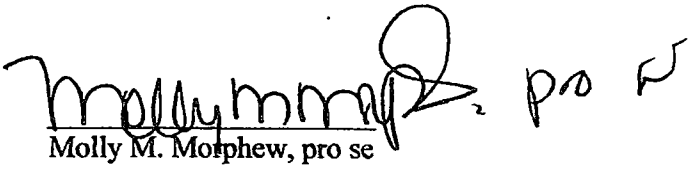
[3] Plaintiff is aware of Defendant Collins's filed "answer." However, as a party in default, he is not entitled to officially answer the complaint.

ejected from her home. To allow further delay in this case simply puts her further away from the resources she is entitled to, as a result of her injuries from the Defendant (and its co-defendants fraud/fraud upon the court(s)) that occurred through no fault of her own. Plaintiff has procedurally advanced her case as allowed and required by the rules; thus, to allow Defendant Collins out of default when he failed to proceed as required himself in the rules would cause severe prejudice to Plaintiff. For example, Plaintiff would be barred from forever bringing a claim if she waited and missed the statute of limitations. In the same, Defendant Collins should be barred from a second bite at the apple in now deciding to be a participant in this case

CONCLUSION

Thus, for the reasons set forth more fully above, and any to be presented at a hearing on this matter, the Plaintiff would ask this Honorable Court strike with prejudice Defendant Collins's Answer and Return to Motion, and any pleas or future pleas to be let out of Default as he has failed to present "good cause" for failing to respond to this lawsuit and the required factors weigh heavily in favor of Plaintiff.

Respectfully Submitted,



Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

January 21, 2018

AFFIDAVIT

Personally came and appeared before me, the undersigned Notary, the within named, Molly M. Morphew, who is a resident of Dorchester County, State of South Carolina, and makes this her statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth in above Motion are true and correct to the best of her knowledge.

Dated this the 30th day of January, 2018

Signature of Affiant

SWORN to subscribed before me, this 30th day of January, 2018

NOTARY PUBLIC

My Commission Expires: 7/11/2020

ANTHONY SMITH
MY COMM EXP
NOTARY
PUBLIC
JULY 11, 2020
CHATHAM COUNTY, GA

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Molly M. Morphew,

Plaintiff,

v.

Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile

Defendants.

COURT OF COMMON PLEAS
CASE NO.: 2016-CP-1801706

FILED - RECORDED
2018 JAN 30 PM 2:14
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 30th day of January, 2018, to:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

January 21, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2016-CP-18- 1706
Molly Morphew	)	
Plaintiff,	)	
vs.	)	RETURN TO MOTION
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer Wooddy Law Firm	)	
Defendants.	)	

FILED - RECORDED
2018 JAN 30 PM 2:15
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

FILED-RECORDED
2017 DEC 19 AM 10:58
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Defendant, David Collins, acting pro se, hereby responds to the motion and application for default as follows:

The Plaintiff has filed this action, alleging among other things fraud and the intentional infliction of emotional distress. When the initial suit was filed this defendant was on interim suspension from the practice of law. He had been denied access to his office and client files. Service was attempted on this defendant by certified mail. However service was not perfected in that the pleadings were not sent with delivery restricted to this Defendant. Additionally, this defendant has not been served with a copy of the order granting the dismissal of many causes of action.

On December 18, 2017, this defendant received notice of the filing of the Plaintiffs Motion for Default. Upon receipt of said motion, this defendant immediately filed a responsive pleading. This defendant believes that the foregoing constitutes good cause to relieve him of any default that exists.

A
403.

DAVID A. COLLINS, LLC
David A. Collins
P. O. Box 30052
Charleston, SC 29417
(843)224-3779
Davidacollins2@aol.com

December 19, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2016-CP-18- 1706
Molly Morphew	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer Wooddy Law Firm	)	
	)	
Defendants.	)	

FILED-RECORDED
2017 DEC 19 AM 10:58
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Response to Motion was served by mailing or hand delivery on the following:

Steven L. Smith, Esquire
PO Box 40578
Charleston, SC 29423

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste. D
Murrells Inlet, SC 29576

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P O Box 7368
Columbia, SC 29202

Molly Morphew

David A. Collins

December 19, 2017
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2016-CP-18- 1706
Molly Morphew	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer Wooddy Law Firm	)	
	)	
Defendants.	)	

FILED - RECORDED
2018 JAN 30 PM 2:15
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

ANSWER OF DEFENDANT
DAVID COLLINS

FILED-RECORDED
2017 DEC 19 AM 10:58
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Defendant, David Collins, acting pro se, hereby answers the Complaint (the Complaint) of Plaintiff, and alleges as follows:

1. That any and all allegations contained in the Complaint not specifically admitted or denied, are hereby denied and strict proof is demanded thereof.

2. That the allegations contained in paragraphs One, Two and Three require no affirmative response from this Defendant.

3. That this Defendant denies the allegations contained in Paragraphs Four and Five of the complaint and demands strict proof thereof.

4. That this Defendant admits the allegations contained in Paragraphs Six, seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen Fifteen, and Sixteen.

5. That this defendant denies the allegations contained in Paragraphs Seventeen and Eighteen.

6. That this Defendant denies the allegations contained in Paragraphs Twenty, Twenty-One, Twenty-Two, Twenty-Three and Twenty-Four.

406 B

7. That this Defendant admits so much of the allegations contained in Paragraph Twenty-Six of the Complaint that state that the contract was ratified but cannot admit as to the date of said ratification.

8. That this Defendant admits so much of the allegations contained in Paragraph Twenty-Seven of the Complaint that state that the Defendants Dudek and Cross claimed an extension but cannot admit as to the date of said claim.

9. That this defendant admits so much of the allegations contained in Paragraph Twenty-Eight of the Complaint that state that the Ferros refused the extension but cannot admit as to the date of said refusal.

10. That this defendant does not sufficient information with which to either admit or deny the allegations contained in Paragraphs Twenty-Nine, Thirty, Thirty-One, Thirty-Two, Thirty-Three, Thirty-Four, Thirty-Five, Thirty-Six, Thirty-Seven, Thirty-Eight, Thirty-Nine, Forty, Forty-One, Forty-Two, Forty-Three, Forty-Four, Forty-Five, Forty-Six, and Forty-Seven. The reason for the lack of information is based on the fact that any and all files regarding this matter have been turned over to substitute counsel and this Defendant cannot verify any of the dates contained within said Paragraphs.

11. This Defendant admits so much of the allegations contained in Paragraph Forty-Eight that state that a LIS PENDENS was filed but does not have sufficient information with which to either or admit said date.

12. That this defendant does not sufficient information with which to either admit or deny the allegations contained in Paragraphs Forty-Nine, Fifty, Fifty-One Fifty-Two, Fifty-Three, Fifty-Four and Fifty-Five . The reason for the lack of information is based on the fact that any

and all files regarding this matter have been turned over to substitute counsel and this Defendant cannot verify any of the dates contained within said Paragraphs.

13. That this defendant denies the allegations contained in Paragraph Fifty-Six of the Complaint and demands strict proof thereof.

14. That this defendant does not sufficient information with which to either admit or deny the allegations contained in Paragraphs Fifty-Seven, Fifty-Eight, Fifty-Nine, Sixty, Sixty- One, Sixty-Two, Sixty-Three, Sixty-Four, Sixty-Five, Sixty- Six, Sixty-Seven, Sixty-Eight and Sixty-Nine. The reason for the lack of information is based on the fact that any and all files regarding this matter have been turned over to substitute counsel and this Defendant cannot verify any of the dates contained within said Paragraphs.

15. That the allegations contained in Paragraphs Seventy, Seventy-One and Seventy-Two require no affirmative response from the Defendant.

16. That this Defendant denies the allegations contained in Paragraphs Seventy-Five, Seventy-Six, Seventy-Seven, Seventy-Eight, Eighty, Eighty-One, Eighty-Two, Eighty-Three, Eighty-Four, Eighty-Five, Eighty-Six, Eighty-Seven, Eighty-Eight, Eighty-Nine and Ninety-One of the Complaint and demands strict proof thereof.

17. That the allegations contained in Paragraphs Seventy-Nine and Ninety require no affirmative response from this Defendant.

18. That this Defendant denies the allegations contained in Paragraphs One Hundred Eighty Nine, One Hundred Ninety, One Hundred Ninety Two, One Hundred Ninety Three, One Hundred Ninety-Four, One Hundred Ninety-Five, One Hundred Ninety-Six, One hundred Ninety Seven, One hundred Ninety-Eight, One Hundred Ninety-Nine, Two Hundred, Two hundred One, Two Hundred Two, Two hundred Three, Two hundred Four, Two Hundred Five, Two hundred

Six, Two Hundred Seven, Two Hundred Eight Two Hundred Nine, Two Hundred Ten, two hundred Eleven and Two Hundred Twelve and demands strict proof thereof.

19. That this Defendant denies the allegations contained in Paragraphs Three Hundred Twenty-Six, Three Hundred Twenty-Seven, Three Hundred Twenty-Eight, Three Hundred Twenty-Nine, Three Hundred Thirty, Three hundred Thirty-One, Three Hundred Thirty-Two, Three Hundred Thirty-Three and Three Hundred Thirty-Four and demands strict proof thereof.

20. That this Defendant denies the allegations contained in Paragraphs Three Hundred Thirty-Six, Three Hundred Thirty-Seven, Three hundred Thirty-Eight, Three hundred Thirty-Nine, Three Hundred Forty, Three Hundred Forty-One, Three Hundred Forty-Two, Three Hundred Forty-Three, Three Hundred Forty-Four, Three Hundred Forty-Five, Three Hundred Forty-Six and Three Hundred Forty-Seven of the Complaint and demands strict proof thereof.

FURTHER ANSWERING THE COMPLAINT
AND AS A FIRST AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)

21. That this Defendant realleges and reavers the allegations of the preceding paragraphs as though fully restated herein.

22. That this Defendant hereby gives notice that he intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend his Answer to assert any such defense.

FURTHER ANSWERING THE COMPLAINT
AND AS A SECOND AFFIRMATIVE DEFENSE
(Failure to State a Claim)

23. That the Plaintiff's Complaint fails to state a cause of action against this Defendant and should be dismissed pursuant to South Carolina Rule of Civil procedure 12(B) (6).

WHEREFORE, having fully answered the Complaint of Plaintiff, this Defendant prays that this Court inquire into the matters set forth herein, dismiss the Complaint of Plaintiff with prejudice and grant such other relief as the Court may deem just and proper.

DAVID A. COLLINS, LLC

David A. Collins
P. O. Box 30052
Charleston, SC 29417
(843)224-3779
Davidacollins2@aol.com

December 19, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2016-CP-18- 1706
Molly Morphew	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer Wooddy Law Firm	)	
	)	
Defendants.	)	

FILED-RECORDED
2017 DEC 19 AM 10:58
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Answer to Complaint was served by mailing or hand delivery on the following:

Steven L. Smith, Esquire
PO Box 40578
Charleston, SC 29423

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste. D
Murrells Inlet, SC 29576

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P O Box 7368
Columbia, SC 29202

Molly Morphew
788 E Butternut Road
Summerville, SC 29483

David A. Collins

December 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

Molly M. Morphew
☒ Plaintiff

2016 APR -4 PM 12:42
CLERK OF COURT
DORCHESTER COUNTY

CASE NO.
2016-CP-18-1706

v.

Stephen Dudek, Doreen Cross, Et Al
☐ Defendant.

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Molly Morphew, Pro Se, Bar No. N/A	David A. Collins, Pro Se, Bar No.
Address:	Address:
786 E Butternut Rd, Summerville, SC 29483	P.O. Box 40578, Charleston, SC 29423
phone: fax:	phone: fax:
e-mail: other:	e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: 2nd Motion for Default Entry and Judgment (Def. Collins only)
Estimated Time Needed:30 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒Plaintiff / ☐Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE
☐ Other:	CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**(2nd) MOTION- FOR ENTRY OF DEFAULT TO BE ENTERED AGAINST DEFENDANT DAVID A. COLLINS/ JUDGMENT/AND SUPPORTING AFFIDAVIT(S)**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

2018 APR -4 PM 12:43
CLERK OF COURT
DORCHESTER COUNTY

COME NOW the Plaintiff, Molly M. Morphew, pro se, hereby moves this Court, pursuant Rule 55 of the South Carolina Rules of Civil Procedure, for the entry of default; and for an order holding Defendant, David A. Collins, in default, and granting default judgment on Morphew's claims as set forth in the Affidavit attached hereto.

