THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

JAN 26 2022

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 II

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578
Attorney for Respondents:
Stephen Dudek, Doreen Cross, Susan Nicholson, Carolina One, and Michael Scarafile

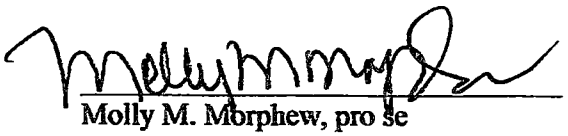
Amy L. Neuschafer, Esquire
11945 Grandhaven Dr, Ste D
Charleston, SC 29407
Attorney for Respondents:
Carrie Boyer and Wooddy Law Firm

Amy L. B. Hill, Esquire
P.O. Box 7368
Columbia, SC 29202-7368
Attorney for Respondents:
Allison Williams and First Federal Bank (aka South State Bank)

David A Collins, pro se
394 Hoff Avenue
Charleston, SC 29407

Molly Morphew, pro se
121 Sterling Dr.
Rincon, GA 31326

Respectfully submitted,



Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

January 30, 2018

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Molly Morphew was denied specific performance and closing on her home in 2013, after which she discovered fraud was committed on the court by Defendants Stephen Dudek and Doreen Cross 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 November 30, 2017. Plaintiff sent defendant a notice letter on January 3, 2018. (EXHIBIT "3"). Defendant's responses were due on or before January 1, 2018. To date, defendant has not served a response to the requests.

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 $1143.09 (EXHIBIT "2"), on the grounds that defendant failed to respond to an authorized method of discovery and her conduct in impeding discovery is without substantial justification and constitutes a misuse of the discovery process.

II. DEFENDANT'S FAILURE TO PROVIDE 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 did not respond or object to Plaintiff's Requests for Admission. 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

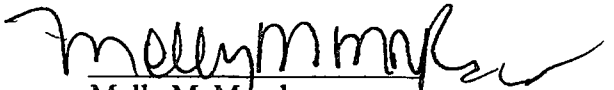
Service of requests for admission authorized by SCRCP 36(a) obligates a party to provide a timely response. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to this motion. SCRCP 36(a). Thus, this Court is instructed to impose monetary sanctions against Defendant for 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 $1143.09 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 Doreen Cross by Plaintiff served on November 30, 2017 and impose monetary sanctions against Defendant in the amount of $1143.09 payable within ten days.

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

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

FILED-RECORDED
2018 FEB -1 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 1st 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)

January 31, 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
NOTARY PUBLIC
CHATHAM COUNTY, GA
MY COMMISSION EXPIRES JULY 11, 2020

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO DEFENDANT DOREEN CROSS**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

2018 FEB -1 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

The Plaintiff, MOLLY MORPHEW, propounds the attached Request for Admissions to Defendant, DOREEN CROSS, 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 DOREEN CROSS

1. Admit that all writings produced by you in prior litigation are authentic.
2. Admit that the October 22, 2012 email [you produced at your June 2013 deposition] from Allison Williams to you, that contained a closing cost worksheet and pre-approval letter, is not authentic.
3. Admit that you had not applied and secured financing per your sales contract on 788 E. Butternut Rd, Summerville, SC (known as "said property").
4. Admit that you were not "ready, able and willing" to close on said property on or before November 30th, 2012.

5. Admit that you were not "ready, able and willing" to close on said property on or before December 15th, 2012.
6. Admit that you were not "ready, able and willing" to close on said property on or before January 15th, 2013.
7. Admit that you were not "ready, able and willing" to close on said property on or before June 13th, 2014.
8. Admit that you 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 your sales contract ending November 30, 2012.
10. Admit the sellers Ferro's ultimately did not cause your failure to close escrow per your sales contract ending November 30, 2012.
11. Admit you did not have a valid and negotiable sales contract (specifically, an expired sales contract) when you applied for mortgage credit (financing) on December 5, 2012.
12. Admit you had not provided First Federal with a legible, signed copy of the sales contract.
13. Admit the bank (lender First Federal) had not required the 'repairs' to the home to be done.
14. Admit the closing attorney (Wooddy Law Firm) did not require a CL-100 Clearance Letter provided to them or in order to close.
15. Admit the bank (lender First Federal) had not requested or required a CL-100 Clearance Letter provided to them.
16. Admit you were aware of another buyer on said property on or before January 11, 2013.
17. Admit that you filed a lis pendens on January 11, 2013 to prevent the sale of said property to that 'other' buyer.
18. Admit you were denied financing (mortgage credit) on your October 24th, 2012 sales contract/December 5th mortgage application for said property.
19. Admit you never completed your application of December 5, 2012 for mortgage credit on said property.

20. Admit you were required to provide a signed Contract Extension Addendum to your lender to complete your mortgage application in 2012 for said property.
21. Admit on December 5th, 2012, your lender had deemed your October 24th, 2012 sales contract for said property expired, and required a signed Contract Extension Addendum to make it valid and negotiable.
22. Admit you had never provided a signed Contract Extension Addendum to your lender.
23. Admit you did not have a valid and negotiable sales contract [on said property] at all times prior to March 1, 2017.
24. Admit you knew you did not meet all legal requirements of Specific Performance before filing your complaint on January 15, 2013 for the remedy of Specific Performance for said property.
25. Admit you did receive a stamped copy of the recorded survey from your agent, Susan Nicholson, on or about November 23nd, 2012.
26. Admit that you knew you were required to secure financing on or before November 30th, 2012.
27. Admit your October 24th, 2012 sales contract was not a repair contingency contract.
28. Admit your sales agent, Susan Nicholson, was responsible to obtain the CL-100 Clearance Letter.
29. Admit the lack of a CL-100 and/or the lack of a CL-100 Clearance Letter did not prevent you from scheduling a closing date or legally prevent you from closing escrow.
30. Admit the recording of the land survey did not prevent you from applying and/or obtaining "buyer" approval (not to be confused with "final" approval) for financing (per your sales contract).
31. Admit that your agent, Susan Nicholson, was 'very concerned', and discussed with you on or about November 27th, 2012, your lack of application to your lender for mortgage credit.
32. Admit you knew you were in breach of contract for failure to make application and/or secure financing on said property per your sales contract.
33. Admit the recorded survey was not the reason for your failure to close escrow on said property in 2012.

34. Admit the CL-100 report was not the reason for your failure to close escrow on said property.
35. Admit your failure to submit an initial application for mortgage credit on or before November 30, 2012 (sales contract expiration) was the reason for your failure to close escrow on said property in 2012.
36. Admit the required signed contract extension addendum was a buyer requirement to provide to the lender.
37. Admit the sellers were under no legal obligation to sign or provide a signed Contract Extension Addendum to either your or your lender.
38. Admit you were aware, on or about November 27th, 2012, of the possibility of "losing the deal" for failure to secure financing per your sales contract.
39. Admit your lender (South State Bank, formally First Federal Bank) would not process your 2017 application until the Court filed an Order for closing.
40. Admit you had to complete a new application for mortgage credit in order to close in June 2017.
41. Admit your lack of applying for and obtaining lending approval- per your October 24, 2012 sales contract requirements- is what prevented you from closing on or before November 30, 2012 and/or December 15th, 2012.

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 admissions 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)

November 29, 2017

COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
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
CLERK OF COURT
DORCHESTER COUNTY

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 30th day of November, 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)

November 29, 2017

MOTION TO DEEM ADMISSIONS ADMITTED AND AFFIDAVIT

$ 110.09	.545 mileage * 202 miles		Travel to file
$ 504.00	8 hours * $63.00		4 hours 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

$ 1,143.09	**TOTAL**

ED-RECORDED
2018 FEB -1 PM 4:43
CLERK OF COURT
DORCHESTER COUNTY

January 3, 2018

FILED-RECORDED
2018 FEB -1 PM 4:43
CLERK OF COURT
DORCHESTER COUNTY

Mr. Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578

Dear Mr. Smith –

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.

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

1
25
DB

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Dorchester) _____ JUDICIAL CIRCUIT
) CASE NO.: 2016-CP-18-01706

FILED-RECORDED
2018 FEB -1 PM 4:42
CHERYL BRUNK
CLERK OF COURT
DORCHESTER COUNTY

Molly Morphew)
Plaintiff,)
vs.)
)
Stephen Dudek, Doreen Cross, et.al)
Defendant.)

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

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: _____	Steven L. Smith, Bar No. _____ Address: P.O. Box 40578, Charleston, SC 29423 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: Deem Admissions Admitted
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
Signature of Attorney for ☒ Plaintiff/☐ Defendant

2/01/2018
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25

☐ 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 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 **DEFENDANTS ALLISON WILLIAMS AND SOUTH STATE BANK f/k/a SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S MOTION TO DISMISS**

2016 SEP 26 AM 11:50
CLERK OF COURT
DORCHESTER COUNTY

TO: MOLLY MORPHEW, PRO-SE PLAINTIFF.

PLEASE TAKE NOTICE that Defendants Allison Williams ("Williams") and First Federal[1] or properly named South State Bank f/k/a SCBT, successor in interest to First Federal Bank ("Bank") (collectively "Defendants"), by and through their undersigned attorney, hereby give notice of their intent to move and do so move, for an Order of this Court dismissing Plaintiff Molly Morphew's ("Plaintiff") Complaint in the above referenced matter. This motion is pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Defendants are entitled to a dismissal in their favor on the grounds that the Plaintiff has failed to allege facts sufficient to establish liability against them.

A summation of the facts as set forth in the Complaint is as follows: Plaintiff is apparently complaining regarding her attempt to purchase residential property in Summerville area ("the Property"). Defendants Stephen Dudek and Doreen Cross entered into a contract for

[1] Plaintiff has named First Federal as a Defendant in this matter. However, the Defendant should properly be named "South State Bank f/k/a SCBT, successor in interest to First Federal Bank."

the purchase of the Property with Sellers. Plaintiff also entered into a contract with sellers for purchase of the Property in December. Plaintiff secured lending on January 3, 2013 with a closing date on January 12, 2013. Defendants Dudek and Cross filed a lis pendens on the property on January 11, 2013 and later filed a complaint seeking specific performance of their purchase contract. The prior litigation resulted in an order in favor of Dudek and Cross granting their request for specific performance. The Bank was not a party to the earlier litigation. Plaintiff claims she was "ultimately wronged by failing to be awarded specific performance to purchase [the Property]...." Complaint ¶ 5.

Although, the Complaint is very lengthy and includes significant discussion, Plaintiff apparently complains that Bank and/or Williams were not truthful to Plaintiff in response to a subpoena and other requests made to the Bank regarding Dudek and Cross's attempts to receive financing for the sales contract that was the subject of the specific performance litigation. Williams was a witness in the trial of that matter.

Plaintiff's causes of action against Williams and Bank 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; **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.

For the following reasons, Plaintiff's Complaint should be dismissed pursuant to SCRCP Rule 12(b)(6):

- Plaintiff has failed to properly plead facts sufficient to establish liability against Defendants Williams and Bank.
- Neither Williams nor Bank had a relationship with Plaintiff whereby a fiduciary duty existed.
- Plaintiff has not established a right to rely on any statements or representations made by Williams or Bank.
- Plaintiff does not have grounds to seek a declaratory judgment against Bank.
- Plaintiff cannot show a cause of action based on the violation of a rule of civil procedure.
- Plaintiff cannot establish a cause of action against Williams or Bank based on a Rule of Professional Conduct for lawyers.
- Plaintiff did not plead facts to show that she is entitled to any damages for intentional infliction of emotional distress.
- Plaintiff has not plead the necessary elements of fraud.
- Based on the allegations of the Complaint, Plaintiff cannot prove Interference with a Contractual Relationship.
- Plaintiff has failed to plead facts that would allow Plaintiffs to receive punitive damages as requested in this matter.
- Plaintiff is not entitled to damages based on the alleged fraudulent statements made by Bank and Williams.

This Motion is based upon Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, other pleadings in this case, any that may be affidavits be filed, memorandum of Defendants, South Carolina and Federal case law as well as the common and statutory law of the State of South Carolina. Further, Defendants Bank and Williams adopt and incorporate any and all other motions to dismiss and the grounds stated therein filed by any other defendants to this action. Accordingly, Defendants Bank and Williams respectfully request that the Complaint be dismissed with prejudice in its entirety as it applies to Defendants Bank and Williams.

GALLIVAN, WHITE & BOYD, P.A.

By: _____

Amy L.B. Hill, SC Bar # 68541
Jordan M. Crapps, SC Bar # 100580
Post Office Box 7368
Columbia, South Carolina 29202
ahill@gwblawfirm.com
jcrapps@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

Attorneys for Defendants South State Bank f/k/a SCBT, successor in interest to First Federal and Allison Williams

Columbia, South Carolina
September 23, 2016

CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

1. **DEFENDANTS ALLISON WILLIAMS AND SOUTH STATE BANK f/k/a SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S MOTION TO DISMISS**

PARTIES SERVED:

Molly Morphew
788 E. Butternut Road
Summerville, SC 29483
morphew926@gmail.com
Pro Se Plaintiff

Michael C. Scarafile, Esquire
Carolina One Real Estate
4024 Salt Pointe Parkway
North Charleston, South Carolina 29405
Attorney for Carolina One Real Estate, David Collins, and Susan Nicholson

Steven L. Smith, Esquire
Samuel Wheeler, Esquire
Smith | Closser, PA
7455 Cross County Road, #1
P.O. Box 40578
Charleston, SC 29423-0578
Attorneys for Defendants Stephen Dudek and Doreen Cross

Columbia, South Carolina
September 23, 2016

Lindsey J. Jones

RECORD
2016 SEP 26 AM 11:50
CLERK OF COURT
DORCHESTER COUNTY

1125.00 R&B

MB ✓

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

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,

Defendant.

2016 SEP 26 AM 11:50

CLERK OF COURT
DORCHESTER COUNTY

MOTION AND ORDER INFORMATION COVER SHEET

Defendant's Attorney:	Pro Se Plaintiff:
Amy L.B. Hill, SC Bar No. 68541 Gallivan, White & Boyd, P.A. PO Box 7368 Columbia, SC 29202 ahill@gwblawfirm.com (803) 779-1833 Ofc; (803) 779-1767 Fax	Molly M. Morphew 788 E. Butternut Road Summerville, SC 29483 morphew926@gmail.com (843) 514-7299

☒ **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: Motion to Dismiss
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.
☐ Other:

_____
JUDGE
CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:
Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FOR THE 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.	Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, Notice of Motion and Motion for Summary Judgment

FILED - RECORDED
2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, will move before the Presiding Judge for the First Judicial Circuit, on the tenth (10th) day of the date of this Motion, or as soon thereafter as may be heard, for Summary Judgment.

This Motion for Summary Judgment is based upon 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. This Motion will be supported by Rule 56, South Carolina Rules of Civil Procedure, affidavits to be subsequently filed and Memorandum of Law which may hereinafter be submitted.

I certify that, in accordance with Rule 11, SCRCP, I have attempted to resolve this matter through consultation with opposing counsel, or that consultation is not required.

SMITH | CLOSSER, P.A.

Steven L. Smith (SC Bar No.: 05173)
Zachary J. Closser (SC Bar No.: 74005)
Samuel M. Wheeler (SC Bar No.: 101008
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorney for the Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate

2-1, 2018
Charleston, South Carolina
16-249

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, Woody Law Firm,

Defendants.

CERTIFICATE OF SERVICE

FILED - RECORDED
2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Summary Judgment was served by mailing, hand delivery or electronic mail on the following:

Molly M. Morphew
1605 Central Avenue, Ste 6/347
Summerville, SC 29483
morphew926@gmail.com

David A. Collins
P.O. Box 300052
Charleston, SC 29417
davidacollins2@aol.com

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576
aneuschafer@collinsandlacy.com

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368
ahill@gwblawfirm.com

Peggy M. Rochay

February 12, 2018
16-249

#25.00 REB

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

RECORDED
2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Molly Morphew,
( ) Plaintiff
v.
Carolina One Real Estate, et al.,
( ) Defendant
check box above indicating submitting party

Case No. 2016-CP-18-1706
MOTION INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Molly M. Morphew 1605 Central Avenue, Ste 6/347 Summerville, SC 29483 telephone: 843-514-7299 fax: e-mail: morphew926@gmail.com	Steven L. Smith - 5173 Smith | Closser, PA P.O. Box 40578 Charleston, SC 29423 telephone: 843-760-0220 fax: 843-552-2678 e-mail: ssmith@scnlaw.com

(x) 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: for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: YES /

SECTION II: Motion Type

(x) Written motion attached
( ) Form Motion --
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: 2-12-18

SECTION III: Motion Fee

(x) 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: _____ _____(print name)
( ) MOTION FEE COLLECTION: _____
( ) CONTESTED - AMOUNT DUE: _____

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.	)	**DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'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.	)	

2016 SEP 29 PM 12:34

TO: MOLLY MORPHEW, PRO SE PLAINTIFF:

Pursuant to Rules 8 and 12(b) of the South Carolina Rules of Civil Procedure, Defendants Wooddy Law Firm and Carrie Boyer (collectively "Defendants") move the Court for an order dismissing the Complaint in the above-referenced matter with prejudice. Specifically, the Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP, because when viewed in a light most favorable to Plaintiff, the allegations support no valid claim for relief or cognizable cause of action against Defendants. Furthermore, Plaintiff lacks standing to assert the purported claims against Defendants.

In addition, to the extent Plaintiff's Complaint can be construed as purporting to allege professional negligence against The Wooddy Law Firm or its agents, dismissal is also required under Rule 12(b)(6), SCRCP, based on Plaintiff's failure to comply with the expert affidavit requirement of S.C. Code Ann. §15-36-100(B).

Plaintiff's claims also are barred by Rule 12(b)(8), SCRCP, as Plaintiff has instituted a prior suit regarding the same subject matter and transactions, specifically 2013-CP-18-00183,

2013-CP-18-00074, and Appellate Case No. 2014-002633.

In support of this motion, Defendants rely on the pleadings, the applicable statutory and common law, any memorandum in support submitted by Defendants, and such oral argument as the Court may hear.

Accordingly, Defendants respectfully request that the Complaint be dismissed with prejudice.

Respectfully Submitted,

COLLINS & LACY, PC

By: Amy L Neuschafer

AMY L. NEUSCHAFER
aneuschafer@collinsandlacy.com
WILLIAM A. BRYAN, JR.
wbryan@collinsandlacy.com
11945 Grandhaven Drive, Suite D
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843.353.2350 (Voice)
843.353.2351 (Fax)

ATTORNEYS FOR DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER

Murrells Inlet, South Carolina
September 26, 2016

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.	)	
	)	**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.	)	

2016 SEP 29 PM 12:34

The undersigned employee of Collins & Lacy, P.C., Attorneys at Law, 11945 Grandhaven Drive, Suite D, Murrells Inlet, South Carolina 29576, does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

Molly Morphew
788 E. Butternut Road
Summerville, SC 29483
Pro Se Plaintiff

Michael C. Scarafile, Esq.
4024 Salt Ponte Parkway
N. Charleston, SC 29405

Steven L. Smith, Esq.
Smith | Closser, PA
P.O. Box 40578
Charleston, SC 29423

PLEADINGS:

- **DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S MOTION TO DISMISS**

Lesley Moulaison

Murrells Inlet, South Carolina
September 26, 2016

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 **DUDEK AND CROSS' NOTICE OF MOTION AND MOTION TO DISMISS AND MOTION FOR SANCTIONS**

2016 SEP 21 PM 12:05
CHARLESTON COUNTY

The Defendants, Stephen Dudek and Doreen Cross (hereinafter referred to as "Defendants" or "Dudeks"), by and through their undersigned attorneys, and pursuant to Rules 12(b)1, 12(b)(6) and 12(b)(8) of the South Carolina Rule of Civil Procedure, Rule 205, SCACR, *res judicata*, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10 *et seq.*, hereby move this Court for an order dismissing all causes of action against the Dudeks and for sanctions, including reasonable costs and attorney's fees, to be imposed on the Plaintiff, Molly Morphew (hereinafter referred to as "Plaintiff" or "Morphew").

BRIEF FACTS AND PROCEDURAL HISTORY

Morphew, proceeding *pro se*, filed the above-captioned action against, *inter alia*, the Dudeks on or about August 24, 2016. As to the Dudeks, the Complaint alleges Fraud, Perjury, Bad Faith and Unfair Dealings, Slander of Title, Breach of Contract Accompanied by Fraudulent Act, Declaratory Judgment, Forgery, Obstruction of Justice, Intentional Infliction of Emotional Distress, and Tortious Interference with Existing Contractual Relations.

The Complaint correctly alleges that the Plaintiff and the Dudeks are currently parties to several cases that were consolidated and that are currently pending on appeal before the South Carolina Court of Appeals. (Compl., ¶ 2) (stating, "This is a separate action from combined civil Cases #2013-CP-1800183 (Specific Performance/breach of contract) and #2013-CP-1800074 (Specific Performance/breach of contract), currently on appeal (Appellate Case No. 2014-002633).").[1] 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, the circuit court for Dorchester County ruled in favor of the Dudeks, causing both Morphew and the sellers to appeal, which is currently pending a decision by the South Carolina Court of Appeals.

This instant action, as admitted by Morphew, 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. The Complaint contains 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). In other words, the factual allegations start with the same contract involved in the Prior Civil Actions. Morphew then gives a date-by-date recount of what occurred leading up to the Prior Civil Actions. (Compl. ¶¶ 27-49). Morphew goes on to outline 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 is merely Morphew'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

[1] The Dudeks crave reference to these actions, which will be collectively referred to as "Prior Civil Actions."

knowledge or the facts, had [intentionally] failed to disclose required pertinent material facts to the case.").

Morphew's allegations concerning "the civil action(s)" and "the case" are references to the Prior Civil Actions. In fact, the Complaint, at least as to the Dudeks, does not make a single 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.

ARGUMENTS

A. Morphew's Complaint should be dismissed pursuant to Rule 12(b)(1), SCRCP, and Rule 205, SCACR.

Rule 205, SCACR, states, "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal..." Rule 205, SCACR. Rule 12(b)(1) allows for the dismissal of an action for "lack of jurisdiction over the subject matter." Rule 12(b)(1), SCRCP.

As stated above, Morphew does not assert a factual allegation beyond what occurred leading up to or during the Prior Civil Actions. Morphew admits that the Prior Civil Actions are on appeal. (Compl. ¶ 2). Because the Prior Civil Actions are on appeal, and because this action arises from the same transactions or occurrences, the Court of Appeals has exclusive jurisdiction over the Prior Civil Actions and this case. Moreover, if Morphew wishes to bring additional causes of action concerning the Prior Civil Actions, then her means of recourse is in the Prior Civil Actions, meaning she should be making motion in front of the court hearing the Prior Civil Actions, not in this completely separate action. That court could then make a determination concerning subject matter jurisdiction. Morphew is attempting to circumvent the Prior Civil Actions, likely because she has lost and has appealed.

B. Morphew's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP.

Morphew lacks standing to bring her Bad Faith and Unfair Dealings, Slander of Title, Breach of Contract Accompanied by Fraudulent Act, and Declaratory Judgment claims.

Morphew does not allege that she and the Dudeks are contacting parties. Instead, she is in contract with parties not named in this action but named in Prior Civil Actions. The Dudeks have a separate contract with those parties. Since the Dudeks and Morphew are not contracting parties, Morphew's claims to Bad Faith and Unfair Dealings, Breach of Contract Accompanied by a Fraudulent Act and Declaratory Judgment should be dismissed, as those claims would all be predicated on a contract between the Dudeks and Morphew, which does not exist.

In addition, Morphew lacks standing to bring a Slander of Title claim. Slander of title is based on the publication of a false statement concerning ***the Plaintiff's title***. *Huff v. Jennings*, 319 S.C. 142, 459 S.E.2d 633 (1980). Morphew does not hold title to the real estate that she is claiming was slandered by the Dudeks. In fact, the holding of the Prior Civil Actions, which are now on appeal, was that the Dudeks should get title. As it stands, the original sellers still hold title. For these reasons, Morphew lacks standing to bring this cause of action; therefore, it should be dismissed.

C. Morphew's Complaint should be dismissed pursuant to Rule 12(b)(8), SCRCP.

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. Morphew alleges the existence of the Prior Civil Actions. Again, all of her factual allegations concern what lead up to the Prior Civil Actions and what occurred during the Prior Civil Actions. (Compl. ¶¶ 25-73). Therefore, all of her claims should be brought in the Prior Civil Actions,

either now or once the appeal is resolved. For these reasons, this action, as to the Dudeks, should be dismissed.

D. Morphew's Claims against the Dudeks are barred by 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.*

There is no dispute that elements (1) and (3), as stated above, are met in this action. Morphew admits that she and the Dudeks were parties to the Prior Civil Actions and that there was adjudication in the Prior Civil Actions. She will likely contest that the second element has been met. She has attempted to assert a series of new causes of action arising from the Defendants actions within the context of the Prior Civil Actions. However, all of Morphew's causes of action are intrinsic to the Prior Civil Actions, thus should have been brought by Morphew in the Prior Civil Actions.

Morphew's Complaint, as to the Dudeks, should be barred based on the doctrine of *res judicata.*

E. Morphew should be sanctioned pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act and should be ordered to pay the Dudeks' legal fees and costs associated with defending this action.

> Section 15-36-10 of the South Carolina Code of Laws states, (A)(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:
>
> (a) filing a frivolous pleading, motion, or document if:
>
> (i) the person has not read the frivolous pleading, motion, or document;
>
> (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or
>
> (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;
>
> S.C. Code Ann. § 15-36-10(A).

A reasonable attorney, with knowledge of the Prior Civil Actions, would not bring this action. Clearly, the Prior Civil Actions bar Morphew from bringing this action, and had she consulted with an attorney, he or she would have advised against brining this action. The statute does not distinguish between *pro se* and represented parties, holding *pro se* litigants to the standard of what a reasonable attorney would do in the same situation. For these reasons, Morphew has violated the South Carolina Frivolous Civil Proceedings Sanctions Act.

Section 15-36-10(G) states, "(G) Sanctions may include: (1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section..." S.C. Code Ann. § 1536-10(G). The Dudeks would respectfully request reimbursement of their attorney's fees and costs, which were incurred defending Morphew's frivolous action.

SMITH | CLOSSER, P.A.

Steven L. Smith – ssmith@scnlaw.com
(SC Bar No.: 05173)
Zachary J. Closser – zclosser@scnlaw.com
(SC Bar No.: 74005)
Samuel M. Wheeler – swheeler@scnlaw.com
(SC Bar No.: 101008)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for the Dudeks

Sept 19, 2016
Charleston, South Carolina

16-249

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, Woody Law Firm,

Defendants.

CERTIFICATE OF SERVICE

2016 SEP 21 P 12:05
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Defendants Dudek and Cross' Notice of Motion and Motion to Dismiss and Motion for Sanctions was served by mailing, hand delivery or electronic mail on the following:

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

Michael C. Scarafile, Esquire
4024 Salt Pointe Parkway
N.Charleston, SC 29405

Peggy M. Rochay

September 19, 2016
16-249

1/25 RIB

2016 SEP 21 PM 12:05

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Molly Morphew,)
( ) Plaintiff)
v.)
)
Stephen Dudek, et al.,)
(x) Defendant)
check box above indicating submitting party)

Case No. 2016-CP-18-1706
MOTION INFORMATION FORM AND COVER SHEET

for Dudek and Cross

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Molly Morphew – pro se 788 E. Butternut Road Summerville, SC 29483	Samuel M. Wheeler Smith | Closser, PA P.O. Box 40578 Charleston, SC 29423
telephone: 843-514-7299 fax: e-mail: morphew926@gmail.com	telephone: 843-760-0220 fax: 843-552-2678 e-mail: swheeler@scnlaw.com

(x) 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: to Dismiss and for Sanctions
Estimated Time Needed: 30 minutes Court Reporter Needed: YES /

SECTION II: Motion Type

(x) Written motion attached
( ) Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

DMM

Signature of Attorney for Plaintiff / Defendant

9/19/16
Date submitted

SECTION III: Motion Fee

(x) PAID - AMOUNT: $25.00
( ) EXEMPT: ( ) Rule to Show Cause in Child or Spousal Support
(check reason) ( ) 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: _____ _____(print name)
( ) MOTION FEE COLLECTION:_____
( ) CONTESTED - AMOUNT DUE:_____

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.	)	**DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S AMENDED MOTION FOR SUMMARY JUDGMENT**
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,	)	
	)	
Defendants.	)	

2018 MAR 12 PM 1:02
CLERK OF COURT
DORCHESTER COUNTY

TO: MOLLY MORPHEW, *PRO SE* PLAINTIFF:

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, Defendants Wooddy Law Firm and Carrie Boyer (collectively "Defendants") hereby move for an Order granting summary judgment in their favor on the grounds that Plaintiff has failed to adduce evidence creating a genuine issue of material fact regarding the causes of action alleged in the Complaint. Defendants further move for summary judgment on the grounds that Plaintiff's claim are barred as a matter of law by the statute of limitations and the doctrine of collateral estoppel. In addition, summary judgment is warranted because this suit constitutes an improper collateral attack on a judgment.

Defendants' Motion is based upon the pleadings and discovery, including deposition testimony, as well as the attached Affidavit of Carrie Boyer (Exhibit 1). Defendants further rely on any memorandum of law that may be submitted to the Court and any oral argument the Court may hear.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.

By:

Amy L. Neuschafer, Esquire
aneuschafer@collinsandlacy.com
William A. Bryan, Jr., Esquire
wbryan@collinsandlacy.com
11945 Grandhaven Drive, Suite D
Murrells Inlet, SC 29576
843.353.2350 (voice)
843.353.2351 (fax)

ATTORNEYS FOR DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER

DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S AMENDED MOTION FOR SUMMARY JUDGMENT

Murrells Inlet, South Carolina
March 9, 2018

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.	)	**AFFIDAVIT OF CARRIE BOYER**
	)	
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,	)	
	)	
Defendants.	)	

2018 MAR 12 PM 1:02
CLERK OF COURT
DORCHESTER COUNTY

PERSONALLY APPEARED BEFORE ME, the undersigned, Carrie A. Boyer, who after being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and a resident of Berkeley County, South Carolina.

2. I have approximately fourteen and one-half (14.5) years of experience practicing as a paralegal in the State of South Carolina. Prior to that, I worked in Virginia as a real estate processor and closer for approximately twelve and one-half (12.5) years.

3. I worked as a real estate paralegal at the Wooddy Law Firm from July 2003 to July 2015.

4. As a paralegal, I assist with the preparation for real estate closings by gathering the necessary documents from the buyer, the seller, the realtors, and the lender. This can be a slow and tedious process and I often have to repeatedly follow up with the parties to obtain documentation.

5. In late 2012, I assisted in preparing for the anticipated closing of 788 E. Butternut Road in Summerville, South Carolina on behalf of Stephen Dudek and Doreen Cross, who had a contract to purchase that property.

6. I am aware that Plaintiff Molly Morphew has brought suit against The Wooddy Law Firm and me alleging we sought to defraud her and conspired with others to defraud her in connection with her attempted purchase of the 788 E. Butternut Road property. These allegations are untrue.

7. I understand that Ms. Morphew points to the standard engagement letter sent by The Wooddy Law Firm as evidence of her allegations. On November 27, 2012, the Wooddy Law Firm sent its standard engagement letter to Thomas and Loraine Ferro introducing itself as the law firm handling the closing for 788 E Butternut Road in Summerville, South Carolina. This letter was sent as part of the ordinary course of preparing for a real estate closing and was not sent in an effort to harm Ms. Morphew or anyone else. That same form document is sent to every seller in a residential real estate closing in order to obtain the sellers' forwarding address, the sellers' social security numbers, and payoff information on any outstanding mortgages – all information that is necessary to obtain in advance of a real estate closing.

8. I further understand that, in support of her allegations, Ms. Morphew points to a November 27, 2012 email I sent to Allison Williams at First Federal (the lender) introducing the Wooddy Law Firm as the firm handling the closing for 788 E Butternut Road in Summerville, South Carolina and requesting that Ms. Williams forward her title request. **(Ex. A).**

9. As a real estate paralegal, I routinely communicate with lenders to determine what their specific title requirements are to order the title work and complete the real estate closing. Lenders often have varying title requirements, which is why I requested Ms. Williams send First Federal's title request at her earliest convenience. This email was sent as part of the ordinary course

of preparing for a real estate closing and was not sent in an effort to harm Ms. Morphew or anyone else.

10. I also understand that Ms. Morphew points to two emails I sent on December 5, 2012 and December 12, 2012 to Susan Nicholson at Carolina One Real Estate (the Buyer's agent) regarding proof that repairs had been made to damage identified in the CL100 termite inspection report. **(Ex. B and C)**.

11. As a real estate paralegal, I routinely communicate with real estate agents regarding the need for documentation, including proof of repairs to damage in the CL100. This is within the ordinary procedure for a real estate closing. These emails were not sent in an effort to harm Ms. Morphew or anyone else, but were sent only in preparation for the anticipated closing on the purchase/sale of the 788 E. Butternut Road property between Thomas and Lorraine Ferros, as sellers, and Stephen Dudek and Doreen Cross, as buyers.

12. I was never aware Ms. Morphew had a backup contract for the purchase of the property or any relationship with the Ferros or the property until the Wooddy Law Firm was served with the Summons & Complaint in this lawsuit. In fact, before I learned of this lawsuit, I had never heard of Ms. Morphew.

13. None of my actions in connection with the anticipated real estate closing of the property were done with any knowledge of Ms. Morphew or done to create a façade that the closing was going to take place. None of my actions in connection with the anticipated real estate closing of the property were done for any other purpose than as part of the normal course of a real estate closing.

[SIGNATURE PAGE TO FOLLOW]

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

CARRIE A. BOYER

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 6th DAY OF

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/22/20

ROXANNE MANNING
NOTARY
PUBLIC
STATE OF SOUTH CAROLINA

EXHIBIT
A

Williams, Allison

From:	Carrie Boyer <cboyer@wooddylaw.com>
Sent:	Tuesday, November 27, 2012 5:14 PM
To:	Williams, Allison
Cc:	Susan Nicholson
Subject:	Title Request Needed - Dudek 788 E. Butternut Road

Good evening - our office has been contacted to handle Mr. Dudek's purchase of the above referenced property. Please forward your title request at your earliest convenience. Title has been ordered - thanks! :)

Carrie Boyer
Real Estate Paralegal

THE WOODDY LAW FIRM, LLC

Goose Creek Office
597 Old Mount Holly Road, Suite 202
Goose Creek, SC 29445
Phone: 843.553.6799
Fax: 843.553.0724

Mt. Pleasant Office
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Phone: 843.881.3700
Fax: 843.881.2511

RECORDED
2018 MAR 12 PM 1:02
CLERK OF COURT
DORCHESTER COUNTY

On Wed, Dec 5, 2012 at 2:38 PM, Carrie Boyer <cboyer@wooddylaw.com> wrote: To: Susan Nicholson

As requested. We will have to have proof that the damages have been repaired. Thanks.

Carrie Boyer
Real Estate Paralegal

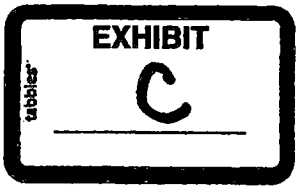
THE WOODDY LAW FIRM, LLC
Goose Creek Office
597 Old Mount Holly Road, Suite 202
Goose Creek, SC 29445
Phone: 843.553.6799
Fax: 843.553.0724

Mt. Pleasant Office
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Phone: 843.881.3700
Fax: 843.881.2511

RECORDED
2010 MAR 12 PM 1:02
CLERK OF COURT
DORCHESTER COUNTY

From: Susan Nicholson < snicholson@carolinaone.com >
Date: Wed, Dec 5, 2012 at 2:46 PM
Subject: Re: CL100 Copy - Dudek
To: Carrie Boyer <cboyer@wooddylaw.com>

OK thanks!



WOn Wed, Dec 12, 2012 at 5:22 PM, Carrie Boyer < cboyer@wooddylaw.com > wrote:
I haven't ever received anything on the repairs required in the CL100. Please advise - thanks!
--

Carrie Boyer
Real Estate Paralegal

THE WOODDY LAW FIRM, LLC

Goose Creek Office
507 Old Mount Holly Road, Suite 202
Goose Creek, SC 29445
Phone: 843.553.6799
Fax: 843.553.0724

Mt. Pleasant Office
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Phone: 843.881.5700
Fax: 843.881.2511

RECORDED
2018 MAR 12 PM 1:02
CLERK OF COURT
DORCHESTER COUNTY

From: Susan Nicholson <snicholson@carolinaone.com>
Date: Wed, Dec 12, 2012 at 5:23 PM
Subject: Re: Status of Repairs - Dudek
To: Carrie Boyer <cboyer@wooddylaw.com>

They have done the treatment just waiting on the contractors letter.

CERTIFICATE OF SERVICE
(2016-CP-18-1706)

The undersigned employee of Collins & Lacy, P.C., hereby certifies that (s)he has served the following named individual(s) with a copy of the pleading(s) indicated below via electronic mail and/or by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

Molly Morphew
786 E. Butternut Road
Summerville, SC 29483
Pro Se Plaintiff

David Collins, Esq.
P.O. Box 30052
Charleston, SC 29417
Pro Se Defendant

Zachary J. Closser, Esq.
Steven L. Smith, Esq.
Samuel M. Wheeler, Esq.
SMITH | CLOSSER, PA
P.O. Box 40578
Charleston, SC 29423
Attorneys for Defendants Stephen Dudek, Doreen Cross, Michael Scarafile, Susan Nicholson and Carolina One Real Estate

Amy L.B. Hill, Esq.
Jordan M. Crapps, Esq.
GALLIVAN, WHITE & BOYD, P.A.
P.O. Box 7368
Columbia, SC 29202
Attorneys for Defendants South State Bank f/k/a SCBT, successor in interest to First Federal and Allison Williams

2018 MAR 12 PM 1:02
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

PLEADING:

- **DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S AMENDED MOTION FOR SUMMARY JUDGMENT**

Angela C. Gonzales

Murrells Inlet, South Carolina
March 9, 2018

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 2016-CP-18-1706

2018 MAR 12 PM 1:02

CLERK OF COURT
DORCHESTER COUNTY

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.

MOTION INFORMATION FORM AND COVER SHEET

check box above indicating submitting party

Plaintiff's Attorney:	Attorney for Defendants Wooddy Law Firm and Carrie Boyer:
Molly Morphew 786 E. Butternut Road Summerville, SC 29483 *Pro Se Plaintiff* phone.: (843) 514-7299 fax: e-mail: mollymorphew1@gmail.com	Amy L. Neuschafer, Esquire, S.C. Bar No. 73922 William A. Bryan, Jr., S.C. Bar No. 17008 Collins & Lacy, P.C. 11945 Grand Haven Drive, Suite D Murrells Inlet, SC 29576 phone: (843) 353-2350 fax: (843) 353-2351 e-mail: aneuschafer@collinsandlacy.com wbryan@collinsandlacy.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM ORDER, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Defendants Wooddy Law Firm and Carrie Boyer's Amended Motion for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Order – Scheduling Order

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — MARCH 9, 2018 Date submitted

Returned filing fee RLB

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)

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Thomas M. Ferro and Lorraine B. Ferro,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-18- 74

SUMMONS

NON-JURY

CERTIFIED COPY
2013 JAN 15 PM 3:44
CLERK OF COURT
DORCHESTER COUNTY

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office at Post Office Box 40578, Charleston, South Carolina, 29423, within thirty (30) days of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire
Post Office Box 40578
Charleston, SC 29423
(843) 760-0220
Attorney for Plaintiff

North Charleston, SC
January 15, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2013-CP-18-74
Stephen Dudek and Doreen Cross	)	
Plaintiffs,	)	
vs.	)	COMPLAINT
Thomas M. Ferro and Lorraine B. Ferro	)	
Defendants	)	

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2013 JAN 15 PM 3:44
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiffs, complaining of the Defendants named herein, would respectfully allege.

1. That the Plaintiffs are citizens and residents of the County of Dorchester, State of South Carolina.
2. That the Defendants are citizens and residents of the County of Dorchester, State of South Carolina.
3. That all parties are subject to the jurisdiction of this Court and venue is proper.
4. That on or about October 24, 2012, the parties entered in an Agreement to Buy and Sell Real Estate, a copy of which is attached hereto as Exhibit "A".
5. That the contract provided that the Defendants, as Sellers, sell to the Plaintiffs that certain real estate known as 788 East Butternut Road, located in Dorchester, South Carolina for and in consideration of the purchase price of Three Hundred Three Thousand and 00/100 ($303,000.00) Dollars.
6. That the Plaintiffs have complied with all conditions precedent to the contract.
7. That despite repeated demand to close the transaction, the Defendants have refused and still refuse to close the transaction as provided for by the contract.
8. That the Defendants are in breach of their contract with the Plaintiffs.

9. That as a direct and proximate result of the Defendants breach of contract, the Plaintiffs have been damaged in an amount to be determined by this Honorable Court.

10. That the Plaintiffs are entitled to a judgment against the Defendants in an amount to be determined by this Honorable Court.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

11. That the allegations contained in the preceding paragraphs are incorporated herein as if specifically repeated.

12. That the parties entered into an Agreement to Buy and Sell Real Estate on or about October 24, 2012.

13. That the Plaintiffs have filed a Lis Pendens on the property and that said Lis Pendens was filed on January 11, 2013. A copy of said Lis Pendens is attached hereto as Exhibit "B".