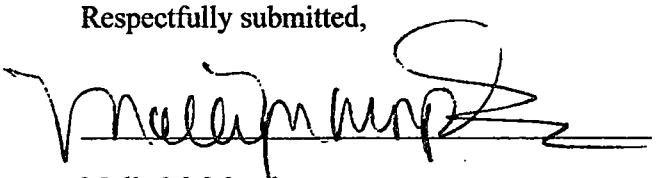
Plaintiff files this (2nd) Motion for Entry of Default and for an Order of Default Judgement against Defendant David A. Collins in response to the court's Order of February 23, 2018 denying Default Judgement on the Plaintiff's initial motion for default judgment. No hearing was held. Reason for denial is unknown, as the Form 4 does not provide justification, therefore cannot be defended. (See **Attachment A**, "Form 4" dated February 23, 2018). Further defense for this motion, Plaintiff had filed a Motion for Entry of Default on November 27, 2017, and even after several inquiries since its filing regarding the entry of default (even requesting the Form 4

noticing entry of default), Plaintiff has received no verification of its entry (entry as required by law) or, if applicable, justification for its lack of entry.

Due to the above, Plaintiff hereby respectfully requests this court to enter default as of November 27, 2017, per its initial Motion for Entry of Default filed November 27, 2017, as required by Rule 55(a) SCRCP.

Additionally, pursuant Rule 55(b)(2) and (3), Plaintiff also respectfully requests this court to enter a Default Judgement against the Defendant David A. Collins for damages including but not limited to, lost wages, travel, expenses, reasonable attorney's fees, interest and disbursement of this action; for sanctions pursuant Rule 11; for punitive damages, and awarding such other and further relief as this Court may deem appropriate.

Respectfully submitted,



Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**AFFIDAVIT IN SUPPORT OF ENTRY OF DEFAULT**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

2018 APR -4 PM 12:43
CLERK OF COURT
DORCHESTER COUNTY

PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named MOLLY M. MORPHEW, who, having first been duly sworn by me, stated on oath the following:

1. I am the Plaintiff, Molly M. Morphew, pro se, and have personal knowledge of the facts set forth in this Affidavit.
2. A complaint in this matter was filed with the Dorchester County Court of Common Pleas on August 24, 2016. (*See*, Exhibit 1 – Summons and Complaint).
3. Pursuant to Rule 4 (Process; Personal Service), a copy of the Summons, together with a copy of the Complaint, was served upon the Defendant by certified mail, restricted delivery, return receipt requested on August 24, 2016, and service of process was deemed complete on Defendant on August 26, 2016. (*See,* Exhibit 2 – Proof of Service by certified mail and acceptance of David A. Collins).

4. A Motion to Dismiss was filed by Michael C. Scarafile, Esquire for Defendant on September 20, 2016. Motion to Dismiss was heard and granted in part and denied in part on November 7, 2016, and an Order was filed as such on January 31, 2017.
5. That more than thirty (30) days have elapsed since the date on which the said Defendant was served with Summons and a copy of the Complaint, and more than twenty (20) days since the date of the court's action in ruling on the motion. Pursuant Rule 55, SCRCP, Defendant is now in default.
6. That the Defendant has failed to answer or otherwise defend as to Plaintiff's Complaint, or serve a copy of any Answer or other defense which he might have upon the Plaintiff.
7. That this Affidavit is executed by affiant herein accordance with Rule 55(a) SCRCP, for the purpose of enabling the Plaintiff to obtain an entry of default against the Defendant for his failure to answer or otherwise defend as to the Plaintiff's Complaint.
8. Pursuant Rule 55(b) SCRCP Morphew seeks the following judgment against the Defendant: damages for lost wages, travel, expenses, reasonable attorney's fees, interest and disbursement of this action; for punitive damages and awarding such other and further relief as this Court may deem appropriate (See **Attachment B** – Cost/Fees Spreadsheet), and requests a Default Judgement hearing be scheduled, if applicable.
9. The court may enter default under Rule 55(a), SCRCP.
10. Per Rule 55(b)(2), a default Judgment hearing or damages hearing may be required.
11. That a Motion for Entry of Default and for Default Judgment was filed, along with the required affidavit and proof of service, on November 27, 2017 (see **Exhibit 3**- Motion for Entry of Default/Judgment).

12. That Plaintiff believed entry was entered and would receive such notice of entry from the court in the self-addressed, stamped envelope left with the court or observe online the Form 4 entry of default.

13. Plaintiff affirms several inquiries were made as to the entry of default, and status of the default judgment and/or hearing.

Based on the foregoing, Plaintiff requests that the Clerk of Court enter the default of Defendant in this matter, as of November 27, 2017, and schedule a Default Judgment hearing, if applicable.

Molly M. Morphew, pro se

SWORN TO AND SUBSCRIBED BEFORE ME, this the 20th day of March, 2018.

NOTARY PUBLIC

My Commission Expires:

Sept 30, 2018

PATRICK BRADSHAW NOTARY PUBLIC MY COMM EXP SEPT. 30, 2018 CHATHAM COUNTY, GA

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**PLAINTIFF'S AFFIDAVIT IN SUPPORT OF ATTORNEY'S FEES AND COSTS/LOSSES TO PLAINTIFF**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

2018 APR -4 PM 12:43
CLERK OF COURT
DORCHESTER COUNTY

I hereby swear or affirm that:

1. I am the Plaintiff, Molly M. Morphew, pro se, in this matter and have provided valuable and necessary service on behalf of the Defendant for which I am requesting compensation.
2. I am requesting approval of attorney's fees in the amount of $15,000.00. The amount of this fee is calculated as follows:

   Partial Plaintiff Attorney's fees: $15,000.00

3. The amount of the requested attorney's fees was arrived from Plaintiff's Attorney's fees so far expended, as only a portion of the total fees expended, as reasonable and necessary in the defense of the prior adjudicated case in question for Fraud/Fraud on the Court, and in the defense of this case.

4. I am requesting approval of costs or compensatory damages (not including attorney's fees, punitive damages, special damages or any other relief as the Court may deem necessary and appropriate) in the amount of $60,696.59. The amount of this cost is calculated as represented in attached worksheet: (*See* Attachment 1, Plaintiff Cost/Losses)

5. The amount of the costs was arrived from costs the Plaintiff has so far expended, as reasonable and necessary in the defense of the prior adjudicated case in question for fraud on the court. In addition, the costs expended by Plaintiff were reasonable and necessary in the prosecution of this action against Defendant.

Respectfully submitted,

Molly M. Morphew, pro se

SWORN TO AND SUBSCRIBED BEFORE ME, this the 20th day of March, 2018.

NOTARY PUBLIC

My Commission Expires:

Sept 30, 2018

PATRICK BRADSHAW NOTARY PUBLIC MY COMM EXP SEPT. 30, 2018 CHATHAM COUNTY, GA

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER: 2016CP1801706

Molly M Morphew	2018 FEB 23 PM CHERYL GRANT CLERK OF COURT DORCHESTER COUNTY	**Stephen Dudek** **David Collins** **First Federal** **Susan Nicholson** **Carrie Boyer**	2018 APR -4 PM 12:43 CLERK OF COURT DORCHESTER COUNTY **Doreen Cross** **Allison Williams** **Michael Scarafile** **Carolina One Real Estate**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: **Plaintiff's Motion for Default Judgment filed November 27, 2017 is hereby denied. The Clerk is hereby instructed to set all pending motions to be heard at the next available Motion Roster.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Maite' Murphy

Maite' Murphy, Circuit Court Judge	**2166**	**2/20/2018**
	Judge Code	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

ATTACH. A

For Clerk of Court Office Use Only

This judgment was entered on 2/___/2018, and a copy mailed first class or placed in the appropriate attorney's box on 2/___/2018, to attorneys of record or to parties (when appearing pro se) as follows:

Molly M Morphew 786 E. Butternut Road Summerville, SC 29483

Steven L. Smith /Zachary James Closser
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578
Amy L.B. Hill /Jordan Michael Crapps PO Box 7368 Columbia, SC 29202
Amy Lynn Neuschafer/William Alfred Bryan Jr. 11945 Grandhaven Drive Suite D Murrells Inlet, SC 29576
David Collins Po Box 30052 Charleston, SC 29417

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Personal actual Costs/losses to Plaintiff/Attorney Fees

DESCRIPTION	ITEM	DAYS	HOURS	RATE	MILES	COPIES	TOTAL
PERSONAL COSTS							
Cancelled deposition							
	Loss of work		2.5	$ 27.00			$ 67.50
	Travel (32 miles one way)			$ 0.56	64		$ 35.84
Deposition							
	Loss of work		8	$ 27.00			$ 216.00
	Travel (32 miles one way)			$ 0.56	64		$ 35.84
Pre-trial prep with attorney							
	Loss of work		4	$ 27.00			$ 108.00
	Travel (32 miles one way)			$ 0.56	64		$ 35.84
2 days for Trial							
	Loss of work		16	$ 27.00			$ 432.00
	Travel (32 miles one way)			$ 0.56	128		$ 71.68
Appeal Initial Brief and Designation of Matter Preparation, development, research, prep, filing, travel							
	Loss of work/time		120	$ 27.00			$ 3,240.00
	Mailing/Filing loss of work		8	$ 27.00			$ 216.00
	Printing			$ 0.15		150	$ 22.50
	Filing Travel			$ 0.56	180		$ 100.80
Appeal: Final Brief/Record on Appeal Preparation, development, research, prep, filing, travel							
	Loss of work/time		24	$ 27.00			$ 648.00
	Mailing/Filing loss of work		8	$ 27.00			$ 216.00
	Printing			$ 0.15		350	$ 52.50
	Filing Travel			$ 0.56	180		$ 100.80
Prep for Motion for Supersedeas Bond							
	Loss of work/time		12	$ 27.00			$ 324.00
Motion Hearing for Super. Bond							
	Loss of work		8	$ 27.00			$ 216.00

2018 APR -4 PM 12:43

ATTACH. B

	Travel (32 miles one way)			$ 0.56	64		$ 35.84
Fraud Complaint Preparation, development, research, filing							
	Loss of work/time		30	$ 27.00			$ 810.00
	Mailing/Filing loss of work		1.5	$ 27.00			$ 40.50
	Printing			$ 0.15		85	$ 12.75
	Filing Travel			$ 0.56	64		$ 35.84
Defendants Motion to Dismiss Fraud Complaint Preparation, development, research, Answer, prep, filing, travel							
	Loss of work/time		20	$ 27.00			$ 540.00
	Mailing/Filing loss of work		1.5	$ 27.00			$ 40.50
	Printing			$ 0.15		18	$ 2.70
	Filing Travel			$ 0.54	64		$ 34.56
Defendants Motion to Dismiss Fraud Complaint Hearing prep, travel, hearing							
	Loss of work/time		10	$ 27.00			$ 270.00
	Printing			$ 0.15		20	$ 3.00
	Filing Travel			$ 0.54	64		$ 34.56
Closing Schedule/ Attorney Fees Hearing Preparation,research, Answer, prep, filing, travel							
	Loss of work/time		20	$ 63.00			$ 1,260.00
	Mailing/Filing loss of work		1.5	$ 63.00			$ 94.50
	Printing			$ 0.15		75	$ 11.25
	Filing Travel			$ 0.54	128		$ 69.12
(Judges) Motion 59 (e) Hearing							
	Loss of work/time		15	$ 63.00			$ 945.00
	Travel			$ 0.54	64		$ 34.56
Contempt/Motion to Vacate Hearing Preparation,research, Answer, prep, filing, travel							
	Loss of work/time		20	$ 63.00			$ 1,260.00
	Mailing/Filing loss of work		1.5	$ 63.00			$ 94.50
	Printing			$ 0.15		75	$ 11.25
	Travel			$ 0.54	128		$ 69.12

2nd Motion to Vacate Hearing Preparation,research, travel								
	Loss of work/time		15	$ 63.00			$ 945.00	
	Printing			$ 0.15		20	$ 3.00	
	Travel			$ 0.54	128		$ 69.12	
Cost to vacate premises in 3 days								
	Loss of work/time		32	$ 63.00			$ 2,016.00	
	Storage/Uhaul thru /Temporary Hotels/ alternate residence			$ 2,337.24			$ 2,337.24	
Plaintiff's Motion for Default Preparation,research, Answer, prep, filing, travel								
	Loss of work/time		24	$ 63.00			$ 1,512.00	
	Mailing/Filing loss of work		8	$ 63.00			$ 504.00	
	Printing			$ 0.15		750	$ 112.50	
	Travel			$ 0.54	186		$ 100.44	
Motion for Default Hearing								
	Loss of work/time		15	$ 63.00			$ 945.00	
	Printing			$ 0.15		20	$ 3.00	
	Travel			$ 0.54	186		$ 100.44	
								$ 20,496.59
Attorney's Fees								$ 48,496.59
PERSONAL COSTS								
	Loss of work/time		60	$ 63.00			$ 3,780.00	
	Mailing/Filing loss of work		8	$ 63.00			$ 504.00	
	Printing			$ 0.10		0	$ -	
	Travel			$ 0.54	0		$ -	
								$ 52,780.59
	Loss of work/time		12	$ 63.00			$ 756.00	
	Mailing/Filing loss of work		0	$ 63.00			$ -	
	Printing			$ 0.10			$ 0.10	

	Travel			$ 0.54	186		$ 100.44	
[redacted]								$ 53,637.13
	Loss of work/time		24	$ 63.00			$ 1,512.00	
	Mailing/Filing loss of work		0	$ 63.00			$ -	
	Printing			$ 0.10		0	$ -	
	Travel			$ 0.54	0		$ -	
[redacted]								$ 55,149.13
Notice of Appeal								
	Loss of work/time		24	$ 63.00			$ 1,512.00	
	Mailing/Filing loss of work		8	$ 63.00			$ 504.00	
	Printing - Contempt Appeal			$ 0.10		42	$ 4.20	
	Printing - Closing appeal			$ 0.10		42	$ 4.20	
	Letter to consolidate			$ 0.10		42	$ 4.20	
	Travel			$ 0.54	332		$ 179.28	
	Transcripts - Contempt Order			$ 569.00			$ 569.00	
	Transcripts - Closing Order			$ 600.00			$ 600.00	
	Mailing Costs- Notice of Appeal			$ 5.38			$ 5.38	
[redacted]								$ 58,531.39
Loss of use of home starting 6-13-17 thru 12-31-2017								
	Daily rate	201		$ 200.00			$ 40,200.00	
[redacted]								$ 98,731.39
INTEREST - Tax writeoff lost mortgage from January 10 to present								
[redacted]							$ 54,837.10	
[redacted]								$ 153,568.49
[redacted]							$ 65,000.00	
[redacted]								$ 218,568.49
SPECIAL DAMAGES								
[redacted]							$ 95,000.00	
[redacted]								$ 313,568.49

PUNATIVE DAMAGES

[redacted]						$ 95,000.00	
							$ 408,568.49

EXH. 2

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Allen Collins, Jr.
7455 Cross Country Rd
N. Charleston, SC 29418

9590 9402 2134 6132 4317 89

2. Article Number (Transfer from service label)

7015 3010 0000 2690 1625

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer Haddock ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jennifer Haddock
C. Date of Delivery 8/26/16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

2016 APR -4 PM 12

CLERK OF COURT
DORCHESTER COUNTY

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

USPS TRACKING#

9590 9402 2134 6132 4317 89

United States Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

Mophew
788 E Butternut Rd
Summerville SC
29483

NOV 27 PM 12

$25.00 MB

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF Dorchester) ____JUDICIAL CIRCUIT
2018 APR -4 PM 12:44
CLERK OF COURT DORCHESTER COUNTY
CASE NO.: 2016-CP-18-01706

Molly M Mapraw)
Plaintiff,)
vs.)
Stephen Wilder Durden, Cross, Carolina [illegible] Woodly Lawton, Carne Boyd, [illegible] Federal, Allison Williams, [illegible] Dillon, Michael Scarafile)
Defendant.)

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
_____, Bar No. _____	_____, Bar No_____
Address:	Address:
Phone: _____ Fax _____	Phone: _____ Fax_____
E-mail: Other:	E-mail: Other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Default
Estimated Time Needed: 15 min Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Molly M Mapraw 11/27/17, 20 17
Signature of ~~Attorney for~~ ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other:	Date: _____, 20

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20____

☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

EXHIBIT 3

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**MOTION AND APPLICATION FOR ENTRY OF DEFAULT AGAINST DEFENDANT DAVID A. COLLINS, AND SUPPORTING AFFIDAVIT**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

COME NOW the Plaintiff, Molly M. Morphew, pro se, hereby moves this Court, pursuant Rule 55 of the South Carolina Rules of Civil Procedure, for the entry of an order holding Defendant, David A. Collins, in default and granting default judgment on Morphew's claims as set forth in the Affidavit attached hereto.

Respectfully submitted,

Molly M. Morphew, pro se

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**AFFIDAVIT IN SUPPORT OF ENTRY OF DEFAULT**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, s. Michael Scarafile	)	
	)	
Defendants.	)	
	)	

PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named MOLLY M. MORPHEW, who, having first been duly sworn by me, stated on oath the following:

1. I am the Plaintiff, Molly M. Morphew, pro se, and have personal knowledge of the facts set forth in this Affidavit.
2. A complaint in this matter was filed with the Beaufort County Court of Common Pleas on May 7, 2013. (*See*, Exhibit 1 – Summons and Complaint).
3. Pursuant to Rule 4 (Process; Personal Service), a copy of the Summons, together with a copy of the Complaint, was served upon the Defendant by certified mail, restricted delivery, return receipt requested on August 24, 2016, and service of process was deemed complete on Defendant on August 26, 2016. (*See*, Exhibit 2 – Proof of Service by certified mail and acceptance of David A. Collins).

4. A Motion to Dismiss was filed by Michael C. Scarafile, Esquire for Defendant on September 20, 2016. Motion to Dismiss was heard and granted in part and denied in part on November 7, 2016, and an Order was filed as such on January 31, 2017.
5. That more than thirty (30) days have elapsed since the date on which the said Defendant was served with Summons and a copy of the Complaint, and more than twenty (20) days since the date of the court's action in ruling on the motion. Pursuant Rule 55, SCRCP, Defendant is now in default.
6. That the Defendant has failed to answer or otherwise defend as to Plaintiff's Complaint, or serve a copy of any Answer or other defense which he might have upon the Plaintiff.
7. That this Affidavit is executed by affiant herein accordance with Rule 55(b) SCRCP, the purpose of enabling the Plaintiff to obtain an entry of default against the Defendant for his failure to answer or otherwise defend as to the Plaintiff's Complaint.
8. Morphew seeks the following judgment against the Defendant: damages for lost wages, travel, expenses, reasonable attorney's fees, interest and disbursement of this action; for punitive damages and awarding such other and further relief as this Court may deem appropriate.
9. The court may enter default under Rule 55, SCRCP.
10. A hearing on damages is required under Rule 55, SCRCP, as it is necessary to determine the amount of damages.

Based on the foregoing, Morphew requests that the Clerk of Court enter the default of Defendants in this matter.

Molly M. Morphew, pro se

SWORN TO AND SUBSCRIBED BEFORE ME, this the 22 day of November, 2017.

NOTARY PUBLIC

My Commission Expires:

7.11.2020

ANTHONY SMITH
MY COMM EXP.
NOTARY
PUBLIC
JULY 11, 2020
CHATHAM COUNTY, GA

$25.00 MB V

STATE OF SOUTH CAROLINA)
COUNTY OF Dorchester)

IN THE COURT OF COMMON PLEAS
____JUDICIAL CIRCUIT

CASE NO.: 2016-CP-18-01706

Molly M. Mophew
Plaintiff,
vs.
Stephen Dudek, Doreen Cross, Carolina Agency, Susan Nicholson, Woodly Law Firm, Carrie Boyd, First Federal, Allison Williams, Scott Ann Collins, Michael Scarafile
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
_____, Bar No. _____	_____, Bar No _____
Address:	Address:
Phone: _____ Fax _____	Phone: _____ Fax _____
E-mail: Other:	E-mail: Other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Default
Estimated Time Needed: 15 min. Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Molly M. Mophew
Signature of ~~Attorney for~~ ☐ Plaintiff / ☐ Defendant

11/27/17, 2017
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE _____
Date: _____, 20

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20____

☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

Molly M. Morphew,

Plaintiff,

v.

Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile

Defendants.

COURT OF COMMON PLEAS

CASE NO.: 2016-CP-1801706

MOTION AND APPLICATION FOR ENTRY OF DEFAULT AGAINST DEFENDANT DAVID A. COLLINS, AND SUPPORTING AFFIDAVIT

FILED
2016 NOV 27 11:18:11
CLERK OF COURT
DORCHESTER COUNTY

COME NOW the Plaintiff, Molly M. Morphew, pro se, hereby moves this Court, pursuant Rule 55 of the South Carolina Rules of Civil Procedure, for the entry of an order holding Defendant, David A. Collins, in default and granting default judgment on Morphew's claims as set forth in the Affidavit attached hereto.

Respectfully submitted,

Molly M. Morphew, pro se

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**AFFIDAVIT IN SUPPORT OF ENTRY OF DEFAULT**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, [illegible]s, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

FILED
2017 NOV 27 PM 12:11
CLERK OF COURT
DORCHESTER COUNTY
STATE OF SOUTH CAROLINA

PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named MOLLY M. MORPHEW, who, having first been duly sworn by me, stated on oath the following:

1. I am the Plaintiff, Molly M. Morphew, pro se, and have personal knowledge of the facts set forth in this Affidavit.
2. A complaint in this matter was filed with the Beaufort County Court of Common Pleas on May 7, 2013. (*See*, Exhibit 1 – Summons and Complaint).
3. Pursuant to Rule 4 (Process; Personal Service), a copy of the Summons, together with a copy of the Complaint, was served upon the Defendant by certified mail, restricted delivery, return receipt requested on August 24, 2016, and service of process was deemed complete on Defendant on August 26, 2016. (*See*, Exhibit 2 – Proof of Service by certified mail and acceptance of David A. Collins).

4. A Motion to Dismiss was filed by Michael C. Scarafile, Esquire for Defendant on September 20, 2016. Motion to Dismiss was heard and granted in part and denied in part on November 7, 2016, and an Order was filed as such on January 31, 2017.

5. That more than thirty (30) days have elapsed since the date on which the said Defendant was served with Summons and a copy of the Complaint, and more than twenty (20) days since the date of the court's action in ruling on the motion. Pursuant Rule 55, SCRCP, Defendant is now in default.

6. That the Defendant has failed to answer or otherwise defend as to Plaintiff's Complaint, or serve a copy of any Answer or other defense which he might have upon the Plaintiff.

7 That this Affidavit is executed by affiant herein accordance with Rule 55(b) SCRCP, for the purpose of enabling the Plaintiff to obtain an entry of default against the Defendant for his failure to answer or otherwise defend as to the Plaintiff's Complaint.

8. Morphew seeks the following judgment against the Defendant: damages for lost wages, travel, expenses, reasonable attorney's fees, interest and disbursement of this action; for punitive damages and awarding such other and further relief as this Court may deem appropriate.

9. The court may enter default under Rule 55, SCRCP.

10. A hearing on damages is required under Rule 55, SCRCP, as it is necessary to determine the amount of damages.

Based on the foregoing, Morphew requests that the Clerk of Court enter the default of Defendants in this matter.

Molly M. Morphew, pro se

SWORN TO AND SUBSCRIBED BEFORE ME, this the 22 day of November, 2017.