14. That should the contract not be ordered to be specifically performed, then the Plaintiffs will have no adequate remedy at law.

15. The contract between the parties constitutes an agreement that is fair, just and equitable.

16. That the Plaintiffs have complied with all terms of the contract and remains ready, willing and able to comply with the contract's terms.

17. That the Plaintiffs are entitled to an order of this Court compelling the Defendants to specifically perform the contract of the parties.

WHEREFORE, the Plaintiffs pray that this Court inquire into the matters as set forth herein, grant them an order compelling the Defendants to specifically perform the contract of the parties, or in the alternative, grant them judgment on their contract claim in an amount to be determined by this Honorable Court, grant them their attorney fees and costs and grant them whatever other relief that this Court deems just and equitable.

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire (Bar # 10294)
Post Office Box 40578
Charleston, SC 29423
Phone (843) 760-0220
Fax (843) 552-2678
Davidacollins2@aol.com

Exhibit "F"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

© Carolina One Real Estate

1. **PARTIES:** This legally binding Agreement entered into on October 20, 2012 between, Buyer(s), Stephan Dudek, Doreen Cross, (hereinafter called "BUYER"), and Seller(s), _____, (hereinafter called "SELLER"). The property shall be deeded in the name(s) of: same

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____

No personal property will convey as a part of this sale, except as described: all appliances including refrigerator as well as all window treatments.

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 12th December, 2012, not later than 6:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ ~~222,000.00~~ 303,000.00
Three Hundred Three Thousand and 00/100 dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: _____

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 1,000.00
Buyer and Seller authorize Carolina One Real Estate as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☒Check, or ☐Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

CERTIFIED COPY
2013 JAN 15 P 3:47
CLERK OF COURT
DORCHESTER COUNTY

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 80,000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☐ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to contribute $5,000-towards Buyers Closing Costs.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☐ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☒ Seller not to exceed $ 700.00. HHS provided by Carolina One.

11. **EXPIRATION OF OFFER:** This offer from Buyer shall be withdrawn at 6 o'clock p M. on October 22, 2012 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later then the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowners association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS. The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

her wall
until closed

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (GL-100) from a licensed and bonded pest control operator on or before November 30, 2012. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment; or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyers expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. **(Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information).** This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum A, B + C

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
BUYER: Doreen Cross	Date 10 2012	Time 1:47
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
SELLER: Thomas Jones	Date 10/24/12	Time 11:45 AM
WITNESS: [illegible]	Date 10/24/12	Time 11:45 AM
SELLER: [illegible]	Date 10/24/12	Time 11:46 AM
WITNESS: [illegible]	Date 10/24/12	Time 11:46 AM

LISTING AGENT AND COMPANY Rick Willis The Group, LLC

SELLING AGENT AND COMPANY Susan Nicholson Carolina One Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Susan Nicholson Carolina One Real Estate

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ADDENDUM A

© Carolina One Real Estate

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property; ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 N Buttercup Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

2. Buyer total satisfaction of home inspection and Cl00 2. Seller to make good all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septic tank hasn't been service in the past yr. then Seller agrees to have it serviced. 5. Seller agrees to have the property subdivided to include in this sale the 2360 sf house, storage bldg. and 5 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to include copies of the survey. Cont. next pg. (8) + C

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Rayona Crone	Date 10.2012	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: James Jones	Date 10/24/12	Time 11:48
WITNESS: Peggy T Jones	Date 10/24/12	Time 11:48
SELLER: Margaret Jones	Date 10/24/12	Time 11:49
WITNESS: Peggy T Jones	Date 10/24/12	Time 11:49

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Carolina One Real Estate - Trolley Road 1510 Old Trolley Road Summerville, SC 29485
Phone: 8434191015 Fax: 8452023169 Susan Nicholson

145 Brownlee

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ADDENDUM B

© Carolina One Real Estate

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 120-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to provide SC Seller's Disclosure due to not legible of what is currently on the MLS. 9. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc. Buyer shall grant water & sewer easement to adjacent 2 acres ~~of~~ ff

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Pudlak	Date 20 OCT 2012	Time 1:45 pm
WITNESS:	Date 10.20.12	Time 1:48 pm
BUYER: Debbie Gross	Date 10.20.12	Time 1:47 pm
WITNESS:	Date 10.20.12	Time 1:48 pm
SELLER:	Date 10/24/12	Time 11:48
WITNESS:	Date 10/24/12	Time 11:48
SELLER:	Date 10/24/12	Time 11:49
WITNESS:	Date 10/24/12	Time 11:49

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Phone: 8434191016 Fax: 8432023169 Susan Nicholson 145 Browning

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) Civil Action Case No.: 2016-CP-18-1706
)
Molly Morphew,)
)
Plaintiff,)
)
v.) **SUMMONS**
) **(Jury Trial Demanded)**
Stephen Dudek, Doreen Cross, David)
Collins, Allison Williams, First Federal,)
Michael Scarafile, Susan Nicholson,)
Carolina One Real Estate, Carrie Boyer,)
Woody Law Firm)
)
Defendants)

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 Pro Se litigant at her address at 788 E Butternut Rd, Summerville, SC 29483 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.

Molly M. Morphew, Pro Se

Molly M. Morphew, Pro Se
788 E Butternut Rd
Summerville, SC 29483
(843) 514-7299
morphew926@gmail.com

SUMMERVILLE, SC
August 23, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) Civil Action Case No.: 2016-CP-18-1706

Molly Morphew,

Plaintiff,

v.

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

Defendants

COMPLAINT
(Jury Trial Demanded)

Plaintiff Molly Morphew sues Defendant Stephen Dudek, Defendant Doreen Cross, Defendant David Collins and/or his agent, Defendant Susan Nicholson and/or her agent, Defendant Carolina One Real Estate, Defendant Michael Scarafile and/or his agent, Defendant Allison Williams and/or her agent, Defendant First Federal (now South State Bank), Defendant Carrie Boyer or her agent, Defendant Wooddy Law Firm, and states as follows:

NATURE OF THE ACTION

1. This is an action for fraud, and specifically fraud on the courts, and torts stemming from the actions, and continued actions, of the Defendants Dudek and Cross, their attorney their real estate agent and company/representatives, and their lending officer and company. Plaintiff Morphew seeks damages, and other appropriate relief based on the (as listed in the causes of action) Defendants' fraud, perjury, breach of fiduciary duty, violation of the SC Rules of Professional Conduct, violation of Title 40 – Professions and Occupations (Chapter 57), contempt, and breach of the Dudek/Cross express, written

contractual obligations per their court Order of November 6, 2014, as well as for violation of their common law duties to Morphew.

2. This is a separate action from combined civil Cases #2013-CP-1800183 (Specific Performance/breach of contract) and #2013-CP-1800074 (Specific Performance/breach of contract), currently on appeal (Appellate Case No. 2014-002633).
    a. Appellants: Plaintiff Morphew, Sellers Thomas Ferro and Lorraine Ferro
    b. Respondents: Defendants Stephen Dudek and Doreen Cross
3. Plaintiff brings this action to recover the losses suffered by Ms. Morphew at the hands of defendant Doreen Cross and Stephen Dudek for compensatory damages of at least $50K, special damages $75K, punitive damages of at least $75K; Susan Nicholson for compensatory damages of at least $25K, special damages $50K, punitive damages of at least $75K; Michael Scarafile for compensatory damages of at least $50K, special damages $75K, punitive damages of at least $75K; Carolina One for compensatory damages of at least $50K, special damages of $50K, and punitive damages of at least $250,000; Allison Williams for compensatory damages of at least $25K, special damages $50K, punitive damages of at least $75K; First Federal (currently State Bank[1]) for special damages of $50K, punitive damages of $250,000 and compensatory damages of $53K, Carrie Boyer for compensatory damages of at least $5K, special damages $5K, punitive damages of at least $25K; Wooddy Law Firm for punitive damages of $25K; and Defendant Collins for punitive damages of $250,000 (to include lost attorney fees and judgement for sanctions), compensatory damages of at least $50K, as well as injunctive relief and declaratory judgment.

[1] Will be referenced as First Federal within this document.

4. The court, and the applicable officers of the court, have been the victim of repeated acts of fraud, dishonesty, deceit, misrepresentation, perjury, non-disclosure of material facts, and bad faith and unfair dealings; including Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act SECTION 15-36-10, Abuse of Rule 11; Violation of ABA Rules of Professional Conduct, Rule 3.1, Rule 3.3, Rule 7.1, 8.4(a), 8.4(b), 8.4(c), 8.4(d), 8.4(e), 8.4(f), 8.4(a); Violation of the Federal Rules of Civil Procedures, Rule 26, Rule 37; 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; Forgery/falsifying documents with intent to defraud another; Breaking Federal Rules and Regulations (FDIC)/Breaking of Banking Rules and Regulations; Obstruction of Justice; Tortious Interference with Existing Contractual Relations; and contempt by Defendants.
5. Morphew has been, and continues to be, the victim of the repeated acts (allegations in #3 repeated word for word herein), and to include Slander of Title; Breach of Contract followed by fraudulent action(s), Intentional Infliction of Emotional Distress; and harassment and/or discrimination by the Defendants. Despite Morphew's repeated given opportunities for Defendants to disclose the truth, to Morphew's knowledge, there has been no action taken by Defendants to put a halt to their unlawful actions which have caused a vast amount of personal expense, time and distress to, not only Morphew, but all parties involved, including the courts. Morphew ultimately was wronged by failing to be awarded specific performance on 788 E Butternut Rd, Summerville, SC, and instead, Defendants Dudek and Cross were awarded such specific performance based on the Defendants unlawful and/or wrongful acts, and bad faith and unfair dealings, both in and out of court.

To: THE DEFENDANTS ABOVE NAMED:

NOW comes the Plaintiff, complaining of the acts and omissions of the Defendants names above, and says as follows:

6. That the Plaintiff, Molly Maric Morphew, (hereafter "Plaintiff") is a citizen and resident of the County of Dorchester, State of South Carolina.

7. That upon information and belief, Defendants Stephen Dudek and Doreen Cross are residents of Dorchester County, State of South Carolina.

8. That upon information and belief, Defendant David Collins is a resident of Charleston County, State of South Carolina.

9. That Defendant Collins was previously Defendants Dudek and Cross' attorney and/or has been suspended by the Supreme Court from practicing law as of approximately July 16, 2016.

10. That upon information and belief, Defendant Susan Nicholson is a resident of Dorchester County, State of South Carolina.

11. That upon information and belief, Defendant Allison Williams is a resident of Dorchester County, State of South Carolina.

12. That upon information and belief, Defendant Michael Scarafile is a resident of Charleston County, State of South Carolina.

13. That upon information and belief, Defendant Carolina One Real Estate, Inc. (hereinafter "Carolina One"), is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Dorchester County. Defendant is in the business of providing real estate agent services in the selling of property, including personal property.

14. That upon information and belief, Defendant First Federal, now known as South State Bank (hereinafter "First Federal"), is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Dorchester County. Defendant is in the business of providing banking and credit services, including personal mortgages, and other related services.

15. That upon information and belief, Defendant Wooddy Law Firm, is a corporation organized and existing under the laws of the State of South Carolina, and doing business in the State of South Carolina, and particularly in Berkley County. Defendant is in the business of providing variety of complex business transactions, focusing primarily on real estate matters.

16. That upon information and belief, Defendant Carrie Boyer, is a real estate paralegal employed at the Wooddy Law Firm, in Goose Creek, SC, Berkley County.

17. That upon information and belief, and at all times material, the Defendant(s) or its agent(s)' named above misrepresented facts with the intent to deceive the Plaintiff and/or the courts and/or with the intent of influencing the court[2].

18. That upon information and belief, and at all times material, the misleading acts of the Defendant(s) or its agent(s)' named above prevented the Plaintiff from presenting all of her case or deprived her of the opportunity to be heard.

VENUE AND JURISDICTION

19. That the Plaintiff hereby incorporates paragraphs one (1) through four (18) above, the same as if set forth again verbatim.

[2] Misrepresentation of facts with the intent of influencing the court is fraud upon the court.

20. Venue is proper pursuant to S.C. Code § 15-7-30, as First Federal [now known as South State Bank since 2015] and Carolina One Real Estate have operations in Dorchester County, and Defendants Dudek and Cross reside in Dorchester County, and the actions set forth herein occurred in Dorchester County.

21. Venue is proper pursuant to S.C. Code § 15-7-10, as the property in dispute is located in Dorchester County.

22. The acts and omissions of the Defendants were conducted, disseminated, published and/or performed in South Carolina, at its jobsites and offices and to its employees and/or agents, including in Dorchester County, in a way to affect, reach and cause injury and/or damage to the Plaintiff in the State of South Carolina.

23. The Plaintiff consents to the jurisdiction of this court since she is a resident of the County of Dorchester, State of South Carolina.

24. Morphew is currently, and was during the relevant period, a citizen and resident of South Carolina in Dorchester County.

FACTS

25. That the Plaintiff hereby incorporates paragraphs one (1) through three (24) above, the same as if set forth again verbatim.

26. On October 24th, 2012, the **"Time is of the Essence"** sale contract between Defendants Dudek and Cross and sellers Thomas Ferro and Lorraine Ferro for property located at 788 E Butternut Rd, Summerville, SC 29483, was ratified [and expired on Friday, November 30th, 2012].

27. That, upon information and belief, on December 3rd, Defendants Dudek and Cross claimed the 15-day 'no-fault to either party' extension clause within the contract. Expiration date of clause 12/15/2012.

28. That, upon information and belief, on December 3, Sellers Ferro were presented with a Contract Extension Addendum dated December 28th; sellers refused.

29. On December 5th, [5 days after said contract expired], Defendants Dudek and Cross applied for mortgage credit or lending.

30. That, upon information and belief, on December 5th, Defendant Allison Williams received or reviewed the sales contract for the first time.

31. On or about December 5th, Defendant Allison Williams requested [buyers] Defendants Dudek and Cross to obtain the missing sellers names on the front of the sales contract.

32. On December 10th, Defendants Dudek and Cross signed the mortgage loan application.

33. On December 11th, Underwriting received the Dudek and Cross mortgage file; only item in the file was an expired and unsigned/non-property specific, pre-qualification application dated May 2012, and the [expired] sales contract.

34. On December 12th, First Federal Underwriting sends inquiry to both Defendant Williams and Defendants Dudek and Cross as to the status of the required signed Contract Extension Addendum.

35. On December 12th, First Federal declared the Dudek and Cross sales contract invalid due to its illegibility and/or sent a request for a legible, signed contract with all addendums, including the required signed Contract Extension.

36. On December 12th, First Federal requested a signed application and all banking disclosures.

37. On December 12th, [with no application or signed application/banking disclosures, and/or with no legible signed sales contract and all addendums (including the required signed Contract Extension Addendum[3]), First Federal issued an approval letter.

38. On December 16th, 2012, Sellers Ferro submitted a request for sales contract termination to Defendants Cross and Dudek or their agent.[4]

39. On December 16th, Plaintiff and sellers Ferro ratify back-up sales contract.[5]

40. On December 16th, Defendant Susan Nicholson received the termination request from the sellers.

41. On December 16th, Susan Nicholson replies to sellers Ferro and/or their agent that her clients "*made application and supplied requested documentation from the lender in a timely manner from the time we ratified the contract*", and that 'they' are ready to close, "*hopefully this week pending the title work is clear from the closing attorney.*"

    a. No closing date offered or scheduled.

42. On December 18th, First Federal Underwriting received the Dudek and Cross signed Application, First Federal disclosure, Servicing Disclosure, Authorization to Release, and Local Employer Address for Co-Borrower.

43. On December 20th, legal counsel for Carolina One, Defendant Michael Scarafile, stated Dudek and Cross had provided proof of lending, "*were ready to close*", and could schedule a closing "*next week*".

    a. No closing date offered or scheduled.

---

[3] First Federal does not accept mortgage applications on an expired sales contract without a signed Contract Extension Addendum or a new contract.

[4] And only after Dudek and Cross failed to close on or before the November 30th contract date and failed to close on or before the contract extension clause date of December 15th.

[5] Contingent upon Dudek and Cross signing the contract termination request.

44. December 31, First Federal Underwriting sent direct requests to both Defendants Dudek and Cross and Defendant Allison Williams for an update on the **required** Contract Extension Addendum.

    a. No reply from Defendants Dudek and Cross.

45. January 3rd, 2013, First Federal sent out separate 10-day adverse notices to both Defendant Dudek and Defendant Cross requesting the signed Contract Extension Addendum they've required and requested since application.

> Said notice, stated "*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.*"

46. January 3rd, 2013, Morphew secured lending, and had a tentative closing date of January 12th[6].

47. January 11, Defendants Dudek and Cross were notified that "the sellers were not going to sell to them" and that "the sellers had secured another contract" and were "going with another buyer".

48. January 11, Defendants Dudek and Cross filed a lis pendens.

49. January 13th, application submitted by Dudek and Cross was no longer valid, and a new application would have to be submitted.

50. January 15th, Defendants Dudek and Cross filed a 2nd lis pendens, along with a breach of contract lawsuit against sellers[7] to compel specific performance and/or damages.

---

[6] Ibid 5

[7] Defendants Dudek and Cross claim sellers breached their contract and were the reason Defendants could not close.

51. January 16th, as a result of their failure to provide a complete application to First Federal and [intentional] failure to respond to the 10-day adverse notice, Defendants Dudek and Cross were denied lending/mortgage credit on said sales Contract.

52. January 18th, Defendant Allison Williams informs First Federal that the file is under litigation and "was concerned First Federal could get drawn into the lawsuit".

    a. Williams suggested to keep the file open.

53. As of January 18th, Defendants Dudek and Cross are declined mortgage credit for incomplete application, and their mortgage lending file is closed.

54. January 31, First Federal refunds balance of application fee, and provides official notice of declination.

55. On January 31st, 2013, Morphew filed a complaint for breach of contract and damages against Defendants Dudek and Cross, and sought specific performance [only] from sellers, Thomas and Lorraine Ferro.

56. That, upon information and belief, on or about February 10th, 2013, Defendants Dudek and/or Defendant Cross and/or Defendant Collins produced or assisted in the production of a falsified and/or forged e-mail and/ or in order to provide proof they "applied" for lending per Contract.

57. March 4, 2013, Morphew subpoenas First Federal for Dudek and Cross' lending information, including files, electronic documents, e-mails/communications, etc.

    a. First Federal responds March 13, "*there is no such people or property address on file with their institution nor the TMS numbers found in the county records*".

58. March 15, 2013, Plaintiff Attorney contacts Defendant Collins and informs him that, per First Federal, there are no loans approved for his clients.

a. Defendant Collins responds that "his clients had loan approval but could not close because they never got a CL-100"[89].

59. June 2013, Dudek and Cross deposition held.

a. 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.

b. Dudek and Cross failed to disclose they had been denied lending.

60. August 1, 2013, Morphew [again] subpoenas First Federal for Dudek and Cross' lending information, including files, electronic documents, e-mails/communications, etc.

a. First Federal responds "*there were no records of any loans with that number at their institution*".

61. August 12th, 2013, Morphew's attorney makes a phone call to First Federal to verify said response(s) are correct.

a. First Federal responds "*they could not* [or would not] *provide that information*".

62. June 10th, 2014, First Federal responds [unexpectedly] to the March 2013 subpoena for Dudek and Cross mortgage lending information.

63. June 11 & 12, 2014, Trial held for combined cases.

64. November 6, 2014, Order issued from court.

a. Specific performance granted to Defendants Dudek and Cross.

65. December 6th, 2014, Morphew filed appeal with the appellate court.

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[8] Per documents from Defendant Cross' files during her deposition in June, 2013, sellers obtained a CL-100 inspection on November 29th, a report on November 30th, as per Cross/Dudek requested in their sales contract.

[9] Per Cross deposition, she received the CL-100 from Defendant Nicholson on Monday, December 3rd, 2012.

a. Appeal is currently 'Under Review', pending Appellate Court decision.

66. December 15, 2014, sellers Ferro filed appeal with the appellate court.

a. Appeal is currently 'Under Review', pending Appellate Court decision.

67. January 8, 2015, Defendants Dudek and Cross or its agents moved forward on court Order [by requesting to schedule an inspection].

68. March 25, 2015, Defendant Dudek, Defendant Cross and Defendant Collins or its agent(s) filed a Motion to compel the courts to order the appellants (Plaintiff Morphew and sellers Ferro) to post a supersedeas bond to stay the court Order[10] or if not awarded bond, to hold Morphew in contempt for attempting to obstruct Dudek and Cross' performance of the court Order of November 2014.

69. May 13, 2015, Motion hearing held.

a. Defendants Dudek and Cross were instructed to perform their due diligence and/or start application per court Order, as "time was of the essence".

i. No action taken.

b. Plaintiff Morphew was instructed to allow Dudek and Cross access to property to perform their inspection.

i. No action taken.

c. The courts allowed Defendant Collins 10 days to respond to Morphew's Answer to the Motion.

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[10] A supersedeas bond is defined as a "bond required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful." Black's Law Dictionary 738 (6th ed. 1990); The language of Federal Rule of Civil Procedure 62 indicates that a co-requisite to imposition of a supersedeas bond is a motion for a stay by the appellant; A Supersedeas Bond May not be Imposed in the Absence of a Stay; The district court has no power to impose a supersedeas bond in the absence of a stay. Nothing in the language of these rules indicates that an appellee can move the court for imposition of a supersedeas bond.

i. No response from Defendant Collins.

70. The Defendant(s) or its agent(s) having participated in the civil action(s) are presumed to have acted with full knowledge of the facts, and, knowing that they had [unlawfully] and/or with complete disregard to a legal Contract, allowed said Contract to expire.

71. At all times material, the Defendant(s) or its agent(s) having participated in the civil action(s) are to presumed to have acted with full knowledge of the facts, and, knowing at application on December 5th, 2012, that they were required to produce a signed Contract Extension Addendum, and/or

a. without it had an invalid contract and/or would not be able to obtain financing.

72. At all times material, the Defendant(s) or its agent(s) having participated in the civil action(s) are presumed to have acted with full knowledge of the facts, and, knowing that Defendants Dudek and Cross were denied lending and/or Denied [at their own hand].

73. The Defendant(s) or its agent(s) having participated in the civil action(s) are to presumed to have acted with full knowledge of the facts, had [intentionally] failed to disclose required pertinent material facts to the case.

FOR A FIRST CAUSE OF ACTION
(Fraud, Extrinsic Fraud – Fraud on the Court)
[Against all Defendant(s) or its agent(s)]

74. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

75. Plaintiff alleges Defendant Collins [the attorney for Defendants Dudek and Cross] made fraudulent representations and/or misrepresentations, or omitted pertinent material information and or documents, and/or concealed Defendants Dudek and Cross' 'lost or non-existent' lending records.

76. Upon information and belief, and at all times material, Plaintiff alleges Defendant Collins had, in his possession or had complete knowledge of, the letter(s) from First Federal denying his clients lending, which had not been disclosed to the Plaintiff or the court.

77. Plaintiff alleges, Defendant Collins, having participated in the civil action(s), filed frivolous lawsuits/motions; signing pleadings; notice and opportunity to respond.

78. Plaintiff further maintains Defendant Collins both in the prosecution of the case in the lower court, and on appeal in the Court of Appeals, made representations that were false, material, known to have been false when made, [and] made recklessly and/or with the intention that it be acted upon by all parties involved [including the sellers, Plaintiff, and the courts].

79. Plaintiff argues that where there is a duty to speak[11] and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

80. These acts and/or misrepresentations is blatant extrinsic fraud[12].

81. At all times material and with complete knowledge otherwise, [all] Defendant(s) or its agent(s) made false statements and/or misrepresentations and/or omitted material information pertinent to the case and/or committed perjury and/or committed forgery.

82. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she [and all parties involved] would never have gone to trial or be in this position today if

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[11] Where there is a duty to speak, a fiduciary's non-disclosure may be fraudulent. Cf. Manning v. Dial, 271 S.C. 79, 245 S.E.2d 120 (1978).

[12] [E]xtrinsic fraud' refers to frauds collateral or external to the matter tried such as...misleading acts which prevent the movant from presenting all of his case or deprives one of the opportunity to be heard.

Defendant(s) or its agent(s) had been conducted themselves with honesty, and good faith and fair dealings.

83. Plaintiff asserts that the courts relied on the fraudulent act(s) and/or omissions, and representations or misrepresentations made by the Defendant(s) or its agent(s).

84. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

85. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

86. Upon information and belief, Plaintiff affirms these fraudulent act(s) and omissions were intentional and/or made recklessly and/or with malice[13] and/or with intent to deceive.

87. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

88. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

89. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

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[13] Malice is presumed; 1) disparagement of title to real property is false, 2) caused damages, and 3) is not privileged.

90. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

91. Due to these acts [stated herein] of fraud, perjury, falsifying documents, forgery, omissions, and intentional misrepresentations, the Defendant(s) or its agent(s) have cost the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

FOR A SECOND CAUSE OF ACTION
(Perjury)
[Against all Defendant(s) or its agent(s)]

92. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

93. Defendant(s) or its agent(s) falsely and/or [fraudulently] testified unduly during the trial and/or at deposition, including testimony that:

a. Dudek and Cross had applied for lending per contract,

b. Dudek and Cross had provided all documents required of their lender,

c. Dudek and Cross had provided all documents required of their lender per contract and/or in a timely manner,

d. Dudek and Cross had done everything they could to secure financing per contract,

e. Dudek and Cross had done everything they could to close escrow per contract,

f. Dudek and Cross had secured lending per contract,

g. Dudek and Cross were 'ready, able and willing' to close per contract,

h. Dudek and Cross were 'ready, able and willing' to close per contract but the sellers refused,

i. Dudek and Cross were ready to close on December 14th, 2012,

j. First Federal was ready to close on December 14th, 2012,

k. First Federal was "cleared to close" on December 20th, 2012,

l. Dudek and Cross did not receive a CL-100 (report),

m. Defendant Collins has never seen the CL-100,

n. First Federal couldn't *continue* with the loan because they were waiting on the recorded survey,

o. First Federal didn't order the appraisal because they were waiting on the recorded survey,

p. Dudek and Cross did not receive the stamped recorded land survey until 'they drove to the county office themselves to obtain it' [on or about January 2013],

q. Dudek and Cross did not know of the existence of another buyer when filing their lis pendens and lawsuit,

r. the sellers breached their contract,

s. the sellers breach caused Dudek and Cross to breach,

t. the sellers refused to provide required lender and/or closing attorney required documents in order to close,

u. Defendants Dudek and Cross could not close per contract because of the sellers,

v. the Contract Extension Addendum was not required (by their lender), and

w. Defendant Williams turned in the application file [to underwriting] on October 31, 2012.

94. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she (and/or all parties involved) would never have gone to trial or be in this position today if

Defendant(s) or its agent(s) had been conducted themselves with honesty, and good faith and fair dealings.

95. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

96. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

97. Plaintiff insists, if the material facts and/or material evidence was not concealed and the parties went to trial, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

98. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

99. Plaintiff argues the Defendants knew the statements to be false and/or failed or intentionally failed to take remedial measures or disclose to the courts(s) the truth.

100. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

101. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

102. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

103. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A THIRD CAUSE OF ACTION
(Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act SECTION 15-36-10; Abuse of Rule 11 Signing Pleadings, Motions, and Other Papers; Representations to the Court; SC Rules of Professional Conduct Rule 3.1 Meritorious Claims and Contentions Sanctions)
[Against Defendant Collins]

104. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

105. Upon information and belief, Defendant Collins, having participated in the civil action(s), filed frivolous lawsuits/motions; signing pleadings; notice and opportunity to respond.

a. Defendant Collins [unlawfully] and/or [fraudulently] and/or frivolously filed a lawsuit for Specific Performance with complete knowledge the case did not meet all requirements of "Specific Performance" and/or the requirement of the court to compel Specific Performance.

b. Defendant Collins [unlawfully] and/or [fraudulently] and/or frivolously filed a lawsuit claiming seller breach of contract (i.e., seller fault), after Defendants Dudek and Cross had previously claimed the "no fault to either party" extension clause within the contract.

c. Defendant Collins submitted several documents to the courts (including Defendants [Dudek and Cross] Answer to Plaintiff Morphew complaint) that contained numerous or extensive false statements or defenses to the case.

d. In absence of an appellants (Plaintiff Morphew) request for stay of execution, said attorney [unlawfully] and/or [fraudulently] and/or frivolously filed a Motion [for appellants to pay] Supersedeas Bond and/or contempt against Morphew.

i. Upon information and belief, Morphew argues the motion was filed in hopes to "clandestinely" obtain a "stay" to legally excuse his or his client's intentional and fraudulent actions, and/or to harass the appellants.

ii. Due to this [unlawful] and/or [fraudulent] and/or frivolous motion, Plaintiff Morphew had to spend considerable amounts of time, and loss of money, to prepare an answer, and to prepare for and attend a hearing for said motion, including the undue distress it caused Plaintiff Morphew.

106. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his client's sales contract was invalid at application and/or invalid on or before the day they filed or unlawfully and/or frivolously filed the civil action for specific performance.

107. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his clients had not secured lending and/or had been denied lending on or before the day they filed or unlawfully and/or frivolously filed the civil action for specific performance.

108. At all times material, Defendant Collins having participated in the civil action(s) had full knowledge his clients had been and/or were unable to obtain lending

without the signed Contract Extension Addendum when they filed or unlawfully and/or frivolously filed said lawsuit for specific performance.

109. At all times material, Defendant Collins, having participated in the civil action(s) had full knowledge his clients had been denied lending, therefore were never able to close (i.e., "ready, able and willing") within the contract life and/or at any time material, as required to compel specific performance.

110. Defendant Collins having participated in the civil action(s) had full knowledge his clients did not meet all requirements of specific performance, but filed or unlawfully and/or frivolously filed said lawsuit in an attempt to disrupt or interfere with the closing in the Morphew contract, and/or in an attempt to harass, and/or in an attempt to blackmail (technically referred to as 'legal blackmail') the sellers into selling to his clients and/or not honoring Morphew's valid contract.

111. Defendant Collins having participated in the civil action(s) had full knowledge his clients had been denied lending and/or were unable to obtain financing on their sales contract without the signed Contract Extension Addendum but continued to [unlawfully and/or frivolously] file said lawsuit in an attempt to blackmail (technically referred to as 'legal blackmail') the sellers into selling to his clients and/or not honoring Morphew's valid contract.

112. Defendant Collins had a duty to disclose any critical material facts, specifically any that may be of intentional misrepresentation, deceit, or concealment of a material fact the concealing party had a duty to disclose, which was gross, oppressive, or malicious and committed with the intention on the part of the perpetrator to thereby deprive a person or entity of property, legal rights or otherwise cause injury.

113. Upon information and belief, the actions of the Defendant or its agent(s) were not the actions of honesty, good faith and fair dealings.

114. Upon information and belief, Defendant Collins or its agent(s) violated the South Carolina Rules of Professional Conduct

115. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

116. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff Morphew has incurred extensive undue burden or expense.

117. Plaintiff asserts that, absent of herein stated fraudulent act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant or its agent had conducted themselves with honesty, and good faith and fair dealings, or obeyed/honored the South Carolina State Bar Association Rules and Regulations.

118. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant or its agent(s).

119. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

120. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

121. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

122. Upon information and belief, Plaintiff argues Defendant Collins exhibited abuse of process and/or malicious prosecution.

123. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff h has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

124. Due to these acts or acts of fraud, perjury, omissions, unlawful conduct, and/or intentional misrepresentations, the Defendant or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

125. Injunctive relief is also necessary to demand Defendant or its agent to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

126. Punitive damages are necessary to deter Defendant or its agent from continuing its wanton conduct.

127. Sanctions, under FRCP Rule 11 and Rule 3.1, are applicable if the fraudulent evidence and perjured testimony was used in a pleading, written motion or other paper and/or the failure of a lawyer's ethical duty not to bring or defend an action or raise or challenge an issue unless there is a non-frivolous basis for doing so.

FOR A FOURTH CAUSE OF ACTION
(Violation of ABA Rules of Professional Conduct, Rule 3.3 Candor Toward the Tribunal)
[Against Defendant David Collins or its agent(s)]

128. All allegations in the prior paragraphs are fully repeated and incorporated herein.

129. Defendant Collins made a false statement(s) of fact or law to the court(s), including the appellate court or failed to correct a false statement(s) of material fact or law he previously made to the courts(s), such as:

a. Defendant Cross had applied for financing with First Federal before ratifying said sales Contract.

b. Defendant Cross had been pre-approved for financing per paragraph 8 of said contract before contract ratification.

c. Defendant Cross had diligently pursued financing per sales contract.

d. The sale would have closed within the life of the contract if the sellers had complied with their side of the contract.

e. The extension clause within the contract (Para. 12) was an automatic extension.

f. The said contract stated the CL-100 was required to be provided to the Defendants Dudek and Cross by November 30th, 2012.

g. The CL-100 was not provided.

h. He had never seen the CL-100.

i. The bank required the CL-100 clearance letter.

j. The CL-100 clearance letter was a contingency in the sales contract.

k. The sellers were required to provide the clearance letter.

l. First Federal ordered the appraisal "*the minute that the re-subdivision of the property was accomplished*".

m. The appraiser wouldn't go out there [to perform appraisal] until the subdivision had been made by the county.

n. Defendant Cross and/or Dudek were not at fault for any delay in getting the appraisal performed.

o. Sellers Ferro didn't provide response to repair request until December 7, 2012.

p. The lender hadn't ordered the appraisal because of the delays in getting the subdivision plat.

q. All repairs and the CL-100 clearance letter had to be done by November30, 2012.

r. Defendants Dudek and Cross have done nothing to delay the closing during the life of the contract (i.e., from ratification to expiration on November 30th).

s. Nobody (i.e., the lender, the closing attorney) was waiting on any documentation from Defendants Dudek and Cross in order to close.

t. Defendants Dudek and Cross did not know of another buyer until they received Plaintiff Morphew's initial lawsuit (approximately or around February 3rd, 2013).

130. Defendant Collins failed to disclose to the courts(s) 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.

131. Defendant Collins failed to disclose to the courts Defendants Dudek and Cross were denied lending due to never providing a complete application.

132. Defendant Collins failed to disclose to the courts Defendant Dudek and Cross did not have lending secure and/or 'ready, able and willing' to close during the life of the said sales contract, and/or at any time and/or any time material.

133. Defendant Collins failed to disclose to the courts Defendant Dudek and Cross did not have a valid sales contract at application and/or at any time material.

134. Defendant Collins failed to disclose to the courts Defendants Dudek and Cross did not meet the requirements of specific performance.

135. Defendant Collins offered evidence that with complete knowledge he knew to be false or failed to take remedial measures or disclose to the courts(s).

136. Defendant Collins, with complete knowledge that his clients intended to engage in, is engaging or has engaged in criminal or fraudulent conduct related to the proceedings, has failed to take reasonable remedial measures, including, if necessary, disclosure to the court(s).

137. Defendant Collins was required to adhere and continue the duties he so failed in as stated in paragraphs (128) through (136) to the conclusion of the proceeding, and these duties apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

138. Upon information and belief, the actions of the Defendant or its agent(s) were not the actions of honesty, good faith and fair dealings.

139. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

140. Plaintiff argues the actions of Defendant Collins, as an officer of the court, participated, and is participating, in the failure of the court(s) to make an informed decision.

141. Plaintiff insists, absent of herein stated acts and/or omissions, Plaintiff would not have been deprived of a fair trial and/or the opportunity to present all of her case.

142. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

143. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

144. Due to these acts of fraud, perjury, omissions, and misrepresentations or intentional misrepresentations, the Defendant or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

145. Due to the violation of Rule 3.3, sanctions are necessary due to the Defendant or its agent use of fraudulent evidence and perjured testimony in the court of law.

FOR A FIFTH CAUSE OF ACTION

(Violation of the Federal Rules of Civil Procedures, Rule 26. Duty to Disclose; General Provisions Governing Discovery; Rule 37 Failure to Make Disclosures or to Cooperate in Discovery; Sanctions; SC Rules of Professional Conduct Rule 8.4(c) Misconduct, of the Rules Regulating The South Carolina Bar (Rules of Professional Conduct)

[Against Defendant David Collins or its agent(s), Defendant First Federal or its agent(s), and Defendant Michael Scarafile or its agent(s)]

146. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

147. At all times material, and at the direct request(s) of the Plaintiff or her attorney during initial discovery, Defendant Collins failed or intentionally failed to disclose material fact(s) in connection with the sale of land.

148. Defendant Scarafile, as legal counsel and President of Defendant Carolina One Real Estate provided written documentation falsely stating Defendants Dudek and Cross were 1) 'ready, able and willing' to close, and 2) a closing could be scheduled [as of

December 20th, 2012], and 3) his clients had provided proof of financing [per sales contract].

149. With full knowledge and receipt of said subpoena(s), Defendant Collins failed or intentionally failed to disclose to the opposing attorney or party (including the courts) a material fact(s) in connection with the sale of land.

150. First Federal failed or intentionally failed to disclose, answer or respond to, and/or and in a timely manner, two subpoenas and a phone call requesting Dudek and Cross' lending information or status and/or all documents, letters, correspondences, files, etc. and/or affiliation to First Federal.

151. Upon information and belief, Defendants Williams and/or First Federal failed or intentionally to respond to the lawful requests for proof of Defendants Dudek and Cross lending status and/or lending approval [per Contract] and/or lack of approval.

152. At all times material, and with complete knowledge Dudek and Cross had been denied lending due to an incomplete application and/or their application was not valid and/or the Dudek and Cross sales contract were not valid, First Federal refused to provide and/or disclose stated herein material facts and/or status to the sellers or its agent and/or to the Plaintiff and/or to the courts.

153. With full knowledge her clients and the sellers were in litigation, Defendant Allison Williams testified she had destroyed all documents or communications, electronic or otherwise, between her and the Defendants Dudek and Cross.

154. Upon information and belief, the actions of the Defendants were not the actions of honesty, good faith and fair dealings, but instead implied they had damaging or unfavorable information to hide.

155. Upon information and belief, the actions of the Defendant Collins and/or Defendant Scarafile and/or First Federal were not the actions required per the South Carolina Bar Rules (SCBR) of Professional Conduct but instead were inconsistent with the SCBR requirements of 'honest dealings with others'.

156. Plaintiff asserts that, absent of herein stated act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant(s) or its agent(s) had conducted themselves with honesty, and good faith and fair dealings and/or had honored the SC Rules of Profcssional Conduct and/or honored the Federal Rules of Civil Procedures.

157. Plaintiff asserts that the Plaintiff and/or the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

158. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or a fair trial and/or the courts were prevented from making a lawful or informed ruling.

159. Plaintiff insists, absent of herein stated fraudulent acts or act(s) or omissions, Plaintiff would not have been deprived of a fair trial and/or the opportunity to present all of her case and/or the courts would have been able to make a lawful or properly informed ruling.

160. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

161. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

162. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

163. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

164. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

165. Sanctions, under FRCP Rule 26, are applicable due to the Defendants or its agent's use of fraudulent evidence and perjured testimony, as stated herein, as part of their failure to comply with a discovery order and/or submitted as part of a bad faith affidavit or declaration.

166. Sanctions are compelled for violation of Rule 8.4(c) and/or failure to comply with an obligation or prohibition imposed by a Rule as stated herein, as is a basis for invoking the disciplinary process.

167. Sanctions are compelled for abuse of process and/or malicious prosecution as stated herein, as possibly criminal liability.

FOR A SIXTH CAUSE OF ACTION
(Violation of ABA Rules of Professional Conduct, Rule 4.1 Truthfulness in Statements to Others; Rule 5.3 Responsibilities Regarding Non-lawyer Assistants)
[Against Defendant Scarafile or its agent(s) and Defendant Wooddy Law Firm or its agent(s)]

168. At all times material, Defendant Michael Scarafile, with full knowledge Dudek and Cross were not 'ready, able and willing' to close per the sales contract and/or unable to obtain financing on their sales contract without the signed Contract Extension Addendum and/or had an expired or invalid sales contract, declared Dudek

and Cross had provided proof of financing and are ready to close (i.e., 'ready, able and willing') and/or could schedule a closing.

169. With full knowledge that his clients were unable to obtain financing on their sales contract without the signed Contract Extension Addendum and/or had an expired or invalid sales contract, Defendant Scarafile unlawfully concluded a lawsuit would result if the sellers did not comply [i.e., sell to his clients].

170. On November 27, upon information and belief, Defendant Dudek and/or Defendant Cross and/or Defendant Nicholson requested Wooddy Law Firm to contact the sellers [as Dudek and Cross's closing attorney[14]].

a. Upon information and belief, Plaintiff argues the request was implemented to create a 'façade' that they were preparing for a closing in the near future[15], and/or to 'cover up' the fact Dudek and Cross had intentionally and/or seriously breached their contract.[16]

171. On November 27, Wooddy Law Firm mailed an [official] letter introducing themselves as the closing attorney handling the closing, and requested the sellers' personal information (PI)[17].