NOTARY PUBLIC

My Commission Expires:

7.11.2020

ANTHONY SMITH
MY COMM EXP
NOTARY
PUBLIC
JULY 11, 2020
CHATHAM COUNTY, GA

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David Athell Collins, #5
7455 Cross County Rd
N. Charleston, SC 29418

9590 9402 2134 6132 4317 89

2. Article Number (Transfer from service label)

7015 3010 0000 2690 1625

PS Form 3811, July 2016 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer Haddock ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jennifer Haddock
C. Date of Delivery 8/26/16

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☒ Signature Confirmation Restricted Delivery

Domestic Return Receipt

2018 APR -4 PM 12:1

CLERK OF COURT
DORCHESTER COUNTY

USPS TRACKING #

9590 9402 2134 6132 4317 89

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

Mophew
788 E Butternut Rd
Summerville SC
29483

FILED
NOV 27 PM 12:15

EXH. 2

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) _____ JUDICIAL CIRCUIT
COUNTY OF Dorchester)
RECORDED
2018 JUN 11 PM 3:41) CASE NO.: 2016-CP-18-01706
Molly Morphew)
Plaintiff,) **MOTION AND ORDER INFORMATION**
CLERK OF COURT **FORM AND COVERSHEET**
vs. DORCHESTER COUNTY
)
Stephen Dudek, Doreen Cross, et.al)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Molly Morphew, pro se, Bar No. N/A Address: 786 E. Butternut Rd, Summerville SC Phone: 843-514-7299 Fax _____ E-mail: _____Other: _____	_____, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: 59(e) - Order of May 31, 2018
Estimated Time Needed: 30 min Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Molly Morphew Pro se 6/6/2018
Signature of ~~Attorney for~~ ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**PLAINTIFF'S MOTION FOR HEARING OR RECONSIDERATION**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

RECORDED
2018 JUN 11 PM 3:41
CLERK OF COURT
DORCHESTER COUNTY

Pursuant Rule 59(e) Plaintiff Molly Morphew, pro se, hereby respectfully requests that the Court reconsider its Order of May 31, 2018, in its decision to find Defendant Collins not in default or good cause exists to set aside any such entry of default, and instead find Defendant in Default and agree the November 27, 2017 Entry of Default shall stand or enter Default. Further, Plaintiff respectfully requests this court to enter a DEFAULT JUDMENT and award damages as identified in its Complaint. As explained in more detail in the below Memorandum in Support of Plaintiff's Motion, this RECONSIDERATION is necessary in the interest of justice and due process, and allow pertinent motions to be fully heard and a final ruling.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION

I. Issues

1. Did the Court err by ruling Defendant Collins was not in default or good cause exists to set aside any such entry of default without conducting a hearing?

2. Did the Court err by ruling Defendant Collins not in default or good cause exists to set aside any such entry of default by conducting a hearing without Plaintiff present?

3. Did the Court err by finding Defendant Collins not in default or good cause exists to set aside any such entry of default?

II. Authorities

Rule 55(a), SCRCP
Rule 55(a), FRCP
Rule 55(b), SCRCP
Rule 55(c), SCRCP
Rule 11(a), SCRCP

III. Facts

On August 24, 2016, Morphew filed a summons and complaint stating causes of action including but not limited to, for fraud, fraud on the court, conspiracy to commit fraud, Bad Faith and Unfair Dealings, and/or Accompanied by Fraudulent Action, Tortious Interference with Existing Contractual Relations, Breach of Duty of Care, and Intentional Infliction of Emotional Distress.

Pursuant to Rule 4 (Process; Personal Service), a copy of the Summons, together with a copy of the Complaint, was served upon the Defendant by certified mail, restricted delivery, return receipt requested on August 24, 2016, and service of process was deemed complete on Defendant on August 26, 2016.

On September 20, 2016, a Motion to Dismiss was filed by Attorney (and co-defendant in this case) Michael C. Scarafile for Defendant Collins[1]. The Motion to Dismiss was heard and granted in part and denied in part on November 7, 2016, and an Order was filed as such on January 31, 2017. On February 17, 2017, the Defendant's attorney, Mr. Scarafile, filed an

[1] Proof of Appearance in this case

Answer to include [himself] and two other co-defendants he was representing, but did not include Defendant Collins. After several months, with many various Motions and Answers submitted, including Motions for reconsideration, a scheduling Order was filed on November 7, 2017.

Shortly after, on November 27, 2017, Morphew filed her combined Motion for Default Entry and Judgment. Morphew appeared in person at the Courthouse intending to file two (2) motions, one (1) for Entry and one (1) for Judgement, but was told by the Deputy Clerk that only one motion was necessary for Entry and Judgment based on the wording in the Motion for Entry of Default, and was further directed by the Clerk to add "*AND THEREFORE, I hereby direct the Clerk of Court to set this matter for a damages hearing*" as the last line of the ENTRY OF DEFAULT/DAMAGES HEARING FORM. Morphew left the Courthouse and updated her submitting paperwork and returned to file her motion. The Clerk disappeared for approximately 5 minutes (assuming to confirm no Answer had been previously filed by Defendant Collins and that service was proper) and then provided Morphew with the copy of the stamped Motion. When she asked the Deputy Clerk if she was supposed to also get the Entry of Default Form stamped and back, the Clerk responded, "no, entry was complete, and the Defendant could no longer defend himself against the allegations, but you will receive the paperwork back in the self-addressed, stamped envelope you provided today." The Deputy Clerk also stated the Motion, and accompanying paperwork (including the proposed Order for judgment) will be provided to the Judge for review.

On December 8, 2017, Morphew again appeared at the Courthouse and inquired about the status of the Judgment. Morphew was informed that "the Judge's assistant (no name provided) had picked up the Motion and accompanying documents last Friday (December 1, 2017) but the Judge was out all week 'signing Orders'; she will be back next week".

On December 9, 2017, Morphew in the fairness of all parties served its combined Motion for Entry/Judgment on Defendant Collins.

On December 19, 2017, 22 days after Morphew's combined Motion for Entry of Default and Judgment was filed, and over 15 months after service of its Summons and Complaint were served, Defendant Collins 'personally[2]' filed a Return to Motion in response to Morphew's Motion for Default, and 'personally' filed an Answer to Morphew's Summons and Complaint. In response to said filings, the Deputy Clerk sent an email to Attorney Scarafile (Defendant Collins Counsel of Record) stating his client filed documents (in his own name) and that "*parties are not supposed to be filing documents when they are represented.*" It was also noted there was no Order Relieving Scarafile as Defendant Collins' attorney. Defendant/Attorney Scarafile responded that he "*did not file a motion to be relieved, but could do so if needed'*, and would 'review the emails attachments when he was back in town on Friday'. The Deputy Clerk responded that she was "*not sure if the documents Mr. Collins filed can be considered valid filings*", and "*Perhaps this matter needs to be addressed with the Hon. Maite' Murphy.*" (See Exhibit 1). Morphew was neither included in any future communications nor not copied on the subsequent emails.

It wasn't until 5 weeks later and ONLY after the opposing parties' counsel of record, in what it appeared to be an attempted scheme to "trick" Morphew into allowing Defendant Collins to question her in her deposition on or about January 15, 2018, and without his attorney present,[3]

---

[2] By him, signed by him only.

[3] At the end of her 7- hour deposition, Defendant Collins was prompted by Attorney Jordan Crapps that [Collins] could take the seat to question Morphew. When Collins stood up, Morphew objected, turning to Attorney Smith and asked "in what capacity is Defendant Collins present at this deposition". Smith's reply was, "self-represented", at which time Morphew adamantly objected, stating that Collins is NOT pro se, and she does not feel comfortable being questioned by a Defendant without his counsel present, and that "this deposition is over." Collins angrily informed Morphew that she was required to allow him to question her, and if she refused he would be filing a "motion" – and that she would be paying for all costs and attorney's fees for another deposition. Morphew stood up and stated "ok". Deposition was over.

that Defendant/Attorney Scarafile filed a motion to relieve himself as counsel for Collins. Defendant and counsel of record for Collins, Michael Scarafile, filed a motion to be relieved of counsel on January 26, 2018.

Starting December 8, 2017 through February 13, 2018, Morphew made several visits to the Courthouse and/or sent emails to the Deputy Clerk requesting the status of her Motion or request a hearing date for Judgement or damages. Morphew was informed by the Deputy Clerk that no hearings will be scheduled until April 2018.

On January 30, 2018, Morphew filed a Motion to Strike Defendants Answer and Return to Motion.

On February 4, 2018, Morphew requested a Judgment hearing, as she was getting concerned since her Motion was "with the Judge and under review" since December 4th, 2017.

On February 20, 2018, Morphew received notice of an Order denying her Motion for Default Judgment. No reason, facts or justification was provided in said Order. It further stated the Clerk was directed to schedule hearings for the pending Motions.

On May 12, 2018, Morphew received notice hearings were scheduled for May 29, 2018 to resolve several said pending motions from Plaintiff and Defendants, which Morphew planned on attending but was unable to attend due to an emergency room visit with her daughter very early on May 29th. Morphew had provided a hurried notice at 6:40 AM on May 29th to all opposing counsel of record, the Judge, his [clerk], his [secretary], and the Deputy Clerk, that she would not be attending due to an emergency. (See Exhibit 2 - Morphew e-mail dated May 29, 2018; See Exhibit 3 proof of said emergency mailed FedEx to the Court on June 4, 2018.)

This Motion arises out of the Judge's decision to rule that Collins is not in default or good cause exists to set aside any such entry of default, "*Finally, this Court specifically finds that*

Defendant Collins is not in default or good cause exists to set aside any such entry of default." (Reference Order, May 31, 2018)

Morphew argues she is unclear how to argue or what specific Motion or Motions she is presenting for reconsideration or that is to be included in this 59(e) Motion, as the Order in which this Motion is based on neither specifies [any] Motion(s) nor provides factual or evidentiary support in its ruling. Due to this ambiguity, Morphew raises the issue of her inability to properly defend or appropriately present its issues. Meaning, any failure to include or defend its position regarding any motion or filing the Order is based on in this instance is no fault of Morphew, and therefore does not waive her right to raise in a motion or on appeal 'unknown' issues arising out of the Court Order of May 31, 2018.

Moreover, Morphew contends the Court erred in ruling on any motion or the Default and/or Judgment of Defendant Collins, or erred that Defendant is not in default or that good cause exists to be relieved of any such entry of default, as in this instance, 1) a hearing conducted on [Plaintiff's] Motion(s) and without the Plaintiff present violates her due process, or 2) lack of a hearing [as requested by Plaintiff] on any of its Motion(s) but still resulting in a ruling by the Court violates her due process[4]; 3) Collins failed to ANSWER Morphew's Summons and Complaint , 4) Collins failed to file a request to be relieved of Entry of Default[5], and 5) Collins has not presented good cause to be relieved of entry of default. Therefore, Morphew respectfully requests this Court to amend its Order and find Collins in default-- or entry of Default should not be set aside and to enter a DEFAULT JUDMENT and award damages as identified in its Complaint.

IV. Discussion

[4] The Order is not clear if any hearing actually took place or what Motion(s) its ruling in its May 31, 2018 Order specifically addressed.

[5] A request to set aside a default is made through a motion

A court may set aside an entry of default for good cause shown. Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. The Court will consider whether the default was the result of the defendant's culpable conduct. Determination of whether good cause exists to set aside an entry of default depends upon the court's applying its discretion with proper regard to the peculiar circumstances surrounding the case before it. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App. 1989). . See *Sundown Operating Co. v. Intedge Indus., Inc,* 383 S.C. 601, 681 S.E.2d 885, (S.C. 2009); *Wilder v. Blue Ribbon Taxicab Corp*, 396 S.C. 139, 719 S.E.2d 703 (S.C. Ct. App. 2011); see also *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 12, 753 S.E.2d 537, 543 (S.C. 2014) (describing the standard for relief from default as two pronged: first requiring an explanation for the default and why setting aside the default would serve the interests of justice, and second requiring the moving party to present evidence with regards to the factors set forth in Wham). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995).

The Court held Collins "was not in default or good cause exists to set aside any such entry of default". Morphew disagrees. Defendant Collins appeared in this case but failed to Answer the Summons and Complaint, and specifically before Morphew filed its combined Motion for

Default Entry/Judgment. Therefore, pursuant to Rule 55(a) Default shall (or must) be entered by the Clerk. (See Exhibit 4, Affidavit In Support of Entry of Default, November 27, 2017)

In order to relieve defendant from its default, the movant must file a motion requesting such relief and for good cause shown. A court may set aside an entry of default for good cause shown. Rule 55(c), SCRCP. No filing or valid filing has been submitted by defaulting defendant, David Collins, requesting such relief in which this Court can relieve him of default or entry of default. As a consequence, ruling that 'good cause' exists is inappropriate, for it was not 'shown', it does not exist. If good cause does not exist then it was improper for this Court to set aside Default or such entry of default, which would void, in part, the Court Order issued May 31, 2018, specifically its finding, "*...good cause exists to set aside any such entry of default.*"

Additionally, Morphew argues the Court's Order of May 31, 2018, is ambiguous and improper, as it fails to provide the basis for its findings provides no standard in its review and/or fails to be supported by evidence. Further, it fails to state what Motions its ruling is based on, whether any hearing was actually conducted, and if so, provides Defendant Collins, pro se, was not in attendance, "*Counsel for all Defendants appeared for the Hearing. Plaintiff did not appear.*"(Reference Order, May 31, 2018, Pg. 1). Based on face of the Order, Morphew can only determine hearing(s) were not conducted on [any Motion] which this Motion arises from[6] in order for this Court to '*specifically find that Defendant Collins is not in default or good cause exists to set aside any such entry of default,*' This fact or combined with the fact there is no valid filing by Defendant requesting relief and showing good cause for such relief, said ruling is improper and an abuse of discretion and/or a violation of Plaintiff's due process.