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[14] Request was made by Nicholson and/or Cross and/or Dudek after sellers' agent asked "*if a closing time has been set and if so, the place it will occur...*"

[15] Request was 8 days before Defendants Dudek and Cross applied for mortgage lending on their sales contract; no legal relationship existed between Woody Law Firm and the sellers, at all times material, no application for financing had been submitted in connection with Dudek and Cross sales contract.

[16] Contract required application within 10 days of contract ratification; Contract also called for financing approval within 20 days of contract ratification; application for financing had not been submitted until after the said sales contract had expired.

[17] See Note 9

172. On December 5, and at all times material and with full knowledge there was no legal cause and/or justification, Defendant Carrie Boyer required proof [from the sellers] that the [minor] damages stated in the CL-100 have been repaired (i.e., contractors clearance letter)[18].

173. Upon information and belief, Plaintiff argues the actions and/or omissions of the Defendant(s) or its agent(s) created an unjustified expectation or belief as to the status of Defendants Dudek and Cross's financing status, and/or their capacity to close, and/or created a false sense of belief that a closing would take place [in the near future], and or which was materially misleading to the Plaintiff and/or the courts.

174. Upon information and belief, the actions and/or omissions of the Defendant(s) or its agent(s) were not the actions of honesty, good faith and fair dealings, and furthermore violated ABA Rules of Professional Conduct.

175. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

176. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff Morphew has incurred extensive undue burden or expense.

177. Plaintiff asserts that, absent of hercin stated fraudulent act(s) or omissions, she (and all parties involved) would never have gone to trial or be in this position today if Defendant or its agent had conducted themselves with honesty, and good faith and fair dealings, or obeyed/honored the South Carolina State Bar Association Rules and Regulations.

[18] See Note 9

178. Plaintiff asserts that the courts relied on the representations or misrepresentations made by the Defendant(s) or its agent(s).

179. Plaintiff asserts, due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling.

180. Plaintiff insists, absent of herein stated fraudulent act(s) or omissions, Plaintiff would not have been deprived of the opportunity to presenting all of her case or the courts would have been able to make a lawful or properly informed ruling.

181. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

182. As a direct and proximate result of the conduct of Defendant or its agent as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

183. Due to these acts or omissions or misrepresentations, the Defendant(s) or its agent(s) has and is currently costing the Plaintiff undue amounts of money, time and emotional distress. Plaintiff seeks damages (to include actual, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

184. Injunctive relief is also necessary to demand Defendant or its agent to conduct themselves in good faith and fair dealing towards all parties involved and/or specifically a court of law.

185. Punitive damages are necessary to deter Defendant or its agent from continuing its wanton conduct.

186. Sanctions are compelled under ABA Rules of Professional Conduct Rule 4.1, and are applicable if the fraudulent evidence and/or perjured testimony was a false statement of material fact or law to a third person; or the lawyer failed to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

187. Sanctions are compelled under ABA Rules of Professional Conduct Rule 5.3, stating that the lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

FOR A SEVENTH CAUSE OF ACTION

(Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud)

[Against all Defendant(s) or its agent(s)]

188. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

189. With complete knowledge the sales contract was, 1) their own (i.e., not the sellers'), 2) was of **"Time is of the Essence"**, and 3) vastly reduced in the sales price with agreement Cross and Dudek would close on or before November 30th, 2012, Dudek and Cross failed or intentionally[19] failed to make [mortgage financing] application before said sales contract expired.

[19] Though the sales contract was not a "repair' contingent contract, Defendants Cross testified they knew they were required to apply per contract but didn't because she "*was waiting for the sellers to 'take her seriously*" [in regards to making the repairs].

190. Defendants Dudek and Cross and Defendant Susan Nicholson, with intent and/or pre-meditation, conspired to 'cheat' or 'trick' or 'defraud' the sellers out of their remaining property by placing fault on the sellers, and did so even before the contract was ratified (i.e., signed by the sellers)].

> Doreen: "*The Seller could always throw in the extra acreage and the barn and we'll guarantee the end of November for sure. We're willing to do that.* ☺"
>
> Susan: "*If the home isn't subdivided in time then it will be their [sellers] fault not yours....If the seller wants to throw in any additional property I'm sure you will be ok with it* ***the trick*** *is to get him to do that without any extra charge! You never know he may throw you guys a deal you can't refuse!*"

191. Upon information and belief, 15 days before contract expiration, again Defendants Dudek and Cross attempted to 'cheat' or 'trick' or 'defraud' the sellers out of their remaining property by conspiring to use a 3rd party's information against another 3rd party in order to re-negotiate their contract.

> Doreen to Susan: "*Can we hold Eugene* [structural engineer] *liable if future information becomes available contradicting his report? It sounds like it will be challenge to take the information from Tim* [contractor] *and use it in the counter-offer.*"

192. With complete knowledge their client had not yet applied for lending, Defendant Susan Nicholson or her agent(s) falsely stated that the 'lender' was requiring documents (i.e., repair receipts, a CL-100 or cleared CL-100) [in order to process the loan].

193. With complete knowledge their client had not yet applied for lending and/or supplied a complete application, Defendant Susan Nicholson or her agent(s) falsely stated that the 'lender' had not been able to schedule a closing due to waiting on the recorded survey.

194. Upon information and belief, on December 5, Defendant Susan Nicholson requested Wooddy Law Firm to provide a notice they [closing attorney] required proof

the [minor] damages stated in the CL-100 have been repaired (i.e., contractors clearance letter);

195. At all times material, and with complete knowledge of its falsity, Defendants Dudek and Cross have maintained or testified the reason they could not close [per contract] was due to the lack of a CL-100 or a clear/cleared CL-100.

196. On or about December 20th, Dudek and Cross or Defendant Nicholson submitted or unlawfully submitted a legible but invalid sales contract [unsigned and missing sellers names] to First Federal.

197. First Federal accepted or unlawfully accepted an invalid and/or unsigned sales contract that contained no sellers name for mortgage loan processing.

198. With complete knowledge they had been denied lending due to an incomplete application and/or their application had expired and/or their sales contract was no longer valid or expired, Defendant Cross gave specific directions to First Federal to not provide or disclose their lending/mortgage information or status.

199. Defendants Dudek and Cross and Defendant Collins engaged in filing of frivolous and unlawful actions with complete knowledge Dudek and Cross had been denied lending, and/or that their application had expired and/or was no longer valid, and/or the sales contract was no longer valid and/or had expired.

200. Defendants Dudek and Cross and Defendant Collins engaged in filing of [frivolous and/or unlawful] actions at the time they became aware the sellers had contracted to sell the Property to another buyer [Plaintiff].

201. Upon information and belief, Defendants Dudek and Cross and Defendant Collins engaged in filing of actions or frivolous and/or unlawful actions to prevent the sale of said property to Plaintiff.

202. Defendants Dudek and Cross and Defendant Collins, with complete knowledge Dudek and Cross could not secure lending without the signed Contract Extension Addendum, engaged in filing of actions or frivolous and/or unlawful actions in an attempt to 'force' the sellers to sell to them.

203. Upon information and belief, Defendant Nicholson or its agents, and/or Defendant Scarafile or its agents, in their acts and omissions as stated herein, have engaged in bad faith and unfair dealings by displaying a complete disregard to their company core values, "***TRUTH*** *Commitment to honesty without compromise. An excellent reputation, loyalty and trust. We hold each other accountable. We do what we say we are going to do. We communicate honestly with everyone.*"

204. Defendant(s) or its agent(s) having participated in the civil action(s) had full knowledge all times material Defendants Dudek and Cross were denied lending due to an incomplete application, have never secured lending on said contract, could never obtain lending on said contract without a signed contract extension, but in bad faith and unfair dealings engaged in, continues to engage in, and plans to engage in, fraud, forgery, falsifying documents, misrepresentation, perjury, breach of fiduciary duties, and fraud on the courts.

205. Plaintiff asserts the acts or omissions or representations or misrepresentations made by the Defendant(s) or its agent(s) was relied on by Plaintiff and/or the courts.

206. Upon information and belief, Plaintiff affirms these acts and omissions were intentional and/or made recklessly and/or with malice and/or with intent to deceive.

207. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

208. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

209. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

210. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

211. Disciplinary action is compelled per SECTION 40-57-145 (A)(1) [makes a substantial misrepresentation involving a real estate transaction], (3) [pursues a continued and flagrant course of misrepresentation], (4) [in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public], (19) [fails to disclose in accordance with Section 40-57-137 any material facts concerning a real estate transaction], (20) [violates any provision of this chapter or a regulation promulgated under this chapter], (21) [violates a rule or order of the commission], and (23) [engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their client].

212. An investigation is compelled per SECTION 40-57-150 Investigation of violations of law; surrender of license; disciplinary action; report to be posted (A) through (f), with emphasis on (C)(1) [Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days].

FOR AN EIGHTH CAUSE OF ACTION
(Slander of Title)
[Against Defendant Collins and Defendants Dudek and Cross or its agent(s)]

213. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

214. Upon information and belief, Defendant Collins and Defendants Dudek and Cross, in bad faith, filed or frivolously filed a Lis Pendens (and including filing a separate Lis Pendens under a complaint or unlawful or frivolous complaint) with full knowledge Dudek and Cross had been denied lending and/or could not obtain financing on said contract without a signed Contract Extension Addendum, and/or the sales contract was invalid, and/or the application made to First Federal had expired and/or was invalid.

> First Federal 10-day notice letter dated 1-3-13: "*Should you decide at a later date[20] to furnish the above items, we can assist you with a new application.*"

215. Upon information and belief, Plaintiff affirms these acts were intentional and/or made recklessly and/or with malice and/or with intent to deceive[21].

216. Upon information and belief, Defendant Collins and Defendants Dudek and Cross, with complete knowledge of a backup buyer, filed or frivolously filed a Lis

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[20] 10-day notice letter was dated January 3, 2013. Expiration of application was January 13, 2013, making Dudek and Cross mortgage application on said contract invalid after January 13, 2013.

[21] See note 13.

Pendens (and including filing a Lis Pendens under a complaint or an unlawful or frivolous complaint) to prevent such sale of said property.

217. Injunctive relief is necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealings.

FOR A NINTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)
[Against Defendants Dudek and Cross]

218. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

219. Defendants Dudek and Cross failed or intentionally failed to perform the court Order of November 15th, 2014 for specific performance[22].

220. At all times material, and upon information and belief, Plaintiff argues Dudek and Cross were unable and/or are currently unable to obtain mortgage credit on said court Order with First Federal and/or any lending institution.

221. Upon information and belief, and with complete knowledge their sales contract within the court order was and/or is invalid [as provided herein], Defendants Dudek and Cross filed a motion, or an unlawful and frivolous motion, to compel the courts to order a supersedeas bond on appellants in order to stay the said court Order[23].

222. At the direction of the court, Dudek and Cross were, 1) directed to contact the sellers to obtain permission to the property, and 2) Morphew was directed to allow access

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[22] Per SC Rule 241(b)(4), orders, judgements, decree or decision 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.

[23] Per S.C. Code Ann § 18-9-170, If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the *judgment shall not be stayed unless a written undertaking be executed on the part of the appellant*, with two sureties...

to the property [in order for Dudek and Cross to perform an inspection and/or due their due diligence], and 3) Dudek and Cross to move forward on said Order.

223. Upon information and belief, Defendants Dudek and Cross failed or intentionally failed to perform their court Order of November 6, 2014, and again are in breach of contract, and contempt.

224. Upon information and belief, Defendants Dudek and Cross breached or intentionally breached sales contract within the court Order with complete knowledge they are unable to and will be unable to obtain financing on their sales contract within the Order; and have withheld or fraudulently withheld and/or continue to withhold that information from the sellers, the Plaintiff, the lower courts and the appellant court.

225. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

226. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

227. Injunctive relief is also necessary to demand Defendants or its agent to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

228. Punitive damages are necessary to deter Defendants or its agent from continuing its wanton conduct.

FOR A 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)

[Against Defendant Williams, Defendant Nicholson Defendant Collins, and Defendant Scarafile]

229. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

230. Upon information and belief, Defendant Allison Williams, lending officer at First Federal, had a fiduciary duty and/or an assumed duty to disclose to the courts true facts and/or representations as to the status or conditions of the Dudek/Cross loan or file.

231. Upon information and belief, Allison Williams [with complete knowledge of said facts or status] misrepresented to the courts that Defendants Dudek and Cross had applied for lending per their sales Contract, and/or obtained approval per Contract, and/or had secured mortgage lending, and/or were ready to close.

232. Upon information and belief, Defendant David Collins, had a fiduciary duty and/or an assumed duty to disclose to the Plaintiff's attorney and/or the courts, true facts and/or representations as to the status or conditions of the Dudek/Cross loan or file.

233. Upon information and belief, and with full knowledge the sales contract expired November 30th, 2012, Defendant Allison Williams gave legal advice on the Dudek and Cross **Time is of the Essence** sales contract.

234. Upon information and belief, Defendant Allison Williams displayed a misuse of her [influential] position in court and provided false testimony [in order to sway the courts decision].

235. Defendant Scarafile or Defendant Carolina One or Defendant Nicholson had a fiduciary duty and/or an assumed duty to disclose to the sellers or their agent, and to the

courts, that their clients, Dudek and Cross, had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending.

236. Defendant Scarafile made false or unlawfully and/or intentionally made false statements that Dudek and Cross, 1) had secured lending, 2) were ready, able and willing to close, and could schedule a closing the week of Christmas.

237. Upon information and belief, Plaintiff argues said statements were unlawfully made and/or made as a 'scare tactic' to compel the sellers into selling to his clients.

238. Plaintiff argues that where there is a duty to speak and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

239. Upon information and belief, Plaintiff argues these fraudulent actions were performed with the intent to deceive.

240. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

241. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

242. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

243. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

244. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

245. Sanctions are compelled under ABA Rules of Professional Conduct Rule 4.1, and are applicable if the lawyer failed to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

FOR AN ELEVENTH 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)(a), (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)

[Against Defendant Susan Nicholson, Defendant Scarafile, and Defendant Carolina One Real Estate]

246. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

247. Defendant Scarafile/Carolina One had a fiduciary duty and/or an assumed duty to disclose to the sellers or their agent, and to the courts, that their clients, Dudek and Cross, had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending.

248. Defendant Scarafile made false statements or unlawfully and/or intentionally made false statements that Dudek and Cross, 1) had secured lending, 2) were ready, able and willing to close, and could schedule a closing the week of Christmas.

249. Upon information and belief, Plaintiff argues Defendants Scarafile's actions or fraudulent action as stated [in (#196) above] were initially performed with intent to use 'legal blackmail'[24].

250. Defendant Susan Nicholson made false statements and/or false testimony that Dudek and Cross had secured lending or were ready to close.

251. Defendant Susan Nicholson made false statements and/or false testimony that Dudek and Cross were ready to close but could not schedule a closing because of missing document(s) required of the sellers.

252. Defendant Susan Nicholson or her agent had a duty and/or an assumed duty to disclose to the sellers or their agent and/or to the courts that her clients had not made application per sales contract and/or made application after their contract expired and/or had an invalid contract at application and/or they had been denied lending due to an incomplete application.

253. Defendant Nicholson or its agents, or Defendant Scarafile or its agents, have broken their duty and/or violated the S.C. Real Estate Code of Conduct.

254. Plaintiff argues that where there is a duty to speak and there is a failure to do so, there is a fraud of a most serious nature, and that both intrinsic and extrinsic fraud is present.

255. Upon information and belief, Plaintiff argues these fraudulent actions were performed with the intent to deceive.

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[24] When a buyer uses the legal system to "blackmail" the seller into conveying title to the property and/or at a price agreeable to the buyer; (ex., seller of property "blackmailed" into settling frivolous claims for breach of a real estate sales contract).

256. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

257. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

258. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

259. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

260. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

261. Disciplinary action is compelled per **SECTION 40-57-145 (A)(1)** [makes a substantial misrepresentation involving a real estate transaction], **(3)** [pursues a continued and flagrant course of misrepresentation], **(4)** [in the practice of real estate demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public], **(19)** [fails to disclose in accordance with Section 40-57-137 any material facts concerning a real estate transaction], **(20)** [violates any provision of this chapter or a regulation promulgated under this chapter], **(21)** [violates a rule or order of the commission], and **(23)** [engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their client].

262. An investigation is compelled per **SECTION 40-57-150** Investigation of violations of law; surrender of license; disciplinary action; report to be posted; (A)

through (f), with emphasis on (C)(1) Whenever the department has reason to believe that a violation of this chapter has occurred, an investigation must be initiated within thirty days.

FOR A TWELFTH CAUSE OF ACTION
(Fraud - Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive]
[Against all Defendant(s) or its agent(s)]

263. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

264. At all times material, Defendant(s) or its agent(s) concealed pertinent information to the case.

265. At all times material, Defendant(s) or its agent(s) failed to disclose material facts or nondisclosure of material facts/failure to volunteer information.

a. Defendant(s) or its agent(s) failed to disclose they had been denied lending [due to an incomplete application].

b. Defendant(s) or its agent(s) failed to disclose the sales contract between Defendants Dudek and Cross and the sellers Ferro was, has been, and currently is, invalid.

266. Defendant(s) or its agent(s) knowingly made over a hundred misrepresentations or false statements with intent to deceive, including:

1. Defendants Dudek/Cross testified they had secured lending per contract and had been or were always ready able and willing to close,

a. when in fact, they had been denied mortgage credit due to an incomplete application.

2. Defendants Dudek/Cross, their agent, Defendant Susan Nicholson, and loan officer Defendant Allison Williams stated or testified that the loan had been processing per sales contract but it was held up [for various reasons],
    a. when in fact, an application had not even been submitted until the contract had expired.
3. Defendants Dudek/Cross testified they could not close per contract due to seller's breach of contract,
    a. when in fact, they could not close due to making application after their contract expired and/or they were denied lending because they never submitted a complete application.
4. Defendants Dudek/Cross and their agent, Defendant Susan Nicholson, [fraudulently] communicated that the lender was requiring repair receipts and a cleared CL-100,
    a. when in fact, First Federal never required and/or requested either.
5. Defendant(s) or its agent(s) testified that sellers were to complete all the repairs [to Dudek and Cross' satisfaction] before making application,
    a. when in fact, Defendant(s) or its agent(s) had complete knowledge that 1) Dudek and Cross were required to apply for lending within 10 days of contract ratification, and 2) the sellers were under no legal obligation to perform any repairs until proof of financing.
6. Defendant Cross testified she did not receive a copy of the recorded plat, but instead had to obtain one in January 2013, when Defendant Dudek "drove to the county office to obtain a copy",

a. when in fact, Defendant Cross had received the stamped or recorded plat on or about the 23rd of November (Friday).

i. On (Tuesday) November 27th, Cross sent a confirmation e-mail to Defendant Allison Williams at First Federal, checking to make sure the recorded survey is what they needed.

7. Defendant Allison Williams testified her clients did everything they could to close escrow per contract,

a. when in fact, and with complete knowledge, Dudek and Cross had applied for mortgage credit after the said sales contract expired, and had been denied lending due to an incomplete application.

8. With complete knowledge this was breaking FDIC rules and regulations and First Federal processes, Defendant Allison Williams testified that the said non-property specific, unsigned, pre-qualification application dated for May 7, 2012 was the Defendants Dudek and Cross's application requirement per their October 24th, 2012 sales contract,

a. when in fact, at all times material, First Federal and/or FDIC clearly stated an unsigned pre-application is only valid for 30 days.

267. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

268. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

269. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

270. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A THIRTEENTH CAUSE OF ACTION
(Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal)
[Against Defendant First Federal, Defendants Dudek and Cross and Defendant Collins]

271. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

272. Upon information and belief, at all times material, Plaintiff contends no valid Sales Contract exists, or ever existed, between Dudek/Cross and First Federal.

a. Defendants Dudek and Cross applied for lending on an expired sales contract.

b. First Federal required a signed Contract Extension Addendum at application.

c. Dudek and Cross did not provide a signed Contract Extension Addendum at application and/or never provided said Addendum as required by First Federal to process their mortgage application.

d. First Federal declared the submitted sales contract illegible, therefore making it invalid, on December 12, 2012.

e. First Federal requested a signed legible sales contract and all addendums on December 12, 2012.

f. First Federal never received a [valid] and/or signed legible sales contract.

273. Plaintiff seeks declaratory judgment that at all times material, no sales contract existed or exists between Defendants Dudek and Cross and the sellers, as repeated above.

274. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

275. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

276. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

277. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A FOURTEENTH CAUSE OF ACTION
(Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d))
[Against Defendants Dudek, Cross, Williams, Collins, and Nicholson]

278. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

279. Upon information and belief, Defendant(s) or its agent(s) created or engaged in or assisted in the making of fake or false documents.

280. Upon information and belief, Defendant(s) or its agent(s) used or presented a forged document or other forged item (also referred to as "uttering" the instrument) with intent to deceive and with complete knowledge that the item was forged or false.

281. Upon information and belief, Defendant(s) or its agent(s) used a forged or false or fake instrument or document in an attempt or to obtain or transfer property or money.

282. Defendants or its agent's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

283. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

284. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

285. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

286. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR A FIFTEENTH CAUSE OF ACTION
(Violation of Federal Rules and Regulations (FDIC)/Violation of Banking Rules and Regulations)
[Against Defendant Allison Williams and First Federal]

287. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

288. Upon information and belief, Per FDIC and/or First Federal Banking Rules and Regulations, pre-qualification applications (that don't become applications or move forward for processing) expire after 30 days.

289. Upon information and belief, First Federal qualified or unlawfully qualified an 'expired' (over 180 days) unsigned, non-property specific, pre-qualification application as Defendant Dudek and Cross' pre-application 'requirement'.

290. Upon information and belief, FDIC rules specify, a file with a complete application [and with valid loan approval] for residential mortgage credit can only stay open for no more than 90 days without resolution.

291. Upon information and belief, First Federal failed to close Defendant Dudek and Cross' empty lending file (i.e., no application, no valid loan approval, no sales contract) that was over 180 days old.

292. Upon information and belief, and First Federal Banking Rules and Regulations, First Federal requires all necessary or required loan application documents within 10 days of initial application [in order to be considered for mortgage credit and/or process application for mortgage credit].

293. Upon information and belief, and FDIC, and First Federal rules and regulations, an application for mortgage credit cannot be accepted on an expired sales contract without a signed Contract Extension Addendum or a new sales contract with a valid expiration date.

294. First Federal Underwriting continued to process the Dudek/Cross file after the expired 10 days with an invalid or expired contract and no application or signed application from Defendants Dudek and Cross.

295. First Federal failed to close Defendants Dudek and Cross' file when they did not receive a valid contract and/or a signed Contract Extension Addendum within the time required.

296. First Federal accepted or unlawfully accepted an invalid [unsigned, missing seller name(s)], sales contract for mortgage loan processing.

297. Without having a complete application and/or a valid sales contract, First Federal distributed or unlawfully distributed an 'approval' letter dated December 12th, 2012[25].

[25] Submitted as a trial exhibit as proof of financing.

298. Upon information and belief, First Federal 'cleared' their 12/12/12 requirement for a legible signed sales contract and all addendums on 12/20/16 by writing, "*See other copy*[26] *for signatures*" on an unsigned, and nowhere the sellers name appeared on, copy of the sales contract.

299. Defendant Allison Williams and Defendant First Federal provided or intentionally provided false documentation and/or information and/or testimony to the courts:

a. Allison Williams testified Defendant Cross had submitted a pre-approval application" as of October 22nd, 2012 or [per the sales contract].

b. "Satisfactory loan approval" [per contract] was provided on 12/12/12, without a signed application and all banking addendums or a complete application yet received by First Federal.

c. Satisfactory loan approval [that contained no credit, income or asset conditions] per contract was provided on 12/12/12, when in fact approval was still contingent on:

    1. First Federal's receipt and review of the IRS request for last two years of transcripts, and a valid sales contract and all addendums (specifically, a signed legible sales contract, and a signed Contract Extension Addendum), and a signed application and all bank disclosures.

d. First Federal provided statement that, "All [final] information and documents requested from the buyers was received on 12/20/12", when in fact they never

[26] 'Note' references to use the illegible signed copy's signature page to validate the unsigned legible copy, which did not contain the sellers name anywhere.

received a valid [legible] signed sales contract with all addendums nor a complete application.

e. First Federal provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact they had not yet received a complete application and/or a valid sales contract.

f. First Federal [unlawfully] provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact First Federal had not ever contacted closing attorney or with a clear to close approval.

g. First Federal provided documentation that they and the closing attorney were "cleared to close on 12/20/12", when in fact, upon information and belief, the closing attorney had not started a title search as of 12/20/12.

300. Upon information and belief, Defendant Allison Williams provided or unlawfully provided underwriting with invalid and [**unsigned**] documents for processing[27].

301. Upon information and belief, First Federal displayed blatant discrimination[28], specifically but not limited to, Evidence of Disparate Treatment (Treat a borrower differently in servicing a loan or invoking default remedies) and Overt Evidence of

[27] Pre-qualification application dated May 2012, unsigned Contract Extension Addendum on 12/20/16, Unsigned Repair Addendum on 12/20/16, Unsigned sales contract on 12/20/16.

[28] The Department of Housing and Urban Development ("HUD"), the Department of Justice ("DOJ"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Housing Finance Board ("FHFB"), the Federal Trade Commission ("FTC"), the National Credit Union Administration ("NCUA"), and the Office of Federal Housing Enterprise Oversight ("OFHEO") (collectively, "the Agencies") will not tolerate lending discrimination in any form. (FDIC Law, Regulations, Related Acts 5000 – Statements of Policy).

Discrimination (overt evidence of discrimination when a lender openly discriminates on a prohibited basis).

b. All allegations in paragraphs 211-233 are fully repeated and incorporated herein.

c. Without a pre-qualification application or a credit check, First Federal provided or unlawfully and/or fraudulently provided a buyer with a pre-approval letter in the amount of $295,000 to provide to sellers as "*an indication of credit worthiness*" and/or "help borrowers let the seller know that they are about to get financing."

d. First Federal accepted an application on an expired contract (i.e., invalid contract) from Dudek and Cross, when Plaintiff Morphew was told by First Federal that they do not accept applications on expired contracts without, "*a Contract Extension Addendum or a new sales contract*".

e. First Federal failed to close Dudek and Cross' 'empty' residential lending file that was over 180 days old.

f. First Federal used Dudek and Cross' unsigned and incomplete pre-qualification application dated over 180 days as their pre-qualification application requirement (i.e., electronic application).

g. First Federal used an expired or invalid sales contract for Defendant Dudek and Cross' mortgage loan processing.

h. At all times material, and/or with full knowledge Defendant Cross was married at the time, Defendant Allison Williams or Defendant First Federal changed

Defendant Cross' marital status to 'single female' and/or reviewed application as such[29].

i. Defendant Williams, as an agent of a federal bank, provided false testimony or perjury in court [in favor of Defendants Dudek and Cross].

j. Upon information and belief, Ms. Williams failed to disclose pertinent material lending information during trial [in favor of Defendants Dudek and Cross] to hide damaging evidence against her clients.

302. Upon information and belief, Allison Williams or its agents and/or First Federal or its agents provided or unlawfully provided or testified altered information or services regarding any aspect of the lending process, including credit availability, application procedures, or lending standards at the court trial in order to sway the court's ruling [in favor of Defendants Dudek and Cross].

303. Defendant(s) or its agent(s)' actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

304. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

305. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

306. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

[29] Mrs. Cross' filed her applicable tax returns as 'single female'.

307. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR 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))
[Against all Defendant(s) or its agent(s)]

308. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

309. First Federal failed or intentionally failed to provide Defendants Dudek and Cross lending file in a timely manner[30].

310. First Federal responded to 2 separate subpoena requests and 1 direct telephone call by stating:

a. "*there are no accounts for this client at our institution*" and "*unable to locate any loan documents related to the above referenced customers for the specific address and TMS number*" [1st request dated March 4th, 2013]

b. *"no records of any loans with that number at our institution"* [2nd request dated August 1, 2013]

c. *"could not provide any information."* [phone call August 2013]

311. Upon information and belief, First Federal was forced to supply the file [and only] when lending officer and Defendant, Allison Williams, was subpoenaed by the Plaintiff to appear at trial.

a. File "magically" appeared 15 months later in response to the March 4th, 2013 subpoena request.

[30] First Federal failed to supply the subpoenaed information for 15 months, and when provided, it was just hours before the trial.

b. File was unexpectedly delivered to the applicable attorneys just hours before the trial on June 10th, 2014.

312. Upon documentation and belief, on or about January 18th, 2013, First Federal was initially concerned they would be "*pulled into the lawsuit*".

> *"The attorneys are in negotiation still as of a couple of days ago & the attorney for the buyer has placed an order that the seller cannot sell to anyone else until the matter is resolved. I think someone there should speak to our attorney about how to proceed. We could get drawn into this law suit if it in fact becomes a lawsuit".*

313. Upon information and belief, Defendant Collins failed or intentionally failed to provide the Defendants Dudek and Cross lending status, [even at the direct request(s) of the Plaintiff's attorney and/or with knowledge of the 2 subpoenas[31] [32] [33]].

314. Upon information and belief, Defendant Collins directed First Federal not to provide the Defendants Dudek and Cross lending file and/or status to the opposing party or parties[34] [35].

315. Upon information and belief, Defendants, or their agents, [intentionally] refused to provide Dudek and Cross' true lending status.

316. Upon information and belief, the actions of the Defendants were not the actions of honesty, good faith and fair dealings, but instead implied they had something negative to their case to hide.

---

[31] Rule 3.4 (a) (a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act)
[32] Rule 3.4(d) (in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party)
[33] Rule 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information)
[34] See Note 25
[35] Rule 3.4(f) (a lawyer shall not request a person other than a client to refrain from voluntarily giving relevant information to another party)

317. Upon information and belief, Plaintiff alleges there were critical material facts that would contradict Defendants Dudek and Cross' lawsuit against the sellers, and contradict their defense against the Morphew complaint, therefore damaging their legal stance and character.

318. Upon information and belief, Plaintiff alleges there is an abundant amount of damaging information contained herein to prove intent for obstruction.

319. Furthermore, Plaintiff asserts the damaging material facts withheld by the Defendant(s) or its agent(s) is, in itself, enough to demonstrate [malicious] intent in their obstruction.

320. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

321. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

322. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

323. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

324. Sanctions, under FRCP Rule 26, are compelled due to the Defendant(s) or its agent(s) use of fraudulent evidence and perjured testimony as part of their failure to comply with a discovery order.

FOR A SEVENTEENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
[Against all Defendant(s) or its agent(s)]

325. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

326. With complete knowledge that Defendants Dudek and Cross were denied lending due to an incomplete application, Defendant(s) or its agent(s) subjected or intentionally and/or recklessly subjected Morphew to unnecessary spending, time, effort, lost work hours, and extreme emotional distress.

327. Furthermore, Defendant(s) or its agent(s) subjected or intentionally and/or recklessly subjected, and/or is currently subjecting, Morphew to further unnecessary spending, time, effort, lost work hours, and extreme emotional stress[36].

328. Defendants Dudek and Cross, and Defendant Collins or its agents subjected or intentionally and/or recklessly subjected Morphew to [again] unnecessary spending, time, effort, lost work hours, and extreme emotional stress by subjecting Morphew to an unlawful and frivolous motion.

329. Defendant's actions were, and are, so extreme and outrageous as to exceed all possible bounds of decency.

330. The emotional distress that Morphew suffered, and continues to suffer, because of Defendant(s) or its agent(s) conduct is so unreasonable and unnecessary that no reasonable person can be expected to tolerate it.

331. As a result of Defendants conduct, Morphew suffered, and still continues to suffer, emotional distress and embarrassment.

[36] With complete knowledge that Dudek and Cross fraudulently filed an unlawful and frivolous lawsuit [with intent to deceive].

332. Plaintiff seeks actual and punitive damages to redress her damages.

333. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to conduct themselves in good faith and fair dealing with their clients and towards all parties involved.

334. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

FOR AN EIGHTEENTH CAUSE OF ACTION
(Tortious Interference with Existing Contractual Relations)
[Against all Defendant(s) or its agent(s)]

335. All allegations in the prior and subsequent paragraphs are fully repeated and incorporated herein.

336. Upon information and belief, Plaintiff has the valid and binding Contract with the sellers.

337. Upon information and belief, and at all times material, Defendant(s) or its agent(s) had actual knowledge of the Contract between the Plaintiff and the sellers.

338. At all times material, Defendant(s) or its agent(s) had actual knowledge that they did not have a valid sales contract.

339. At all times material, Defendant(s) or its agent(s) had actual knowledge that they, by their own hand, seriously breached their sales contract or could not obtain financing without a signed Contract Extension Addendum or had been denied mortgage credit.

340. Upon information and belief, Defendants Dudek and Cross currently cannot obtain financing on the sales contract and/or with the court order of November 2014.

341. Upon information and belief, Defendants Dudek and Cross have, and still are, interfering or intentionally and/or tortuously interfering with Plaintiffs Contract.

342. The herein stated actions and conduct of Defendants Dudek and Cross are without reasonable or legitimate business justification.

343. As a result of the tortious interference with their fraudulent actions Plaintiff has been unable in acquiring title to the Property pursuant to her Contract.

344. Plaintiff Morphew has incurred substantial expenses and expended considerable time and effort planning to purchase the Property.

345. As a direct and proximate result of the conduct of Defendant(s) or its agent(s) as set forth herein, Plaintiff has been and/or continues to be injured and damaged. Therefore, Plaintiff is entitled to recover actual damages.

346. Injunctive relief is also necessary to demand Defendant(s) or its agent(s) to be truthful in its dealings with their clients and towards all parties involved.

347. Punitive damages are necessary to deter all Defendant(s) or its agent(s) from continuing its wanton conduct.

As a direct and proximate result of the conduct of Defendant or its agents as set forth herein complaint, Plaintiff Morphew has incurred extensive undue burden or expense, time and emotional distress. Plaintiff seeks damages, as stated herein (to include actual, injunctive, punitive and special) at an amount to be proven at the trial of this matter, plus pre-judgment interest at the rate allowed by law.

WHEREFORE, having fully set forth his Complaint, Morphew prays the jury award her available relief including but not limited to the following:

A. Award Morphew appropriate compensatory, actual, consequential, and punitive Damages against Defendants to compensate Morphew for her monetary loss, lost wages, humiliation, embarrassment and emotional

distress, and loss of litigation costs caused by Defendants fraudulent acts, omissions, and of its violation of its duties to the courts and to Morphew; and

B. Award Morphew such other and further relief as the Court deems just and proper, and

C. Sanctions against applicable Defendant(s) or its agent(s) who had a fiduciary duty or duty to follow Rules and Regulations and Rules of Conduct as stated herein but failed or intentionally failed to do so.

Molly M. Morphew, Pro Se

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SUMMERVILLE, SC
August 23, 2016

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

DEFENDANTS ALLISON WILLIAMS AND SOUTH STATE BANK f/k/a SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S MOTION TO RECONSIDER

2017 FEB 16 PM 4:55
CLERK OF COURT
DORCHESTER COUNTY

TO: MOLLY MORPHEW, PRO-SE PLAINTIFF.

PLEASE TAKE NOTICE that Defendants Allison Williams ("Williams") and First Federal[1] or properly named South State Bank f/k/a SCBT, successor in interest to First Federal Bank ("Bank") (collectively "Defendants"), by and through their undersigned attorney, hereby give notice of their intent to move, and do so move, this Court to reconsider its recent Order Granting in Part and Denying in part Defendants' Motion to Dismiss.

PLAINTIFF'S FOURTEENTH CAUSE OF ACTION SHOULD BE DISMISSED AS TO DEFENDANTS, SPECIFICALLY, DEFENDANT WILLIAMS

Defendants assert that Plaintiff's Fourteenth Cause of Action was not addressed in this Court's Order regarding Defendants' Motion to Dismiss. While the Court dismissed the Fourteenth Cause of Action entitled "Forgery/falsifying documents with intent to defraud another; SC Rules of Professional Conduct Rule 1.2(d) (Against Defendants Dudek, Cross,

[1] Plaintiff has named First Federal as a Defendant in this matter. However, the Defendant should properly be named "South State Bank f/k/a SCBT, successor in interest to First Federal Bank."

Williams, Collins, and Nicholson)" as to all other Defendants, it does not appear that the Fourteenth Cause of Action was dismissed as to Defendant Allison Williams. It should be noted that Defendant Allison Williams is noted in the caption to Plaintiff's Fourteenth Cause of Action but is not addressed in the body of the cause of action so it is not clear on what basis Williams would have been included in the first place.

As to Defendants Dudek and Cross and Defendants Michael Scarafile, Susan Nicholson, Carolina One Real Estate and David Collins, this Court dismissed the Fourteenth Cause of Action because "Plaintiff has unequivocally asserted causes of action under the Rules of Professional Conduct" and the Rules of Professional Conduct do not form a basis for civil litigation. (See, Order as to Defendants Duded and Cross, pg. 8, and Order as to Defendants Scarafile, Nicholson, Carolina One Real Estate and Collins, pg. 16-17). This same reasoning should apply Williams, even more so because she is not an attorney and the Rules of Professional Conduct do not apply to her at all. There are no pleadings that state Defendant Williams is an attorney or is subject to the Rules of Professional Conduct.

Therefore, Plaintiff's Fourteenth Cause of Action should be dismissed as to Defendants because:

1. It is not a cognizable basis for civil litigation as found by this Court in its Orders regarding the Motions to Dismiss filed by Defendants Dudek and Cross, and Defendants Scarafile, Nicholson, Carolina One Real Estate, and Collins;
2. No cause of action exists for any violations of the South Carolina Rules of Professional Conduct, and thus Plaintiff cannot support any claim for relief based on their violation. (See, Defendants' Memorandum in Support of their Motion to Dismiss, pg. 6) (citing, *Spence v. Wingate*, 395 S.C. 148, 161, 716 S.E.2d 920, 927 (2011)); and

3. It is not pleaded towards Defendants and fails to state facts sufficient to form a basis for establishing liability.

PLAINTIFF'S FIRST AND SEVENTH CAUSES OF ACTION SHOULD BE DISMISSED AS TO DEFENDANTS

Defendants assert that the Court improperly denied its Motion to Dismiss relative to Plaintiff's First and Seventh Causes of Action. Plaintiff's First cause of action is asserted against "all defendants" and is for "Fraud, Extrinsic Fraud – Fraud on the Court." Plaintiff's Seventh cause of action is for "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud." Both causes of action sound in fraud and thus are subject to the heightened pleading standards found in Rule 9(b) of the South Carolina Rules of Civil Procedure.

The Court did dismiss Plaintiff's Twelfth Cause of Action for "Fraud – Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive." The Court held, "the Plaintiff pleads a claim of perjury rather than fraud." (Order, pg. 11) (brackets in original Complaint). The Court dismisses the cause of action accordingly.

Plaintiff makes no reference specifically to the Defendants or their conduct in her first cause of action. Plaintiff does make reference to actions of other defendants but only actions taken during the prior litigation of the same case. For example, Paragraph 78 reads:

> Plaintiff further maintains Defendant Collins both in the prosecution of the case and in the lower court, and on appeal in the Court of Appeals, made representations that were false, material, known to have been false when made, [and] made recklessly and/or with the intention that it be acted upon by all parties involved [including the sellers, Plaintiff, and the courts].

(Complaint, ¶ 78) (bracketed language is in original). The only action identified by Plaintiff in her Seventh Cause of Action related to Defendants was; "First Federal accepted or unlawfully

accepted an invalid and/or unsigned sales contract that contained no sellers name for mortgage loan processing." (Complaint, ¶ 197). Plaintiff wholly fails to identify any action of Defendants which support an allegation of fraud. Plaintiff's First and Seventh Causes of Action fail the pleading requirements of Rule 9(b), SCRCP. The causes of action should be dismissed for this reason alone.

Further, throughout the entire Complaint, there is no indication of action taken by the Defendants outside of the previous legal proceeding which could form the basis of a fraud cause of action. Therefore, the First and Seventh Causes of Action are merely a restatement of the perjury cause of action and should be dismissed for the same reason the Plaintiff's Twelfth Cause of Action was dismissed.

Therefore, Plaintiff's First and Seventh causes of action should be dismissed as to Defendants because:

1. The causes of action fail to properly plead facts sufficient to establish liability against Defendants;
2. The causes of action, sounding in fraud, fail to satisfy the heightened pleading standards set forth in Rule 9(b), SCRCP; and
3. The causes of action, to the extent they elucidate the reader at all as to what they are based on, are a restatement of the Plaintiff's cause of action for perjury.

This motion is made pursuant to Rules 59(e) of the South Carolina Rules of Civil Procedure and is based upon the facts of this case, the arguments of counsel, the pleadings filed, affidavits filed or to be filed and the common and statutory law of the State of South Carolina. For the reasons set forth herein, Defendants respectfully request this Court reconsider its ruling

on Defendants' Motion to Dismiss and dismiss Plaintiff's First, Seventh, and Fourteenth Causes of Action as they relate to the Defendants.

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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Attorneys for Defendants South State Bank f/k/a SCBT, successor in interest to First Federal and Allison Williams

Columbia, South Carolina
February 13, 2017

CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail to all parties of record at the address(es) shown below.