[6] Again, Morphew cannot defend any Motion or Motions in particular since the Order is ambiguous and does not specifically call out any Motions in its ruling, only that it 'does not find Collins in default or that good cause exists to set aside any such entry of default'.

Alternately, if any hearings were conducted-- in which no valid filing by the Defendant requesting relief and showing good cause for such relief, and/or with the Plaintiff and/or Defendant not in attendance, and where Plaintiff provided advance notice to the Court and has valid cause of her absence—its ruling is improper and is an abuse of discretion and/or violation of her due process.

Due to the reasons above, Morphew is respectfully requesting this Court to reconsider its Order of May 31, 2018 and instead find Defendant in Default and agree the November 27, 2017 Entry of Default shall stand or enter Default against Defendant. Additionally, Plaintiff asks this court to enter a DEFAULT JUDMENT and award damages as identified in its Complaint.

Also, due to the ambiguity of the Order (as stated above) causing Plaintiff's inability to fully or properly defend herself in this matter, Plaintiff is hereby not waiving her right to provide subsequent defenses or affirmative defenses in regards to this Motion or matter after its filing.

V. Arguments

1. **Did the Court err by finding Defendant Collins not in default or good cause exists to set aside any such entry of default?**

Morphew argues **Defendant Collins was or is in Default** at the time of Morphew's filing of the combined Motion for Entry/Judgment on November 27, 2017, therefore pursuant Rule 55(a); the CLERK was required to enter default. Rule 55(a), SCRCP: *(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).* It was clear by Plaintiff's Affidavit (or by checking the court records) Defendant had not filed an Answer before November 27, 2017, and service of process was deemed complete on August 26, 2016, as Defendant

appeared in this case (Reference Defendants Motion to Dismiss, September 20, 2016), which was heard and ruled on, therefore Collins was or is in Default, and the Clerk was required to enter his default upon the calendar. (See Exhibit 4, Affidavit In Support of Entry of Default, November 27, 2017). Morphew petitions this Court to find Defendant in Default per her November 27th Motion and to record such entry as applicable per Rule 55(a). If this Court finds the Clerk failed to enter default as required, Morphew petitions this Court to Order entry of default was mandatory but not entered as required per Rule 55(s), and is no fault of the Plaintiff, but instead an error of the court. Additionally, Plaintiff requests said Order to state Defendant Collins has been found in Default and is hereby entered on November 27, 2017.

Even if the Court found or finds Collins in Default, Morphew argues **no good cause exists to set aside any such entry of default**. First, there was no proper or valid filing by Defendant Collins requesting relief from default or entry of default, therefore no showing of good cause, resulting in the fact that no good cause existed in order to set aside any such entry of default. SOUTH CAROLINA RULE OF CIVIL PROCEDURE 55(c) requires the party presenting the motion (in this case, Defendant Collins) to present to the Court "good cause" for vacating his entry of default, including that the requested relief would serve the interests of justice. SCRCP 55(c).

Morphew argues there was no filing, or proper or valid filing, by Collins requesting relief from entry of default, as no motion was filed, instead, Defendant personally signed and filed a Return to Motion while represented by counsel (i.e., his attorney did not sign the filing), therefore violated Rule 11(a), making its filing invalid. Plaintiff would present to the Court, through the following arguments and any to be presented at a hearing on this matter, that Defendant Collins has neither properly requested this Court relief of his entry of default

nor has shown good cause to be relieved of his entry of default, therefore his Default or entry of Default should not be set aside, and Judgment should be ordered.

Second, Morphew currently has a pending Motion to Strike Defendants Return to Motion and Answer due to its invalidity, and argues evidence not yet deemed valid [7] is inadmissible to be used in a court ruling-- and such ruling without valid evidentiary support should be reversed or struck from the record until said filing is ruled on.

Even if the Defendants filing was valid, the Defendant failed to meet the Rule 55(c) requirements in its filing, and failed to show good cause for such relief. Further, Morphew, an aggrieved party, is not confident her issues and arguments have been sufficiently raised to and ruled on by the trial court to deem Defendant Collins not in default or that good cause exists to set aside any such entry of default, therefore Plaintiff respectfully requests that the Court reconsider its Order of May 31, 2018, and instead find Defendant in Default and agree the November 27, 2017 Entry of Default shall stand or enter Default against Defendant. Further, Plaintiff asks this court to enter a DEFAULT JUDMENT and award damages as identified in its Complaint.

2. Did the Court err by ruling on one or more Motions by conducting a hearing without Plaintiff and/or Defendant present?

"Discussion" in Section IV of this Motion is repeated herein.

IF [a hearing or] hearings were conducted, Morphew argues this was improper in her absence. There were 13 pending motions to be heard that day, but the Plaintiff was unable to attend the hearings due to an emergency with her young daughter. The Court ordered a rescheduling for [most of] the hearings [upon receipt of proof of her emergency room visit],

[7] See **Exhibit 1**, December 19, 2017 email from Deputy Clerk to Collins Counsel of Record, Michael Scarafile, stating *"Perhaps this matter needs to be addressed with the Hon. Maite' Murphy (in light of Judge Goodstein's recusal). Until then, I am not sure if the documents Mr. Collins filed today can be considered valid filings.*

but ruled on one or more of said Motions in her [valid] absence. Plaintiff contends the Court erred by conducting a hearing on at least one Motion while allowing the rescheduling of the others, and without Morphew and/or Collins present. Morphew, an aggrieved party, is not confident her issues and arguments were sufficiently raised to and ruled on by the trial court.

Also, as stated previously and whether a hearing was conducted or not, there was no valid or proper evidence in which the Court could make such a ruling that "*this Court specifically finds that Defendant Collins is not in default or good cause exists to set aside any such entry of default.*" Any filing by Defendant Collins in regards to his default has not been deemed valid (See Exhibit 1), therefore if no valid filing is on record in which to petition the Court for relief from Default or Entry of Default or present good cause, this Court erred by making such a ruling, and the ruling should be considered void. Further, Defendant failed to appear for the hearing(s), if any were conducted on May 31, 2018.

Due to the reasons and evidence provided herein Motion, Plaintiff Morphew respectfully requests that the Court reconsider its Order of May 31, 2018, in its decision to find Defendant Collins not in default or good cause exists to set aside any such entry of default, and instead find Defendant in Default and agree the November 27, 2017 Entry of Default shall stand or enter Default against Defendant. Further, Plaintiff respectfully requests this court to enter a DEFAULT JUDMENT and award damages as identified in its Complaint.

3. **Did the Court err by ruling Defendant Collins was not in default or good cause exists to set aside any such entry of default without conducting a hearing?**

"Discussion" in Section IV of this Motion is repeated herein.

Based on face of the Order, Morphew can only determine hearing(s) were not conducted on any Motion which this Motion arises from in order for this Court to

'specifically find that Defendant Collins is not in default or good cause exists to set aside any such entry of default.' The fact no hearing was conducted and/or there is no 'valid' filing by Defendant requesting relief and showing good cause for such relief, would make its ruling improper and is an abuse of discretion and/or a violation of Plaintiff's due process; Also, Morphew, an aggrieved party, is not confident her issues and arguments could be sufficiently raised to and ruled on by the trial court without a hearing.

Due to the reasons and evidence provided herein Motion, Plaintiff Morphew respectfully requests that the Court reconsider its Order of May 31, 2018, in its decision to find Defendant Collins not in default or good cause exists to set aside any such entry of default, and instead find Defendant in Default and agree the November 27, 2017 Entry of Default shall stand or enter Default against Defendant. Further, Plaintiff respectfully requests this court to enter a DEFAULT JUDMENT and award damages as identified in its Complaint.

VI. Conclusion

Due to the evidence provided and the reasons stated herein, Morphew respectfully asks this Court reconsider its Order and find that Defendant Collins in Default-- or entry of Default should not be set aside-- and to enter a DEFAULT JUDMENT and award damages as identified in its Complaint.

Respectfully submitted,

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

June 2, 2018
Summerville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Molly M. Morphew,

Plaintiff,

v.

Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile

Defendants.

COURT OF COMMON PLEAS
CASE NO.: 2016-CP-1801706

CERTIFICATE OF SERVICE

2018 JUN 11 PM 3:41
CLERK OF COURT
DORCHESTER COUNTY

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 6th day of June, 2018, to:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

June 2, 2018
Summerville, South Carolina

FILED
2018 JUN 11 PM 3:41
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT 1

From: Becky Stevens <BStevens@dorchestercountysc.gov>
Date: December 19, 2017 at 4:32:59 PM EST
To: 'Michael Scarafile' <mcs@carolinaoneplus.com>
Cc: "mcs@carolinaone.com" <mcs@carolinaone.com>, "dcollins2@aol.com" <dcollins2@aol.com>, "ssmith@scnlaw.com" <ssmith@scnlaw.com>, "Zach Closser (zclosser@scnlaw.com)" <zclosser@scnlaw.com>, "'morphew926@gmail.com'" <morphew926@gmail.com>, "'swheeler@scnlaw.com'" <swheeler@scnlaw.com>, "'ahill@gwblawfirm.com'" <ahill@gwblawfirm.com>, "'jcrapps@gwblawfirm.com'" <jcrapps@gwblawfirm.com>, "'aneuschafer@collinsandlacy.com'" <aneuschafer@collinsandlacy.com>, "'wbryan@collinsandlacy.com'" <wbryan@collinsandlacy.com>, "mmurphylc@sccourts.org" <mmurphylc@sccourts.org>
Subject: RE: Molly M Morphew VS Stephen Dudek , et al; 2016CP1801706

Mr. Scarafile,

I am confused because the Court's file shows Smith & Closser as representing Dudek, Cross, yourself, Nicholson and Carolina One Real Estate pursuant to the Notice of Appearance filed on February 17, 2017. Is there an Order of Substitution of Counsel that did not get sent to the Court? Perhaps this matter needs to be addressed with the Hon. Maite' Murphy (in light of Judge Goodstein's recusal). Until then, I am not sure if the documents Mr. Collins filed today can be considered valid filings.

Becky Stevens

Chief Deputy Clerk of Court
Dorchester County Clerk of Courts Office
5200 E. Jim Bilton Boulevard
St. George, S C 29477
BStevens@DorchesterCountysc.gov
843-832-0108

2018 JUN 11 PM 3:41
CLERK OF COURT
DORCHESTER COUNTY

From: Michael Scarafile [mailto:mcs@carolinaoneplus.com]
Sent: Tuesday, December 19, 2017 3:46 PM
To: Becky Stevens
Cc: mcs@carolinaone.com; dcollins2@aol.com
Subject: Re: Molly M Morphew VS Stephen Dudek , et al; 2016CP1801706

I am out of the office until Friday and can not open the attachment. That said, I initially filed a motion to dismiss on behalf of various parties, as you indicated. Then our defense was taken over by Mr Smith and I did not represent Mr. Collins beyond that point.

I did not file a motion to be relied, I can if needed and I apologize.

I'll reach out Friday when I am back in town and can read the attachments.

On Dec 19, 2017, at 2:51 PM, Becky Stevens <BStevens@dorchestercountysc.gov> wrote:

Mr. Scarafile,

Mr. Collins filed today the attached documents. The Court file shows that on September 20, 2016 you filed a Motion to Dismiss on behalf of several defendants, including Mr. Collins – thereby making you his attorney of record. I do not see where there is an Order Relieving you as Mr. Collins' attorney. Please let me know what the status is as parties are not supposed to be filing documents when they are represented.

Becky Stevens

Chief Deputy Clerk of Court
Dorchester County Clerk of Courts Office
5200 E. Jim Bilton Boulevard
St. George, S C 29477
BStevens@DorchesterCountysc.gov
843-832-0108

From: Rosalee Baldwin
Sent: Tuesday, December 19, 2017 2:38 PM
To: Becky Stevens
Subject:

As you requested.

Rosalee Baldwin
Deputy Clerk/Common Pleas
Dorchester County
Clerk of Courts Office
5200 East Jim Bilton Blvd.
St. George, SC 29477
Office: (843) 563-0113 or (843) 832-0113
Fax: (843) 563-0178
Email: rbaldwin@dorchestercountysc.gov



<mime-attachment>

<mime-attachment>

2018 JUN 11 PM 3:42

CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT 2

Morphew, Molly

From: Morphew, Molly
Sent: Wednesday, June 06, 2018 9:36 AM
To: Morphew, Molly
Subject: Morphew v. Dudek, et al; Case No. 2016-CP-18-1706

From: Molly Morphew <mollymorphew1@gmail.com>
Date: May 29, 2018 at 6:42:30 AM EDT
To: Becky Stevens <BStevens@dorchestercountysc.gov>, edicksonlc@sccourts.org, edicksonsc@sccourts.org, edicksonj@sccourts.org, "Samuel M. Wheeler" <swheeler@scnlaw.com>, "Steven L. Smith" <ssmith@scnlaw.com>, ahill@gwblawfirm.com, aneuschafer@collinsandlacy.com, David Collins <davidacollins2@aol.com>
Subject: Morphew v. Dudek, et al; Case No. 2016-CP-18-1706

All, my apologies but I;ll be unalbe to attend today's hearing. I'm on my way to the emergency room with my daughter with severe abdominal pains
Sorry for the brief message but in a hurry.

Thank you,
Molly

FILED
2018 JUN 11 PM 3:42
CLERK OF COURT
BERKELEY COUNTY

RECEIVED
2018 JUN 11 PM 3:42
CLERK OF COURT
WINCHESTER COUNTY

EXHIBIT 3

ST. Joseph's/Candler

Name: Savannah Sheppard
Acct Num: V00033724543
Med Rec Num: M004060616
Location: Emergency Department...
Primary Provider: Kenney,Jeffrey R
Date: 05/29/18

RECORDED
2018 JUN 11 PM 3:42
CLERK OF COURT
WORCHESTER COUNTY

Patient Visit Information

You were seen today for:

Abdominal pain of unknown etiology

Patient Instructions Reviewed

ED Abdominal Pain Unkn Cause

received 05/29/18 11:36

Activity Restrictions or Additional Instructions

Take all medications you were given today as prescribed. If the pain does not improve in the next 1-2 weeks, you need to follow with a gastroenterologist. I have listed the name of a gastroenterologist in your discharge instructions for your convenience. It is also important for you to follow-up with your primary care provider in the next 1-2 weeks. If you have any new or worsening symptoms, return to the emergency department immediately for a re-evaluation.

Follow-up

Sheppard,Savannah has been referred to the following clinics/specialists for follow-up care:

Charles W Duckworth, MD
1139 Lexington Ave., Suite A
Savannah, GA 31404
(912)303-4200

Follow-Up Plan: As Instructed

Not on Fil Physician

Follow-Up Plan: As Instructed

2018 JUN 11 PM 3:42

CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**AFFIDAVIT IN SUPPORT OF ENTRY OF DEFAULT**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, s. Michael Scarafile	)	
	)	
Defendants.	)	
	)	

2018 JUN 11 PM 3:42
CLERK OF COURT
DORCHESTER COUNTY

PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named MOLLY M. MORPHEW, who, having first been duly sworn by me, stated on oath the following:

1. I am the Plaintiff, Molly M. Morphew, pro se, and have personal knowledge of the facts set forth in this Affidavit.
2. A complaint in this matter was filed with the Beaufort County Court of Common Pleas on May 7, 2013. (*See*, Exhibit 1 – Summons and Complaint).
3. Pursuant to Rule 4 (Process; Personal Service), a copy of the Summons, together with a copy of the Complaint, was served upon the Defendant by certified mail, restricted delivery, return receipt requested on August 24, 2016, and service of process was deemed complete on Defendant on August 26, 2016. (*See*, Exhibit 2 – Proof of Service by certified mail and acceptance of David A. Collins).

4. A Motion to Dismiss was filed by Michael C. Scarafile, Esquire for Defendant on September 20, 2016. Motion to Dismiss was heard and granted in part and denied in part on November 7, 2016, and an Order was filed as such on January 31, 2017.

5. That more than thirty (30) days have elapsed since the date on which the said Defendant was served with Summons and a copy of the Complaint, and more than twenty (20) days since the date of the court's action in ruling on the motion. Pursuant Rule 55, SCRCP, Defendant is now in default.

6. That the Defendant has failed to answer or otherwise defend as to Plaintiff's Complaint, or serve a copy of any Answer or other defense which he might have upon the Plaintiff.

7. That this Affidavit is executed by affiant herein accordance with Rule 55(b) SCRCP, the purpose of enabling the Plaintiff to obtain an entry of default against the Defendant for his failure to answer or otherwise defend as to the Plaintiff's Complaint.

8. Morphew seeks the following judgment against the Defendant: damages for lost wages, travel, expenses, reasonable attorney's fees, interest and disbursement of this action; for punitive damages and awarding such other and further relief as this Court may deem appropriate.

9. The court may enter default under Rule 55, SCRCP.

10. A hearing on damages is required under Rule 55, SCRCP, as it is necessary to determine the amount of damages.

Based on the foregoing, Morphew requests that the Clerk of Court enter the default of Defendants in this matter.

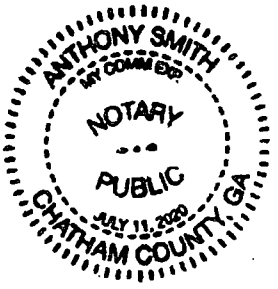
Molly M. Morphew, pro se

SWORN TO AND SUBSCRIBED BEFORE ME, this the 22 day of November, 2017.

NOTARY PUBLIC

My Commission Expires:

7.11.2020



STATE OF SOUTH CAROLINA COUNTY OF DORCHESER	IN THE COURT OF COMMON PLEAS 1st JUDICIAL CIRCUIT CASE NO.: 2016-CP-18-1706
MOLLY MORPHEW, Plaintiff, vs. STEPHEN DUDEK, DOREEN CROSS, DAVID COLLINS, ALLISON WILLIAMS, FIRST FEDERAL, MICHAEL SCARAFILE, SUSAN NICHOLSON, CAROLINA ONE REAL ESTATE, CARRIE BOYER, WOODY LAW FORM , Defendants	**MOTION TO DISMISS** 12(b)(6) and 12(b)(8)

2016 SEP 20 AM 10:58
CLERK OF COURT
DORCHESTER COUNTY

TO: MOLLY MORPHEW, PRO-SE PLAINTIFF.

PLEASE TAKE NOTICE that Defendants Michael Scarafile, Susan Nicholson Carolina One Real Estate and David Collins, by and through its undersigned attorney, respectfully moves before this Honorable Court, for an Order dismissing the Complaint in the above referenced matter. This motion is based on South Carolina rules of civil procedure 12(b)(6), "failure to state facts sufficient to constitute a cause of action" and 12(b)(8) "another action is pending between the same parties for the same claim." In reference to the 12(b)(8) motion, please refer to 2013-CP-18-00183 (consolidate with 2013-CP-18-00074) which was heard by the Honorable James E. Chellis, Master-in-Equity for Dorchester County. An order was issued on November 6, 2014 and is currently pending on appeal, 2014-002633.

Accordingly, Defendants Michael Scarafile, Susan Nicholson, Carolina One Real Estate and David Collins respectfully requests that the Third-Party Complaint be dismissed with prejudice.

By: 

Michael C. Scarafile, Esquire
4024 Salt Pointe Parkway
North Charleston, South Carolina 29405
(843) 202-2061 (office)
(843) 202-3061 (fax)
Legal@carolinaone.com

Counsel for Defendants Carolina One Real Estate, Susan Nicholson, Michael Scarafile and David Collins

Charleston, South Carolina
September 14, 2016

STATE OF SOUTH CAROLINA COUNTY OF DORCHESER	IN THE COURT OF COMMON PLEAS 1St JUDICIAL CIRCUIT CASE NO.: 2016-CP-18-1706
MOLLY MORPHEW, Plaintiff, vs. STEPHEN DUDEK, DOREEN CROSS, DAVID COLLINS, ALLISON WILLIAMS, FIRST FEDERAL, MICHAEL SCARAFILE, SUSAN NICHOLSON, CAROLINA ONE REAL ESTATE, CARRIE BOYER, WOODY LAW FORM , Defendants	**CERTIFICATE OF SERVICE**

2016 SEP 20 AM 10:58

I, Michael C. Scarafile, Esq., certify that I mailed a copy of the **MOTION TO DISMISS** by depositing same in the United States Mail, postage pre-paid, or serving via email, and addressed as follows:

Molly Morphew, Pro Se
788 E. Butternut Road
Summerville, South Carolina 29483

By: _____

Michael C. Scarafile, Esquire
4024 Salt Pointe Parkway
North Charleston, South Carolina 29405
(843) 202-2061 (office)
(843) 202-3061 (fax)
Legal@carolinaone.com

Counsel for Defendants Carolina One Real Estate, Susan Nicholson, Michael Scarafile and David Collins

Charleston, South Carolina
September 14, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2013-CP-18- 183
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**COMPLAINT**
	)	**(Jury Trial Demanded)**
Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	

CERTIFIED COPY
2013 JAN 31 PM 3:2
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff, Molly M. Morphew, complaining of the Defendants, Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross, alleges as follows that:

BACKGROUND

1. The Plaintiff is a citizen and resident of Dorchester County, South Carolina.
2. Upon information and belief, Defendants Thomas Ferro and Lorraine Ferro are residents of the State of Kentucky.
3. Upon information and belief, Defendants Thomas and Lorraine Ferro own property in Dorchester County that is the subject of this Complaint, identified as TMS# 128-00-00-090 (hereafter "the Property").
4. Upon information and belief, Defendant Stephen Dudek is resident of Dorchester County, South Carolina.
5. Upon information and belief, Defendant Doreen Cross is a citizen and resident of Dorchester County, South Carolina.
6. This Court has jurisdiction over the parties and subject matter of this litigation and venue is proper in Dorchester County.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

7. Upon information and belief, at some time prior to October 20, 2012, Defendants Thomas and Lorraine Ferrow acquired the Property.
8. On October 20, 2012, Defendants Dudek and Cross entered into an Agreement to Buy and

Sell Real Estate with Defendants Thomas and Lorraine Ferro (hereafter "1st Contract")(See "Exhibit A" attached) to purchase the Property specific terms and conditions stated in the 1st Contract.

9. Upon information and belief, Defendants Thomas and Lorraine Ferro performed their obligations under the 1st Contract and were prepared to close in accordance with the terms of the Contract.

10. Upon information and belief, Defendants Dudek and Cross failed to comply with their obligations under the 1st Contract.

11. Specifically, Defendants Dudek and Cross failed to provide Defendants Thomas and Lorraine Ferro with proof of financing within the time period required by paragraph 8 of the 1st Contract.

12. Additionally, Defendants Dudek and Cross failed or refused to close the purchase of the Property as specified in paragraph 3 of the 1st Contract.

13. The 1st Contract provided that time was of the essence as to both of the time limitations in paragraph 8 and paragraph 3.

14. Pursuant to paragraph 16 of the Contract Defendants Dudek and Cross were obligated to sign a written release after receiving written notice of their default under the 1st Contract.

15. Upon information and belief, on or about December 16, 2012 Defendants Thomas and Lorraine Ferro provided Defendants Dudek and Cross with notice of their default and requested that they sign a release of the 1st Contract, but Defendantd Dudek and Cross failed or refused to sign the release.

16. On or about December 16, 2012, Defendants Thomas and Lorraine Ferro entered into an Agreement to Buy and Sell Real Estate with Plaintiff (hereafter "2nd Contract")(See "Exhibit B" attached) to purchase the Property specific terms and conditions stated in the 2nd Contract.