DOCUMENT(S) SERVED:

1. **DEFENDANTS ALLISON WILLIAMS AND SOUTH STATE BANK f/k/a SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S MOTION TO DISMISS**

PARTIES SERVED:

RECORDED
2017 FEB 16 AM 11:40
CHERYL B. [illegible]
CLERK OF COURT
DORCHESTER COUNTY

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Columbia, South Carolina
February 13, 2017

Amber Miller

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, Woody Law Firm, Defendants.	**DEFENDANTS ALLISON WILLIAMS' AND SOUTH STATE BANK f/k/a SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S MOTION FOR SUMMARY JUDGMENT**

RECORD
2018 MAR -5 PM 12:42
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

TO: MOLLY MORPHEW, PRO-SE PLAINTIFF.

PLEASE TAKE NOTICE that Defendants Allison Williams ("Williams") and First Federal[1] or properly named South State Bank f/k/a SCBT, successor in interest to First Federal Bank ("Bank") (collectively "Bank Defendants"), by and through their undersigned attorneys, hereby give notice of their intent to move and do so move, for an Order of this Court dismissing Plaintiff's Complaint pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This motion is supported by oral arguments of the undersigned counsel at any hearing regarding this motion, the attached exhibits and any affidavits, and applicable case and statutory law. Further, this Motion is supported by any Memorandum of Law filed in support thereof.

A trial court may properly grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a

[1] Plaintiff has named First Federal as a Defendant in this matter. However, the Defendant should properly be named "South State Bank f/k/a SCBT, successor in interest to First Federal Bank."

judgment as a matter of law." Rule 56(c), SCRCP. While the Court views the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party, once the party moving for summary judgment meets its initial burden of showing a lack of a genuine issue of material fact, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000) (citing *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988)).

BACKGROUND

Plaintiff initiated this action by filing her Complaint on September 8, 2016 alleging eighteen causes of action, eleven of which were at least facially directed at the Bank Defendants in some manner. On September 26, 2016, the Bank Defendants filed a Motion to Dismiss based upon Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. As a result, the Court dismissed seven of the eleven causes of action directed at the Bank Defendants leaving causes of action for (1) Plaintiff's first cause of action – "Fraud, Extrinsic Fraud – Fraud on the Court"; (2) Plaintiff's seventh cause of action – "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud"; (3) Plaintiff's seventeenth cause of action – "Intentional Infliction of Emotional Distress"; (4) Plaintiff's eighteenth cause of action – "Tortious Interference with Existing Contractual Relations."

This case fundamentally arises out of Plaintiff's disappointment with the decision of the Honorable James E. Chellis, Master in Equity, Dorchester County issued November 5, 2014 (See, Master in Equity Order in Case No. 2013-CP-18-00074, attached hereto as **Exhibit A**). Plaintiff has initiated a string of litigation arising out of this decision including two appeals and three civil actions. This Court has already summarized the "labyrinthine string of litigation" in its

Order Granting Defendants' [Dudek and Cross] Motion to Dismiss in one of those civil actions initiated by Plaintiff. (See, Order Granting Defendants' Motion to Dismiss in Case No. 2017-CP-18-00987, attached hereto as **Exhibit B**).

All of the related litigation arises out of Plaintiff's attempt to purchase a property located in Summerville, South Carolina. Defendants Dudek and Cross (the "Buyers") entered into a contract for the purchase of the property with the sellers of the property (the "Sellers"). Plaintiff also entered into a contract with the Sellers for purchase of the property. With competing contracts for the property outstanding, litigation between the Buyers, Sellers, and Plaintiff ensued. Neither of the Bank Defendants were parties to the previous litigation. The previous litigation resulted in Judge Chellis' Order awarding priority to the Buyers' contract over the Plaintiff's contract. (Exhibit A).

Plaintiff's allegations in this matter are best summarized by her in her deposition:

> If you file a lawsuit for specific performance, you are saying that you are ready, able and willing to close escrow at any moment, at any time at that moment that you filed and that is the requirement...And it is specific, and it's a law in itself, and it is not excused. Now, I find that they were denied lending. They told in trial, we secured financing. We were ready to close. ... What I understand now is they had to have a signed contract extension addendum in order to make that contract valid. They never had one. They never submitted one. ... So I am – that's why I'm here. I find that they met those requirements that they told a judge they did. They convinced a judge they did, and that's called an uninformed ruling.

(Deposition of Plaintiff, p.45, l.8 – p.48, l.12, excerpts attached hereto as **Exhibit C**). This quote belies Plaintiff's fundamental misunderstanding of the requirements and standards of specific performance. "South Carolina does not require Plaintiff to have made actual tender of the funds necessary to close in order to obtain the remedy of specific performance. **Plaintiff only need state in his pleading that he is ready, willing, and able to perform his obligations under the**

Contract." *Shay v. Austin*, 466 F.Supp.2d 664, 669 (D.S.C., 2006) (emphasis added) (internal citation omitted). As found by Judge Chellis, the Sellers in this case breached the sales contract and Buyers were always ready, able and willing to perform *their* obligations under the contract. (Exhibit A). There is no prerequisite to seeking specific performance, nor could there be, to force a recalcitrant counterparty to have also upheld its obligations. It would completely undermine the purpose and utility of specific performance.

According to the Plaintiff, the role of the Bank Defendants in this scheme was allegedly providing false testimony and misleading the court in the 2014 trial in front of Judge Chellis. Plaintiff stated that the Bank Defendants' alleged wrong-doing occurred "within the four walls of the courtroom." (Deposition of Molly Morphew, pg. 283, ll. 6-8, Exhibit C).

> Q: Is it fair to say that the only thing you're suing First Federal Bank and Allison Williams for is false testimony and misleading the court?
> A: And – well, currently, yes.
> Q: Currently yes?
> A: Yes.

(Deposition of Molly Morphew, pg. 279, ll. 1-7, Exhibit C). Further, Plaintiff discovered the alleged false testimony by examining the file her attorney had prior to the litigation of the previous case – not newly discovered evidence.

> 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 for your appeal, that's when you discovered that Ms. [Allison] Williams's 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.

(Deposition of Molly Morphew, pg. 80, ll. 11-23, Exhibit C). Allison Williams was cross-examined by Plaintiff's trial counsel.

ARGUMENT

Plaintiff's claims fail as a matter of law. As will be more fully developed in a memorandum of law in support of this Motion, the Bank Defendants' Motion for Summary Judgment should be granted on the following grounds:

1. The determination of whether or not the Buyers met the standards to seek specific performance has been heard and litigated and Plaintiff's attempt to litigate those issues again here should be barred by the doctrine of *res judicata*, the South Carolina Rules of Civil Procedure, equity, and the statutory and case law of the State of South Carolina.. Regardless, the Bank Defendants have no liability whether or not the Buyers met that standard.
2. Plaintiff's allegations of fraud on the court cannot be supported by her allegations of false and/or misleading testimony or discovery abuses and thus fail as a matter of law.

> Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, 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 v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Plaintiff has not alleged and cannot prove such egregious conduct on the part of the Bank Defendants and as such, cannot as a matter of law support her cause of action for fraud on the court.

3. Each and every remaining claim against the Bank Defendants is substantively a claim that the Bank Defendants committed perjury, which cannot support a civil cause of action

even if true. There is no civil cause of action for perjury. "As a general rule, no civil action lies for damages resulting from false statements under oath constituting perjury or from subornation of false testimony. Thus, no action for damages lies for false testimony in a civil suit whereby the litigant fails to recover a judgment, or a judgment is rendered against him or her." 60A Am Jur 2d Perjury § 7. "Authorities are unanimous in holding that generally a person who is damaged by perjured testimony in a civil suit does not have a cause of action for damages arising out of such perjured testimony." *Frist v. Gallant*, 240 F.Supp. 827, 828 (D.S.C. 1965).

4. To the extent Plaintiff has any other remaining allegations against the Bank Defendants, they consist of allegations that the Bank violated banking regulations and/or policy for which no private right of action lies. These causes of action have already been dismissed by this Court.

5. Any allegation of conspiracy, notably Plaintiff's seventh cause of action, fails as a matter of law because Plaintiff cannot show special damages. "The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage." *Jenkins v. Few*, 391 S.C. 209, 217, 705 S.E.2d 457, 461 (Ct. App. 2010). "Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Id.* Plaintiff has testified that she has no special damages that rise or fall with the merits of the conspiracy claim:

> Q: If your conspiracy claim is dismissed, do your damages hold up?
> A: Yes.

(Deposition of Molly Morphew, pg. 290, ll.22-25, Exhibit C).

6. Plaintiff's claim for her costs and expenses to litigate this action fails as a matter of law. South Carolina courts have routinely denied pro se litigants awards of attorney fees. "A pro se litigant is not entitled to an award of attorney fees, even when the litigant is a practicing attorney." *First Union Nat'l Bank v. Soden*, 333 S.C. 554, 571, 511 S.E.2d 372, 381 (Ct. App., 1998). "A *pro se* litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney. Accordingly, we hold that pro se litigants are not entitled to attorney fees under § 20-3-130(H) [which provides for awards of attorney's fees in divorce actions]." *Calhoun v. Calhoun*, 339 S.C. 96, 100, 529 S.E.2d 14, 17 (2000). Plaintiff's attempt to label her claim as costs instead of attorney's fees is merely form over substance. Plaintiff is asking the court to award her payment for her time for acting as her own lawyer. Any claim by Plaintiff for an award of attorney's fees should be dismissed.
7. No genuine issue as to any material fact exists as to any of Plaintiff's claims and those claims fail as a matter of law.

CONCLUSION

Therefore, based on the above, the attached exhibits and any affidavits, applicable case and statutory law, and any Memorandum of Law filed in support thereof, the Bank Defendants are entitled to summary judgment on Plaintiff's claims.

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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Columbia, South Carolina
March 2, 2018

EXHIBIT A

RECORDED
2018 MAR -5 PM 12:43
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew

Thomas Ferro
Stephen Dudek

Lorraine Ferro
Doreen Cross

2014 NOV -6 PM 12:58
CLERK OF COURT
DORCHESTER COUNTY

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.**

Master in Equity

3078
Judge Code

11/6/2014
Date

FILED
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
2014 NOV -5 PM 12:43
RECORDED

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **November 6, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **November 6, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

John A. Massalon PO Box 859 Charleston, SC 29402

David A. Collins PO Box 40578 Charleston, SC 29423
Thomas Ferro 788 East Butternut Road Summerville, SC 29483
Lorraine Ferro 788 East Butternut Road Summerville, SC 29483

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

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.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA **COUNTY OF DORCHESTER**	**IN THE COURT OF COMMON PLEAS** **FIRST JUDICIAL CIRCUIT** **EQUITY DIVISION** **Civil Action No.: 2013CP1800074** **consolidated with Civil Action No. 2013CP1800183**
Stephen Dudek, Doreen Cross, **Plaintiffs** **Versus** **Thomas M Ferro, and Lorraine B Ferro,** **Defendants** **AND** **Molly M Morphew,** **Plaintiff** **Versus** **Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro,** **Defendants**	**ORDER**

2014 NOV -5 PM 12:57

Presiding Judge: James E. Chellis
Master in Equity

June 11, 2014 and Thursday, June 12, 2014

Appearances:

For Plaintiff Morphew:
Wills Massalon & Allen, LLC
John A. Massalon, Esquire
97 Broad Street
P. O. Box 859
Charleston, South Carolina 29402

For Defendants :Dudek & Cross
Law Firm of David A. Collins, LLC
David A. Collins, Esquire
P. O. Box 40578
Charleston, South Carolina 29423

Defendants:
Thomas M Ferro and Lorraine B Ferro, Defendants,
Pro Se

Emily R. Mirek, Court Reporter and Notary Public

PREFACE

This is a breach of contract action. Plaintiff Morphew seeks enforcement of a contract for the purchase of real estate she entered into with Defendants Ferro on December 16, 2012 (the Morphew Contract). Defendants Dudek and Cross seek enforcement of a contract for the purchase of real estate they entered into with Defendants Ferro on October 23, 2012 (the Dudek/Cross Contract). The real property described in each contract is the same. It consists of a residential property on 6.006 acres near Summerville (the Real Property) Plaintiff's Exhibit 23, cf. endnote 10). All parties agree the residential real property is unique. All Parties agree both contracts are unambiguous.

Plaintiff Morphew and Defendants Ferro assert the latter contract, the first contract, is not enforceable. Plaintiff Morphew and Defendants Ferro assert Defendants Dudek and Cross failed to meet conditions of their contract in a timely manner. Plaintiff Morphew alternatively seeks damages against Defendants Ferro on breach of the Morphew Contract should the Court direct the specific performance of Dudek/Cross Contract. Hence, Defendants Ferro champion the Morphew Contract. As such, Plaintiff Morphew and Defendants Ferro have consistent positions on the Dudek/Cross Contract. The latter consistent positions diverge on the issue of Defendants Ferro's breach of the Morphew Contract.

This Court finds Plaintiff Morphew and Defendants Ferro consistent position untenable. The Dudek/Cross Contract is enforceable. This Court will order specific performance of that contract. The Morphew Contract is contingent on termination of the Dudek/Cross Contract. Hence, this Court will declare that contract enforceable only if Defendants Dudek and Cross fail to complete the performance of the Dudek/Cross Contract as ordered by this Court. Since the Dudek/Cross Contract is enforceable subject to conditions, this Court will fashion the remedy of specific performance giving due regard to the conditions, the time for completion of which will need to be reset, since the conditions are reasonably designed to protect all parties to the Contract. Plaintiff Morphew has a conditional contract that is not enforceable unless Defendants Dudek and Cross elect to terminate the contract as directed to be specifically performed. The Court's analysis follows.

GUIDING PRINCIPALS OF LAW & EQUITY

This Court is guided by many principals of law and equity. These guides include the following:

1. It is not the province of the courts to construe contracts broader than the parties have elected to make them or to award benefits where none was [sic] intended. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 151, 533 S.E.2d 597, 601 (2000).
2. The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous. *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003).
3. The law by which a contract is to be governed, is resolved into the terms whereby it is entered into; provided that the contract be consistent with morality and not repugnant to law or the principles of public policy. *Satterwhite's Adm'rs v. McKie*, 16 S.C.L. 397, 398 (S.C. Const. App. 1824).
4. Where a contract's language is plain and unambiguous, the language used by the parties "determines the instrument's force and effect." *Jordan v. Sec. Group, Inc.*, 311 S.C. 227, 230, 428 S.E. 2d 705, 707 (1993).
5. A court reviewing a written contract must discern:

   [T]he intention of the parties and the meaning[, which] are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945); *see also ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct.App.2011) ("It is not the function of the court to rewrite contracts for parties."). "Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012).
6. If a promisor prevents or hinders the occurrence of a condition, or the performance of a return promise, and the condition would have occurred or the performance of the return promise been rendered except for such prevention or hindrance, the condition is excused, and the actual or threatened nonperformance of the return promise does not discharge the promisor's duty, unless (a) the prevention or hindrance by the promisor is caused or justified by the conduct or pecuniary circumstances of the other party; or (b) the terms of

the contract are such that the risk of such prevention or hindrance as occurs is assumed by the other party. Restatement (First) of Contracts § 295 (1932)

7. Impracticability excuses the non-occurrence of a condition if the occurrence of the condition is not a material part of the agreed exchange and forfeiture would otherwise result. Restatement (Second) of Contracts § 271 (1981).
8. Waiver is the voluntary and intentional relinquishment of a known right. *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387. It may be implied from circumstances indicating an intent to waive. *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981); *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Ct.App.1987). Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver. *Bonnette*, 282 S.E.2d 597. *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928-29 (Ct. App. 1994).
9. In the construction of a contract, the intention of the parties to be collected from the instrument, (if in writing,) should be constantly in view, and in their performance, good faith and fair dealing is always required. And from hence, [the Court] deduce[s] the rule that when a contract stipulates for the performance of a condition on the event of a contingency, the occurrence of which must be known to one of the parties, but not necessarily known to the other, it is the duty of him to whom it is known to give notice of it to the other. . . *Birdseye v. Davis*, 13 S.C.L. 296, 298, 297-98 (S.C. Const. App. 1822).
10. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. *Restatement (Second) of Contracts § 205 (1981).*
11. The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case." *Guignard v. Atkins*, 282 S.C. 61, 64, 317 S.E.2d 137, 140 (Ct.App.1984); *accord Bishop v. Tolbert*, 249 S.C. 289, 298, 153 S.E.2d 912, 917 (1967) ("The rule is well settled that the granting of specific performance is not a matter of absolute right, but rests in the sound or judicial discretion of the Court, guided by established principles, and exercised on a consideration of all the circumstances of each particular case."). "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct.App.1985). "[S]pecific performance ... is only available to enforce a contract that is fair, just, and equitable." *Hodge v. Shea*, 252 S.C. 601, 612, 168 S.E.2d 82, 87 (1969). "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).

FINDINGS OF FACT

1. The Dudek/Cross Contract is a conditional contract. Four conditions[1] are in the "printed matter" of the Contract. The parties agree these conditions require that "TIME IS OF THE ESSENCE." These conditions are found in Paragraph 3[2]; Paragraph 8;[3] Paragraph 12;[4] and Paragraph 19: Condition of Property (B. Inspection[5]) and (D. Wood Infestation[6]).

2. Ten conditions are set out in the Paragraph 29 Contingencies[7]. Notably, these ten conditions do not provide that time is of the essence. Moreover, these stipulations preempt the printed matter. These ten conditions are stated in three separate addenda, entitled Addendum A[8], Addendum B[9] and Addendum C[10].

3. The intention of the parties and the meaning of the Dudek/Cross Contract can be gathered primarily from the contents of the writing itself. In other words, this Court finds that the Dudek/Cross Contract is clear and unequivocal from the four corners of the instrument. This Court finds that the intent of the parties is the sale and purchase of the Real Property. Even though the conditions, in the stipulated contingencies, do not expressly require that time is of the essence, these stipulations do not materially discharge the time of the essence provisions. The parties intended that this transaction would occur on or before a date certain, specifically, November 30, 2012. The Dudek/Cross Contract's meaning is determined by the Contract's contents alone. This meaning is express. This Court finds the Dudek/Cross Contract is clear and capable of legal interpretation. Thus, this Court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. See, *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012).

4. The meaning[11] of the Dudek and Cross Contract is to give effect to the sale and purchase of the Real Property, a unique residential real property. This objective, i.e., to give effect to the intentions of the parties, culminates at that point in time when Defendants Ferro deliver a deed of conveyance[12] to Defendants Dudek and Cross in exchange for the purchase price. The purchase price is Three Hundred Three Thousand Dollars ($303,000.00). Defendants Ferro agree to pay Five Thousand Dollars ($5,000.00) of Defendants Dudek and Cross' closing costs.

5. Paragraph 6 of the Contract provides: "Purchase price shall be paid as follows: ■ Subject to financing. Financing to be obtained by ■ Conventional." Cross testified she and Dudek were

prepared to pay 20% of the purchase price in cash, financing 80% with a conventional residential loan.

6. Paragraph 3's closing date condition is dependent on successful completion of all of the conditions. This condition cannot be enforced until Defendants Dudek and Cross can deliver to Defendants Ferro the purchase price, discussed *infra*. Additionally, Defendants Dudek and Cross are not obligated to deliver the purchase price until Defendants Ferro perform the conditions for which they are responsible[13].

7. Defendants Ferro rely heavily on the failure of Defendants Dudek and Cross to have performed under Paragraph 8. A review of the condition reveals that the obligation to provide written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in the contract, is impossible. No other provision in the Dudek/Cross Contract alters the obligation to provide written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions.

8. Defendants Dudek and Cross's loan officer testified that the conventional residential loan is subject to rules and regulation. Her testimony indicates her financial institution has loan criteria that change. This testimony infers these rules and regulations are also banking regulations. She stated the regulations change from time to time. She testified that her financial institution provides pre-authorized loan approvals upon a potential borrower's successful application for an approval of residential financing. She testified pre-approval loan letters contain conditions that cannot be changed. She testified pre-approved loans evolve into loan applications. Her testimony established that pre-approved loan applications become loan applications when a specific property is identified. Her testimony also established that a signed application is not necessary for a loan officer to begin initiating the lender's processing. She testified that loan applications, if the potential borrower meets the loan processing conditions, thereafter evolve into loan commitments. She testified loan commitments contain conditions. Further, her testimony that a loan commitment for a conventional residential loan will always be subject to conditions; such as, the borrower's assets and liabilities remain substantially the same as they were at the time of the loan's application[14], continued verification of employment, mortgagee title insurance, free of liens and encumbrances, except those acceptable to the lender, *et. cet.*, (Plaintiff Exhibit 16, generally, and specifically, Residential Loan Commitment,

12/12/12). This testimony and documentary evidence is consistent with this Court taking judicial notice of the fact that conventional residential loan approvals without conditions are impossible to achieve.

9. Plaintiff Morphew and Defendants Ferro assert Defendants Dudek and Cross failed to perform this condition. This Court finds that an unconditional loan approval as described in Paragraph 8 is impossible[15] to achieve. In fact, an unconditional commitment for a conventional residential loan is impossible. A conventional residential loan commitment is subject to conditions. The legal effect of this impossibility is to excuse the condition. Hence, the culmination of the transaction on or before November 30, 2012 is excused.

10. The Court however finds that the temporal condition that TIME IS OF THE ESSENCE cannot be ignored altogether because the intent of the Dudek/Cross Contract was to complete the transaction with TIME IS OF THE ESSENCE. Notably, this Court finds the term is a mutual condition that conversely infers mutual benefits. The Contract created conditions for both parties to observe the resounding term, TIME IS OF THE ESSENCE[16]. In fact, Defendant Cross testified she immediately ordered a home inspection upon completion of the executed contract. (Transcript page 35, line 20). This act demonstrates Defendants Dudek and Cross understood the intent and meaning of the Dudek/Cross Contract.

11. The evidence reveals that Dudek and Cross had a completed home inspection by November 3, 2012. On that date, the evidence reveals Dudek and Cross provided Defendants Ferro a detailed list of critical concerns. The first of which embodies four points concerning the structural integrity[17] of the residence[18]. Additional critical concerns include plumbing water damage (6 points), moisture control (4 points), electrical issues (6 points), safety (4 points), utility maintenance (2 points), and four miscellaneous points. (Plaintiff's Exhibit 5; Transcript page 36, lines 5-8).

12. The Court finds Defendants Dudek and Cross detail of problems they wanted addressed consistent with their rights under the contract (Plaintiff's Exhibit 3, Dudek/Cross Contract Addendum A, Item 1) and infers they acted on the condition time is of the essence to achieve the November 30, 2012 closing date. Moreover, development of the critical concerns list and notifying Defendants Ferro within 10 days of the execution date of the contract supports this Court finding Defendants Dudek and Cross acted with good faith were dealing fairly with

Defendants Ferro. The detail of critical concerns establishes the importance of clear communication to avoid delays that poor communication invariably creates. The Defendant Cross testified Mr. Ferro's reply was a "few simple lines" indicating that he would take care of the structural problems, the electrical problems, would make sure that the bath leak in his bathroom was repaired, the floor would be repaired if needed and a few and other things like that (Transcript page 36, lines 12 – 20). This evidence is not controverted (Plaintiff's Exhibit 17, see Thomas Ferro email, dated November 11, 2012 @ 2:51 P.M.). Also, the uncontroverted evidence reveals a copy of the approved subdivision plat, dated October 20, 2012, was received by Defendants Dudek and Cross the Friday after Thanksgiving. The effective utility of which is Defendants Dudek and Cross were delayed until at least November 26, 2012 to further pursue the purchase price through the conventional residential financing. Moreover, the evidence reveals a wood infestation report (CL 100) was not provided until November 30, 2012. That report revealed a number of problems.

13. The Court finds that Defendants Ferro failure to address each item of critical concern in the manner in which it was presented violates Defendants Ferro's obligation to deal in good faith and fairly with Defendants Dudek and Cross. The Court finds Defendants Ferro's failure to immediately respond to Defendants Dudek and Cross in writing to the critical concerns to eliminate, or at least lessen, misunderstandings for Defendants Dudek and Cross to evaluate facts regarding their due diligence, together with Defendants Ferro's failure to provide an approved subdivision plat until effectively four (4) days prior to the Paragraph 3 date, and the utter failure to provide a timely "clear" CL 100, demonstrate that Defendants Ferro did not perform their obligations under the contract. These failures prevented or hindered the ability of Defendants Dudek and Cross to complete their evaluation of the property as the Contract provides (Plaintiff's Exhibit 17, see Susan Nicolson email dated, November 27, 2012 @12:44 P.M.). Thus, this Court finds Defendants Ferro's failures excuse the obligation of Defendants Dudek and Cross to deliver the purchase price on or before November 30, 2012 by the method of payment to which the parties agreed. Restatement (First) of Contracts § 295 (1932).

14. This Court finds the actions of Defendants Ferro establish they failed to observe TIME IS OF THE ESSENCE, a mutual obligation that the contract required. The contract expresses this refrain five (5) times in the printed matter. The Court finds that Defendants Ferro's failure to

respond with dispatch, and with clear intentions, effectively waives their right to assert Defendants Dudek and Cross did not comply with their obligation to observe that TIME IS OF THE ESSENCE.

15. The Court finds Defendants Dudek and Cross are willing, able and ready purchasers of the Real Property.

16. The Court finds the Dudek/Ferro Contract is enforceable.

17. The Court finds Defendants Ferro shall complete the sale of the property to Defendants Dudek and Cross.

18. The Court finds the Defendants Dudek and Cross' Paragraph 8 conditions are impossible. Nonetheless, Defendants Dudek and Cross are bound by the obligation of good faith and fair dealing which, when considered with the intent and meaning of the Contract, requires them to pursue conventional residential loan financing without delay. Since, the payment method to consummate the sale is a conventional residential loan, the date of the closing shall occur as soon as practicable once Defendants Dudek and Cross procure the loan commitment. Defendants Dudek and Cross shall enlist the services of a closing attorney to assure the conditions of the conventional residential loan commitment shall proceed with the urgency of time is of the essence. Thus, the intent and meaning of the Contract is reset to the date this Order becomes the law of the case.

19. The obligation to observe time of the essence applies to both Defendants Dudek and Cross and to Defendants Ferro. Since both parties are obligated to observe that time is of the essence both parties enjoy a reciprocal benefit by this provision. The Court finds the mutual obligation that the parties must deal with one another in good faith and with fairness must be addressed. The obligation for good faith and fair dealing, implied in every contract, is essential in the Dudek/Cross contract relationship with Defendants Ferro.

20. In this case, had the Defendant Ferro reciprocated this mutual contractual obligation, the sale and purchase of the Real Property would have occurred nearly two years ago, and would have saved all parties tremendous time, effort, expense and perhaps, as importantly, emotional equity. Regrettably, Defendants Ferro allowed an innocent third party, Plaintiff Morphew, in this consolidated case, to become entangled in an existing contractual relationship. In this Court's view, Defendants Ferro's acts demonstrate they failed to exercise a simple rule of common

decency that is, "do unto others as you would have them do unto you"[19]. A corollary to the noble principal is "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Restatement (Second) of Contracts § 205 (1981). See, *Birdseye v. Davis*, 13 S.C.L. 296, 297-98 (S.C. Const. App. 1822) (In the construction of a contract, ***the intention of the parties*** to be collected from the instrument, (if in writing,) should be constantly in view, and ***in their performance, good faith and fair dealing is always required.***) (This Court's emphasis).

21. The Court finds Defendants Ferro are in default of the Dudek/Cross Contract for the reasons stated in this Order. Pursuant to Paragraph 16, the Court finds Defendants Dudek and Cross are entitled to recover reasonable costs, including a reasonable attorney fee. To this end, Defendants are at leave to apply, on or before ten (10) days of the date of this Order, for costs and attorneys fees due from Defendants Ferro. This Court will schedule a factual hearing on or after 10 days from the date of filing the application to ascertain a reasonable attorney fee and what costs should be recovered. If Defendants Dudek and Cross fail to apply for costs and attorneys fees within ten (10) days of the entry of this Order, Defendants Dudek and Cross shall be deemed to have waived their rights under Paragraph 16.

22. Defendants Dudek and Cross seek specific performance of the Dudek/Cross Contract. Defendants Dudek and Cross claim against Defendants Ferro allege a breach of contract; however, they maintain the property is unique and no adequate remedy at law is available. This Court agrees. The property is six and six-one thousandth (6.006) acres on the outskirts of Summerville, South Carolina between the developing communities of Knightsville and Jedburg. In the last decade and one-half this area has enjoyed significant growth in commercial development in a rural setting. The Real Property is close to new public elementary and middle schools, and Summerville's private school, Pinewood Preparatory School. It presents easy access to the Town of Summerville, and U. S. Highway 78, which is the predominant route between the Summerville and the County Seat, St. George. In contrast, it is a far cry from a condominium and significantly different than a home in a tract builder's residential subdivision. This Court finds the property unique. Specific performance should be granted because there is no adequate remedy at law. Specific enforcement of the contract is equitable between the parties. See, *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000).

23. The Court finds the Dudek/Cross Contract is fair, just, and equitable. See, *Anthony v. Eve*, 109 S.C. 255, 263, 95 S.E. 513, 515 (1918); *McChesney v. Smith*, 105 S.C. 171, 176, 89 S.E. 639, 641 (1916).

24. Giving due regard to the terms of the contract and the facts and circumstances concerning the intent and meaning of the Dudek/Cross Contract, this Court finds it should order that done which ought to be done. Hence, compelling performance of the Dudek/Cross Contract is an equitable result. Moreover, giving effect to the intent and meaning of the contract by compelling Defendants Ferro to sell the property to Defendants Dudek and Cross promotes a just result.

25. The Court finds Defendants Dudek and Cross worked in good faith to consummate the sale. The evidence supports a finding Defendants Ferro acts and omissions demonstrated unfair dealing. Defendants Ferro fail to point to meaningful communication with Defendants Dudek and Cross whereas the acts of Defendants Dudek and Cross infer they acted with care, kept Defendants Ferro advised of the concerns they had. This Court finds Plaintiff's Exhibit 3 emails demonstrate Defendants Ferro obfuscated the intent and meaning of the contract in the performance of conditions incumbent upon them to fulfill. The Court finds Defendants Ferro acted without intent to fulfill the contract according to its plain terms. The circumstances imply Defendants Ferro attempted to use the contract's time of the essence provisions as an exemption, and tried to use it as a tool to avoid their having to deal with critical concerns raised by Defendants Dudek and Cross, who were acting at all times within their rights under the contract.

CONCLUSIONS OF LAW

1. The Findings of Fact shall be deemed Conclusions of Law. The Conclusions of Law shall be deemed Findings of Fact. Additional Conclusions of Law are as follows:

2. The Dudek/Cross Contract is valid.

3. The Dudek/Cross Contract is a conditional contract.

4. The Dudek/Cross Contract is fair, just, and equitable.

5. Paragraph 12 of the Dudek/Cross Contract is impossible to perform. Defendants Dudek and Cross's failure to comply with Paragraph 12 is excused. However, Defendants Dudek and Cross did all they could have done to achieve a conventional residential loan to complete the method of payment. Moreover, they carried into execution of the terms of the Contract with the approbation of Defendants Ferro.

6. Defendants Ferro frustrated the rights of Defendants Dudek and Cross to perform their due diligence. Thus, Defendants Ferro excused the intent and meaning of the contract to culminate on or before November 30, 2012 with TIME IS OF THE ESSENCE.

7. Defendants Ferro's acts and omissions waived their right to require this Court to give effect to the intent and meaning of the contract to culminate on or before November 30, 2012 with TIME IS OF THE ESSENCE.

8. Defendants Ferro are in default of the Dudek/Cross Contract. Defendants Dudek and Cross have a contractual right to pursue recovery of a reasonable attorney fee and costs of this action. In order to assert this right, Defendants Dudek and Cross shall apply to recover these costs and fees on or before ten (10) days of the entry of this order.

9. Defendants Dudek and Cross have demonstrated they are willing, able and ready to purchase the Real Property, however, since approximately two (2) years have passed since the agreement was originally made, in order to give effect to the intent and meaning of the contract, they are granted the right to update their due diligence requirements while they renew their loan application.

10. Defendants Dudek and Cross shall be entitled to an updated Residential Home Inspection in accord with Paragraph 19 (B) that is satisfactory to them.

11. Defendants Ferro shall procure a CL 100 in accord with Paragraph 19 (D) that is satisfactory to Defendants Dudek and Cross.

12. The Dudek/Cross Contract intends and means that Defendants Dudek and Cross are to purchase the Real Property for Three Hundred Three Thousand Dollars ($303,000.00) and the method of payment shall be a conventional residential loan. The closing costs shall be paid as set forth in the Dudek/Cross Contract.

13. Defendants Ferro shall observe the obligation of good faith and fair dealing in performance of the Dudek/Cross Contract.

14. Defendants Ferro shall perform those conditions of the contract they are responsible for without delay. They shall inform in writing with specificity the Defendants Cross and Dudek what, if any, repairs they intend to complete to meet the satisfaction of Defendants Dudek and Cross. Although the finding of this Court established the Defendants right to personal satisfaction, the standard of satisfaction must meet the test of a reasonable person (*supra*,

endnote 13). In assessing what is reasonable the obligation of good faith and fair dealing prevails.

15. Defendants Ferro shall deliver a deed upon payment of the purchase price that complies with the provisions of Paragraph 3. and Addendum A and Addendum B of the Special Stipulations.

16. This Order shall be construed to terminate the Morphew Contract upon the exchange of the purchase price by Defendants Dudek and Cross for delivery of the deed by Defendants Ferro. Hence. at that point in time, Defendants Dudek and Cross grant of mortgage lien to their conventional residential loan lender shall be free of the encumbrance of the Morphew Contract.

17. The Morphew Contract cannot be specifically performed unless the Dudek/Cross Contract is terminated because a condition of the contract cannot be performed.

18. If the Dudek/Cross Contract is terminated, Defendants Dudek and Cross shall notify this Court and Plaintiff Morphew immediately, and file with this Court the written termination of Contract specifying the condition of the contract that could not be performed.

19. The Morphew Contract is a valid contract.

20. The Morphew Contract is a conditional contract.

21. The Morphew Contract is fair, just and equitable.

22. Thus, if the Dudek/Cross Contract is terminated, Defendants Ferro specifically perform Plaintiff Morphew Contract according to its terms.

23. Since the Morphew Contract is an enforceable contract conditioned on the termination of Defendants Dudek and Cross Contract, Defendants Ferro are not in default of the Morphew Contract. Absent a default, Plaintiff Morphew is not entitled to recover her costs and attorney's fee. NOW THEREFORE, IT IS

ORDERED, ADJUDGED, AND DECREED that Defendants Ferro shall deliver a deed of conveyance to the Real Property to Defendants Dudek and Cross in exchange for the purchase price in accord with the terms of sale and purchase contained in the Dudek/Cross Contract as directed to be given effect by the Findings of Fact and Conclusions of Law set forth in this Order. AND, IT IS

SO ORDERED, ADJUDGED, AND DECREED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
November 6, 2014

[1] Paragraph 11. is not contested, however, this accounts for a fifth condition with Time is of the Essence. The Court considers it in construing the intent and meaning of the Dudek/Cross Contract.

2

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 11/30 ~~December 01~~ 2012, not later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

3

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 90.000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐will ☐will not be added to the mortgage. VA funding fee ☐will ☐will not be added to the mortgage.

4

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. 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.

5

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20 . 2012 . In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. **Time is of the essence.** If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

6

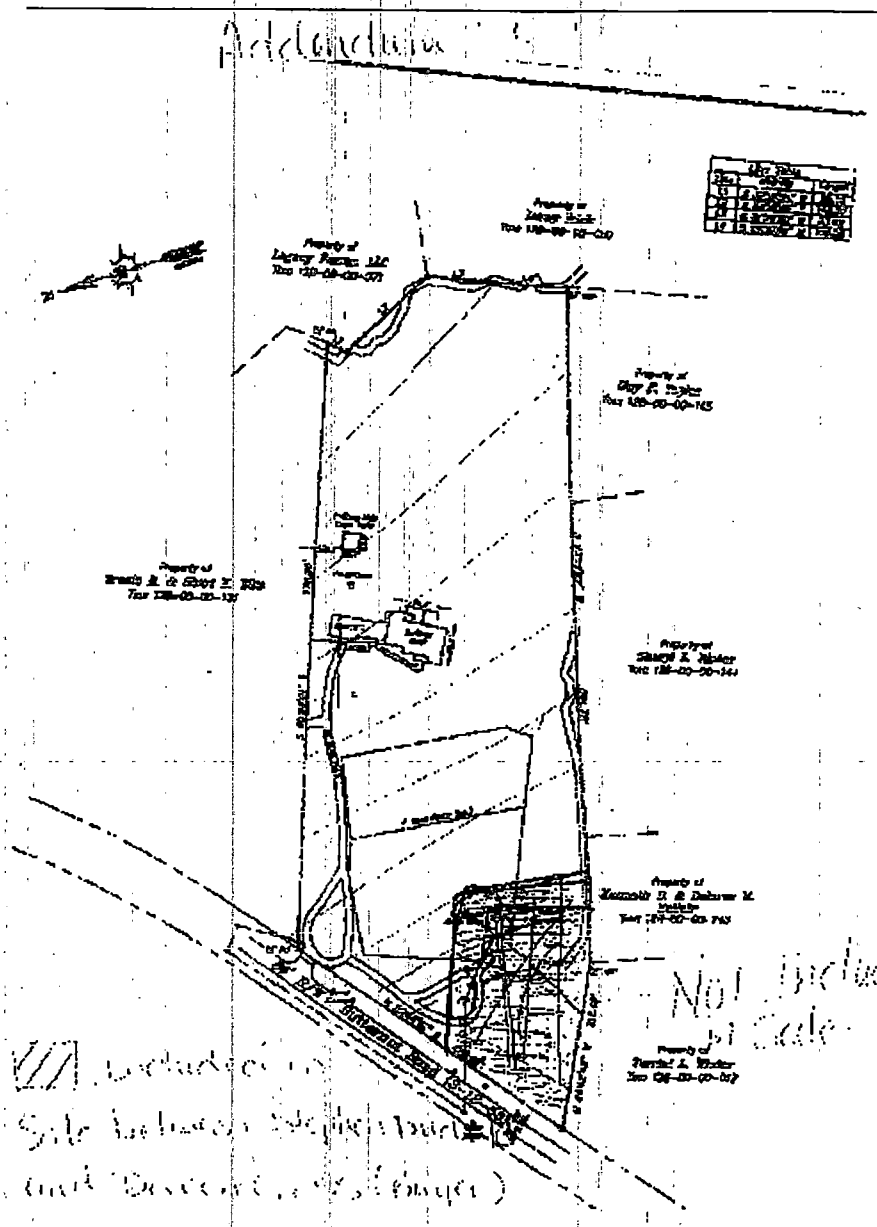
(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before November 30 , 2012 . **Time is of the essence.** If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum (1 of 3) (C)

The undersigned Parties hereby agree as follows.
1. Buyer total satisfaction of home inspection and CL100. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septic tank hasn't been service in the past yr. then Seller agrees to have it serviced.5. Seller agrees to have the property subdivided to include in this sale the 3340 sf house, storage bldg and 6 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to include copies of the survey. Cont. next to. (B) + (C)

Also...remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SC Sellers Disclosure due to not legible of what is currently on the MLS. 9. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc.



[11] The meaning of the contract and the intent of the parties to it is one and the same thing. To interpret the lawful meaning is to discover the intention of the parties as found within the agreement. Our Court acknowledges contractual language coupling the terms "intent and meaning." Cf., *Mordecai v. Stutts*, 16 S.C. 622, 622 (1882) (interpreting a power of sale in a mortgage, the Court acknowledges language of the mortgage, "the conditions and recitals thereof, according to the true intent and meaning); *Hext v. Jarrell*, 34 S.C.L. 11, 14 (S.C. App. L. 1848) (the intent and meaning of a deed); *Edwards v. Sartor*, 69 S.C. 540, 48 S.E. 537, 537 (1904) (the Court acknowledges language of "true intent and meaning of note and condition thereunder written" in a mortgage, see, also, *Kaphan v. Ryan*, 16 S.C. 352, 353 (1882) (true intent and meaning of said bond, secured by a mortgage); *Crawford v. Owens*, 79 S.C. 59, 60 S.E. 236, 237 (1908) (the Court acknowledges language of "the terms of the contract according to its true intent and meaning" addressing a bond surety for the faithful performance of a contract); *Satterwhite's Adm'rs v McKie*, 16 S.C.L. 397, 398 (S.C. Const. App. 1824) ("the obvious meaning and intent of the parties to the contract.").

[12] Paragraph 3 describes the particulars of the conveyance; this provision is modified by conditions set out in condition of the Special Stipulations.