17. The 2nd Contract states that it is contingent upon Defendants Thomas and Lorraine Ferro obtaining a release of the 1st Contract from Defendants Dudek and Cross.

18. Plaintiff has complied with all of her obligations under the 2nd Contract and she is ready, willing and able to close.

19. Plaintiff has been unable to close because Defendants Dudek and Cross have refused to

sign a release of the 1st Contract despite their breach of that contract.

20. Pursuant to the South Carolina Declaratory Judgments Act, S.C. Code Ann. Sec 15-53-10 et. seq., Plaintiff is entitled to a declaration that Defendants Dudek and Cross are in breach of their obligations under the 1st Contract, that those Defendants are obligated to sign a release of the 1st Contract, and that the Defendants Thomas and Lorraine Ferro are obligated to sell the Property to Plaintiff.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

21. All allegations in the prior paragraphs are fully repeated and incorporated herein.

22. The Defendants Dudek and Cross have unlawfully prevented Defendants Thomas and Lorraine Ferro from fulfilling their obligations under the 2nd Contract and/or unlawfully interfered and disrupted the performance of Defendants Thomas and Lorraine Ferro under the 2nd Contract.

23. Further, Defendants Dudek and Cross filed a lawsuit against Defendants Thomas and Lorraine Ferro in an attempt to disrupt and interfere with the closing of the 2nd Contract.

24. Upon information and belief, Defendants Dudek and Cross engaged in those activities even though she was aware that Defendants Thomas and Lorraine Ferro had contracted to sell the Property to the Plaintiff.

25. Defendants Thomas and Lorraine Ferro have an absolute duty to perform all their obligations under the 2nd Contract.

26. Plaintiff has no adequate legal remedy in that the Property is unique, the Property is uniquely suited for her needs, and Plaintiff has incurred substantial expenses and expended considerable time and effort planning to purchase this particular Property.

27. As a direct and proximate result of Defendants' conduct as set forth herein, Plaintiff is entitled to an order requiring Defendants Thomas and Lorraine Ferro to perform as provided by the 2nd Contract and deliver good and marketable title to the Property to Plaintiff by executing a general warranty deed free of liens, encumbrances and claims.

FOR A THIRD CAUSE OF ACTION
(BREACH OF CONTRACT)

28. All allegations in the prior paragraphs are fully repeated and incorporated herein.

29. As set forth more fully above, Plaintiff entered into a valid and legally binding written

contract with Defendants Thomas and Lorraine Ferro to purchase the Property on certain terms and conditions as stated in the 2nd Contract.

30. After signing the Contract, Plaintiff has secured the financing necessary to purchase the Property and Plaintiff has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

31. Plaintiff has performed all of her obligations under the 2nd Contract.

32. Defendants Thomas and Lorraine Ferro have an absolute duty to perform all their obligations under the 2nd Contract.

33. Upon information and belief, Defendants Thomas and Lorraine Ferro are prepared to perform their obligations under the 2nd Contract.

34. Upon information and belief, Defendants Thomas and Lorraine Ferro have been unable to close due to the unlawful objections of Defendants Dudek and Cross, which have or will result in breach of the terms the 2nd Contract.

35. As a direct and proximate result of Defendants' conduct as set forth herein, Plaintiff has been injured and damaged. Therefore, as an alternative to the Plaintiff's prayer for an order compelling specific performance of the 2nd Contract, Plaintiff is entitled to recover damages against Defendants in an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

FOR A FOURTH CAUSE OF ACTION
(TORTIOUS INTERFERENCE WITH
EXISTING CONTRACTUAL RELATIONS)

36. All allegations in the prior paragraphs are fully repeated and incorporated herein.

37. Plaintiff has a valid and binding Contract with Defendants Thomas and Lorraine Ferro.

38. At all times material, Defendants Dudek and Cross had actual knowledge of the 2nd Contract between Plaintiff and Defendants Thomas and Lorraine Ferro.

39. Defendants Dudek and Cross intentionally and tortiously interfered with and precipitated the breach of Plaintiff's 2nd Contract as described more fully above.

40. The actions and conduct of Defendants Dudek and Cross were without any reasonable or legitimate business justification.

41. As a result of the tortious interference with the Contract of Defendants Dudek and Cross Plaintiff has been unsuccessful in acquiring title to the Property pursuant to the 2nd Contract.

42. As a direct and proximate result of the conduct of Defendants Dudek and Cross as set forth herein, Plaintiff has been injured and damaged. Therefore, Plaintiff is entitled to recover actual damages and punitive damages against Defendants Dudek and Cross in an amount to be proven at the trial of this matter.

WHEREFORE, Plaintiff seeks an order of this Court compelling Defendants Thomas and Lorraine Ferro to specifically perform their obligations under the 2nd Contract, or in the alternative, for an award against Defendants Stephen Dudek and Doreen Cross for actual damages, consequential damages, pre-judgment interest at the legal rate, punitive damages and for such other relief as may be just and proper.

John A. Massalon
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

January 30, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2013-CP-18- 183
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**SUMMONS**
	)	**(Jury Trial Demanded)**
Thomas Ferro, Lorraine Ferro, Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	

CERTIFIED COPY
2013 JAN 31 PM 3:28
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the below subscribed attorney at his office at 97 Broad Street, Charleston, South Carolina 29401 within thirty (30) days after the service hereof exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this action.

John A. Massalon
WILLS MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

January 30, 2013

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

ED-RECORDED
2018 FEB 16 AM 10: 39
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF'S NOTICE AND MOTION TO DEEM ADMISSIONS ADMITTED AND AFFIDAVIT

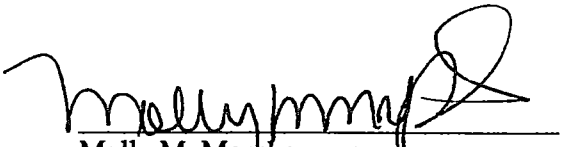
COME NOW the Plaintiff, Molly M. Morphew, pro se, hereby compels this Court for an order that the truth of each matter specified and the genuineness of each document specified in the Requests for Admission served on defendant First Federal or South State Bank on or about December 14, 2017 be deemed admitted and conclusively established for all purposes of this action.

A copy of the Requests for Admission is attached as Exhibit "1". Plaintiff will also move the Court for an order that defendant and/or her attorney of record pay to the moving party the sum of $954.09 for reasonable costs incurred by plaintiff to file this motion, Rule 37(a)(4). A copy of plaintiff's costs is attached as Exhibit "2".

This motion is made on the ground that the Requests for Admission are relevant to the subject matter of the action, and that defendant has not served a timely response. The motion will

be based upon this notice, the attached memorandum in support and declaration, and the records and files in this action.

Respectfully submitted,



Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

February 13, 2018

MEMORANDUM OF POINTS AND AUTHORITIES

RE-RECORDED
2018 FEB 16 AM 10:40
CLERK OF COURT
DORCHESTER COUNTY

I. INTRODUCTION

Plaintiff Molly Morphew was denied specific performance and closing on her home in 2013, after which she discovered fraud was committed and/or fraud on the court by the defendant, its employee(s) or its agent(s), its co-defendants and clients, Stephen Dudek and Doreen Cross, and several other co-defendants, to also include conspiracy to commit fraud and/or fraud on the court in order for the defendants to obtain the property instead. Plaintiff has brought this lawsuit to recover her home and/or damages.

By this motion plaintiff seeks an Order from this Court deeming that defendant admits the truth of each matter specified in the Requests for Admissions (EXHIBIT "1"), served on defendant through its attorney of record on December 14, 2017. On Friday, January 12, 2018, Attorney Crapps asked for an extension on said Plaintiff's discovery requests due to having the flu. Plaintiff agreed to the extension on the Interrogatories and Production, making the due date February 1, 2018, but refused an extension on the Admissions. On January 16, 2018, after the Plaintiff's deposition in which Attorney Crapps attended, he again asked for an extension on the admissions, and again Plaintiff refused. Plaintiff sent defendant a notice letter on February 13, 2018. (EXHIBIT "2"). Defendant's admissions were due on January 18, 2018, including the five (5) days for mailing.

Plaintiff respectfully requests that this Court grant the requested relief and order that defendant admit the truth of each matter and document specified in Plaintiff's Request for Admissions as they are relevant to the subject matter at issue and were served in compliance with the Code of Civil Procedure.

Plaintiff additionally requests that this Court impose a monetary sanction against defendant and/or her attorney in the amount of $954.09 (EXHIBIT "4"), on the grounds that defendant failed to timely respond to an authorized method of discovery and its conduct in impeding discovery is without substantial justification and constitutes a misuse of the discovery process.

II. DEFENDANT'S FAILURE TO PROVIDE TIMELY RESPONSES TO PLAINTIFFS REQUESTS FOR ADMISSION ENTITLES PLAINTIFF TO AN ORDER DEEMING THE MATTERS ADMITTED

Plaintiff is entitled to an order admitting the truth of the matters specified in Plaintiff's Requests for pursuant to SCRCP 36(a), and Federal Rules of Civil Procedure 36(a), which provides in relevant part:

"If a party who is served with requests for admissions fails to respond to the requests within 30 days of being served, the requests are deemed admitted and conclusively established. Fed. R. Civ. P. 36(a)(3); Fed. R. Civ. P. 36(b); Bailey v. Christian Broad. Network, 483 F. App'x 808, 809–10 (4th Cir. 2012).

Defendant failed to respond or object to Plaintiff's Requests for Admissions in a timely fashion. In order to properly prepare this matter for trial, it is necessary for Plaintiff to obtain the information sought by Plaintiff's Requests for Admission. Accordingly, Plaintiff requests that this Court order: (1) that the truth of any matter specified in the requests be deemed admitted, (2) imposing monetary sanctions against Defendant.

III. AN ORDER IMPOSING MONETARY SANCTIONS IS MANDATORY AS DEFENDANT HAS NOT PROVIDED RESPONSES TO PLAINTIFF'S REQUEST FOR

ADMISSIONS

Service of requests for admission authorized by SCRCP 36(a) obligates a party to provide a timely response. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to this motion. SCRCP 36(a). Thus, this Court is instructed to impose monetary sanctions against Defendant for the failure to provide a timely response to the requests for admission at issue. Defendant's conduct in this regard is a blatant misuse of the discovery process and merits sanctions in the amount of $954.09 because plaintiff travels out of state during the week for work, and incurs loss of work and undue travel to defend itself in this instance.

IV. CONCLUSION

For the foregoing reasons, Plaintiff Molly Morphew respectfully requests that this Court issue an Order deeming that Defendant admits the truth of each matter specified in the Requests for Admission propounded to Defendant First Federal or South State Bank by Plaintiff served on December 14, 2017 and impose monetary sanctions against Defendant in the amount of $954.09 payable within ten days.

Respectfully Submitted,

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
843-514-7299

February 13, 2018

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
CASE NO.: 2016-CP-1801706

Molly M. Morphew,

Plaintiff,

v.

Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile

Defendants.

CERTIFICATE OF SERVICE

2018 FEB 16 AM 10:40
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 15st day of February, 2018, to:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

February 13, 2018

AFFIDAVIT

Personally came and appeared before me, the undersigned Notary, the within named, Molly M. Morphew, who is a resident of Dorchester County, State of South Carolina, and makes this her statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth in above Motion are true and correct to the best of her knowledge.

FILED-RECORDED
2018 FEB 16 AM 10:40
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

Dated this the 15th day of February, 2018

Molly M Morphew
Signature of Affiant

SWORN to subscribed before me, this 15 day of Feb., 2018

Patricia S. Neubaum
NOTARY PUBLIC

My Commission Expires: 02/02/2021

PATRICIA S. NEUBAUM
MY COMM. EXPIRES
NOTARY
PUBLIC
February 2, 2021
CHATHAM COUNTY, GA

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER Molly M. Morphew, Plaintiff, v. Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile Defendants.	)	COURT OF COMMON PLEAS CASE NO.: 2016-CP-1801706 **PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO DEFENDANT FIRST FEDERAL BANK (Now known as South State Bank) AND/OR SOUTH STATE BANK**

FILED-RECORDED
2018 FEB 16 AM 10:40
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff, MOLLY MORPHEW, propounds the attached Request for Admissions to Defendant, FIRST FEDERAL BANK (Now known as South State Bank) AND/OR SOUTH STATE BANK, to be answered in writing, under oath, within you knowledge or the knowledge of your agents, servants, employees or attorneys, within 30 days from the date of service hereof in accordance with Rule 36, South Carolina Rules of Civil Procedure.

REQUEST FOR ADMISSIONS TO FIRST FEDERAL AND/OR SOUTH STATE BANK

1. Admit that all writings produced by you or your agent or employee in prior litigation are authentic.
2. Admit that the October 22, 2012 email from Allison Williams to Defendant Doreen Cross, with an attached closing cost worksheet and pre-approval letter is not valid.

3. Admit that Defendant Stephen Dudek and Doreen Cross ("its clients") had not applied and secured financing per their sales contract on 788 E. Butternut Rd, Summerville, SC (known as "said property") in 2012 and/or 2013.
4. Admit that its clients were not "ready, able and willing" to close on said property on or before November 30th, 2012.
5. Admit that its clients were not "ready, able and willing" to close on said property on or before December 15th, 2012.
6. Admit that its clients were not "ready, able and willing" to close on said property on or before January 15th, 2013.
7. Admit that its clients were not "ready, able and willing" to close on said property on or before June 13th, 2014.
8. Admit that its clients were not "ready, able and willing" to close on said property on or before March 1, 2017.
9. Admit that the sellers Ferro did not breach its clients' sales contract ending November 30, 2012.
10. Admit its clients' sales contract, ending November 30, 2012, was expired when they made application for mortgage credit (financing) on or about December 5, 2012.
11. Admit its' clients did not do "everything they could" to secure financing on or before November 30, 2012.
12. Admit its' clients did not provide some or all documentation and/or requests by you in a timely fashion or did not provide some required documentation at all in order to secure mortgage credit on their December 5, 2012 application.

13. Admit you informed the closing attorney, Wooddy Law Firm, of its clients January 2013 denial of mortgage credit (financing) on said property.
14. Admit you informed Wooddy Law Firm, on or about November 27th, 2012, that its clients' had not yet made application for mortgage credit on said property.
15. Admit its clients October 24, 2012 sales contract on said property was not a 'repair' contingency sales contract.
16. Admit the sellers Ferro's ultimately did not cause its clients failure to close escrow per their sales contract ending November 30, 2012.
17. Admit its clients did not have a valid and negotiable sales contract (specifically, had an expired sales contract) when its clients applied for mortgage credit (financing) on December 5, 2012.
18. Admit its clients had not provided First Federal with a legible signed copy of the sales contract.
19. Admit First Federal had not required 'repairs' to the home to be done in order to secure financing per its clients sales contract dated October 24, 2012.
20. Admit the closing attorney (Wooddy Law Firm) had not informed First Federal they required a CL-100 Clearance Letter provided to them in order to close.
21. Admit the First Federal had not requested or required a CL-100 Clearance Letter provided to them on or before June 15, 2014.
22. Admit its clients were denied financing (mortgage credit) for said property in 2012 or 2013.
23. Admit its clients never completed their application of December 5, 2012 for mortgage credit on said property.

24. Admit its clients were required at application in December 2012 to produce a signed contract extension addendum to First Federal to make their sales contract on said property valid and negotiable.

25. Admit its clients did not have a valid and negotiable sales contract [on said property] at all times prior to December 31, 2016.

26. Admit you knew its clients did not meet all the legal requirements of Specific Performance before filing your complaint on January 15, 2013 for the remedy of Specific Performance for said property.

27. Admit you did receive a stamped copy of the recorded survey from its clients' agent, Susan Nicholson, on or about November 26, 2012.

28. Admit that First Federal knew its clients were required to secure financing on or before November 30th, 2012 per their sales contract of October 24, 2012 on said property.

29. Admit that you or your employee, Allison Williams, knew its clients agent, Susan Nicholson, was 'very concerned' and discussed with you on or about November 27th, 2012, its clients lack of application for mortgage credit.

30. Admit you or your agent or employees knew its clients were in breach of contract for failure to make application and/or secure financing on said property per their sales contract.

31. Admit the recorded survey was not the reason for its clients' failure to close escrow on said property in 2012.

32. Admit the CL-100 report was not the reason for its clients' failure to close escrow on said property.

33. Admit its clients' failure to submit an initial application for mortgage credit on or before November 30, 2012 (specifically, on or before your sales contract expired) was the reason for its clients failure to close escrow on said property.

34. Admit the required signed contract extension addendum was a buyer requirement to provide to the lender, not a seller requirement.

35. Admit the sellers Ferro were under no legal obligation to sign or provide a signed contract extension addendum to either you or its clients.

36. Admit you never received a reply to your 10-day Adverse Notice (dated January 3, 2013) stating "*We must receive all the above documentation within 10 days from the date of this letter. Otherwise, First Federal will regrettably be unable to give further consideration to your credit request...Should you decide at a later date to furnish the above items, we can assist you with a new application.*"

37. Admit the reason the lender South State Bank, formally First Federal Bank, would not accept for processing its clients 2017 application until the Court filed an Order for closing was because its clients were never "ready, able and willing" to close prior to the filing of the Order.

38. Admit its clients had to complete a new application for mortgage credit in order to close in June 2017.

39. Admit its clients lack of applying for and obtaining lending approval per their sales contract requirement is what prevented its clients from closing on or before November 30, 2012 or December 15, 2012.

40. Admit First Federal improperly or unlawfully processed an application for its clients on an invalid or non-negotiable sales contract.

1. In the event you have denied any of the above requests for admission please set forth the specific facts, and identify by date, name and/or subject any documents on which you base such denial.
2. If you deny and/or fail to admit any of the Requests for Admissions set forth above please state the reasons for such response, and the facts relied upon in denying and/or failing to admit the same.

It is requested that the aforesaid production be made within thirty (30) days of service of this request to Molly Morphew, 786 E. Butternut Rd., Summerville, SC 29483.

Respectfully submitted,



Molly M. Morphew, *Pro Se*
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

December 14, 2017

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	COURT OF COMMON PLEAS CASE NO.: 2016-CP-1801706
Molly M. Morphew, Plaintiff, v. Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile Defendants.	**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 14day of December, 2017, to:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578

Michael C. Scarafile, Esquire
4024 Salt Pointe Parkway
N. Charleston, SC 29405

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

December 14, 2017

MOTION TO DEEM ADMISSIONS ADMITTED AND AFFIDAVIT

$ 110.09	.545 mileage * 202 miles		Travel to file
$ 315.00	5 hours * $63.00		1 hour time off work to write motion and 4 hours travel time
$ 25.00			Filing Fee
$ 504.00	8 hours * $63.00		8 hours off work for pre-hearing prep, travel and to hear motion

$ 954.09	**TOTAL**

CD-RECORDED
2018 FEB 16 AM 10:40
CLERK OF COURT
DORCHESTER COUNTY

February 13, 2018

RE-RECORDED
2018 FEB 16 AM 10:40
CLERK OF COURT
DORCHESTER COUNTY

Amy L.B. Hill
Gallivan, White & Boyd, PA
P.O. Box 7368
Murrells Inlet, SC 29202-7368

Re: **CASE NO.: 2016-CP-1801706**
Defendants: Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile

Dear Ms. Hill,

The Plaintiff's First Set of Interrogatories, First Requests for Production, and First Requests for Admission for Defendant First Federal was served on December 14, 2017. On Friday, January 12, 2018, Attorney Crapps asked for an extension on said Plaintiff's discovery requests due to having the flu. Plaintiff agreed to the extension on the Interrogatories and Production, making the due date February 1, 2018, but refused an extension on the Admissions. Those discovery requests are now overdue.

It is this Plaintiff's position that, pursuant to Rule 36(a), SCRCP, the matters in the Requests for Admission are deemed admitted because they were not answered within 30 days of service.

Please provide the full and complete responses to the Interrogatories and Requests to Production within ten (10) days of this letter in order to avoid a Motion to Compel.

Thank you for your attention in this matter.

Regards,

Molly Morphew, pro se
843-514-7299

3

$25.00 ✓

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

FILED - RECORDED
2018 FEB 16 AM 10:39
CHERYL D. [illegible]
CLERK OF COURT
DORCHESTER COUNTY

Molly M. Morphew
☒ Plaintiff

v.

Stephen Dudek, et al
☒ Defendant.

CASE NO.
2016-CP-180-1706

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney: Amy L.B. Hill, Esquire
Molly Morphew, Bar No. N/A	, Bar No.
Address:	Address: PO Box 7368
786 E Butternut Rd, Summerville, SC 29483	Columbia, SC 29202-7368
phone: fax:	phone: fax:
e-mail: other:	e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Deem Admissions Admitted
Estimated Time Needed: 15m Court Reporter Needed: ☑ YES / ☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Molly Morphew, pro se — 1/16/18
Signature of ~~Attorney~~ for ☒ Plaintiff / ☐ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

FILED - RECORDED
2018 JAN 30 PM 1:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY RESPONSES**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

TO: STEVEN SMITH, ESQ:

PLEASE TAKE NOTICE that the Plaintiff, Molly M. Morphew, pro se, will move before the Presiding Judge for the First Judicial Circuit, on the tenth (10^{th}) day or as soon thereafter as counsel can be heard, for an Order requiring the Defendant, Doreen Cross, to answer Interrogatories and Request for Production of Documents, and in support of this motion shows the Court as follows:

1. That on or about November 30, 2017, the Plaintiff, Molly Morphew, served upon the Defendant, Doreen Cross, through its attorney of record, Interrogatories, Request for Admissions and Request for Production of Documents.

2. That the Defendant has not responded to said Interrogatories, Admissions and Request for Production.

3. That on January 3, 2018, Plaintiff served a notice to Defendant, through its attorney of

record, via USPS, providing its position, that:

> *"Plaintiff's First Set of Interrogatories, First Requests for Production, and First Requests for Admission for Defendant Doreen Cross were served on November 30, 2017, and are now overdue."*
>
> *"It is this Plaintiff's position that, pursuant to Rule 36(a), SCRCP, the matters in the Requests for Admission are deemed admitted because they were not answered within 30 days of service."*

4. In same instance, Plaintiff requested Defendant to provide the full and complete responses to the Interrogatories and Requests for Production within ten (10) days of its letter in order to avoid a Motion to Compel.

5. I certify, in accordance with Rule 11, that I've made a request for the production of this information and that the responses have not been provided.

Respectfully submitted,

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
843-514-7299

January 30, 2018

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
CASE NO.: 2016-CP-1801706

FILED - RECORDED
2018 JAN 30 PM 1:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Molly M. Morphew,

Plaintiff,

v.

Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile

Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 30th day of January, 2018, to:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

January 21, 2018

$25.00 MB ✓

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

FILED - RECORDED
2018 JAN 30 PM 1:59
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

✓ Molly M. Morphew
☒ Plaintiff

v.

Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Nosaby Law Firm
☒ Defendant.

CASE NO.
2016-CP-180-1706

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Molly Morphew, Bar No. N/A	Steven Smith, Bar No.
Address:	Address:
786 E Butternut Rd, Summerville, SC 29483	P.O. Box 40578, Charleston, SC 29423
phone: fax:	phone: fax:
e-mail: other:	e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Compel Discovery
Estimated Time Needed: 15 mins Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Molly Morphew
Signature of ~~Attorney~~ for ☒ Plaintiff / ☐ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	_____ JUDGE
☐ Other:	CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**PLAINTIFF'S NOTICE AND MOTION TO DEEM ADMISSIONS ADMITTED AND AFFIDAVIT**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

FILED-RECORDED
2018 FEB -1 PM 4:42
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

COME NOW the Plaintiff, Molly M. Morphew, pro se, hereby compels this Court for an order that the truth of each matter specified and the genuineness of each document specified in the Requests for Admission served on defendant Doreen Cross on or about November 30, 2017 be deemed admitted and conclusively established for all purposes of this action.

A copy of the Requests for Admission is attached as Exhibit "1". Plaintiff will also move the Court for an order that defendant and/or her attorney of record pay to the moving party the sum of $1143.09 in sanctions for reasonable costs incurred by plaintiff to file this motion. A copy of plaintiff's costs is attached as Exhibit "2".

This motion is made on the ground that the Requests for Admission are relevant to the subject matter of the action, and that defendant has not served a timely response. The motion will be based upon this notice, the attached memorandum in support and declaration, and the records and files in this action.