[13] Addendum A requires the Paragraph 19 (B) and Paragraph (D) conditions to meet a standard totally acceptable to the Buyer. See. *Restatement (First) of Contracts § 265 (1932)*: A promise in terms conditional on the promisor's satisfaction with an agreed exchange, gives rise to no duty of immediate performance until such satisfaction; but where it is doubtful whether words mean that a promise is conditional on the promisor's personal satisfaction with an agreed exchange, or on the sufficiency of that exchange to satisfy a reasonable man in the promisor's position, the latter interpretation is adopted. The Court finds the term "total satisfaction" means Dudek and Cross are not required to pay the purchase price until Dudek and Cross are personally satisfied with the Paragraph 19 (B) & (D) conditions. In any event, Cross testified despite Defendants Ferros' failure to answer in kind the questions concerning the home inspection and after she procured a structural engineer's report acceptable to her (she had a relative, who is an engineer, review the calculations) she was satisfied that the residence was structurally sound a reservation contained in her home inspection report. Dudek testified he never received a satisfactory CL 100 (Transcript page. 104, line 23). Hence, she did not have an opportunity to determine if it was satisfactory.

[14] The Court takes Judicial Notice that at a conventional residential loan closing borrowers are required to sign a Uniform Residential Loan application. The application is made under oath. This fact further supports the impossibility of the Paragraph 8 condition.

[15] Impossibility that would discharge the duty to perform a promise excuses a condition if (a). . ., or (b) existence or occurrence of the condition is no material part of the exchange for the promisor's performance and the discharge of the promisor will operate as a forfeiture. Restatement (First) of Contracts § 301 (1932). This Court applies this rule to the facts of this case as follows:

> Dudek and Cross had a duty (promise to perform) to procure unconditional financing within 20 days of signing the contract. The Contract calls for a conventional residential loan. Unconditional residential loan financing is impossible. The occurrence of the condition to procure unconditional financing in 20 days is not a material part of the exchange because delivery of the deed depends on delivery of the purchase price not procurement of the loan within twenty days of the signing of the contract and the discharge of Dudek and Cross's duty to procure unconditional loan approval would operate as a forfeiture of the contract.

[16] It is well established in this state that time is not of the essence of a contract to convey land unless made so by its terms expressly or by implication. Bishop v. Tolbert, 249 S.C. 289, 153 S.E.2d 912 (1967). When the contract does not include a provision that "time is of the essence," the law implies that it is to be done within a reasonable time. Hobgood v. Pennington, 300 S.C. 309, 387 S.E.2d 690 (Ct.App.1989). In equity, strict compliance with time limits contained in a contract will not ordinarily be enforced, except with regard to option contracts. Dargan v. Page, 222 S.C. 520, 73 S.E.2d 705 (1952). Faulkner v. Millar, 319 S.C. 216, 219-20, 460 S.E.2d 378, 380 (1995).

[17] Defendant Cross testified:
"the piers were not supporting anything, they were jus there. I didn't understand why all these piers were there, they were not touching the house (Transcript page 38, lines 1-3) Dudek corroborates and elaborates: "We were concerned about the extra piers under the crawl space because they were just there, they weren't at supporting anything, that surprised me. And yes, we were concerned about the crack tile in the front foyer and in the master bathroom. The back porch where the concrete was sinking, I thought it was just an add on so I wasn't sure, if it was an add on it was just settling, that didn't worry me that much. But the biggest thing was the structure of the house, the extra piers there for the supports because they were there and they weren't doing anything (Transcript page 98, l. 24 – page 99, l. 9).

[18] The house is a fairly heavy house. it is made of steel and it has installed CompCore on the outside of it with rebar in it, so I was concerned about the structure (Transcript page 38, lines 6 – 9).

[19] The moral principle, that men in their intercourse with each other should act with perfect fairness, is as broad as the foundation on which society is erected, and, in some form or other, we find it incorporated into the laws of every well regulated society. "Do unto others as you would have them do unto you," is the substratum of every civilized code: and the well known rule that no one shall profit by his own wrong, or profit by his own fraud, is built upon it- and wherever it is apparent that one man has profited by fraud and circumvention, to the loss or injury of another, he must respond. Minter v. Dent, 37 S.C.L. 205, 207 (S.C. App. L. & Eq. 1832)

EXHIBIT B

2019 MAR -5 PM 12:43
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
RECORD

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP1800987

FILED - RECORDED
2018 MAR -5 PM 12:43
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Molly M Morphew	Stephen Dudek	Doreen Cross
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
2-21-2018
Cheryl Graham
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.

Diane S. Goodstein	2112	2/21/2018
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 2/21/2018, and a copy mailed first class or placed in the appropriate attorney's box on 2/21/2018, 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 Smith Closser, PA PO Box 40578 Charleston, SC 29423-0578

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
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2017-CP-18-987
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**
	)	
Stephen Dudek and Doreen Cross,	)	
	)	
Defendants,	)	
	)	

FILED-RECORDED
2-21-2018
Cheryl Graham
Clerk of Court
Dorchester County
RAS

On November 13, 2017, the above-captioned case came before this Court on the Defendants' Motion to Dismiss, pursuant to Rules 12(b)(6) and 12(b)(8), SCRCP. Present at the hearing were Samuel M. Wheeler, counsel for the Defendants, and the Plaintiff, Molly M. Morphew, *pro se* ("Plaintiff" or "Morphew"). For the reasons stated below, the Defendants' Motion is GRANTED.

FACTS AND PROCEDURAL HISTORY

Morphew, proceeding *pro se*, filed the above-captioned action against Stephen Dudek and Doreen Cross (collectively, "Dudeks") on or about August 24, 2016, alleging claims for constructive trust, abuse of process and fraud.

The same parties have been and are involved in a ~~tortured~~ DSG. labyrinthine string of litigation. DSG Specifically, Morphew has two other cases, as well as an appeal, pending against the Dudeks, all of which arise out of (1) Morphew's alleged legal or equitable ownership of real property, located at 788 E. Butternut Road, Summerville, SC 29483 ("Property"); and (2) alleged fraud perpetrated by the Dudeks on the court in other actions pending between the parties. (see, generally, Compl.; *Molly M. Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183; *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706; Court of Appeals

Appeal No. 2017-001393).

According to Morphew's complaint, in 2012, the Dudeks had a contract to purchase the Property from the previous owners, Thomas and Lorraine Ferro (collectively, "Ferros"). (Compl. ¶ 29(e)). Morphew had a contingency contract on the Property, which she alleges remains valid (Id. at ¶ 19). Morphew claims that the Dudeks contract expired on or about November 30, 2012, at which time Morphew should have been able to purchase the Property. (Id.; and Id at ¶ 29(e)). Morphew goes on to allege that the Dudeks filed a *lis pendens* and specific performance action without a valid contract, and the judge in that action was "fooled" when he awarded the Dudeks specific performance. (Id. at ¶¶ 10, 29). Morphew further asserts that, during the course of discovery and at trial in the previous action, the Dudeks committed fraud on the court regarding their ability to purchase the Property. (see Compl.). Based on the actions of the Dudeks, Morphew alleges that she is the equitable owner of the Property (constructive trust) and that she is entitled to damages for fraud and abuse of process. (Id.).

The case Morphew references is *Stephen Dudek, et al. v. Thomas M. Ferro, et al.*, Case No. 2013-CP-18-00074, which was consolidated with *Molly M. Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183. Both Morphew and filed suit seeking specific performance, each alleging that their contract with the previous owners, the Ferros, was valid. On June 11, 2014, and June 12, 2014, the cases were tried in front of the Honorable James E. Chellis, Master-In-Equity for Dorchester County. Following trial but prior to a decision by Judge Chellis, the Ferros filed a "pleading statement" in which they raised instances of alleged fraud by the Dudeks. (see Case No. 2013-CP-18-00183, Pleading Statement, September 10, 2014). On November 6, 2014, Judge Chellis issued an order awarding the Dudeks specific performance. (see Case No. 2013-CP-18-00183, Nov. 6, 2014 Order). Both Morphew and the Ferros appealed that order. (see *Stephen Dudek v. Ferro*, Appellate Case No. 2014-002633). On January 11, 2017, the Court

of Appeals upheld Judge's Chellis' award of specific performance in an unpublished opinion, numbered 2017-UP-019. (Id.). Morphew initially petitioned for a rehearing, but she voluntarily dismissed the petition on February 9, 2017. (Id.). The Court of Appeals granted the dismissal and issued remittitur on February 15, 2017. (Id.). Following remittitur, Judge Chellis issued several orders setting a schedule for the Dudeks to close on the Property and, ultimately, for contempt, as Morphew refused to vacate the Property after closing. (see Case No. 2013-CP-18-00183). Morphew has appealed this contempt order. (see Court of Appeals Appeal No. 2017-001393).

While Morphew's original appeal was pending, she filed her second action against the Dudeks, as well as against virtually every person or entity that had any involvement in the Dudeks sales contract or in the trial in Case No. 2013-CP-18-00183. (see *Molly M. Morphew v. Stephen Dudek, et al.*, Case No.2016-CP-18-1706). In that action, Morphew has pleaded fraud, or some variation thereof, arising out of the alleged facts that form the basis of Morphew's complaint in this action. By way of an order issued on or about January 31, 2017, the Honorable Deadra Jefferson dismissed all of Morphew's fraud-based claims against the Dudeks, leaving only an intentional infliction of emotional distress cause of action. (see January 31, 2017, Order, Case No.2016-CP-18-1706).

In total, Morphew has lost an appeal, she has three actions pending, and she has an appeal pending. All of her past and present actions arise out of her alleged ownership in the Property or out of the fraud that the Dudeks perpetrated on the court in the original action, Case No. 2013-CP-18-00183.

STANDARD OF REVIEW

The ruling on a Rule 12(b)(6), SCRCP motion to dismiss must be based solely upon the allegations set forth in the complaint. *State Bd. of Med. Examiners v. Fenwick Hall, Inc.*, 300

S.C. 274, 387 S.E.2d 458 (1990). The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)*; *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987). The question to be considered 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. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

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 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).

DISCUSSION

I. Morphew's complaint is dismissed pursuant to Rule 12(b)(6) and 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.*

In the original action between these parties, Case No. 2013-CP-18-00183, Morphew could have brought her constructive trust or equitable ownership claim against the Dudeks. After losing at the trial court level, Morphew appealed, and the Court of Appeals affirmed the order awarding the Dudeks specific performance. Not happy with the Court of Appeals decision, Morphew filed her second action, Case No.2016-CP-18-1706, as well as this action. Morphew has more than had her day in court on the issue of ownership of the Property. Furthermore, Morphew's constructive trust claim is fundamentally flawed, and she cannot plead a set of facts, against the Dudeks, that would entitle her to relief on her constructive trust cause of action. Constructive trust "results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution." *Carolina Park Associates, LLC v. Marino*, 732 S.E.2d 876, 879 (2012). (quoting, *Lollis v. Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 560 (1987)). At all times, the Dudeks had a contract with the previous owners, the Ferros. At no point did the Dudeks have a contract or relationship, fiduciary or otherwise, with Morphew. If anyone could conceivable be entitled to "restitution," it would be the Ferros; however, the issue of ownership has firmly been established by the trial court and Court of Appeals. For these reasons, Morphew's constructive trust claims is dismissed and barred by *res judicata*.

As to Morphew's fraud and abuse of process claims, Morphew had legal mechanisms to bring the alleged fraud and abuse of process to the court's attention. Rule 60, SCRCP, addresses the exact situation. Rule 60(b), SCRCP, allows for a party to move to set aside an order which was based on fraud or after the discovery of new evidence. Rule 60(b), SCRCP. The rule even allows for a party to request leave from the appellate court. The supposed fraud was known to Morphew and the Ferros after trial but before the lower court issued the order awarding the Dudeks specific performance. The Ferros filed a "pleading statement" in September, 2014, months prior to the court awarding specific performance. In this "pleading statement," the Ferros outline all the alleged fraud surrounding the case. Yet, at no point, either after issuance of the order awarding specific performance, or the filing of their first appeal, did Morphew or the Ferros file a motion pursuant to Rule 60, SCRCP, seeking to have the order set aside for fraud. (see Case No. 2013-CP-18-00183). Despite knowing of the alleged fraud by the Dudeks, Morphew never filed a Rule 60 motion. Moreover, Morphew brought the same claims in the second case she filed against the Dudeks, Case No. Case No.2016-CP-18-1706. By way of an order issued on January 31, 2017, the court dismissed Morphew's fraud-based claims against the Dudeks. For these reasons, her fraud and abuse of process causes of action are dismissed and barred by *res judicata*.

II. Morphew's complaint is dismissed by Rule 12(b)(8).

As discussed above, Morphew filed a second case against the Dudeks and almost all persons or entities that had any involvement with the Dudeks' contract with the Ferros, or with the trial in Morphew's original case. Dismissal under Rule 12(b)(8) is appropriate when another action is pending between the same parties for the same or substantially the same claim. Rule 12(b)(8), SCRCP; *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (2009). The second action filed by Morphew, Case No.2016-CP-18-1706, is pending. It is between

Morphew and the Dudeks. And it is for the same or substantially the same claim. For these reasons, Morphew's complaint is dismissed pursuant to Rule 12(b)(8).

CONCLUSION

For all of the above stated reasons, the Defendants' motion to dismiss is GRANTED.

IT IS SO ORDERED.

The Honorable Diane S. Goodstein
First Judicial Circuit

St. George, South Carolina
2-20, 2018

EXHIBIT C

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2018 MAR -5 PM 12:43
CHERYL GRAHAM
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DORCHESTER COUNTY

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DORCHESTER COUNTY

different person from that and what I would do and how I feel.

Q. So you would have tried the case differently than Mr. Massalon?

A. Most likely, yes. May I make a comment?

Q. Sure.

A. Though it's -- if I know what I know now, it would definitely be different. But if I had had this information when I asked for it in the first place, we probably wouldn't be here.

Q. What do you mean by that?

A. If I had had this when I subpoenaed it, at that time.

Q. What would have happened?

A. Not after the trial.

Q. Well, this was given to you before -- it was given to your attorney before the trial.

A. I understand. I understand.

Q. He didn't convey it to -- he didn't give it to you until afterwards?

A. Correct.

Q. If this had been given to you on day one, the first time -- the day after you asked for it the first time, what would you have done? I mean why would you not be here?

A. Well, I would have seen that they did not meet specific performance requirements. That's like a law in itself, the specific performance. And that is what -- they filed a lawsuit for specific performance saying they met -- basically, when you file -- correct me if I'm wrong.

If you file a lawsuit for specific performance, you are saying that you are ready, able and willing to close escrow at any moment, at any time at that moment that you filed, and that is the requirement.

And it is one of the biggest requirements for it, unless you can prove -- well, no. That had -- actual requirement. You're not allowed to breach, but a breach can be excused if the other contracting party causes your breach. But this has to be met. There's no ifs, ands or buts, or you don't get to file for specific performance. Law.

And it is specific, and it's a law in itself, and it is not excused. Now, I find that they were denied lending. They told in trial, we secured financing. We were ready to close. We did all this. And I'm saying -- and now, I mean,

how can you?

You never even had financing. You didn't even complete your application. Denied. Incomplete application. They got a -- they had to have -- what I understand now is they had to have a signed contract extension addendum in order to make that contract valid. They never had one. They never submitted one.

Whatever the deal is, it's not there. They don't have it. Therefore, the bank told them day one, day one when she applied on December 5th, it says, we need a signed contract extension addendum. You have 72 hours to provide this information in order to have closing on December 31st.

Not even December 15th or November 30th, nothing. But nothing was conveyed to anybody. No one even knew this information. We assume when we went to trial -- I assume when we went to trial, because everybody was saying it. The loan officer, the subpoenas -- I mean, I -- this is legal stuff.

So I'm thinking, I'm supposed to believe what any legal document says if I've asked for it, especially when I'm getting the same answer,

correct?

(David Collins entered the deposition.)

A. So I assumed that this documentation and what they're saying -- and so I think it's an open and shut case. I really, really did. I mean, I really felt that if they had financing -- you go to court. You prove it. All you have to do is hand some documents over and say, here's my secured financing.

No one could get it. No one pushed it. No one -- well, the judge didn't even ask for it. So -- and I've been asking for it, and I still can't get it. So my thing is is I am still stuck on the fact that I went to trial, and I did not even have the right information to fight my battle. None.

And all I kept hearing was, we secured financing. And when you're one person against a federal bank -- they had rules and regulations. And I worked in a bank, and I would never have thought about not telling the truth in a court. I wouldn't think of that now.

I just -- so I said, okay. She's saying they had it, but I'm still not seeing it. It's

reasonable. It's reasonable to be asking this question. I went through a lot of money and time to defend myself and -- for the house that I was -- I had a contract on. I really did.

And it's more not the purchase necessarily of the house. It's afterwards that I went through having an attorney, which I thought was open and shut. So I am -- that's why I'm here. I find that they never met those requirements that they told a judge they did. They convinced a judge they did, and that's called an uninformed ruling.

No matter what, I've asked and asked and asked. And you're saying -- and David Collins is saying, yes, they should have -- what would you say they should have done?

Q. I --

A. You said it.

Q. You lost me after the first five minutes. Let me ask you --

A. I --

Q. -- any of that information you just gave me -- all the facts and all the documents and everything else that you just discussed -- was every bit of that known to your attorney before

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.

Q. Is there anything else that it was based on?

A. Yes.

Q. All right. What?

A. That they refused to provide proof of financing. A simple document.

Q. And Mr. Massalon talked about that at trial, correct?

A. No, I don't think so. I'm going to have to say I don't know, because I don't remember -- I don't remember.

Q. If he didn't, why didn't he?

A. I'm not a lawyer, and I'd -- you'd have to ask him. Mind you, I'm sitting behind the attorneys talking forward, so I'm sure there was things asked and said that I could not hear.

Q. All right. Anything else that Ms. Williams said?

A. Do I look at that? I mean, this --

Q. You can if you want.

A. This is -- I mean, I can sit here and talk about it, yes, yes, that's what she testified. Yes.

Q. I need to know everything today, because, again, I've got to fully prepare my case for what comes next. So if there's anything that you need to review or look at or anything, that's

Q. Is it fair to say that the only thing you're suing First Federal Bank and Allison Williams for is false testimony and misleading the court?

A. And -- well, currently, yes.

Q. Currently yes?

A. Yes.

Q. Do you plan to change that?

A. I can't -- I don't know.

Q. But this complaint, the only thing you're suing my client for, is -- happened at the trial between you and Dudek and Cross, that we spent lots of time on, occurred in June of 2014?

A. And there, again, my conspiracy that all the actions before of going along with it and not actually disclosing. Nondisclosure, everything like that.

Q. Going along with -- okay. All right. So you threw a wrinkle in there.

A. Sorry.

Q. Anything other than testimony at trial and misleading the court?

A. And nondisclosure.

Q. Nondisclosure of what?

A. Of the material facts.

Q. To the court?

A. And to -- and to the party they were suing, which entails -- because I still --

Q. Wait. Wait. We were never suing anybody.

A. No. No. Not First Federal. That they were -- I'm sorry. Repeat the question.

MR. CRAPPS: Can you read that back?

(The requested testimony was read back by the reporter.)

A. Can I look at this for a moment?

Q. You're looking at --

A. I had --

Q. What are you referencing here, just for the record?

A. I'm referencing my allegations for First Federal.

Q. In the amended -- in your motion to amend, which is Exhibit 3?

A. Right. Which is all the ones in the complaint, but put under people specifically so that there would be more clarification. But I know it would have been easier for me just to look at that than to go through, so --

Q. I'm just clarifying for the record.

A. So First Federal and Allison Williams failed to follow their processes. I claim discrimination that they -- not discriminated against me, but discrimination as a whole, that they did something for -- if they do -- if you do something for one person but that's not policy, and you do it for another -- when I asked if I could -- you know, if I had an expired contract, could I actually apply for the loan. You know, the application, not the pre-app.

And she said no, that you would have to have this or this or otherwise we couldn't accept it. But they accepted theirs. To me, that would be considered discrimination.

Q. Discrimination?

A. Yeah. I think it was in there, and there was no complaint that -- and that would cause harm because, you see, I had -- I had --

Q. Did you apply for a loan at First Federal Bank?

A. No.

Q. Were you ever denied a loan from First Federal Bank?

A. No.

Q. All right. I mean -- okay. So anything other than the testimony at trial? That's what I'm trying to figure out. And you keep saying they failed to follow their processes.

But do you have any -- other than these conversations with Ms. Williams and another loan officer at the bank, is there any rules, regulations that you can cite me today that they failed to follow?

A. I apologize. I cannot cite. But in my complaint, I actually cite those rules and regulations.

Q. And those were the ones that were dismissed?

A. Yes.

Q. And if I remember correctly, you didn't cite anything. You just said FDIC rules and regulations.

A. No. Actually, I did cite some rules.

Q. Either way, they're dismissed?

A. Yes.

Q. So as we stand here today, are you suing my client for anything other than their testimony at trial?

A. I'm not sure. I'm sorry. I don't want

to say yes or no because I think there's more to it. No. Testimony and nondisclosure. Not just what they said, but non-acts and -- just want to make sure that on the record it wasn't just testimony.

Q. But it was within the four walls of the courtroom?

A. Yes.

Q. All right. I'm going to try to speed this up because we're all tired. If you'll turn to page 34 of your complaint. And, again, I'm referencing the current complaint. You have a cause of action there for bad faith and unfair dealings and/or accompanied by fraudulent action, conspiracy to defraud.

But flipping through that cause of action, I don't see any actions of First Federal. Are you alleging that cause of action against First Federal and/or Allison Williams?

A. Yes.

Q. Okay. And I'll correct myself. The only action I see of First Federal is paragraph 197.

A. Paragraph 198 says that all allegations in the prior and subsequent paragraphs are fully

Q. What has caused you stress, Ms. Morphew?
A. What has caused me stress?
Q. Is it litigating this case?
A. No. It's litigating when I have facts, and we're still going through this. And it's stressful that I know the truth, this truth, and I know what was said in lies. I'm sorry. I get very stressed out when people -- my pet peeve is liars and bullies to the max.

And when someone prevents me from closing or ever closing and -- because of lies and deceit, this is what's stressing me. The litigation part, yes, I lose sleep and lose family time. And, yes, I'm in front of my computer way more than I want to be.

But it's very, very frustrating that -- it's just very frustrating. I feel like I've been wronged. I do.

Q. Okay. Have you alleged any conspiracy against First Federal?
A. Yes.
Q. And are the damages resulting -- just so we don't have to go over it again, are the damages resulting from that conspiracy the same damages that have resulted from all your other

causes of action?

A. Can you repeat -- can you rephrase that?

Q. Yeah. The damages you're alleging that were caused by a conspiracy, are they the same damages that you allege were caused by the other causes of action in this case?

A. They contributed to it.

Q. What does that mean?

A. The complaint as a whole is the damages. Any cause of action as a whole together supports that total.

Q. So any one of these causes of action supports your damages claims?

So does your fraud claim support -- let's go with intentional infliction of emotional distress. Does your intentional infliction of emotional distress claim support all the other damages that you're claiming in this case?

A. It supports it, but not all the damages. Maybe I can --

Q. Please.

A. -- try to answer your question. My damages as a whole, fraud and fraud on the court is the basis which caused the emotional distress and anything else that falls on it. Any of the

bad faith and unfair dealings. Their actions -- this is what I'm asking for. This is what the causes of action are. Right?

Q. Yes.

A. It would be up to a judge and jury to decide portions or proportions since I did not put it out. Is that what you're saying? Like let's say -- I want to understand this. If a cause -- if there is five causes of action against somebody and then only one actually goes to trial, are you saying that it most likely or could be proportioned?

Because just emotional distress may not support the whole thing I'm asking for because a normal judge, jury or even a person would say, if you had done this -- if you had been charged with this, this and this, yes, the whole thing.

But since you're only charged with this, we don't see it except -- you know, we will deem that you can get a portion of that. That's the way I understand it.

Q. I'll ask it this way. If your conspiracy claim is dismissed, do your damages hold up?

A. Yes.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

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,

Defendant.

FILED - RECORDED
2018 MAR -5 PM 12:42
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

MOTION AND ORDER INFORMATION COVER SHEET

Defendant's Attorney:	Pro Se Plaintiff:
Amy L.B. Hill, SC Bar No. 68541 Jordan M. Crapps, SC Bar No. 100580 Gallivan, White & Boyd, P.A. PO Box 7368 Columbia, SC 29202 ahill@gwblawfirm.com; jcrapps@gwblawfirm.com (803) 779-1833 Ofc; (803) 779-1767 Fax	Molly M. Morphew 788 E. Butternut Road Summerville, SC 29483 morphew926@gmail.com (843) 514-7299

☒ **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: Motion for Summary Judgment
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: 3/2/18

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)

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.	)	**DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S MOTION FOR SUMMARY JUDGMENT**
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm,	)	
Defendants.	)	

RECEIVED
2018 MAR 12 PM 1:52
CLERK OF COURT
DORCHESTER COUNTY

TO: MOLLY MORPHEW, *PRO SE* PLAINTIFF:

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, Defendants Wooddy Law Firm and Carrie Boyer (collectively "Defendants") hereby move for an Order granting summary judgment in their favor on the grounds that Plaintiff has failed to adduce evidence creating a genuine issue of material fact regarding the causes of action alleged in the Complaint.

Defendants' Motion is based upon the pleadings and discovery, including deposition testimony, as well as the attached Affidavit of Carrie Boyer (Exhibit 1). Defendants further rely on any memorandum of law that may be submitted to the Court and any oral argument the Court may hear.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.

By: Amy L. Neuschafer

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William A. Bryan, Jr., Esquire
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843.353.2350 (voice)
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ATTORNEYS FOR DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER

DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S MOTION FOR SUMMARY JUDGMENT

Murrells Inlet, South Carolina
March 8, 2018

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2016 MAR 14 PM 1:52
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DORCHESTER COUNTY

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

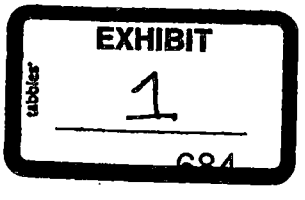
PERSONALLY APPEARED BEFORE ME, the undersigned, Carrie A. Boyer, who after being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and a resident of Berkeley County, South Carolina.

2. I have approximately fourteen and one-half (14.5) years of experience practicing as a paralegal in the State of South Carolina. Prior to that, I worked in Virginia as a real estate processor and closer for approximately twelve and one-half (12.5) years.

3. I worked as a real estate paralegal at the Wooddy Law Firm from July 2003 to July 2015.

4. As a paralegal, I assist with the preparation for real estate closings by gathering the necessary documents from the buyer, the seller, the realtors, and the lender. This can be a slow and tedious process and I often have to repeatedly follow up with the parties to obtain documentation.



5. In late 2012, I assisted in preparing for the anticipated closing of 788 E. Butternut Road in Summerville, South Carolina on behalf of Stephen Dudek and Doreen Cross, who had a contract to purchase that property.

6. I am aware that Plaintiff Molly Morphew has brought suit against The Wooddy Law Firm and me alleging we sought to defraud her and conspired with others to defraud her in connection with her attempted purchase of the 788 E. Butternut Road property. These allegations are untrue.

7. I understand that Ms. Morphew points to the standard engagement letter sent by The Wooddy Law Firm as evidence of her allegations. On November 27, 2012, the Wooddy Law Firm sent its standard engagement letter to Thomas and Loraine Ferro introducing itself as the law firm handling the closing for 788 E Butternut Road in Summerville, South Carolina. This letter was sent as part of the ordinary course of preparing for a real estate closing and was not sent in an effort to harm Ms. Morphew or anyone else. That same form document is sent to every seller in a residential real estate closing in order to obtain the sellers' forwarding address, the sellers' social security numbers, and payoff information on any outstanding mortgages – all information that is necessary to obtain in advance of a real estate closing.

8. I further understand that, in support of her allegations, Ms. Morphew points to a November 27, 2012 email I sent to Allison Williams at First Federal (the lender) introducing the Wooddy Law Firm as the firm handling the closing for 788 E Butternut Road in Summerville, South Carolina and requesting that Ms. Williams forward her title request. **(Ex. A)**.

9. As a real estate paralegal, I routinely communicate with lenders to determine what their specific title requirements are to order the title work and complete the real estate closing. Lenders often have varying title requirements, which is why I requested Ms. Williams send First Federal's title request at her earliest convenience. This email was sent as part of the ordinary course

of preparing for a real estate closing and was not sent in an effort to harm Ms. Morphew or anyone else.

10. I also understand that Ms. Morphew points to two emails I sent on December 5, 2012 and December 12, 2012 to Susan Nicholson at Carolina One Real Estate (the Buyer's agent) regarding proof that repairs had been made to damage identified in the CL100 termite inspection report. **(Ex. B and C).**

11. As a real estate paralegal, I routinely communicate with real estate agents regarding the need for documentation, including proof of repairs to damage in the CL100. This is within the ordinary procedure for a real estate closing. These emails were not sent in an effort to harm Ms. Morphew or anyone else, but were sent only in preparation for the anticipated closing on the purchase/sale of the 788 E. Butternut Road property between Thomas and Lorraine Ferros, as sellers, and Stephen Dudek and Doreen Cross, as buyers.

12. I was never aware Ms. Morphew had a backup contract for the purchase of the property or any relationship with the Ferros or the property until the Wooddy Law Firm was served with the Summons & Complaint in this lawsuit. In fact, before I learned of this lawsuit, I had never heard of Ms. Morphew.

13. None of my actions in connection with the anticipated real estate closing of the property were done with any knowledge of Ms. Morphew or done to create a façade that the closing was going to take place. None of my actions in connection with the anticipated real estate closing of the property were done for any other purpose than as part of the normal course of a real estate closing.

[SIGNATURE PAGE TO FOLLOW]

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

CARRIE A. BOYER

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 6th DAY OF

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/22/20

ROXANNE MANNING
NOTARY
PUBLIC
STATE OF SOUTH CAROLINA

RECORDED

2012 MAR 12 PM 1:52

CLERK OF COURT
DORCHESTER COUNTY

Williams, Allison

From: Carrie Boyer <cboyer@wooddylaw.com>
Sent: Tuesday, November 27, 2012 5:14 PM
To: Williams, Allison
Cc: Susan Nicholson
Subject: Title Request Needed - Dudek 788 E. Butternut Road

Good evening - our office has been contacted to handle Mr. Dudek's purchase of the above referenced property. Please forward your title request at your earliest convenience. Title has been ordered - thanks! :)

--

Carrie Boyer
Real Estate Paralegal

THE WOODDY LAW FIRM, LLC

Goose Creek Office
597 Old Mount Holly Road, Suite 202
Goose Creek, SC 29445
Phone: 843.553.6799
Fax: 843.553.0724

Mt. Pleasant Office
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Phone: 843.881.3700
Fax: 843.881.2511

EXHIBIT
A
688

RECORDED
2018 MAR 12 PM 1:52
CLERK OF COURT
DORCHESTER COUNTY

On Wed, Dec 5, 2012 at 2:38 PM, Carrie Boyer <cboyer@wooddylaw.com> wrote: To: Susan Nicholson

As requested. We will have to have proof that the damages have been repaired. Thanks.

Carrie Boyer
Real Estate Paralegal

THE WOODDY LAW FIRM, LLC
Goose Creek Office
597 Old Mount Holly Road, Suite 202
Goose Creek, SC 29445
Phone: 843.553.6799
Fax: 843.553.0724

Mt. Pleasant Office
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Phone: 843.881.3700
Fax: 843.881.2511

From: Susan Nicholson < snicholson@carolinaone.com >
Date: Wed, Dec 5, 2012 at 2:46 PM
Subject: Re: CL100 Copy - Dudek
To: Carrie Boyer <cboyer@wooddylaw.com>

OK thanks!

EXHIBIT
tabbies
B

RECORDED
2018 MAR 12 PM 1:52
CLERK OF COURT
DORCHESTER COUNTY

WOn Wed, Dec 12, 2012 at 5:22 PM, Carrie Boyer < cboyer@wooddylaw.com > wrote:
I haven't ever received anything on the repairs required in the CL100. Please advise - thanks!

--

Carrie Boyer
Real Estate Paralegal

THE WOODDY LAW FIRM, LLC

Goose Creek Office
307 Old Mount Holly Road, Suite 202
Goose Creek, SC 29445
Phone: 843.553.6799
Fax: 843.553.0726

Mt. Pleasant Office
622 Johnnie Dodds Blvd.
Mt Pleasant, SC 29464.
Phone: 843.881.2700
Fax: 843.881.2711

From: Susan Nicholson <snicholson@carolinaone.com>
Date: Wed, Dec 12, 2012 at 5:23 PM
Subject: Re: Status of Repairs - Dudek
To: Carrie Boyer <cboyer@wooddylaw.com>

They have done the treatment just waiting on the contractors letter.

EXHIBIT
tabbies
C

1/25 RLB

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT
Molly Morphew,) CIVIL ACTION NUMBER: 2016-CP-18-1706
☐ 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.

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2018 MAR 12 PM 1:52
CLERK OF COURT DORCHESTER COUNTY

MOTION INFORMATION FORM AND COVER SHEET

check box above indicating submitting party

Plaintiff's Attorney:	Attorney for Defendants Wooddy Law Firm and Carrie Boyer:
Molly Morphew 786 E. Butternut Road Summerville, SC 29483 *Pro Se Plaintiff* phone.: (843) 514-7299 fax: e-mail: mollymorphew1@gmail.com	Amy L. Neuschafer, Esquire, S.C. Bar No. 73922 William A. Bryan, Jr., S.C. Bar No. 17008 Collins & Lacy, P.C. 11945 Grand Haven Drive, Suite D Murrells Inlet, SC 29576 phone: (843) 353-2350 fax: (843) 353-2351 e-mail: aneuschafer@collinsandlacy.com wbryan@collinsandlacy.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM ORDER, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Defendants Wooddy Law Firm and Carrie Boyer's Motion for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Order – Scheduling Order

_____ MARCH 8, 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

Date Filed:
Collected by: _____

☐ MOTION FEE COLLECTED: $
☐ CONTESTED – AMOUNT DUE: $

SCCA/233 (11-03)

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,	)	
	)	**DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S MOTION TO ALTER OR AMEND**
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.	)	

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CLERK OF COURT
DORCHESTER COUNTY

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendants Wooddy Law Firm and Carrie Boyers (collectively "Defendants") move this Court to alter or amend its January 31, 2017 Order Granting in Part and Denying in Part Defendants' Motion to Dismiss.[1] Defendants request the Court reconsider its partial denial and grant Defendants' Motion to Dismiss regarding the following claims, entitled: Plaintiff's First Cause of Action – Fraud, Extrinsic Fraud, and Fraud on the Court; Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, Conspiracy to Defraud; Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress; and Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations.

[1] In its Order, this Court dismissed Plaintiff's Second Cause of Action – Perjury; Sixth Cause of Action – Violation of the ABA Rules of Professional Conduct; Twelfth Cause of Action – Fraud; Untrue Assertion of Fact; Assertion Made with Knowledge of Falsity and Intent to Deceive; and Sixteenth Cause of Action – Obstruction of Justice and Violations of the South Carolina Rules of Professional Conduct. With respect to the dismissal of Plaintiff's Second Cause of Action, there appears to be scrivener's error in which the Court mistakenly references Defendants Allison Williams and First Federal Bank rather than Defendants. (See January 31, 2017 Order, p. 7, ¶1). Defendants respectfully request this error be corrected.

Factual/Procedural Background

The present matter arises out of Plaintiff Molly Morphew's attempted purchase of residential property located in Summerville, South Carolina. The Sellers of the subject property entered into a contract to purchase with Defendants Dudek and Cross and a "back-up sales contract" with Plaintiff. (Complaint, ¶¶ 26 and 39). Prior to consummating the closing, there was a dispute regarding which contract should take precedence, which resulted in a consolidated civil lawsuit.[2]

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 on the subject property and Defendant Boyer was a paralegal with the Wooddy Law Firm. (Complaint, ¶¶ 15-16). Plaintiff only references the Wooddy Law Firm and Defendant Boyer in seven paragraphs throughout the entirety of the 64-page complaint and alleges only three actions by Defendants in support of her claims. First, Plaintiff asserts that Defendants Dudek, Cross, or Nicholson requested that the Wooddy Law firm contact the Sellers. (Complaint, ¶ 170). Next, she asserts that the Wooddy Law Firm mailed a letter to the Sellers introducing themselves as the closing attorneys and requesting information. (Complaint, ¶ 171). Finally, she asserts Defendant Boyer requested the Sellers provide proof of repairs. (Complaint, ¶ 172).

Even when viewed in a light most favorable to Plaintiff, none of these alleged acts by the Wooddy Law Firm and Boyer give rise to any valid claim for relief. It appears as though the Court misapprehended Defendants' involvement in the attempted real estate transaction and underlying

[2] When this action was initiated, the underlying suit was pending in the South Carolina Court of Appeals. On January 11, 2017, the Court of Appeals entered an ordered affirming the lower court's order granting specific performance on the between Defendants Dudek and Cross and the Sellers. See Unpublished Opinion No. 2017-UP-019, Appellate Case No. 2014-002633.

consolidated lawsuit in relation to Plaintiff's claims. Accordingly, Defendants move this Court to reconsider its January 31, 2017 Order and dismiss Plaintiff's remaining claims.

I. Plaintiff's First Cause of Action – Fraud, Extrinsic Fraud, Fraud on the Court

It is difficult to ascertain what Plaintiff alleges in her First Cause of Action, but it appears to most closely resemble a claim for fraud. To the extent this cause of action is construed as such, it is fatally defective because Plaintiff has not plead each of the nine elements. See Mutual Savings & Loan Ass'n v. McKenzie, 274 S.C. 630, 633-34, 266 S.E.2d 423 (1980) ("It is essential the nine elements of fraud be reasonably inferable from the allegations of the pleading to state a good cause of action."). Plaintiff asserts only that Wooddy Law Firm sent a letter to the Sellers stating they would be handling the closing and that Boyer requested proof of the damages repairs. (Complaint, ¶ 171-72). Even if these allegations are construed as representations, Plaintiff has no facts giving rise to an inference that she, holder of an undisputed back-up contract, had a right to rely on them. Plaintiff further fails to allege these statements were false, material in any way, that Defendants knew the statements were false or acted with reckless disregard, that the hearer of these statements was ignorant to their falsity, or that she suffered damages as a result of them. In short, the Court overlooked that, even when viewed in a light most favorable to Plaintiff, the facts alleged do not give rise to an action for fraud.

However, it appears from the Order that the Court may have construed Plaintiff's First Cause of Action as a claim for extrinsic fraud or fraud on the court. To the extent this is the case, the claim fails as a matter of law because extrinsic fraud and fraud on the court are not independent causes of action. Instead, these are grounds to set aside a final judgment pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. Chewning v. Ford Motor Co., 346 S.C. 28, 34, 550 S.E.2d 584, 587 (2001); see also Hagy v. Pruitt, 339 S.C. 524, 529 S.E.2d 714 (2000). In the

present matter, Plaintiff has not moved to set aside a final judgment. Further, these are not independent claims under South Carolina law. Therefore, Plaintiff's First Cause of Action should be dismissed for failure to state a cognizable claim.

II. Plaintiff's Seventh Cause of Action – Bad Faith and Unfair Dealings, Fraudulent Action; Conspiracy to Defraud

Upon a reading of the Complaint, it appears as though Plaintiff's Seventh Cause of Action, like her First Cause of Action, most closely resembles a claim for fraud and therefore should be dismissed as described above. However, it appears the Court construed Plaintiff's Seventh Cause of Action as claims for the breach of the implied covenant of good faith and fair dealing or a civil conspiracy claim. These claims likewise fail to state a claim upon which relief can be granted.

"Under South Carolina law, there exists in every contract an implied covenant of good faith and fair dealing." Parker v. Byrd, 309 S.C. 189, 420 S.E.2d 850 (1992); see also Inabinet v. Royal Exchange Assur. Of London, 165 S.C. 33, 36, 162 SE. 599, 600 (1932). In the present matter, there is no allegation that Wooddy Law Firm and Defendant Boyer entered into a contract with Plaintiff. Accordingly, it is unclear how Defendants could have breached a covenant of good faith and fair dealing owed to Plaintiff. Further, the majority of the allegations contained in Plaintiff's Seventh Cause of Action relate to the actions of Defendants Dudek, Cross, and Nicholson. In fact, the only reference to Wooddy Law Firm is that Defendant Nicholson requested Wooddy Law Firm provide a notice that they required proof of minor repairs. (Complaint, ¶ 194). This allegation alone fails to allege a claim for breach of the covenant of good faith and fair dealing.

Moreover, Plaintiff's Seventh Cause of Action fails to state a claim for civil conspiracy. The elements of a civil conspiracy claim include: 1) a combination of two or more persons; 2) for the purpose of injuring the plaintiff; 3) causing plaintiff special damages. Vaught v. Waites, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). A civil conspiracy claim must allege additional

facts in furtherance of the conspiracy and cannot reallege other claims within the complaint. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981), rev'd on other grounds, 283 S.C 155, 321 S.E.2d 602 (1984) quashed in part on other grounds, 287 S.C. 190, 336 S.E.2d 472 (1985). The element regarding special damages requires that the plaintiff plead damages that occurred as a result of the conspiracy *in addition to* any other alleged damages. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 63, 650-651, 780 S.E.2d 263, 271, 272 (2015) (dismissal of civil conspiracy claim was appropriate where plaintiff failed to allege special damages with specificity.); see also Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009).

As discussed above, the majority of the Plaintiff's Seventh Cause of Action relates to the alleged acts of Defendants Dudek, Cross, and Nicholson. (Complaint, ¶¶ 188-212). Specifically, Plaintiff asserts "Defendants Dudek and Cross and Defendant Susan Nicholson . . . conspired to 'cheat' or 'trick' or 'defraud' the sellers . . . ." (Complaint, ¶ 190). Plaintiff only makes a single reference to Defendants Wooddy Law Firm and Boyer, where she alleges that Defendant Nicholson requested the Wooddy Law firm provide notice that they required proof of repairs to minor damages. (Complaint, ¶ 194.) Plaintiff wholly fails to allege that Defendants Wooddy Law Firm and Boyer took any acts at all – let alone additional acts in furtherance of this alleged conspiracy. Moreover, she does not allege special damages. Therefore, Plaintiff's Seventh Cause of Action must be dismissed for because it fails to state a cognizable claim for civil conspiracy.

III. Plaintiff's Seventeenth Cause of Action – Intentional Infliction of Emotional Distress

To successfully plead a claim of intentional infliction of emotional distress, the plaintiff must establish the following four elements:

> the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community;' (3) the actions of the defendant caused plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' such that 'no reasonable man could be expected to endure it. Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776, 778-79 (1981).

Further, it has been held that "not all conduct involving personal interaction and causing emotional distress in a business setting may serve as a basis for an action alleging outrage." Folkens v. Hunt, 290 S.C. 194, 203, 348 SE.2d 839, 845 (Ct. App. 1986).

Plaintiff's Seventeenth Cause of Action purports to allege a claim for intentional infliction of emotional distress against all defendants. In support of this claim, Plaintiff makes only the conclusory allegation that "Defendant(s) or its agent(s) subjected or intentionally and/or recklessly subjected Morphew to unnecessary spending, time, effort, lost work hours, and extreme emotional distress." (Complaint, ¶326). However, Plaintiff offers no facts of Defendants Wooddy Law Firm and Boyer's alleged actions to support of this claim. Therefore, the Court overlooked Plaintiff's failure to assert facts sufficient to constitute intention infliction of emotional distress that this claim should be dismissed as a matter of law.

IV. Plaintiff's Eighteenth Cause of Action – Tortious Interference with Existing Contractual Relations

Here, Plaintiff's Eighteenth Cause of Action attempts to set forth a claim for tortious interference with existing contractual relations. The elements of a cause of action for tortious interference with an existing contractual relationship 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) damages. DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293

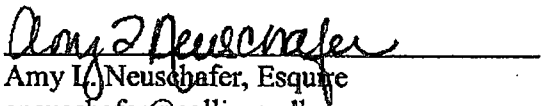
(1981). The Court overlooks that Plaintiff fails to identify any conduct by Defendants which intentionally caused a breach of said contract. Accordingly, Plaintiff's claim for tortious interference with an existing contract must be dismissed pursuant to Rule 12(b)(6), SCRCP.

CONCLUSION

For the foregoing reasons, Defendants respectfully request this Honorable Court reconsider its previous Order and grant Defendants' Motion to Dismiss with respect to Plaintiff's remaining claims.

Respectfully submitted,

COLLINS & LACY, P.C.

By: 

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ATTORNEYS FOR DEFENDANTS THE WOODDY LAW FIRM AND CARRIE BOYER

Murrells Inlet, South Carolina
February 13, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
Molly Morphew,	)	Civil Action No.: 2016-CP-18-170
	)	
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.	)	

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CLERK OF COURT
DORCHESTER COUNTY

The undersigned employee of Collins & Lacy, P.C., Attorneys at Law, 11945 Grandhaven Drive, Suite D, Murrells Inlet, South Carolina 29576, does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, as well as via electronic mail:

COUNSEL SERVED:

Molly Morphew
788 E. Butternut Road
Summerville, SC 29483
Pro Se Plaintiff

Michael C. Scarafile, Esq.
4024 Salt Pointe Parkway
North Charleston, SC 29405
Attorney for Defendants Carolina One Real Estate, David Collins, Susan Nicholson, and Michael Scarafile

Zachary J. Closser, Esq.
Steven L. Smith, Esq.
Samuel M. Wheeler, Esq.
SMITH | CLOSSER, PA
P.O. Box 40578
Charleston, SC 29423
Attorneys for Defendants Stephen Dudek and Doreen Cross

Amy L.B. Hill, Esq.
Jordan M. Crapps, Esq.
GALLIVAN, WHITE & BOYD, P.A.
P.O. Box 7368
Columbia, SC 29202
Attorneys for Defendants South State Bank f/k/a SCBT, successor in interest to First Federal and Allison Williams

PLEADINGS:

- **DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S MOTION TO ALTER OR AMEND**

Angela C Gonzales
Murrells Inlet, South Carolina
February 13, 2017

RESPONSES

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 **DEFENDANTS ALLISON WILLIAMS AND SOUTH STATE BANK F/K/A SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S ANSWER TO PLAINTIFF'S COMPLAINT**

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CLERK OF COURT
DORCHESTER COUNTY

TO: MOLLY MORPHEW, PRO SE PLAINTIFF:

Defendants Allison Williams and First Federal, properly named South State Bank f/k/a SCBT, successor in interest to First Federal Bank, (collectively, "Defendants"), by and through their undersigned counsel, hereby answer the Complaint of Plaintiff as follows:

FOR A FIRST DEFENSE

Each and every paragraph of Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained is denied.

FOR A SECOND DEFENSE

1. Defendants deny the allegations contained in Paragraphs 1 through 5 of the Complaint and demand strict proof thereof.
2. Defendants lack sufficient information regarding the allegations contained in Paragraphs 6 through 10 of the Complaint and therefore deny the same and demand strict proof thereof.

3. Defendants admit the allegations contained in Paragraph 11 of the Complaint.

4. Defendants lack sufficient information regarding the allegations contained in Paragraphs 12 and 13 of the Complaint and therefore deny the same and demand strict proof thereof.

5. In responding to Paragraph 14 of the Complaint, Defendants admit that South State Bank (f/k/a SCBT) is the successor in interest to First Federal Bank. Defendants further admit that South State Bank is a South Carolina Corporation and does business in the State of South Carolina, including Dorchester County. Defendants further admit that its business includes banking services including but not limited to mortgage lending origination. Any remaining allegations contained in Paragraph 14 of the Complaint are denied and Defendants demand strict proof thereof.

6. Defendants lack sufficient information regarding the allegations contained in Paragraphs 15 and 16 of the Complaint and therefore deny the same and demand strict proof thereof.

7. Defendants deny the allegations contained in Paragraphs 17 and 18 of the Complaint and demand strict proof thereof.

8. Answering the allegations contained in Paragraph 19 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of their Answer.

9. The allegations contained in Paragraphs 20 and 21 of the Complaint contain conclusions of law and, as such, do not require a response from the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraphs 20 and 21 of the Complaint and demand strict proof thereof.

10. Defendants deny the allegations contained in Paragraph 22 of the Complaint and demand strict proof thereof.

11. Defendants lack sufficient information regarding the allegations contained in Paragraphs 23 and 24 of the Complaint and therefore deny the same and demand strict proof thereof.

12. Answering the allegations contained in Paragraph 25 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of their Answer.

13. Defendants lack sufficient information regarding the allegations contained in Paragraphs 26 through 28 of the Complaint and therefore deny the same and demand strict proof thereof.

14. Defendants deny the allegations contained in Paragraphs 29 through 31 of the Complaint and demand strict proof thereof.

15. Responding to Paragraph 32 of the Complaint, Defendants admit that Defendants Dudek and Cross submitted a mortgage loan application with the Defendant Bank. Defendants crave reference to the document identified by the Plaintiff and deny any allegation inconsistent with that document. Defendants deny the remaining allegations contained in Paragraph 32 of the Complaint and demand strict proof thereof.

16. Defendants deny the allegations contained in Paragraphs 33 through 37 of the Complaint and demand strict proof thereof.

17. Defendants lack sufficient information regarding the allegations contained in Paragraphs 38 through 41 of the Complaint and therefore deny the same and demand strict proof thereof.

18. Defendants deny the allegations contained in Paragraph 42 of the Complaint and demand strict proof thereof.

19. Defendants lack sufficient information regarding the allegations contained in Paragraph 43 of the Complaint and therefore deny the same and demand strict proof thereof.

20. Defendants deny the allegations contained in Paragraphs 44 and 45 of the Complaint and demand strict proof thereof.

21. Defendants lack sufficient information regarding the allegations contained in Paragraphs 46 through 48 of the Complaint and therefore deny the same and demand strict proof thereof.

22. Defendants deny the allegations contained in Paragraph 49 of the Complaint and demand strict proof thereof.

23. Defendants lack sufficient information regarding the allegations contained in Paragraph 50 of the Complaint and therefore deny the same and demand strict proof thereof.

24. Defendants deny the allegations contained in Paragraphs 51 through 54 of the Complaint and demand strict proof thereof.

25. Upon information and belief, Defendants admit that Morphew filed a lawsuit arising out of the same real estate transaction complained of in Plaintiff's current Complaint. Defendants lack sufficient information regarding the remaining allegations contained

in Paragraph 55 of the Complaint and therefore deny the same and demand strict proof thereof.

26. Defendants lack sufficient information regarding the allegations contained in Paragraph 56 of the Complaint and therefore deny the same and demand strict proof thereof.

27. Defendants deny the allegations contained in Paragraph 57 and demand strict proof thereof.

28. Defendants lack sufficient information regarding the allegations contained in Paragraphs 58 and 59 of the Complaint and therefore deny the same and demand strict proof thereof.

29. Defendants deny the allegations contained in Paragraphs 60 and 61 of the Complaint and demand strict proof thereof.

30. Responding to the allegations contained in Paragraph 62 of the Complaint, Defendants admit that Defendant Bank did produce documents to Plaintiff's attorney in the previous litigation of this matter. Defendants deny the remaining allegations contained in Paragraph 62 of the Complaint and demand strict proof thereof.

31. Upon information and belief, Defendants admit the allegations contained in Paragraphs 63 and 64 of the Complaint.

32. Defendants lack sufficient information regarding the allegations contained in Paragraphs 65 through 69 of the Complaint and therefore deny the same and demand strict proof thereof.

33. Defendants deny the allegations contained in Paragraphs 70 through 73 of the Complaint and demand strict proof thereof.

34. Answering the allegations contained in Paragraph 74 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of their Answer.

35. Paragraphs 75 through 78 are not directed towards the Defendants and therefore, no response is required of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraphs 75 through 78 and demand strict proof thereof.

36. Paragraph 79 of the Complaint does not appear to require a response, but to the extent a response is required, Defendants deny the allegations contained in Paragraph 79.

37. Paragraph 80 of the Complaint is a legal conclusion and, as such, does not appear to require a response from the Defendants. To the extent a response is required, Defendants deny the allegations contained in Paragraph 80 and demand strict proof thereof.

38. Defendants deny the allegations contained in Paragraphs 81 through 91 of the Complaint and demand strict proof thereof.

39. Plaintiff's second cause of action for Perjury was dismissed by the circuit court in an order dated January 31, 2017. Accordingly, Defendants need not respond to the allegations contained in Paragraphs 92 through 103 of the Plaintiff's Complaint. To the extent a response is required, Defendants deny the same and demand strict proof thereof.

40. Answering the allegations of Paragraph 104 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

41. Plaintiff's third cause of action for violations of the South Carolina Frivolous Civil Proceedings Sanctions Act, Abuse of Rule 11, and violations of South Carolina Rules of Professional Conduct is not directed towards the Defendants. Further, Plaintiff's third cause of action was dismissed by the circuit court as to the defendants it is directed towards by order dated January 31, 2017. Therefore, Defendants need not respond to Paragraphs 104 through 127 of the Complaint. To the extent a response is required, Defendants deny Paragraphs 104 through 127 of the Complaint and demand strict proof thereof.

42. Answering the allegations of Paragraph 128 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

43. Plaintiff's fourth cause of action for violations of the ABA Rules of Professional Conduct is not directed towards the Defendants. Further, Plaintiff's fourth cause of action was dismissed by the circuit court as to the defendants it is directed towards by order dated January 31, 2017. Therefore, Defendants need not respond to Paragraphs 129 through 145 of the Complaint. To the extent a response is required, Defendants deny Paragraphs 129 through 145 of the Complaint and demand strict proof thereof.

44. Answering the allegations of Paragraph 146 of the Complaint, Defendants hereby reallege and incorporate herein by reference the preceding allegations of its Answer.

45. Plaintiff's fifth cause of action for violations of the Federal Rules of Civil Procedure and South Carolina Rules of Professional Conduct was dismissed by the circuit court in an order dated January 31, 2017. Accordingly, Defendants need not respond to the allegations contained in Paragraphs 147 through 167 of the Plaintiff's Complaint. To

the extent a response is required, Defendants deny the same and demand strict proof thereof.

46. Plaintiff's sixth cause of action for violations of the ABA Rules of Professional Conduct is not directed towards the Defendants. Further, Plaintiff's sixth cause of action was dismissed by the circuit court as to the defendants it is directed towards by order dated January 31, 2017. Therefore, Defendants need not respond to Paragraphs 168 through 187 of the Complaint. To the extent a response is required, Defendants deny Paragraphs 168 through 187 of the Complaint and demand strict proof thereof.

47. Answering the allegations of Paragraph 188 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

48. Paragraphs 189 through 193 are not directed towards the Defendants and therefore, no response is required of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraphs 189 through 193 of the Complaint and demand strict proof thereof.

49. Defendants lack sufficient information regarding the allegations contained in Paragraph 194 of the Complaint and therefore deny the same and demand strict proof thereof.

50. Paragraph 195 is not directed towards the Defendants and therefore, no response is required of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 195 of the Complaint and demand strict proof thereof.

51. Defendants deny the allegations contained in Paragraphs 196 through 198 of the Complaint and demand strict proof thereof.

52. Paragraphs 199 and 200 are not directed towards the Defendants and therefore, no response is required of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraphs 199 and 200 of the Complaint and demand strict proof thereof.

53. Defendants lack sufficient information regarding the allegations contained in Paragraph 201 of the Complaint and therefore deny the same and demand strict proof thereof.

54. Paragraphs 202 and 203 are not directed towards the Defendants and therefore, no response is required of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraphs 202 and 203 of the Complaint and demand strict proof thereof.

55. Defendants deny the allegations contained in Paragraphs 204 through 207 of the Complaint and demand strict proof thereof.

56. Defendants lack sufficient information regarding the allegations contained in Paragraph 208 of the Complaint and therefore deny the same and demand strict proof thereof.

57. Defendants deny the allegations contained in Paragraphs 209 and 210 of the Complaint and demand strict proof thereof.

58. Paragraphs 211 and 212 appear to be legal conclusions and, as such, do not require a response. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 211 and 212 and demand strict proof thereof.

59. Answering the allegations of Paragraph 213 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

60. Plaintiff's eighth cause of action for Slander of Title is not directed towards the Defendants. Further, Plaintiff's eighth cause of action was dismissed by the circuit court as to the defendants it is directed towards by order dated January 31, 2017. Therefore, Defendants need not respond to Paragraphs 214 through 217 of the Complaint. To the extent a response is required, Defendants deny Paragraphs 214 through 217 of the Complaint and demand strict proof thereof.

61. Answering the allegations of Paragraph 218 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

62. Plaintiff's ninth cause of action for Breach of Contract Accompanied by Fraudulent Act is not directed towards the Defendants. Further, Plaintiff's ninth cause of action was dismissed by the circuit court as to the defendants it is directed towards by order dated January 31, 2017. Therefore, Defendants need not respond to Paragraphs 219 through 228 of the Complaint. To the extent a response is required, Defendants deny Paragraphs 219 through 228 of the Complaint and demand strict proof thereof.

63. Answering the allegations of Paragraph 229 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

64. Plaintiff's tenth cause of action for 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 was dismissed by the circuit court in an order dated January 31, 2017. Accordingly, Defendants need not respond to the allegations contained in Paragraphs 230 through 245 of the Plaintiff's Complaint. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 230 through 245 and demand strict proof thereof.

65. Answering the allegations of Paragraph 246 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

66. Plaintiff's eleventh cause of action for violations of the Real Estate Code is not directed towards the Defendants. Further, Plaintiff's eleventh cause of action was dismissed by the circuit court as to the defendants it is directed towards by order dated January 31, 2017. Therefore, Defendants need not respond to Paragraphs 247 through 262 of the Complaint. To the extent a response is required, Defendants deny Paragraphs 247 through 262 of the Complaint and demand strict proof thereof.

67. Answering the allegations of Paragraph 263 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

68. Plaintiff's twelfth cause of action for "Fraud – Untrue assertion of fact; Assertion made with knowledge of falsity and intent to deceive" was dismissed by the circuit court in an order dated January 31, 2017. Accordingly, Defendants need not respond to the allegations contained in Paragraphs 264 through 270 of the Plaintiff's Complaint. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 264 through 270 and demand strict proof thereof.

69. Answering the allegations of Paragraph 271 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

70. Plaintiff's thirteenth cause of action for a Declaratory Judgment that no contract exists was dismissed by the circuit court in an order dated January 31, 2017. Accordingly, Defendants need not respond to the allegations contained in Paragraphs 272 through 277 of the Plaintiff's Complaint. To the extent a response is required,

Defendants deny the allegations contained in Paragraphs 272 through 277 and demand strict proof thereof.

71. Answering the allegations of Paragraph 278 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

72. Defendants deny the allegations contained in Paragraphs 279 through 286 of the Complaint and demand strict proof thereof.

73. Answering the allegations of Paragraph 287 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

74. Plaintiff's fifteenth cause of action for violation of Federal FDIC Rules and Regulation and Violation of Banking Rules and Regulations was dismissed by the circuit court in an order dated January 31, 2017. Accordingly, Defendants need not respond to the allegations contained in Paragraphs 288 through 307 of the Plaintiff's Complaint. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 288 through 307 and demand strict proof thereof.

75. Answering the allegations of Paragraph 308 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

76. Plaintiff's sixteenth cause of action for Obstruction of Justice and South Carolina Rules of Professional Conduct was dismissed by the circuit court in an order dated January 31, 2017. Accordingly, Defendants need not respond to the allegations contained in Paragraphs 309 through 324 of the Plaintiff's Complaint. To the extent a response is required, Defendants deny the allegations contained in Paragraphs 309 through 324 and demand strict proof thereof.

77. Answering the allegations of Paragraph 325 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

78. Defendants deny the allegations contained in Paragraphs 326 and 327 of the Complaint and demand strict proof thereof.

79. Paragraph 328 is not directed towards the Defendants and therefore, no response is required of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 328 of the Complaint and demand strict proof thereof.

80. Defendants deny the allegations contained in Paragraphs 329 through 334 of the Complaint and demand strict proof thereof.

81. Answering the allegations of Paragraph 335 of the Complaint, Defendants hereby re-allege and incorporate herein by reference the preceding allegations of its Answer.

82. Defendants deny the allegations contained in Paragraphs 336 through 340 of the Complaint and demand strict proof thereof.

83. Paragraphs 341 and 342 are not directed towards the Defendants and therefore, no response is required of the Defendants. To the extent that a response is required, Defendants deny the allegations contained in Paragraphs 341 and 342 of the Complaint and demand strict proof thereof.

84. Defendants deny the allegations contained in Paragraphs 343 through 347 of the Complaint and demand strict proof thereof.

85. The "WHEREFORE" of Plaintiff's Complaint are denied, including but not limited to any allegations which state that Plaintiff is entitled to relief of any form from Defendants.

FOR A THIRD DEFENSE

86. Defendants would show that Plaintiff has failed to state facts sufficient to constitute a cause of action; therefore, Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

87. Plaintiff's claims are barred by the doctrines of ratification and/or acquiescence.

FOR A FIFTH DEFENSE

88. Plaintiff's claims are barred by the equitable defenses of unclean hands, waiver and the doctrine of laches.

FOR A SIXTH DEFENSE

89. Plaintiff's claims are barred by the applicable statutes of limitations, which include but are not limited to S.C. Code Ann. §§ 15-3-530 and 15-3-535.

FOR A SEVENTH DEFENSE

90. Plaintiff's claims are barred by the doctrines of estoppel, equitable estoppel, judicial estoppel, collateral estoppel, and/or quasi-estoppel.

FOR AN EIGHTH DEFENSE

91. Plaintiff has not suffered any damages caused by the actions of the Defendants.

FOR A NINTH DEFENSE

92. Plaintiff brought this action for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based and in violation of the South Carolina Frivolous Civil Proceedings Act, S.C. Code Ann. § 15-36-10. That upon information and belief, the Defendant is entitled to

attorney's fees and costs associated with this suit pursuant to S.C. Code Ann. § 15-36-10.

FOR A TENTH DEFENSE

93. Plaintiff's claims are barred by the doctrine of Res Judicata.

FOR AN ELEVENTH DEFENSE

94. The injuries and/or damages alleged by Plaintiff, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the actions taken or not taken by Plaintiff herself, for whose conduct Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A TWELFTH DEFENSE

95. Defendants would show that injuries and/or damages alleged by the Plaintiff, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the sole negligence and recklessness of third persons or parties, for whose conduct Defendants are not liable.

FOR A THIRTEENTH DEFENSE

96. Plaintiff fails to state a claim upon which consequential damages, special damages, and pre- or post-judgment interest may be awarded.

FOR A FOURTEENTH DEFENSE

97. Plaintiff fails to state a claim upon which costs may be awarded

FOR A FIFTEENTH DEFENSE

98. The damages alleged by Plaintiff, which damages are specifically denied, should be barred as a result of Plaintiff's failure to mitigate her own damages.

FOR A SIXTEENTH DEFENSE

99. Defendants are entitled to a set-off of any monies received from any party who resolves with Plaintiff the claims alleged against them prior to any dismissal of or judgment in this matter.

FOR A SEVENTEENTH DEFENSE

100. No act or omission of Defendants, if any, was unconscionable, outrageous or extreme. Defendants did not engage in misconduct that was willful, wanton, or in reckless disregard of Plaintiff's legal rights or the applicable law. Accordingly, Plaintiff's Complaint fails to state a claim upon which relief can be granted for punitive or exemplary damages.

FOR AN EIGHTEENTH DEFENSE

101. Defendants allege that any recovery by Plaintiff on her claim for punitive damages is subject to any cap on punitive damages as may be enacted and becomes part of South Carolina or United States law.

FOR A NINETEENTH DEFENSE

102. Plaintiff's claims for punitive damages cannot be sustained because an award of punitive damages would violated Defendants' rights under the Constitution of the United States of America and the Constitution of the State of South Carolina, and, therefore, the prayer for such damages should be stricken from the Complaint.

FOR A TWENTIETH DEFENSE

103. Plaintiff's claims for punitive damages cannot be sustained because an award of punitive damages under applicable state law by a jury that (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award, (2)

is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including without limitation the residence, wealth, and corporate status of Defendants, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, (5) is not properly instructed regarding Plaintiff's burden of proof with respect to each and every element of a claim for punitive damages and (6) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards, would violate the Defendants' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the equivalent provision(s) of the applicable state constitution, and would be improper under the common law and public policies of applicable state law.

FOR A TWENTY-FIRST DEFENSE

104. Plaintiff's claims for punitive damages against Defendants cannot be sustained because any award of punitive damages under applicable state law without the apportionment of the award separately and severally between or among any joint tortfeasors, as determined by the alleged percentage of the wrong committed by each alleged tortfeasor, would violate Defendants' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States

Constitution, and the equivalent provision(s) of the applicable state constitution, and would be improper under the common law and policies of applicable state law.

FOR A TWENTY-SECOND DEFENSE

105. Plaintiff's claims for punitive damages should be dismissed to the extent that they assert a claim for punitive damages based on breach of contract and/or other causes of action that do not support an award of punitive damages.

FOR A TWENTY-THIRD DEFENSE

106. Plaintiff's claims for punitive damages cannot be sustained because no provision of South Carolina law or the South Carolina punitive damage scheme provides adequate procedural safeguards consistent with the criteria set forth in Philip Morris, Inc. v. Williams, 549 U.S. 346, 1060-61 (2007), State Farm Mutual Ins. Co. v. Campbell, 538 U.S. 408 (2003), BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), Pacific Mutual Life Ins. Co. v. Haslip, 499 U.S. 1 (1990) and Matthews v. Eldridge, 424 U.S. 319 (1976) for the imposition of a punitive award.

FOR A TWENTY-FOURTH DEFENSE

107. Plaintiff's claims for punitive damages cannot be sustained because, in the admission of evidence, the standards provided the trier of fact (including jury instructions), and post-trial and appellate review, South Carolina law and the South Carolina punitive damage scheme place undue emphasis on a defendant's wealth as a basis for making and enhancing a punitive damage award, and do not require that the award must not be based on any desire to redistribute wealth.

FOR A TWENTY-FIFTH DEFENSE

108. Plaintiff's claims for punitive damages cannot be sustained because under South Carolina law and the South Carolina punitive damage scheme, there is no limit on the number of times Defendants could be held accountable for punitive damages based on the same alleged conduct as that alleged in this case.

FOR A TWENTY-SIXTH DEFENSE

109. To the extent that the punitive damage award sought by Plaintiff seeks to impose punitive damages under South Carolina law for conduct in other states, the award violates: (a) Defendants' rights to due process under the Fourteenth Amendment of the United States Constitution and under similar provisions of the South Carolina Constitution; (b) the dormant or negative commerce clause derived from Article I, section 8, clause 3 of the United States Constitution; (c) the Full Faith and Credit Clause of Article IV, section 1 of the United States Constitution; and (d) the requirement of the United States Constitution that a state respect the autonomy of other states within their spheres.

FOR A TWENTY-SEVENTH DEFENSE

110. Plaintiff's claim for punitive damages violates the federal doctrine of separation of powers and the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A TWENTY-EIGHTH DEFENSE

111. Plaintiff lacks standing to bring this action.

FOR A TWENTY-NINTH DEFENSE

112. Defendants reserve the right to rely upon the defenses raised in the pleadings of any other party to this action, and each and every such alleged defense set forth in those pleadings is hereby re-alleged and reiterated as fully as if set forth and incorporated herein.

FOR A THIRTIETH DEFENSE

113. Defendants are entitled to the benefit of all defenses and presumptions contained in, or arising from, any rule of law or statute of the State of South Carolina, whose substantive law controls this action.

FOR A THIRTY-FIRST DEFENSE

114. Defendants reserve the right to amend this Answer and their affirmative defenses after investigation, discovery and further information is disclosed, including any and all defenses supported by the evidence proffered at trial of this matter.

Defendants, denying they are liable to Plaintiffs, and denying that Plaintiffs are entitled to any relief as sought in the Complaint, or any relief whatsoever, demand judgment as follows:

115. Dismissing the Complaint against Defendants with prejudice and, alternatively, for judgment in their favor; and

116. For cost, attorneys' fees, and disbursements of this action along with such other and further relief as the Court deems proper.

(*Signature on Next Page*)

GALLIVAN, WHITE & BOYD, P.A.

By: _____

Amy L.B. Hill, SC Bar # 68541
Jordan M. Crapps, SC Bar # 100580
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Columbia, South Carolina 29202
ahill@gwblawfirm.com
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(803) 779-1833 Ofc
(803) 779-1767 Fax

Attorneys for Allison Williams and South State Bank f/k/a SCBT, Successor in Interest to First Federal Bank

Columbia, South Carolina
February 17, 2017

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS FOR THE 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.	**DEFENDANTS MICHAEL SCARAFILE, SUSAN NICHOLSON, AND CAROLINA ONE REAL ESTATE'S ANSWER**

FILED - RECORDED
2017 FEB 17 PM 12:32
CHIEF CLERK OF COURT
DORCHESTER COUNTY

The Defendants, Michael Scarafile ("Scarafile"), Susan Nicholson ("Nicholson"), and Carolina One Real Estate ("Carolina One") (hereinafter referred to collectively as "Defendants"), by and through their undersigned attorney, hereby answer the Plaintiff's Complaint as follows:

1. Any allegation neither admitted nor denied is hereby denied, and the Defendants demand strict proof thereof.
2. The Defendants deny Paragraphs 1 through 5 of the Plaintiff's Complaint.
3. The Defendants admit Paragraph 6 of the Plaintiff's Complaint.
4. The Defendants lack information sufficient to either admit or deny Paragraphs 8 and 9 of the Plaintiff's Complaint; insofar as a response is required, the Defendants deny the same.
5. The Defendants admit Paragraph 10 of the Plaintiff's Complaint.
6. The Defendants lack information sufficient to either admit or deny Paragraph 11 of the Plaintiff's Complaint; insofar as a response is required, the Defendants deny the same.
7. The Defendants admit Paragraph 12 and 13 of the Plaintiff's Complaint.

18. Paragraphs 218 through 228 relate to a cause of action against a defendant or defendants other than the Defendants. In addition, this claim has been dismissed by this Court. Insofar as a response is required, the Defendants deny the same.

19. Paragraphs 229 through 270 relate to causes of action against the Defendants that have been dismissed by this Court; insofar as a response is required, the Defendants deny the same.

20. Paragraphs 271 through 277 relate to a cause of action against a defendant or defendants other than the Defendants. In addition, this claim been dismissed by this Court. Insofar as a response is required, the Defendants deny the same.

21. Paragraphs 278 through 286 relate to a cause of action against the Defendants that has been dismissed by this Court; insofar as a response is required, the Defendants deny the same.

22. Paragraphs 287 through 307 relate to a cause of action against a defendant or defendants other than the Defendants. In addition, this claim been dismissed by this Court. Insofar as a response is required, the Defendants deny the same.

23. Paragraphs 308 through 324 relate to a cause of action against the Defendants that has been dismissed by this Court; insofar as a response is required, the Defendants deny the same.

24. The Defendants deny Paragraphs 325 through 347, in addition to any remaining Paragraphs. The Defendants further deny that the Plaintiff is entitled to her prayed-for relief.

Affirmative Defenses

25. **Reservation of Defenses:** The Defendants give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend their answer to assert any such defense. The Defendants further incorporate into this Answer and defense raised by the other defendants to this action.

26. **Comparative Negligence or Negligence of others:** To the extent that any of the Plaintiff's causes of action could be construed as claims based in negligence, they should be barred, or should be proportionally reduced as provided by law, due to the Plaintiff's own negligence, or the negligence of others outside the Defendants' control, which combined, contributed to, and concurred without any alleged negligence on the part of the Defendants.

27. **Estoppel:** The Plaintiff is estopped from claiming the relief complained of in her Complaint.

28. **Frivolous Action:** The Plaintiff brought this action for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based and in violation of the South Carolina Frivolous Civil Proceedings Sanctions Act, § 15-36-10 South Carolina Code of Laws. That upon information and belief the Plaintiff is entitled to attorney's fees and costs associated with this suit pursuant to South Carolina Code of Laws § 15-36-10.

29. **Laches**: The doctrine of laches bars the Plaintiff's action.

30. **Res Judicata:** The instant action has been previously adjudicated and cannot be brought again.

31. **Punitive Damages Unconstitutional:** To the extent that the Plaintiff's remaining causes of action against the Defendants asserts a claim for punitive damages, such claims violate the rights of the Defendants to procedural and substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

32. **Rule 12(b)(6):** The Plaintiff's remaining causes of action against the Defendants should be dismissed.

33. **Statute of Limitations:** The Plaintiff failed to commence this action within the time required by the applicable statute of limitations period, and the failure to timely commence the action constitutes a bar and complete defense to all claims.

34. **Unclean Hands:** The Plaintiff brings this action with unclean hands, thus barring her Complaint.

35. **Setoff and Contribution:** To the extent that the Plaintiff settles with one defendant, the Defendants are entitled to a measure of setoff. If the Plaintiff recovers for her remaining cause of action against the Defendants, the Defendants are entitled to apportionment or contribution from the other defendants.

36. **Specific Pleading Requirements:** As to any cause of action alleging fraud, the Plaintiff has failed to assert such a claim with sufficient specificity, pursuant to Rule 9, SCRCP.

37. **Truth:** All statements made to the Court or to an agent for the Plaintiff were either true or the Defendants did not know or did not have reason to know of their falsity.

38. **Lack of Relationship:** The Plaintiff did not have a relationship, fiduciary or otherwise, with the Defendants, thus she was not entitled to rely on any statement made by the Defendants.

Having fully answer the Plaintiff's Complaint, the Defendants would request that the Court inquire into this matter, dismiss the Plaintiff's Complaint, or find in favor of the Defendants and award the Defendants their attorney's fees and costs.

SMITH | CLOSSER, P.A.

Steven L. Smith – ssmith@scnlaw.com
(SC Bar No.: 05173)
Zachary J. Closser – zclosser@scnlaw.com
(SC Bar No.: 74005)
Samuel M. Wheeler – swheeler@scnlaw.com
(SC Bar No.: 101008)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for Michael Scarafile, Susan Nicholson and Carolina One Real Estate

February 13, 2017
Charleston, South Carolina

17-052

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, Woody Law Firm,	)	
	)	
Defendants.	)	
	)	

FILED - RECORDED
2017 FEB 17 PM 12:33
CHERYL E. BRIGHT
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Defendants Michael Scarafile, Susan Nicholson and Carolina One Real Estate's Answer was served by mailing, hand delivery or electronic mail on the following:

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

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

Peggy M. Roehay

February 15, 2017
16-249

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 **DEFENDANTS STEPHEN DUDEK AND DOREEN CROSS' ANSWER**

FILED - RECORDED
2017 FEB -8 AM 11:30
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

The Defendants, Stephen Dudek and Doreen Cross (hereinafter referred to as "Defendants" or "Dudeks"), by and through their undersigned attorney, hereby answer the Plaintiff's Complaint as follows:

1. Any allegation neither admitted nor denied is hereby denied, and the Dudeks demand strict proof thereof.
2. The Dudeks deny Paragraphs 1 through 5 of the Plaintiff's Complaint.
3. The Dudeks admit Paragraphs 6 and 7 of the Plaintiff's Complaint.
4. The Dudeks lack information sufficient to either admit or deny Paragraphs 8 through 16 of the Plaintiff's Complaint; insofar as a response is required, the Dudeks deny the same.
5. The Dudeks deny Paragraphs 17 and 18 of the Plaintiff's Complaint.
6. Paragraph 19 does not require a responsive pleading; insofar as a response is required, the Dudeks deny the same.

8. The Defendants lack information sufficient to either admit or deny Paragraphs 14 through 16 of the Plaintiff's Complaint; insofar as a response is required, the Defendants deny the same.

9. The Defendants deny Paragraphs 17 and 18 of the Plaintiff's Complaint.

10. Paragraph 19 does not require a responsive pleading; insofar as a response is required, the Defendants deny the same.

11. The Defendants admit Paragraphs 20 through 24, only to the extent that these Paragraphs allege jurisdiction and venue are appropriate before this Court; the Defendants deny all other factual or legal allegations contained therein.

12. The Defendants deny Paragraphs 25 through 91 of the Plaintiff's Complaint.

13. Paragraphs 92 through 103 relate to causes of action against the Defendants that have been dismissed by this Court; insofar as a response is required, the Defendants deny the same.

14. Paragraphs 104 through 145 relate to causes of action against a defendant or defendants other than the Defendants. In addition, these claims have been dismissed by this Court. Insofar as a response is required, the Defendants deny the same.

15. Paragraphs 146 through 187 relate to causes of action against the Defendants that have been dismissed by this Court; insofar as a response is required, the Defendants deny the same.

16. The Defendants deny Paragraphs 188 through 212 of the Plaintiff's Complaint.

17. Paragraphs 213 through 217 relate to a cause of action against the Defendants that has been dismissed by this Court; insofar as a response is required, the Defendants deny the same.

7. The Dudeks admit Paragraphs 20 through 24, insofar as these Paragraphs allege venue is appropriate before this Court; the Dudeks deny all other factual or legal allegations contained therein.
8. Paragraphs 25 does not require a responsive pleading; insofar as a response is required, the Dudeks deny the same.
9. The Dudeks deny Paragraphs 26 through 73, including all subparts.
10. Paragraphs 74 through 103 relate to causes of action against the Dudeks that have been dismissed by this Court; insofar as a response is required, the Dudeks deny the same.
11. Paragraphs 104 through 187 relate to causes of action against a Defendant or Defendants other than the Dudeks; insofar as a response is required, the Dudeks deny the same.
12. Paragraphs 188 through 228 relate to causes of action against the Dudeks that have been dismissed by this Court; insofar as a response is required, the Dudeks deny the same.
13. Paragraphs 229 through 262 relate to causes of action against a Defendant or Defendants other than the Dudeks; insofar as a response is required, the Dudeks deny the same.
14. Paragraphs 263 through 286 relate to causes of action against the Dudeks that have been dismissed by this Court; insofar as a response is required, the Dudeks deny the same.
15. Paragraphs 287 through 307 relate to causes of action against a Defendant or Defendants other than the Dudeks; insofar as a response is required, the Dudeks deny the same.
16. Paragraphs 308 through 324 relate to a cause of action against the Dudeks that has been dismissed by this Court; insofar as a response is required, the Dudeks deny the same.
17. The Dudeks deny Paragraphs 325 through 334 of the Plaintiff's Complaint.
18. Paragraphs 335 through 347 relate to a cause of action against the Dudeks that has been dismissed by this Court; insofar as a response is required, the Dudeks deny the same.

19. The Dudeks further deny that the Plaintiff is entitled to the relief prayed for.

Affirmative Defenses

20. **Reservation of Defenses:** The Dudeks give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend their answer to assert any such defense. The Dudeks further incorporate into this Answer and defense raised by the other Defendants to this action.

21. **Estoppel:** The Plaintiff is estopped from claiming the relief complained of in her Complaint.

22. **Frivolous Action**: The Plaintiff brought this action for a purpose other than that of securing the proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based and in violation of the South Carolina Frivolous Civil Proceedings Sanctions Act, § 15-36-10 South Carolina Code of Laws. That upon information and belief the Plaintiff is entitled to attorney's fees and costs associated with this suit pursuant to South Carolina Code of Laws § 15-36-10.

23. **Laches**: The doctrine of laches bars the Plaintiff's action.

24. **Res Judicata:** The instant action has been previously adjudicated and cannot be brought again.

25. **Punitive Damages Unconstitutional:** To the extent that the Plaintiff's remaining cause of action against the Dudeks asserts a claim for punitive damages, such claims violates the rights of the Dudeks to procedural and substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

26. **Rule 12(b)(6):** The Plaintiff's remaining cause of action against the Dudeks should be dismissed.

27. **Statute of Limitations:** The Plaintiff failed to commence this action within the time required by the applicable statute of limitations period, and the failure to timely commence the action constitutes a bar and complete defense to all claims.

28. **Unclean Hands:** The Plaintiff brings this action with unclean hands, thus barring her Complaint.

29. **Setoff and Contribution:** To the extent that the Plaintiff settles with one Defendant, the Dudeks are entitled to a measure of setoff. In the event that the Plaintiff recovers for her remaining cause of action against the Dudeks, the Dudeks are entitled to contribution from the other Defendants.

Having fully answer the Plaintiff's Complaint, specifically the Plaintiff's Intentional Infliction of Emotional Distress claim (i.e., her only remaining claim against the Dudeks), the Dudeks would request that the Court inquire into this matter, dismiss the Plaintiff's Complaint or find in favor of the Dudeks, and award the Dudeks their attorney's fees and costs.

[Signature on following page]

SMITH | CLOSSER, P.A.

Steven L. Smith – ssmith@scnlaw.com
(SC Bar No.: 05173)
Zachary J. Closser – zclosser@scnlaw.com
(SC Bar No.: 74005)
Samuel M. Wheeler – swheeler@scnlaw.com
(SC Bar No.: 101008)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorneys for the Dudeks

February 6, 2017
Charleston, South Carolina

16-249

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, Woody Law Firm,

Defendants.

CERTIFICATE OF SERVICE

RECORDED
2017 FEB -8 AM 11:30
CHERYL S. SOUKUP
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Defendants Stephen Dudek and Doreen Cross' Answer was served by mailing, hand delivery or electronic mail on the following:

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

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

Peggy M. Rochay

February 6, 2017
16-249

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.	)	**AMENDED ANSWER OF DEFENDANTS CARRIE BOYER AND WOODDY LAW FIRM**
	)	
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 MAR 22 AM 11: 11
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Pursuant to Rule 15(a), SCRCP Defendants Carrie Boyer and Wooddy Law Firm (collectively "Defendants"), reserving the right to file a motion under Rule 12 of the South Carolina Rules of Civil Procedure or any other dispositive motion, hereby make this Amended Answer to the Complaint of Molly Morphew ("Plaintiff"), by denying each and every allegation not hereinafter specifically admitted, by demanding strict proof thereof, and by further answering as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

1. Each and every allegation not herein admitted is hereby denied and strict proof thereof demanded.

2. Defendants deny the allegations of Paragraph 1 and demands strict proof thereof.

3. Defendants admit so much of Paragraph 2 as alleges this action has been filed separately from 2013-CP-18-183 and 2013-CP-18-74. Defendants further state this action is duplicative of the other actions barred by preclusion doctrines, as well as the outcome of the appellate decision.

4. Defendants deny the allegations of Paragraphs 3 through 5 and demand strict proof thereof.

5. Defendants lack sufficient information on which to form a belief as to the allegations of Paragraphs 6 through 14 and therefor deny the same and demand strict proof thereof.

6. Defendants admit the allegations of Paragraph 15.

7. Defendants admit Paragraph 15 to the extent it alleges Carrie Boyer was previously employed as a real estate paralegal at the Wooddy Law Firm.

8. Defendants deny the allegations of Paragraphs 17 through 18 and demand strict proof thereof.

9. In response to Paragraph 19, Defendants restate and reallege their responses to Paragraphs 1 through 18.

10. In response to Paragraphs 20 through 21, Defendants admit venue is proper in the Dorchester County Court of Common Pleas.

11. Defendants deny the allegations of Paragraph 22 and demand strict proof thereof.

12. Paragraph 23 contains no allegation against Defendants; accordingly, no response is required. To the extent a response is necessary, Defendants deny any allegations in Paragraph 23 that allege wrongdoing by Defendants and demand strict proof thereof

13. Defendants lack sufficient information on which to form a belief as to the allegations of Paragraph 24 and therefore deny the same and demand strict proof thereof.

14. In response to Paragraph 25, Defendants restate and reallege their responses to Paragraphs 1 through 24.

15. Defendants lack sufficient information on which to form a belief as to the allegations of Paragraphs 25 through 69, including all subparts, and demand strict proof thereof.

16. Defendants deny the allegations of Paragraphs 70 through 73, including all subparts, and demand strict proof thereof

17. In response to Paragraph 74, Defendants restate and reallege their responses to Paragraphs 1 through 73.

18. Defendants lack sufficient information on which to form a belief as to the allegations of Paragraphs 75 through 78 and therefore deny the same and demand strict proof thereof.

19. Paragraph 79 constitutes a conclusion of law to which Defendants need not respond. To the extent a response is required, Defendant denies the allegations of Paragraph 79 to the extent they are directed to these Defendants and demand strict proof thereof.

20. Defendants deny the allegations of Paragraphs 80 through 91 and therefore deny the same and demand strict proof thereof.

21. Paragraphs 92 through 103 relate to causes of action that have been dismissed by the court by way of Order dated January 31, 2017. To the extent a response is required, Defendants deny the allegations of Paragraphs 92 through 103 and deny any allegation of wrongdoing in such Paragraphs and demand strict proof thereof.

22. In response to Paragraph 104, Defendants restate and reallege their responses to Paragraphs 1 through 103.

23. Paragraphs 105 through 167 are not directed toward Defendants. To the extent a response is required, Defendants deny the allegations of Paragraphs 105 through 167 and demand strict proof thereof.

24. Paragraphs 168 through 187 relate to causes of action that have been dismissed by the court by way of Order dated January 31, 2017. To the extent a response is required, Defendants

deny the allegations of Paragraphs 168 through 187 and deny any allegation of wrongdoing in such Paragraphs and demand strict proof thereof.

25. In response to Paragraph 188, Defendants restate and reallege their responses to Paragraphs 1 through 187.

26. Defendants lack sufficient information on which to form a belief as to the allegations of Paragraphs 189 through 194 and therefore deny the same and demand strict proof thereof.

27. Defendants lack sufficient information on which to form a belief as to the allegations of Paragraphs 195 through 203 and therefore deny the same and demand strict proof thereof.

28. Defendants deny the allegations of Paragraphs 204 through 212 and demand strict proof thereof.

29. Paragraphs 213 through 262 are not directed toward Defendants. To the extent a response is required, Defendants deny the allegations of Paragraphs 213 through 262 and demand strict proof thereof.

30. Paragraphs 263 through 270 relate to causes of action that have been dismissed by the court by way of Order dated January 31, 2017. To the extent a response is required, Defendants deny the allegations of Paragraphs 263 through 270 and deny any allegation of wrongdoing in such Paragraphs and demand strict proof thereof.

31. Paragraphs 271 through 307 are not directed toward Defendants. To the extent a response is required, Defendants deny the allegations of Paragraphs 271 through 307 and demand strict proof thereof.

32. Paragraphs 308 through 324 relate to causes of action that have been dismissed by the court by way of Order dated January 31, 2017. To the extent a response is required, Defendants deny the allegations of Paragraphs 308 through 324 and deny any allegation of wrongdoing in such Paragraphs and demand strict proof thereof.

33. In response to Paragraph 335, Defendants restate and reallege their responses to Paragraphs 1 through 334.

34. Defendants deny the allegations of Paragraphs 336 through 347 and demand strict proof thereof.

35. Defendants deny the allegations of the unnumbered paragraph concerning damages on page 63 of the Complaint and demand strict proof thereof.

36. Defendants deny Plaintiff is entitled to the relief sought in the "Wherefore" clause/prayer for relief and demand strict proof thereof.

FOR A SECOND DEFENSE

37. The Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

38. Plaintiff's recovery may be reduced or barred based on Plaintiff's failure to mitigate damages as required by law.

FOR A FOURTH DEFENSE

39. Any recovery by Plaintiff must be reduced or offset by amounts Plaintiff has received or will receive from others for the same damages claimed in this lawsuit.

FOR A FIFTH DEFENSE

40. Plaintiff's claims are barred because she brings this action with unclean hands.

FOR A SIXTH DEFENSE

41. Defendants plead any and all applicable rights and protections afforded to it under the South Carolina Fairness in Civil Justice Act of 2011, codified at South Carolina Code Annotated Sections 15-32-510 to 15-32-540, as a defense to Plaintiff's claims and/or request for an award of punitive damages.

FOR A SEVENTH DEFENSE

42. Punitive damages, as currently awarded in South Carolina, are violative of the United States Constitution and South Carolina Constitution, as well as the holding of *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.

Pursuant to *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which is denied, the amount of punitive damages "[are] not really a fact tried by the jury" therefore Plaintiff's request for punitive damages "to be determined by the jury" violates the United States Constitution.

The U.S. Constitution's Due Process Clause "forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly [do not] represent," Phillip Morris USA v. Williams, 127 S.Ct. 1057, 1063 (U.S. 2007), and, therefore, to the extent that Plaintiff seeks an award of punitive damages for potential or speculative harm to non-parties to the present action, such prayer for relief is unconstitutional and must be struck from the pleadings and is otherwise inadmissible at trial.

Notwithstanding Defendant's prior defenses incorporating Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 522 U.S. 424 (2001) and State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408 (2003), and the cases upon which they are based, in the event

the trial court permits the jury to return a punitive damages award in the instant case, such damages are to be limited to an amount that is no greater than the jury's award of actual damages, as explicated within Exxon Shipping Company v. Baker, 128 S. Ct. 2605 (2008).

FOR AN EIGHTH DEFENSE

43. Plaintiff's claims are barred by the doctrines of waiver and laches.

FOR A NINTH DEFENSE

44. Plaintiff's claims are barred due to her failure to commence this action within the time required by the applicable statute of limitations.

FOR A TENTH DEFENSE

45. Plaintiff is estopped from seeking the relief sought and from asserting the causes of action alleged in the Complaint.

FOR AN ELEVENTH DEFENSE

46. Plaintiff's claims are barred by res judicata, collateral estoppel, equitable estoppel, judicial estoppel, and/or other doctrines of preclusion.

FOR A TWELFTH DEFENSE

47. Plaintiff's claims must fail because Defendants acted in good faith and in a reasonable manner at all times relevant to this matter.

FOR A THIRTEENTH DEFENSE

48. To the extent Plaintiff alleges a claim for civil conspiracy, such claim fails because she has not alleged and cannot prove special damages.

FOR A FOURTEENTH DEFENSE

49. To the extent Plaintiff alleges a claim for breach of the implied covenant of good faith and fair dealing, such claim fails because she has not alleged the existence of a contract

between Plaintiff and Defendants and in fact no such contract exists.

FOR A FIFTEENTH DEFENSE

50. Plaintiff's claims fail because Defendants have performed all of their alleged contractual and/or other duties and obligations, if any.

FOR A SIXTEENTH DEFENSE

51. Plaintiff's damages, if any, resulted solely and proximately from conditions and/or conduct for which Defendants are not liable or responsible.

FOR A SEVENTEENTH DEFENSE

52. Plaintiff's damages, if any, were caused by the intervening and superseding acts of third parties for which Defendants are not liable or responsible.

FOR AN EIGHTEENTH DEFENSE

53. Plaintiff has not alleged and cannot prove all elements of fraud by clear, cogent, and convincing evidence.

FOR A NINETEENTH DEFENSE

54. Plaintiff has not alleged and cannot prove additional acts in furtherance of a civil conspiracy.

FOR A TWENTIETH DEFENSE

55. The conduct alleged in the Complaint does not, as a matter of law, rise to the level of exceeding all bounds of human decency, as required to support a claim for intentional infliction of emotional distress.

FOR A TWENTY-FIRST DEFENSE

56. To the extent Plaintiff intends to allege a cause of action for fraud upon the court or extrinsic fraud, such an independent civil action is not recognized by South Carolina law and

must be dismissed.

FOR A TWENTY-SECOND DEFENSE

57. Plaintiff's claims are barred to the extent they constitute an improper collateral attack on a prior judgment.

FOR A TWENTY-THIRD DEFENSE

58. Plaintiff has commenced this action in violation of the South Carolina Frivolous Civil Proceeding Sanctions Act, S.C. Code Ann. § 15-36-10 et seq., as well as Rule 11 of the South Carolina Rules of Civil Procedure because: 1) a reasonable attorney in the same circumstances would not believe that under the facts such claims may be warranted under existing law and not good faith argument exists for the extension, modification or reversal of existing law; 2) a reasonable attorney in the same circumstances would not believe this claims is not frivolous, interposed for delay, or brought for a purpose other than securing proper discovery, joinder of parties, or adjudication of the claim upon which the proceedings are based; and 3) a reasonable attorney in the same or similar circumstances would not believe the procurement, initiation, continuation, or defense of this civil case is not intended merely to harass or injure the other parties. As such, Defendants are entitled to an award of attorney's fees and costs associated with this suit.

FOR A TWENTY-FOURTH DEFENSE

59. The injuries and/or damages alleged by Plaintiff, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the actions taken or not taken by Plaintiff herself, for whose conduct Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A TWENTY-FIFTH DEFENSE

60. Defendants would show that injuries and/or damages alleged by the Plaintiff, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the sole negligence and recklessness of third persons or parties, for whose conduct Defendants are not liable.

FOR A TWENTY-SIXTH DEFENSE

61. Plaintiff fails to state a claim upon which consequential damages, special damages, costs, and pre- or post-judgment interest may be awarded.

FOR A TWENTY-SEVENTH DEFENSE

62. Plaintiff lacks standing to bring this action.

FOR A TWENTY-EIGHTH DEFENSE

63. Defendants reserve and do not waive any additional or affirmative defenses that may be revealed in the course of discovery or investigation of this matter.

FOR A TWENTY-NINTH DEFENSE

64. Defendants specifically incorporate by reference all applicable and pertinent defenses raised by their Co-Defendants, consistent herewith.

WHEREFORE, having fully answered Plaintiff's Complaint, subject to any and all motions, qualifications, or other pleadings, Defendants pray that this action be dismissed with prejudice and that Defendant be awarded costs and attorneys' fees as well as such other and further relief as this Honorable Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR DEFENDANTS THE WOODDY LAW FIRM AND CARRIE BOYER

AMENDED ANSWER OF DEFENDANTS CARRIE BOYER AND WOODDY LAW FIRM

Murrells Inlet, South Carolina
March 17, 2017

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.	)	**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.	)	

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CHERYL GRANT
CLERK OF COURT
DORCHESTER COUNTY

The undersigned employee of Collins & Lacy, P.C., Attorneys at Law, 11945 Grandhaven Drive, Suite D, Murrells Inlet, South Carolina 29576, does hereby certify that the following named individual(s) were served with a copy of the pleading(s) indicated below by mailing a copy of same to said person(s) in the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, as well as via electronic mail:

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PLEADINGS:

- **AMENDED ANSWER OF DEFENDANTS CARRIE BOYER AND WOODDY LAW FIRM**

Angela C Gonzales

Murrells Inlet, South Carolina
March 17, 2017

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	Civil Action Case No.: 2016-CP-18-1706
Molly Morphew,)	
Plaintiff,)	
v.)	**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS SCARFILE, COLLINS, CAROLINA ONE, AND NICHOLSON'S MOTION TO DISMISS 12(b)(6) and 12(b)(8)**
Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm)	
Defendants)	

Plaintiff Morphew, pro se, submits the following Brief in Opposition to Defendants Michael Scarafile, David Collins, Carolina One, and Susan Nicholson's Motion to Dismiss 12(b)(6) and 12(b)(8). For the reasons set forth below, Morphew requests that this court Deny the Motion to Dismiss in its entirety.

Table of Contents

INTRODUCTION 1
ARGUMENTS 4
MOTION TO DISMISS STANDARDS 4
A. Motion to Dismiss Rule 12(b)(6), SCRP. 4
B. Motion to Dismiss Rule 12(b)(8), SCRP. 6
Conclusion 8

Table of Authorities

Cases

Brown v. Leverette, 291 S.C 34, 353 S.E.2d 697 (1987) 6
Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) 6
Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) 6
McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) 6, 7
Baird, 333 S.C. at 527, 511 S.E.2d at 73 7
Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974)2007) 7
Flateau, 355 S.C. at 202, 584 S.E.2d at 415 7
Gentry v. Yonce,337 S.C. 1, 522 S.E.2d 137 (1999) 7
Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001) 7
Williams, 347 S.C. at 233, 553 S.E.2d at 499 7
Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001) 8
Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) 8
Gentry, 337 S.C. at 5, 522 S.E.2d at 139 8
Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) 8
Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). 8
Beatty v. Liberty Mut. Ins. Group, 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008) 9
S.C. Public Serv. Comm'n v. City of Rock Hill, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977) .. 9

Other Authorities

Twombly, 550 U.S. at 556-57 7
James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed. 1996) 9

Rules

South Carolina Rules of Civil Procedure (SCRCP) 12(b)(6) 4,5,6
South Carolina Rules of Civil Procedure (SCRCP) 12(b)(8) 4,8
Appellate Court Rule 12(b)(8) 9

INTRODUCTION

Morphew alleges in its Complaint:

- That the Defendants, as named above, have committed Fraud, Extrinsic Fraud- specifically Fraud on the Courts.
- That the Fraud(s) or Fraudulent actions as set forth in the Complaint include [as a basis for fraud on the courts and their unlawful conduct] actions of Perjury, Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act SECTION 15-36-10; Abuse of

South Carolina & Federal Rules of Civil Procedures, Violation of SC Rules of Professional Conduct, Violation of ABA Rules of Professional Conduct, abuse of the South Carolina Bar Rules of Professional Conduct, Misrepresentation, Bad Faith and Unfair Dealings, Slander of Title, 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, Violation of the Real Estate Code of Conduct, Declaratory Judgment That No Contract Exists, Forgery, Obstruction of Justice, Intentional Infliction of Emotional Distress, and Tortious Interference with Existing Contractual Relations.

- That the fraudulent actions or unlawful conduct of the Defendants were unknown to Morphew or the courts at the time before or during the prior civil trial.
- That discovery of fraud was a direct result of Plaintiff Morphew becoming Pro-se and performing discovery over 100's of hours.
- The factual allegations (Complaint ¶¶ 25-347), including those listed within each Cause of Actions, provide a detailed description of the method or process of the fraudulent actions or unlawful conduct of the Defendants, including when the fraud began, how the fraud was committed on the courts, on Morphew, and further demonstrates how their fraudulent acts or omissions or unlawful conduct have continued after the trial.
- That the fraudulent actions or unlawful conduct of the Defendants on the courts were intentional and have caused, and continue to cause:
    1. The Courts undue time, resources, and costs, and
    2. Morphew, excessive amounts of time, money and emotional distress, and loss principal, interest, and years of rightful ownership of the property at stake.

The Complaint contains all this and more in page after page of detailed factual allegations and quotes (Complaint ¶¶ 25-347) that can be supported by material evidence and exhibits, and can be proved, without a doubt, at trial. Trials have been won with less evidence. Under any reading of the applicable standard requiring particularity, Morphew meets and exceeds its pleading obligations.

Additionally, Morphew's subject matter of Fraud on the Courts includes a supporting cause of action of perjury. To "perjure" yourself is to knowingly make false or misleading statements under oath or to sign a legal document you know to be false or misleading. This crime is taken very seriously because the foundation of the legal system depends on trust and credibility. After all, just one sworn statement has the power to tip the scales of justice and dramatically alter someone's life. Perjury is considered a crime against justice, since lying under oath compromises the authority of courts, grand juries, governing bodies, and public officials.

Nevertheless, the Defendants, as named above, have moved to dismiss the Complaint, basing their Motion on South Carolina Rules of Civil Procedure (SCRCP) 12(b)(6), "failure to state facts sufficient to constitute a cause of action" and 12(b)(8), "that another action is pending between the same parties for the same claim". If the Defendants had reasonably done their due diligence or discovery, they would have recognized that the Prior Civil Action is not between the same parties (i.e., none of the Defendants in this motion are a party to case #2013-CP-18-00183 (consolidated with 2013-CP-18-00074) , or that issues raised and tried in the prior adjudicated suit are not the same claims or issues raised in this current Complaint.

Furthermore, the defenses within the Defendants Motion to Dismiss lack any argument and are totally unsupported. Though the Defendants call out the nature of the Motion, there was no explanation as to the nature of the motion and the reasons therefor. Copies of the Complaint (and

any other papers that may be necessary to the motion) were not included. Hence, the defendants failed 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 Defendants Motion to Dismiss lacks merit for grounds of dismissal. But even under the Michael Scarafile, David Collins, Carolina One, and Susan Nicholson's Motion to Dismiss' unsupported standards, Morphew's Complaint is so thoroughly particularized that it must survive and Defendants' motion must be dismissed.

ARGUMENTS

MOTION TO DISMISS STANDARDS

A. Motion to Dismiss Rule 12(b)(6), SCRP.

A motion to dismiss under Rule 12(b)(6) ["failure to state facts sufficient to constitute a cause of action"] should be granted only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. *Brown v. Leverette, 291 S.C 34, 353 S.E.2d 697 (1987); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997).*

Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)*; see also *Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987)* (noting trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); *Williams, 347 S.C. at 233, 553 S.E.2d at 499* (finding that trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

To survive a rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level" and have "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly. 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974)2007).* A motion under Rule 12(b)(6) merely tests the legal sufficiency of a complaint, requiring

a court to construe the complaint liberally, assume all facts as true, and draw all reasonable inferences in favor of the plaintiff. Twombly, 550 U.S. at 556-57. Morphew argues a "complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Defendants claim 12(b)(6), but fail to clearly demonstrate the plaintiff has failed to state facts sufficient to constitute a cause of action. A trial judge in the civil setting 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).* "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Flateau, 355 S.C. at 202, 584 S.E.2d at 415*; see *Gentry v. Yonce,337 S.C. 1, 522 S.E.2d 137 (1999)*; see also *Baird, 333 S.C. at 527, 511 S.E.2d at 73* (declaring that if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); *McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997)* (concluding that motion to dismiss cannot be sustained if facts alleged in complaint and inferences reasonably deducible therefrom would entitle plaintiff to relief on any theory of the case).

In deciding whether the trial court properly granted the motion to dismiss, this court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. See *Gentry, 337 S.C. at 5, 522 S.E.2d at 139*; see also *Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999)* (explaining that looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).* The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001)*; see also *Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997)* (stating motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case).

Furthermore, Defendants fail to specify which cause of action or actions is in question and which co-defendant the actions are speaking unambiguously or specifically to. Due to the generalization of Defendants claim, Plaintiff contends her inability to sufficiently answer the Defendants basis for this motion.

For these reasons above, the Defendants Motion to Dismiss should be dismissed in its entirety.

B. Motion to Dismiss Rule 12(b)(8), SCRP.

Defendants' motion to dismiss claims Rule 12(b)(8), "another action is pending between the same parties for the same claim." Plaintiff would respectfully like to point out that the parties to the prior pending action are not the same parties represented in this Motion to Dismiss, therefore Rule 12(b)(8) is not an applicable standard in the Defendants' Motion for dismissal.

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[1] providing a defendant a similar opportunity to demur; the

[1] The former statute, Section 10-642(3) of the South Carolina Code (1962), read in part as follows: "The defendant may demur to the complaint when it shall appear upon the face thereof that: (3) There is another action pending between the same parties for the same cause."

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). This approach is consistent with modern day practice under rules similar to the Appellate Court 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, the courts can 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).

Even if they were the same parties, Plaintiff contends the current action is an independent action alleging fraud, and specifically fraud upon the court arising from the material discovery after adjudication of the prior action that the acts and omissions of the Defendants were indeed intentionally fraudulent, and carried out in bad faith and unfair dealings. This action also alleges, to include contempt and perjury, as a basis for fraud on the courts. The remedy being damages (including Punitive), and sanctions for injury resulting from their unlawful behavior, and to deter the Defendants from continuing its wanton conduct.

The Prior Civil Actions subject, as claimed, is Breach of Contract (instance #1) with the remedy being Specific Performance.

Plaintiff asserts the two disputes are substantively different and the case should go forward notwithstanding the pending breach of contract issue. Plaintiff respectfully recognizes that the prior claim may have some relationship or impact upon the circuit court action, but would like this

court to recognize that the prior proceeding and the circuit court action are fundamentally and structurally different from each other.

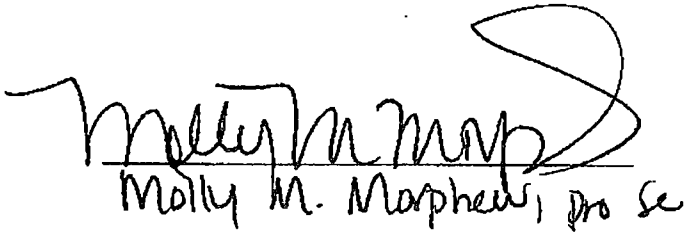
Accordingly, Plaintiff respectfully compels the court to dismiss with prejudice the Defendants Motion to Dismiss in its entirety.

Conclusion

For all the foregoing reasons, the court should deny Defendant's Motion to dismiss in its entirety.

Further, the Plaintiff Morphew would hereby respectfully move the court for an order for Defendant's to pay for all costs (plus treble damages) associated to Plaintiff in defending these Defendants' MOTION TO DISMISS 12(b)(6) and 12(b)(8).

Respectfully Submitted,



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October 1, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	Civil Action Case No.: 2016-CP-18-1706
Molly Morphew,)	
Plaintiff,)	
v.)	**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)	

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I certify that on this date a copy of the foregoing Plaintiffs Brief in Opposition to Defendants' Michael Scarafile, Susan Nicholson, David Collins, and Carolina One Real Estate **MOTION TO DISMISS 12(b)(6) and 12(b)(8)** was served by mailing on the following:

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October 4, 2016

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff	)	
	)	
v.	)	**PLAINTIFF MORPHEW'S RESPONSE TO FIRST FEDERAL'S MOTION FOR SUMMARY JUDGMENT**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

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Plaintiff Molly Morphew, pro se, hereby responds to First Federal's Motion for Summary Judgment and by the reasons and defenses stated below respectfully requests that the Court deny or dismiss with prejudice the defendant's motion.

To grant a motion for summary judgment, the court must find that "there is no genuine issue as to any material fact." Fed.R.Civ.P. 56(c). The judge is not to weigh the evidence but rather must determine if there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001). "Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts." Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp., 278 S.C. 195,

196, 293 S.E. (2d) 706, 707 (1982). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Lanham, 349 S.C. at 289*289 362, 563 S.E.2d at 333 (citing Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000)). "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." Hall v. Fedor, 349 S.C. 169, 173, 561 S.E.2d 654, 656 (Ct.App.2002) (citing Young v. South Carolina Dep't of Corr., 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999)). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Id. at 173-74, 561 S.E.2d at 656. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." Murray v. Holnam, Inc., 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct.App. 2001) (citing Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing & Regulation, 337 S.C. 476, 523 S.E.2d 795 (1999)).

BACKGROUND

A complaint for Fraud/Fraud on the Court, including allegations of conspiracy to commit fraud, against ten (10) defendants, including bank loan officer, Allison Williams (Bank Defendant Williams" or "Williams"), and it's employer, previously First Federal Bank but now known as South State Bank f/k/a SCBT, successor in interest to First Federal Bank[1](Bank Defendant FF" or "First Federal") was filed on August 24, 2016. Defendants Allison Williams and First Federal ("Bank Defendants") filed a Motion to Dismiss on September 26, 2017, in which the court dismissed seven (7) of the eleven (11) causes of action. Six (6) of those causes of action were

[1] For consistency and direct reference back to the original case that the alleged fraud/fraud on the court was committed on, South State Bank f/k/a SCBT, successor in interest to First Federal Bank will be herein referred to as "First Federal" or "First Federal Bank".

dismissed either for the reason they were criminal charges and could not be brought in a civil cause of action, or they were violations of rules -- either professional conduct, banking, or FDIC – meaning, rules that "are not designed to be a basis for civil liability" or "a violation of the rules is not a recognized or cognizable claim for relief in South Carolina." The remaining four (4) causes of action not denied include Fraud[2], Extrinsic Fraud/Fraud on the Court, Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action, conspiracy to defraud, Intentional Infliction of Emotional Distress, and Tortious Interference with Existing Contractual Relations.

This case is an independent action resulting from the defendant(s) fraudulent actions, forgery, tortious interference, and bad faith and unfair dealings in a previous case -in which the defendant(s) actions or non-actions before trial, at trial, or after trial, rose to the level of fraud/fraud on the court. Their misrepresentations, hiding of material documentation or evidence, forgery and making of false statements of pertinent material facts substantially support Plaintiff's allegations of the bank Defendants' bad faith and unfair dealings and fraud/fraud on the court. The bank Defendants' actions or non-actions further prove that their co-defendants/clients, Stephen Dudek and Doreen Cross, filed frivolous and unlawful complaint(s)/answer(s)/motions, and most importantly that the bank Defendants knowingly assisted in its clients/co-defendants' fraud on the court-- leading to conspiracy to commit fraud/defraud or fraudulent intent. Moreover, both the bank Defendants (including its legal department) and its other co-defendant/clients' prior attorney, David Collins, intentionally concealed the lending documents or the failed financial condition of its clients from the opposing parties and the courts before trial,

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[2] In the Case of *Conner v. CITY OF FOREST ACRES*, 348 S.C. 454, *560* S.E.2d 606 (2002), the Supreme Court held "The fraudulent act is any act characterized by dishonesty in fact or unfair dealing. *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct.App.1986). "Fraud," in this sense, "assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence." *Sullivan v. Calhoun*, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921) (citation omitted).

during or after; and further suborned bank Defendants, co-defendants or witnesses to withhold or conceal Dudek and Cross' financial status or condition, falsely testify or misrepresent material evidence or facts.

Plaintiff Morphew holds that an attorney's repeated and intentional failing to disclose or intentional hiding or withholding material documents/evidence or suborning its clients or witnesses to perjure, misrepresent, forger or intentionally hide or withhold material evidence is unlawful and was an intent to deceive and constituted extrinsic fraud, and for the reasons stated above, the trial court erred in awarding Specific Performance to Dudek and Cross. See *Chewning v. Ford Motor Co.*, 354 S.C. at 84, 579 S.E.2d at 611 (recognizing that where an attorney embarks on a scheme to intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs). Further, an officer of a federally insured institution committing perjury or misrepresentation of material facts, material and pertinent facts known with complete knowledge of the whole truth, also brings forth the question of the First Federal's integrity and its attempt to cover up its own failures, such as briefing or condoning its own employee(s) to commit perjury or misrepresentation under oath in a court proceeding, such as in subpoena(s) and during a trial.

It appears the bank Defendants are not disputing the facts of the case, but instead are just attempting to release themselves of any liability of their fraudulent, unlawful and/or bad faith and unfair actions in their Motion for Summary Judgment. Considering the Master's Order, ruling in favor of the Dudeks for Specific Performance, was primarily or substantially based on the bank Defendant Williams' false or misrepresented testimony or evidence, Morphew argues the bank Defendants are substantially liable for the significant fraud perpetrated on the court during the litigation of the original case and the harm it has and is still causing.

In this instance, several litigants were unduly and substantially harmed, plus the courts and its processes were used unlawfully or in a fraudulent manner (including, but not limited to, stealing or taking away property belonging to another), or unlawfully used to prevent Morphew from closing or obtaining the property, and to force or blackmail the seller in closing with them thought they had no legal right to compel Specific Performance.

Further, the deception (perjury, withholding evidence, fraud, forgery and conspiracy) committed during their unlawful use of the judicial process is considered the 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).

Plaintiff Morphew holds bank Defendants knew of this deception and are liable for their part in said fraud for, including but not limited to, undermining the integrity of the judicial system, preventing Morphew from closing escrow on her sales contract, violating her constitutional right of due process or preventing Morphew from fully presenting her claim during trial, the loss of her home, undue emotional distress, loss of work, time, and money.

Pursuant to paragraph 16 of their contract Defendant Dudek and Cross were obligated to sign a written release after receiving written notice of their default under their Contract (**Exhibit**

"Exh." A -- Dudek/Cross sales contract, October 24, 2012), and that their unlawful actions or non-actions have intentionally prevented Morphew from closing.

A. Bank Defendants first assert in their motion "*this case fundamentally arises out of Plaintiff's disappointment with the decision of the Honorable James E. Chellis, Master in Equity...*"

Though Morphew agrees she was disappointed with the Master's decision, she points out disappointment' is an emotion expected in any case in which a party loses. But in this instance, Morphew's "disappointment" was not disappointment because she lost, as losing fairly and honestly would be appropriate and acceptable. Instead it was -- and still is – substantial disappointment in the lack of honesty and fair dealings of the opposing party/defendants and its witnesses, and the bank defendant(s) failure to tell the truth or in its duty to disclose specific material facts or evidence to the case, for if the bank Defendants had told or disclosed the truth in their answers to two (2) subpoenas or in its testimony at trial, no trial would have taken place or Plaintiff would have been able to present her case fully as is her Constitutional right. It is without a doubt that the Master's ruling would have turned out substantially different. For example, if the bank Defendants had told the truth or provided the Dudeks' lending information in their initial answers to the subpoenas by Morphew, there undoubtedly would have been no trial. Even if the case managed to make it to trial, the Master would have found Dudek and Cross failed to meet the strict guidelines and requirements of equity to compel specific performance in the first place, and therefore he did not have the inherent power to order Specific Performance in favor of the Dudeks. Instead he would have found the Dudeks critically breached their conditions precedent to any of the sellers conditions within their sales contract and therefore the Dudeks were required to sign the termination notice so Morphew could close, ultimately awarding Specific Performance to Morphew.

To add to Plaintiff Morphew's disappointment is her dumbfounded concern that even when verified and documented evidence contradicting the bank Defendants and its co-defendants testimony, or evidence proving the Dudeks had no legal right to compel specific performance, was discovered and presented to the Master from pro se party, the Ferros, he chose not to consider it. Meaning, the Order of the Master was only or substantially the result of the bank Defendants' fraudulent actions or non-actions and the collusion between the bank Defendants and its co-defendants, and not the truth or what was lawful.[3] It should be specifically noted that the court of equity never ruled on the fraud/fraud on the court issue and declined to consider it on appeal, therefore the issue of fraud/fraud on the court has not been litigated.

These 'fraudulent' or unlawful actions or non-actions prevented the Plaintiff from fully exhibiting and trying her case, therefore there has never been a real contest before the court on the subject matter of the action. "Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)." The decision by the court of equity was erroneous and based on intentional deceit and fraud, costing undue emotional and financial stress to the Morphew, including the loss of her home, which it appears she had the only legal claim to prior to litigation of the original case. Meaning, Dudek and Cross' sales contract was no longer in effect, negotiable or was invalid after November 30, 2012 but before they made initial application for mortgage credit; whereas Morphew's had secured lending and was ready, able and willing to close escrow as of January 6, 2013.

[3] Pending appeal, Morphew filed its independent action for fraud/fraud on the court. Though on appeal the fraud or unlawful actions were also presented, it had not been heard nor ruled on.

The Plaintiff's additional and continuing disappointment is that the Master had and is knowingly turning a blind eye to the unlawful actions that have caused substantial damage to its court and the parties involved -- even to the very the party(s) who caused, and continues to cause, [those] damages by coming to the courts in bad faith and unclean hands with their frivolous and unlawful filings, unfair dealings, blatant dishonesty and fraudulent behavior. First, the power to set aside a judgment exists in every court. (CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE supra note 151). Second, in whichever court the fraud was committed, that court should consider the matter. (Id.) (Citing *Universal Oil Prods. Co. v. Root Refining Co.*, 328 U.S. 575 (1946) (other citations omitted). Third, while parties have the right to file a motion requesting the court to set aside a judgment procured by fraud, the court may also proceed on its own motion.(Id.) Indeed, one court stated that the facts that had come to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist."(*Root Refining Co. v. Universal Oil Prods. Co.*, 169 F.2d 514, 521–23 (3d Cir. 1948) (emphasis added). Fourth, unlike just about every other remedy or claim existing under the rules of civil procedure or common law, there is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration of the matter.(See WRIGHT ET AL., supra note 151).The logic is clear: "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits."(*Lockwood v. Bowles*, 46 F.R.D. 625, 634 (D.D.C. 1969). Doctrines of res judicata and collateral estoppel will not bar a collateral attack on a judgment based on extrinsic fraud. *Evans v. Gunter*, 294 S.C. 525, 366 S.E.2d 44 (Ct.App.1988).

Even so, because the allegations by Morphew are true, she was denied the opportunity to present her case fully. While the Defendants' alleged perjury would fall in the "intrinsic fraud" category, the Defendants has superior knowledge of the Dudeks' transaction, but instead provided false or misleading statements in its answers to 2 subpoenas and at trial, while concealing the truth. Also, the position of trust and confidence in Defendant Williams as a loan officer of a federally insured bank was exploited. It was clear that the opposing parties (including Morphew) and the trial court judge would not consider such a witness to lie, conceal or misrepresent under oath, therefore there was no question at the time that her statements would be anything but true, and reliance on her testimony was justified. If the Defendants had disclosed the truth before trial or at trial and as required by law, it's most likely a trial would never had happened or Morphew would have been in a position to present her case fully. Ultimately, the Defendants actions or non-actions could be considered extrinsic fraud. Further, 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). The allegations by Morphew make out a case such that it would no longer be equitable that the judgments have prospective application if the allegations are true.

The court system and its officers (i.e., judges and lawyers) are public figures put in place to instill confidence in the public and protect the judicial process, thereby protecting the innocent. They are to seek justice with honesty and integrity, not just 'hang their hat on a hook' or be partial. When fraud/fraud upon the court[4] has been committed on its court, whether intrinsic or extrinsic [in this independent action for fraud/fraud on the court], the impartial functions of the

[4] Fraud upon the Court, is where a material misrepresentation has been made to the court, or by the court itself. The main requirement is that the impartiality of the court has been so disrupted that it can't perform its tasks without bias or prejudice

court have been directly corrupted. As has been seen, the amendment to Federal Rule 60(b) introduced the term "fraud on the court" and no distinction was drawn between extrinsic and intrinsic fraud in the saving clause; Recall that the rule expressly provides that either intrinsic or extrinsic fraud can be ground for relief by motion to the court that rendered judgment. Though it is recognized that South Carolina usually applies only extrinsic fraud as fraud on the court, it has in some cases recognized intrinsic fraud that rose to the level of extrinsic fraud to succeed as fraud on the court.

Therefore, even if we were to assume based on precedent that any fraud alleged is intrinsic in nature, the judgment and concurrent finding of Specific Performance is nonetheless vulnerable to attack outside of the fraud context under Rule 60(b)(5) and through an independent action if the appropriate circumstances are present. In this instant case, Morphew has alleged that applying the judgment prospectively is no longer equitable.

As Plaintiff Morphew clearly states in its complaint, all defendants committed fraud in some way, but specifically bank Defendants and Defendant David A. Collins[5] [Defendants Dudek and Cross' attorney in prior case/co-defendant in this action], who was suspended by the Supreme Court from practicing law in 2016, and then pleaded guilty to and charged with 'fraudulent intent' and 'breach of trust' in another case in 2017.

Plaintiff's allegations include perpetrating fraud, making excessive material misrepresentations to the court and presenting forgered documents to falsify the lending condition or status of its clients and incorrectly assert liability or breach of the prior defendants/sellers Ferro in their failure to close escrow to the court. Moreover, Attorney Collins intentionally withheld and/or prompted its clients and witnesses to withhold or hide the financial documents that would

[5] Defendant Collins is currently in default. Judgement hearing pending scheduling.

eradicate their case, and prompted them for perjured testimony. Plaintiff avers this substantiates extrinsic fraud, in which the bank Defendants are also liable for.

Further disappointment was in the Master in Equity and the court itself for failing to require proof (or pertinent material documentation) or denying requests to compel said material documentation supporting defendant's testimony(s) at trial or after trial. Even when knowledge of the bank Defendants and co-defendants' unlawful behavior was presented – and presented several times – the Master or court consistently refused to review or address such behavior or require proof[6] from the Dudeks-- declaring "this information is not relevant to the [case]" or it's 'moot' or allowing it to be compelled and then denying it because "he changed his mind" in order to end and close the case and/or let Dudek and Cross close. (**Exh. B**- Rule 59 Hearing Transcript, May 12, 2017 pg. 25 of condensed version: pg. 98 line 23 – pg. 100 line 11).

MR. SMITH:	*"And in the order that comes out of this, that we just add one or two sentences that say, and this concludes the matter. There are no other further pending matters. This case is over."*
THE COURT:	*"Over and ended. Right."*
MR SMITH:	*"And the reason is so we can close. Thank you, Your Honor."*
THE COURT:	*"All right. Ms. Morphew, any additional comments to what I said?*
MS. MORPHEW:	*"Just to make sure -- you denied me the motion to compel proof of documents. But because I asked for an actual proof of financing in the [March 2017] hearing and I still haven't gotten it, ...".*
THE COURT:	*"I'm not going to require that they give that to you. If they want to do that on their own voluntarily, they can do it. But if they are scheduled to go forward for closing and the*

[6] Morphew has asked many times, in hearings, motions and subpoenas, for proof that Defendants clients/co-defendants had secured financing and were ready and able to close in 2012 as the defendants/co-defendant(s) claimed in their complaint compelling specific performance and as they testified at trial in 2014.

closing is scheduled, then let's let it happen, and you'll need to be out. So you need to get prepared."

MS. MORPHEW: *"That was not what I said. I said I would -- not until –*

THE COURT: *"I understand what you've asked for, and I'm denying your request."*

MS. MORPHEW: *"But it wasn't denied during the* [March 2017*] hearing."*

THE COURT: *"I've changed my mind then. I'm denying it now. Okay. Ms. Ferro, Mr. Ferro, thank you for participating. Mr. Smith, thank you for your participation. And Ms. Morphew, thank you for your participation. That concludes the hearing."*

The only reason there is a complicated or "labyrinthine" string of litigation (as the court described in an Order[7] dated February 21, 2018) is because of the amount of defendants --10 to be exact -- and the extent of the fraud or unlawful actions or non-actions performed by said defendants in order to obtain ruling(s) in their favor. Morphew has stated to the courts or to the opposing party over and over again through the past years that if the co-defendants or bank Defendants would produce verified material documentation that supports Dudek and Cross' claims they were ready and able to close escrow in 2012 and/or at the time they compelled specific performance on January 15, 2013, then she would drop all its claims. Both bank Defendants and/or co-defendants had continuously refused to provide any supporting documentation to defend against the Plaintiff's claims, and the trial court has denied all motions to compel, mainly claiming 'Plaintiff has no legal right to such proof'. Now, it appears in its Motion for summary judgment bank Defendants are admitting to the allegations, but are attempting to release themselves from their unlawful actions or from all liability of those actions.

During the litigation of the prior case , the question 'if" financing was extended or secured was not an issue in the previous litigation as all opposing parties were told over and over again in

[7] Case referenced in Defendant's Motion, #2017-CP-18-00987 (Constructive Trust against Stephen Dudek and Doreen Cross) is currently on appeal.

answers, depositions or communications prior to and during trial that Dudek and Cross has secured financing. Further, forgered documents were produced prior to trial and bank officers lied in subpoenas, and especially, a bank officer and a sales agent testified its clients were approved. So instead the question was 'when' financing was applied for and secured, and if a sellers breach caused Dudek and Cross' failure to close. If Morphew had known Dudek and Cross did not have a valid sales contract at application or were denied financing at their own hand (meaning their breach for failing to meet their financing condition was precedent to any seller breach or failure) or that they had never been ready or able to close escrow during the prior litigation, obviously this would have been presented the moment the information was known, especially at the prior case trial. Instead it was the prior defendants/sellers Ferro who discovered this information and immediately petitioned the court with the discovered material facts and documented proof in their filing of September 2014, which the trial court or Master intentionally ignored. On appeal, Plaintiff Morphew and sellers Ferro presented these issues and evidence to the Appellate Court but because the trial court neither heard nor ruled on the issues presented after trial, the appellate court had no obligation to review, which they didn't. "It is well settled that ... an appellate court cannot address an issue unless it was raised to, and ruled upon by, the trial court." *Smith v. Phillips*, 318 S.C. 453, 455, 458 S.E.2d 427, 429 (1995) (emphasis added) (citing *Beaufort County v. Butler*, 316 S.C. 465, 451 S.E.2d 386 (1994)). See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Additionally, following the defendants' unconvincing and feeble reasoning in its Motion for Summary Judgment as to why Morphew has pursued the action in Fraud, the bank defendants

also conveniently fail leave out a pertinent and clarifying part of Morphew's attempt to purchase the property. It is important to understand that Plaintiff Morphew entered into contract AFTER defendants Dudek and Cross failed to close on or before two (2) contract dates[8], and only AFTER Dudek and Cross were issued a cancellation request. Further, it wasn't until a month later –only when Dudek/Cross obtained knowledge that there was another buyer ready to close -- that they filed a lis pendens to prevent Morphew's purchase (**Exh. C** Email from Atty. Qualey to Seller Ferro, January 18, 2013 and Lis Pendens January 11, 2013) -- and then after that filed another lis pendens and complaint a week later compelling specific performance. Two (2) weeks after the defendants' filings, Morphew filed its complaint, claiming breach of contract against the sellers (Ferros), and one (1) cause of action against Dudek and Cross, "Tortious Interference with Contractual Relations", which was never heard nor considered or ruled on but instead withdrawn. The previous litigation resulted in Judge Chellis' Order awarding specific performance to Defendants Dudek and Cross, which was later found out by Morphew to be an unlawful and uninformed ruling based on fraud/fraud on the court by the Defendants and co-defendants.

B. Defendants also assert in their motion that Morphew's allegations in this matter are best summarized by her in her deposition, and that she misunderstands the requirements and standards of specific performance, specifically implying that she thinks "funds have to be actually tendered to meet specific performance requirements." Moreover, defendants themselves claim "*Plaintiff only need state in his pleading that he is ready, willing and able to perform his obligations under the contract,*" and further assert that "*South Carolina does not require Plaintiff to have made*

[8] One 'contract' date was an 'extension clause' within the sales contract, as an agreement of both parties, a "no fault clause" and stated that "If a closing does not take place within the time extension then under no event shall closing occur later than the above extension date [15 consecutive days]", in this instance December 15, 2012.

actual tender of the funds necessary to close in order to obtain the remedy of specific performance."

Morphew disagrees, and contend that its allegations "are best summarized in its Complaint for fraud", not in one clip from its 7 hour deposition. Morphew further contends she is very clear in the requirements of specific performance, as it was reviewed extensively by herself and her prior attorney before filing her own complaint for specific performance in 2013, and agrees the Plaintiff does not have to actually transfer the funds, but disagrees that the "Plaintiff only need state in his pleading that he is ready, willing and able to perform..." in order to obtain the remedy of specific performance.

Again, the Defendants only support to their claims is a short, vague clip from the Plaintiff's deposition in its attempt to persuade the courts of a clear indication that "she misunderstands specific performance". Nothing in that 'clip' states or even indicates Plaintiff Morphew has any misunderstanding of specific performance nor does the clip indicate or claim specific performance requires the actual 'transferring of the funds[9]', instead it's the movant's readiness and ability to transfer the funds to deliver the purchase price of the house at contract expiration and at the moment they file for Specific Performance. Tender is an evidentiary rule relating to the matter of good faith. Each party to the transaction needs to prove that they were "ready, willing and able" to close the transaction on the date of closing if they are to sue the other party for either specific performance or damages. In this instance, the Defendants neither scheduled a closing date, tentative or confirmed, nor did they ever offer same to sellers, therefore

[9] Tender: An offer of money; the act by which one individual offers someone who is holding a claim or demand against him or her the amount of money that the offeror regards and admits is due, in order to satisfy the claim or demand, in the absence of any contingency or stipulation attached to the offer. *The two essential characteristics of tender are an unconditional offer to perform, together with manifested ability to do so, and the production of the subject matter of tender. https://legal-dictionary.thefreedictionary.com/tendered

the "date of closing" is the expiration date of their 2012 sales contract, specifically November 30, 2012.

In its deposition, Morphew stated the party must be "ready, able and willing" to perform, meaning the buyer must show that he or she had appropriate financing from a lending institution (as able to perform his part of his contract at the time his performance was due under the agreement) and at the time they filed for Specific Performance. "To obtain specific performance, the buyer must show that he or she was ready and able to perform at the closing. Most importantly, this means that the buyer must show that he or she had appropriate financing from a lending institution."[10]

Defendants quote "*Shay v. Austin*" in order to demonstrate that their clients did not have to prove their "ability" or "readiness" to perform their part of the contract or prove that they had appropriate financing from a lending institution in order to compel specific performance, but instead only have to state they were 'ready, able and willing....under the contract' in their complaint. If this were the case, then no contract would ever expire and/or every buyer out there would have the ability to compel specific performance and hold up sellers for years without being held accountable for their own failures.

In *Shay v. Austin*, the Defendant (seller) cancelled the contract because a copy of the deed had been delivered to the Plaintiff's attorney but funds had not been received in the Defendant's account. The Plaintiff had the closing funds in an escrow account but was waiting on the Defendant's mortgage holder to sign a partial release of the property in order for the Plaintiff to receive a clear title to the property he was purchasing. The Defendant was required to sign and submit the release papers to another buyer. In *Shay*, the Plaintiff in his action to compel specific

[10] Residential Real Estate, "Can Home Purchaser or Seller Use "Specific Performance" to Enforce Real Estate Contract?" By Brian Farkas, Attorney (Understanding the legal remedy of "specific performance" as applied to real estate sales)

performance alleged past and present ability and willingness to perform his obligations under the Contract. Further, the Plaintiff had already wired the entire closing funds to his attorney -- who held the verified funds in an escrow account ready to tender payment to close. "That action and the Plaintiff's assurances of readiness indicate that the Plaintiff was ready, willing, and able to tender payment" *Shay v. Austin* 466 F.Supp.2d. 664, 669 (D.S.C., 2006).

In this instant case, (buyers) Plaintiffs/Defendants' Stephen Dudek and Doreen Cross did allege in its complaint "*That the Plaintiffs* [Dudek and Cross] *have complied with all terms of the contract and remains ready, willing and able to comply with the contract terms.*" **(Exh. D** - Plaintiffs/ Defendants' Dudek/Cross Complaint, *Dudek v. Ferros*, paragraph 16, pg. 2, January 15, 2013), but unlike *Shay v. Austin*, Dudek and Cross were not in a position to tender payment to the sellers [Defendants Ferro] the purchase price for the property on the date their contract expired (November 30, 2012), or on the no-fault of either party 'extension clause' agreement contained within their contract (December 15, 2012), or on the date they filed a lis pendens to prevent the sale to Morphew (January 11, 2013) or when they brought their action for specific performance (January 15, 2013). It was discovered months after trial that they intentionally had not complied with all terms of the contract, and had failed-- first and foremost-- at their own hand to secure financing or a closing date or close escrow. ("[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."). See 71 Am.Jur.2d Specific Performance § 201 (1973); *INGRAM v. KASEY'S ASSOCIATES,* 531 S.E.2d.287, 340 S.C. 98 (2000).

Instead, the Defendants Dudek did not comply with all the terms of their contract, never offered to perform (i.e., no closing date set) and were never ready and able to tender payment Its very clear the Bank Defendants or First Federal never officially agreed to loan them the money, and they had no written loan agreements.[11]

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. willing to tender the purchase price) on February 28, 1994, the date the lease expired, or on March 14,

[11] Both Defendants First Federal as the lending institution or its employees, and Allison Williams as the loan officer, knew that their clients were denied lending for said property in January 2013 due to an incomplete application but still provided false information in subpoenas and allowed or provided false testimony and forgered evidence at the court trial in 2014, such as "its clients had secured financing per their sales contract and were ready to close [but it was the sellers fault they could not schedule a closing], and forgered financial documents or approval letters (dated 44 days before initial application was even made).

1994, the date he brought the action for specific performance.[1] 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).

The Supreme Court of South Carolina has upheld that a party (must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future). *INGRAM v. KASEY'S ASSOCIATES*, 531 S.E.2d.287, 340 S.C. 98 (2000). The Supreme Court's ruling in Ingram clearly indicates there IS a prerequisite to seeking specific performance[12], specifically as to the buyer's financial obligations and especially when the seller was to rely on the buyer's financial means in the future. Otherwise any buyer to property could use specific performance as a means to 'buy more time' to secure financing, or to disregard the terms of the contract (in this instance, specifically, apply for and secure a loan per contract terms or close escrow) with no accountability, or to indefinitely hold up a seller's property and/or to blackmail sellers into giving more than the contract allowed with the mere threat of holding up the sellers property for years in litigation. Therefore, concluding by a matter of law, Defendants Dudek and Cross ultimately failed to meet the prerequisites to lawfully, and in good faith and fair dealings, compel specific performance.

Being denied lending –and by their own hand-- exceedingly fails Dudek and Cross' ability[13] to compel specific performance, meaning they have not performed or had the ability and readiness to perform their part of the contract, therefore specific performance was not a lawful remedy. As stated herein, the trial court had been presented those facts or the Defendants' fraudulent actions or non-actions before, during or after trial, but before it issued its Order. The judge did not consider the evidence from the Defendant Ferros' petition, and instead issued an Order compelling specific performance in favor [first] of the Dudeks. Morphew contends the Judge erred or abused its discretion when it failed to hear or address those issues, and made an

[12] Contrary to the Defendants claim in its motion

[13] Specific performance isn't based on any absolute legal right. Rather, it involves a court using its discretion to order the nonperforming buyer or seller to perform and complete the contract as if it had never been breached—that is, to sell or buy the house.

unlawful ruling based on the Defendants unclean hands, bad faith and unfair dealings or fraud or fraud on the court, therefore Morphew contends the prior order is Void.

It's also important to note that in the prior case, the Master excused Defendants Dudek and Cross' failure to perform closing of escrow, NOT their failure to perform their financing condition, as he incorrectly found them ready, able and willing to close escrow based only on the testimony and forgered documents of the opposing party and their witnesses, and most prevalently from Bank Defendant Williams (**Exh. E**- Order, November 6, 2014 Case #2013-CP-100183). The court(s), the sellers (Defendants Ferro) and Plaintiff Morphew were led to believe before, during or after trial that Dudek and Cross had performed their financing condition, though late in doing so, and could have closed on or around December 14, 2012. This belief was due mainly to the [substantial false and misrepresented] testimony of bank Defendant Allison Williams, including her support of [false or forgered] approval documents addressed from herself to Cross.

Defendant Williams testified there was no question to her clients approval for financing, and that her clients had applied and secured financing and had done everything they could to close per their sales contract. Defendant Williams clearly and knowingly gave false testimony or misrepresented about the Defendants' 2012 financial condition, and forgered material evidence, to support its clients' claim they met the requirements in order to compel specific performance, which was the crux of both its clients and Morphew's prior complaints.

Morphew claims Defendant Williams and First Federal are largely liable for the unlawful and uninformed ruling in the prior litigation, as the bank defendants were negligent and owed a duty of care[14] or a fiduciary duty to the court or to the Plaintiff to tell the truth or disclose all

[14] Duty of Care: A requirement that a person act toward others and the public with the watchfulness, attention, caution and prudence that a reasonable person in the circumstances would use. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence. Legal Dictionary, Copyright © 1981-2005 by Gerald N. Hill and Kathleen T. Hill.

relevant facts, particularly under oath, in its answers to subpoenas and/or at trial. Morphew argues the combining of the cases, the relationship between the parties, the amount of weight and reliance given to the testimony of bank defendant Allison Williams, the lack of [any] supporting documentation to Williams or its do-defendants' testimony, and the circumstances of the case, together that the Plaintiff and judge, who were not loan officers or underwriters, relied on Defendant Williams for its financial expertise [in the management of its co-defendants' loan], should be sufficient to plead the existence of a *de facto* fiduciary relationship, though whether a de facto fiduciary relationship exists is "generally a question of fact for the jury." *Can-Dev, ULC v. SSTI Centennial, LLC*, 2018 NCBC 9. Morphew argues when information is withheld, and the testimony given as to the 'ready and able' status of the Dudeks in Order to compel specific performance is heavily relied, this resulted in Bank Defendants "holding all the cards" – all the financial power [and] technical information- and that a "special circumstance of a fiduciary relationship has arisen."[15] "[o]nly when one party figuratively holds all the cards — all the financial power or technical information, for example — have courts found that the special circumstance of a fiduciary relationship has arisen." *Lockerman v. S. River Elec. Membership Corp.*, 794 S.E.2d 346, 352 (2016).

Even if a fiduciary relationship does not exist, based on a lender's misrepresentations, courts have held lenders liable to third parties as well as to borrowers. *Crystal Springs Trout Co. v. First State Bank*, 732 P.2d 819 (Mont.) (bank liable to shareholders of debtor corporation where bank president misrepresented bank's intention to pursue long term financing for debtor and

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[15] No material documentation to support its prior testimony could be found nor has the bank defendants offered or provided any proof, in past or current discovery. Moreover, the presiding judge in the prior case did not require material documentation from the opposing to prove they met the strict specific performance requirements; instead twice denied the sellers/defendants petitions for said proof, and has continually denied Morphew's motions to compel.

misrepresented availability of that financing), modified, 736 P.2d 95 (Mont. 1987). In this instant case, discovered evidence after trial showed that at the time the Bank Defendants' clients compelled specific performance [and at trial] the lenders had already reached a decision to deny or had denied lending to Dudek and Cross because the Dudeks never completed their application and even failed to answer their 10-day adverse letter requiring the signed Contract Extension Addendum required at their initial application on December 12th, 2012 in order to make their expired or invalid sales contract negotiable.

Morphew argues that Bank Defendant Williams' [loan officer], testimony at trial was intended to and did create a false impression of the bank's lending position and in regards to its clients financial ability to close escrow under its current sales contract, leading the court to believe that specific performance was a lawful remedy available to the defendants in the prior case. As a result, such misrepresentations constitute actionable fraud. *State Nat. Bank V. Farah Mfg. Co.*678 S.W.2d 661 (1984); see also *Gen. Motors Acceptance Corp. v. Cent. Nat'l Bank*, 773 F.2d 771 (7th Cir. 1985) (affirming judgment for Plaintiff finance company against bank for fraud based on misrepresentations made in connection with a car dealership's checking account); *Jairett v. First Montauk Sec. Corp.*, 203 F.R.D. 181 (E.D. Pa. 2001) (statement of intent that is false can constitute a fraudulent misrepresentation). To prosecute a claim for fraud and misrepresentation successfully, a proponent must establish that certain facts were misrepresented or omitted, and that a party reasonably relied upon such misrepresentations or omissions to its detriment. See, e.g., *Nat'l Westminster Bank, U.S.A. v. Ross*, 130 B.R. 656, 664 (S.D.N.Y. 1991), aff'd sub nom. *Yaeger v. Nat'l Westminster Bank,* 962 F.2d 1 (2d Cir. 1992). Therefore, it seems evidence of misrepresentations that could establish the lenders willfully or intentionally interfered with the contractual relations of another party without just cause or excuse, should result in the lenders'

liability for damages for tortious interference with contractual relations and with fraudulent intent. Morphew argues that other cases demonstrate the claims on which lender liability may be based are bounded only by the creativity of attorneys and the willingness of courts to countenance those displays of imagination. See, e.g., *Cameo Dev. Co. v. Lakin* (In re *Cameo Dev. Co.*), 2005 U.S. Dist. LEXIS 22311 (D. Ariz. 2005) (claims against lender included claims of intentional interference in contractual and business relationships and intentional infliction of emotional distress); *Temp-Way Corp. v. Cont'l Bank*, 139 B.R. 299 (E.D. Pa.) (claims against lender for business coercion and intentional interference with contractual relations), aff'd, 981 F.2d 1248 (3d Cir. 1992); *Steele v. First Nat'l Bank*, 136 B.R. 278 (D. Kan. 1991) (abuse of process claim against asserted against lender).

The nondisclosure of relevant facts becomes fraudulent because it was the duty of the witness/sworn in loan officer having knowledge of the facts to disclose such to the courts or to the Plaintiff Morphew. "The imposition of a common-law duty of a lender to a borrower or a third party derives primarily from the lender's exercise of "control" over the borrower." http://apps.americanbar.org/abastore/products/books/abstracts/5070531, "Lender Liability Considerations." "Indeed, the trend in courts has been to exonerate a lender that has acted strictly within the terms of its agreement with the borrower as long as its actions have been reasonable. The actions of the lender with respect to an agreement's provisions and remedies, not their mere existence, may be the basis for a court's finding of liability." Id. Morphew became a third party when she compelled specific performance on the same property, as the first buyers and borrowers' [Dudek and Cross] legal right to the property was ultimately based on its ability to compel specific performance. Because specific performance has very strict requirements as stated herein, with the financial condition or status of the buyers being the core, and the judge and Plaintiff

Morphew in the prior case relied substantially on the bank defendants disclosure of the those facts, Plaintiff Morphew contends they should be held liable for their actions or non-actions, fraud or not, that they have intentionally interfered with her prior contractual relations, prevented Morphew from presenting her case fully, caused her excessive damage, some irreparable, and have now ultimately provided mortgage credit against a void or non-negotiable contract and allowed the defendants to obtain the said property with full knowledge the Dudeks have done so unlawfully and fraudulently.

> 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. W*arr 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.

JACOBSON v. YASCHIK, 155 S.E.2d 601, 249 S.C. 577 (1967)

Morphew argues that First Federal has liability in this current case as First Federal (including its agents, employees, officers, legal department) knew of its client's invalid/expired/ illegible sales contract at application, and it has a legal department put in place to protect itself against fraud or fraud on the court, abuse of its processes and, including but not limited to, the disclosure of personal information, and would have prepared Williams for trial. Even if legal assistance was not extended, at a minimum, a higher corporate officer would take notice and direct its employee of proper conduct in representing a federal insured banking institution. Meaning, when a bank officer is subpoenaed for trial, there is a requirement for that witness to be adequately prepared[16,17]. Therefore, the bank clearly had knowledge of its clients' failures or unlawful actions/non-actions, and of its officers or employees' abuse of its own processes or federal regulations. And it clearly failed to direct its officer(s) to 'tell the truth, the whole truth and nothing but the truth" or to disclose or provide correct information; OR directed same to withhold, not to disclose, or to falsely testify or misrepresent material facts to the case. In all instances, this can be construed as bad faith and unfair dealings and/or conspiracy to commit fraud on the court(s) as stated herein and in Plaintiff Morphew's Complaint.

Again, Dudek and Cross had not applied or secured financing within the terms of the contract, instead Dudek and Cross were denied lending due to failure to have a valid and negotiable sales contract at initial application (i.e., failure to complete their application),

Moreover, in the prior case, Dudek and Cross were legally required to sign the termination notice, as they had no legal cause or remedy to pursue the purchase of said property, but instead

[16] Before producing a company witness to testify, the witness must be adequately prepared on the issues that will likely come up during the deposition, hearing or trial. It is usually advisable to have experienced outside litigation counsel direct the company's witness preparation efforts. Outside litigation counsel will typically be better positioned to prepare the company witness thoroughly and efficiently. In addition, outside counsel's involvement may further support any assertions of privilege that the company wishes to make regarding communications and other information related to the witness preparation process.

[17] Morphew can personally testify to such mandate as she worked in the banking industry for over a decade.

prevented Morphew from her rights to the property, frivolously compelled specific performance, filed false answers and frivolous motions, and conspired with all other defendants to induce the trial judge to make a ruling in their favor[18]. As stated before, though this information was discovered after trial, and it was presented in a petition to the trial court by the sellers before the Order was issued --but neither heard nor ruled on-- and again on appeal these issues were not addressed. Therefore, whether or not Plaintiff Morphew previously presented them on appeal in 2015 is moot, as the unlawful or fraud issues were not heard or ruled on by the appellate court in its Opinion (**Exh. F** – Appellate Opinion, January 11, 2017, Appellate Case No. 2014-002633).

Additionally, as stated in its complaint, it was discovered the sales contract (agreement) of Dudek and Cross was invalid at application. In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement..... *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)). First, Morphew asserts the contract was expired when Dudek and Cross applied for mortgage credit. The contract expired on November 30, 2012 and they applied for mortgage credit on December 5, 2012. It was discovered Bank Defendants Williams and First Federal required a signed contract extension addendum to make the expired sales contract negotiable, which was demanded at application.[19] Second, First Federal Underwriting deemed the sales contract illegible when it received it on December 11, 2012, and required a signed, legible sales contract (which was never produced). An illegible contract is not negotiable, as illegible is defined as indecipherable, or unreadable. If a contract cannot be read or deciphered it cannot be

[18] Co-defendant and attorney in past case, David Collins, plus Defendants Allison Williams (loan officer), Susan Nicholson (buyers' agent), and Stephen Dudek/Doreen Cross (buyers) influenced the judge to make an uninformed ruling based on their false testimony, false documentation, non-disclosure of material facts to the case, misrepresentations and conspiracy to fraud the courts.

[19] A signed extension addendum to a land sales contract is not a mandatory requirement of the sellers (i.e. sellers are under no legal obligation to agree to any extension of a land sales contract).

legally binding. Plaintiff Morphew contends that if a contract is invalid due to expiration and/or illegibility, and was never remedied, leading to the bank's clients being denied mortgage credit, then the Dudeks knowingly filed a frivolous and unlawful complaint to compel specific performance, as Dudek and Cross were never 'ready and able to close escrow as lawfully mandated.

C. Lastly, Defendants in their motion state that Morphew discovered the false testimony by examining the file her attorney had prior to litigation of the previous case, not newly discovered evidence. Their support to this assertion is, again, one statement from her deposition (see below), in which it does not in any form indicate that she examined a file her attorney had prior to litigation of the previous case. Instead, Morphew stated she went through a file of Mr. Massalons and reviewed the trial transcripts in preparation for her appeal [when she became pro se 6 months after the trial] and comparing found that Defendant William's falsely testified.

> *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 for your appeal, that's when you discovered that Ms. [Allison] Williams's 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.*

Moreover, Morphew's independent action is not constrained by 'newly discovered evidence' as "nothing prevents a court's power to entertain an independent action to relieve a party from a judgment, order, or proceeding; or set aside a judgment for fraud on the court." "...the procedure for obtaining any relief from a judgment shall be by motion as prescribed in

these rules or by an independent action." SCRCP Rule 60; FRCP Rule 60(d)(1)(3)[20]. Morphew was not obligated to file a 60(b) motion, instead pursuant SCRCP Rule 60/FRCP Rule 60 was allowed to file an independent action [based on fraud/fraud on the court, unclean hands, bad faith and unfair dealings and due to a judgment no longer equitable or a void judgment], which has no time constraint. "There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court. Rule 60(b), SCRCP; *Hagy v. Pruitt*, 339 S.C. 425, 529 S.E.2d 714 (2000). (court has the inherent authority to set aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations)." (*Chewning v. Ford Motor Co.*, 354 S.C. at 84, 579 S.E.2d at 611).

"Normally, a judgment regular on its face may not be collaterally attacked, but this rule does not apply where extrinsic fraud has been practiced to procure the judgment." *Wold v. Funderburg*, 250 S.C. 205, 157 S.E.2d 180. "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.

ARGUMENTS

1. Defendants assert "*The determination of whether or not the Buyers met the standards to seek specific performance has been heard and litigated and Plaintiff's attempt to litigate those*

[20] As has been seen, the amendment to Federal Rule 60 introduced the term "fraud on the court" and no distinction was drawn between extrinsic and intrinsic fraud in the saving clause; Recall that the rule 60 (b) expressly provides that either intrinsic or extrinsic fraud can be ground for relief by motion to the court that rendered judgment; Also, SCRCP Rule 60 states only 'fraud' and does not distinct between extrinsic and intrinsic fraud.

issues again here should be barred by the doctrine of res judicata, the South Carolina Rules of Civil Procedure, equity, and the statutory and case law of the State of South Carolina. Regardless, the Bank Defendants have no liability whether or not the Buyers met that standard."

Plaintiff Morphew disagrees. First, Fraud/Fraud on the court or the unlawful actions of the Defendants was not litigated or ruled on in the original action, therefore res judicata does not apply. Second, Morphew asserts the lower court's Order of November 6, 2014, was erroneous and based on fraud or extrinsic fraud and cannot be barred by res judicata. "Doctrines of res judicata and collateral estoppel will not bar a collateral attack on a judgment based on extrinsic fraud". *Evans v. Gunter,* 294 S.C. 525, 366 S.E.2d 44 (Ct.App.1988). Further, even if the application of res judicata were applied to Bank Defendants, it would not terminate this complaint, so therefore this court may review the facts. "In those cases where application of res judicata would not terminate a dispute, the policy objectives underlying the doctrine are not at stake. A court may then reexamine the facts without doing injury to the principle of res judicata." *Adams v. Pearson*, 411111.431, 104 N.E.2d 267 (1952). .

> "Extrinsic fraud" has been variously defined by the courts. The dissenting opinion in Arnold v. Arnold, 285 S.C. 296, 328 S.E.2d 924 (Ct.App.1985) relies on the definition formulated by the Arizona Court that extrinsic fraud is "some intentional act or conduct by which the prevailing party has prevented the unsuccessful party from having a fair submission of the controversy." Bates v. Bates, 1 Ariz. App. 165, 169, 400 P.2d 593, 597 (1965).

Under this definition, Plaintiff Morphew argues the extensive misconduct of all Defendants, including bank defendants, which includes collusion and hiding of material facts or

documents by the Defendants and its attorney(s) as stated herein, plus the fact the Defendants had superior knowledge of the Dudeks' transaction, and Defendant Williams' position of trust and confidence was exploited, is sufficient to constitute extrinsic fraud and cannot be barred by res judicata. As emphasized in *Wold v. Funderburg*, 250 S.C. 205, 157 S.E.2d 180, "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.

Further, Morphew allegations of the Defendants' conspiracy to commit fraud or collusion, plus the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney, prevented Morphew from fully exhibiting and trying its case. As argued herein, the Bank Defendants were instructed several times to not disclose the financial status or condition of its clients, by Defendant Collins or in its pre-trial witness briefing. The exact and true financial condition of Defendants Dudek was required to be disclosed by the Bank Defendants in the 2 separate subpoenas during discovery, and at trial, especially under oath. Because this information was not disclosed as required, the courts made an unlawful ruling and Morphew was not able to defend or present her case fully.

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)."

"The subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. Contrary to perjury by a witness or a party's failure to disclose requested materials, conduct which constitutes intrinsic fraud, where an attorney—an officer of the court—suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. These actions by an attorney constitute extrinsic fraud. Moreover, we note that, while their analysis does not turn on the categorization of fraud as intrinsic or extrinsic, numerous jurisdictions hold an attorney's subornation of perjury and/or the intentional concealment of documents constitute fraud upon the court. See *Kupferman v. Consol. Research & Mfg. Corp.*, 459 F.2d 1072 (2d Cir.1972) (institution of action by attorney who knew that there was complete defense to action might be fraud upon the court); *Great Coastal Express, Inc., v. Int'l Brotherhood of Teamsters*, 675 F.2d 1349, 1357 (4th Cir.1982) ("[I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court."); *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir.1987) ("A verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony."); *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5th Cir.1978) (fabrication of evidence where attorney is implicated is fraud upon the court); *H.K. Porter Co. v. Goodyear Tire & Rubber*, 536 F.2d 1115, 1119 (6th Cir.1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."); *Synanon Found., Inc., v.*

Bernstein, 503 A.2d 1254 (D.C.1986) (attorney subornation of perjury and false statements to trial court constitute fraud upon the court).

Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice. Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs."

Chewning v. Ford Motor Co., 354 S.C. at 84, 579 S.E.2d at 611

Plaintiff Morphew asserts bank defendants' SUBSTANTIAL liability in the prior case and current case, and damages towards her. At the time its clients filed its complaint for specific performance, the Bank Defendants were aware of the litigation going on between its clients and the sellers, and knew it was its clients themselves that caused the loan to be denied[21]. Bank Defendants were afraid they would get drawn into the law suit, indicating they could be found liable or acted improper in the transaction. (**Exh. G** - email between bank defendants, Allison Williams and Mortgage Lead, Sandi Steele, dated 1-18-2013 10:09am)

STEELE: *"Hi Allison, I received this file for decline due to borrower not sending a contract extension...I just wanted to verify you had not heard from her before I process this file out..."*

WILLIAMS: *"This file is in litigation and the seller could decide to sell at any moment. If that happens and the file is cancelled, that could be a problem....I think someone there should speak to our attorney about how to proceed. We could get drawn into this law suit if it in fact becomes a law suit. Linda is the ultimate person that needs to decide this..."*

Likewise, the bank defendants knew their clients' sales contract was not valid at application and required a contract extension to make it equitable or negotiable (**Exh. H** -

[21] Instead Williams testified at trial that its clients diligently pursued financing [per their contract] and had no doubt they were approved [and ready to close].

Customer Loan Application Checklist, December 5, 2012). Additionally, bank defendants deemed the sales contract illegible, therefore a contract deemed illegible is inequitable or non-negotiable, and a legible signed sales contract was required, but never received.

The lending file was closed, and closed as of the very day the mortgage department was informed of the lawsuit by bank Defendant Williams, afraid they 'will get pulled in it'. "1/18/13: *Loan is declined as of 01/18/2013 – INCOMPLETE APPLICATION – NO RESPONSE TO 10 DAY LETTER. – M. Vincent 1/23/13*" (**Exh. I** - "Underwriting Approval Conditions" – Request date 1/18/13)(**Exh. J** – email to Sandi Steel from Williams, dated January 18, 2013). Meaning, bank Defendants knew its co-defendants/clients Stephen Dudek and Doreen Cross waited to apply for financing until after their sales contract expired and failed to provide a signed Contract Extension Addendum to make the contract valid or negotiable. Therefore, its clients did not complete their application, they were denied lending, and unquestionably were not approved or ready and able to close as testified at trial by the opposing party and its witnesses, including bank Defendants.

None of this material evidence or these conditions was revealed or they were misrepresented by all defendants, including bank defendants, while they hid or destroyed the status or financial condition of its clients from the court and the opposing parties. Instead, answers to discovery, subpoenas and trial testimony were false or misleading in its [successful] attempt to prevent Morphew from fully trying her case and sway the Master to an unlawful or uninformed ruling.

Plaintiff Morphew further contends bank defendant(s) were directed by its own legal department before trial, or by its clients' attorney, to withhold evidence during discovery and/or testify false facts or misrepresent material facts pertinent to the prior case. This is extrinsic fraud.

Morphew also states the bank defendants were directed by Cross to not to provide any specifics about its clients file and lending status to the seller's agent [Rick Willis] but instead to direct all questions thru her attorney, leading a person of normal understanding to believe they were in collusion to hide or hiding something. It raises the questions, "why wouldn't a person who has nothing to hide go to such extremes to prevent the sellers [the very people they want to purchase the house from—the very people they are compelling to perform specific performance] from such information or not offer or even allow them access to information proving they are ready to close. (**Exh.K** - "Memos for Loan: W12AW08756" pg. 3); and "how can a buyer demand a seller to close when the buyer is not willing to offer a closing date or offer proof they have performed their part of the sales contract and are ready, able and willing to close?" As it turns out, the defendants, including the Bank Defendants, did have something to hide- several unlawful and pertinent facts or evidence, especially regarding specific performance as a legal remedy being available to the Dudeks, including but not limited to: 1) Defendant Dudek and Cross were denied lending or their failed lending status, 2) Defendants Collins, Dudek and Cross filed a frivolous complaint, 3) Defendants Collins, Dudek and Cross filed a lis pendens and unlawfully clouded property's title, 4) Defendant Dudek and Cross had no legal right to compel specific performance, 5) Defendant Dudek and Cross no longer had a legal claim to the property, and 6) Defendant Dudek and Cross were legally obligated to sign the termination notice.

Plaintiff Morphew argues there is no legitimate reasons whatsoever for bank defendants to hide/withhold material documents or lie in the subpoenas or at trial concerning the lending conditions of its clients unless the bank defendants were deliberately attempting to aid its clients in deceiving the Defendants/sellers Ferro, Morphew and the Master in order to support its clients in closing on the property, in which bank defendant(s) had a pecuniary interest in.

Other reasons the bank defendants would feel the need to lie would be to attempt to shield themselves from liability in their clients' unlawful actions, and also hide their obvious abuse of their and their regulating agents' processes. Morphew also alleges 'discrimination', as First Federal's policy was to refuse an application or refuse to process an application if the sales contract was expired or was without a signed Contract Extension Addendum. Instead First Federal accepted AND attempted to process Defendants Dudek and Cross' application eleven (11) days after it expired, but as soon as it had knowledge of litigation and in fear they may get pulled into it, "*We could get drawn into this law suit if it in fact becomes a law suit*[22]," they immediately denied lending and closed the file[23]. With their intimate knowledge of its clients financial condition and detail of their clients pending litigation of the said property, they still knowingly lied on subpoenas and went to trial and unlawfully supported its clients claims [they had been approved or secured financing and were ready and able to close escrow], and are not actions of someone who 'has nothing to hide' or is acting with a duty of care to the judicial system/process or the courts.

Moreover, not only did its clients' attorney fail to correct these misrepresentations or false statements, but he encouraged or suborned bank defendants to withhold information and/or make false statements or misrepresentations, and this is extrinsic fraud. Defendant Williams not only lied about its clients financing status but lied to the courts that she had pre-approved them or had the inherent power to 'approve' them.

(**Exh. L** - Transcript, June 11-12, 2014, pg. 214 lines 4-8 Case No. 2013-CP-100183)

ATTORNEY COLLINS: *"Is there any doubt in your mind that my clients were approved or in your part pre-approved"*

[22] Reference Exhibit G.

[23] Defendant Allison Williams informed Mortgage Dept. of litigation on January 18, 2013; lending was denied and file closed as of January 18, 2013.

ALLISON WILLIAMS: *"No, I wasn't worried about the approval at all."*

ATTORNEY COLLINS: *"Why not?"*

ALLISON WILLIAMS: *"Because I already pre-approved them.*[24]*"*

(**Exh. M** - Transcript, June 11-12, 2014, pg. 198 lines 7-18 Case No. 2013-CP-100183)

ATTORNEY MASSALON: *I would like for you to talk me through the differences between this one* [application] *and the one that was submitted in May. The obvious difference as you said it has a particular property that it is associated with?*

ALLISON WILLIAMS: *The one that was submitted in May was probably submitted through my website. So it would have been strictly the information that the borrower entered about the sale. Then once I convert the pre-approval to an approval for a property, I tailor the application based on all the documents that the buyers provided me for income, assets and so forth.*

Defendant Williams had full knowledge she was not a mortgage processor but presented herself as one when providing the testimony that her clients diligently pursued financing [as required per their sales contract]

(**Exh. N** - Trial Transcript, June 11-12, 2014, P. 214 line 23 – P.215 line 14, Case No. 2013-CP-100183)

ATTORNEY COLLINS: *In your opinion do you think that she diligently pursued financing in this case?*

MR. MASSALON: *Objection, your Honor. That calls for an opinion*

[24] Defendant Williams not only lied about its clients financing approval but lied to the courts that she had pre-approved them or had the inherent power to approve them herself when at trial she had full knowledge they had an expired or did not have a valid or negotiable sales contract when they made application therefore were denied financing on said property.

by a witness.

ATTORNEY COLLINS: *I can qualify her as a mortgage processor if you wish.*

MR. MASSALON: *I think what he is asking is a question that you have to decide, which is it your opinion that she did all she could have done.*

ATTORNEY COLLINS: *That doesn't mean that Ms. Williams doesn't have an opinion as to that. I'm not asking for a legal opinion, I'm asking for lay opinion in your position as a mortgage processor.*

THE COURT: *I'm going to overrule your objection, I think it is okay.*

ATTORNEY COLLINS: *Did she diligently pursue?*

ALLISON WILLIAMS: *I think she did.*

Allison Williams apparently gave legal contract advice to a 3rd party (Dudeks, who were not clients in that instant), without having an application or a negotiable sales contract, and which she was not a lawyer or real estate lawyer, or even a mortgage loan processor or Underwriter. Further, her advice to wait to apply for financing until after the home inspection was just to 'save $425' (monies required up front to submit an application).

(**Exh. O** - Trial Transcript, June 11-12, 2014 P. 188 lines 24– P.190 line 1, Case No. 2013-CP-100183)

MR. MASSALON: *Next it look like you wrote I really don't like to start anything until it is done because it can kill the deal if it goes south?*

ALLISON WILLIAMS: *Yes, and it does often.*

MR. MASSALON: *At this time [October 24, 2012] your advice to Ms. Cross is don't do anything on your loan application*

until you work out your inspection issues?

ALLISON WILLIAMS: *Yes and normally that gets done within a weeks period.*

MR. MASSALON: *When you and Ms. Cross talked about this you didn't have a copy of the contract itself, right?*

ALLISON WILLIAMS: *I guess not.*

MR. MASSALON: *Were you aware of what her deadline under the contract was to apply for financing and furnished proof of financing?*

ALLISON WILLIAMS: *Probably not if I didn't have it.*

MR. MASSALON: *Were you aware of what the closing date was said in the contract?*

ALLISON WILLIAMS: *I don't know what it was or not. If I didn't have the contract -- I may have asked a question, but I don't remember.*

MR. MASSALON: *Chances are good that you weren't looking at the contract and giving her that same advice?*

ALLISON WILLIAMS: *Regardless of the contract date I pretty much give everybody the same advice that they need to get a home inspection. I give them an option and I basically tell them, you know, you get the home inspection, if we go to the appraisal prior to home inspection there is a good chance that if it doesn't work you are going to lose $425 and without fail most people want to wait on ordering the appraisal until they get their home inspection worked out.*

MR. MASSALON: *After that it looks like you said this, let me know about the inspection. End of November closing may be okay if all other things go smooth. So it looks like in some way she had told you about the deadline to close at the end of November?*

ALLISON WILLIAMS: *It appears so.*

Bank Defendant Williams also 'pre-approved' these 'non-clients' for $295,000 and issued such letter along with a Loan Estimate Statement/Closing Cost Worksheet – both without an application, bank disclosures, a valid or negotiable sales contract, financial information, or credit check, and all just because Defendant Cross 'asked her for it'. Plaintiff Morphew asserts Defendant Williams committed forgery and produced this false evidence months after the date of the email in order to support the Dudeks answers to Morphew's complaint, not on October 22nd, 2012. Regardless, Defendant Williams action supports Morphew's allegations of discrimination, as she is positive if she or a stranger [to Ms. Williams] walked in and asked for the same courtesy, they'd be refused.

(Exh. O - Trial Transcript, June 11-12, 2014 P. 182 line 13– P.183 line 15, Case No. 2013-CP-100183)

MR. MASSALON:	*That is a letter that is docked October 22, 2012 that has been produced to us in the of case?*
ALLISON WILLIAMS:	*Uh-huh.*
MR. MASSALON:	*What is that?*
ALLISON WILLIAMS:	*They requested a letter, I guess they were going to make an offer on the property and they asked me to produce this letter for them so I did.*
THE COURT:	*Who is they?*
ALLISON WILLIAMS:	*The borrowers.*
THE COURT:	*Ms. Cross?*
ALLISON WILLIAMS:	*Uh-huh.*
MR. MASSALON:	*The letter that we are looking at now I did not see a*

copy of that in the file that we got from the bank as I was looking through it and I believe I am right about that. Is there any reason that a copy of that October 22 letter wouldn't have been in the bank's file.

ALLISON WILLIAMS: *I don't know why it wouldn't be in there, it doesn't have to be in there, it is not required to be in our file.*

MR. MASSALON: *It is just something that you generated at the request of Ms. Cross?*

ALLISON WILLIAMS: *Yeah. It is to help borrowers let the seller know that they are about to get financing.*

MR. MASSALON: *Again, it is not a loan approval, it is just an indication of credit worthiness?*

ALLISON WILLIAMS: *Right.*

The e-mail, letter and Worksheet was fraudulently created as evidence by Defendant Cross/Dudek/Collins and/or Defendant Williams on February 10, 2013, at 1:08am (Sunday morning) just days after Cross/Dudek received Morphew's prior complaint (served January 31, 2013) which alleged "Dudek/Cross failed to apply and secure financing per their sales contract". In this current action, Morphew alleges Defendants Collins, Dudek, Cross, Williams, and/or Nicholson initially forgered these documents to support Dudek/Cross' answers that they had applied and secured financing per their sales contract and were ready, able and willing to close escrow per same. They also needed to cover up the fact they failed to apply for financing before their contract expired, and that they were actually denied lending.

Again, because Williams testified she had the power to approve them and stated that she did so, and using this October 22, 2012, email/documents during trial to support her testimony and her clients claim they had performed their financing condition, there was no question in the Masters' mind or issue raised whether Dudek and Cross met the specific performance

requirements – for no one thought a loan officer, representing a federally insured bank, would perjure herself (or had any reason to), especially under oath in a court of law. [25]

Since the Master did not require material documentation to support the defendants or Bank Defendants' claims or testimony, the representations bank Defendant Williams made during trial was heavily relied on by both the Master and the Plaintiff, therefore disclosure was pertinent and required. The opposing parties and bank defendants' efforts to deceive the Master was successful as the Master awarded Specific Performance first to Defendants' Dudek and Cross instead of the Plaintiff -- who clearly, as discovered, is the only party that had a legal claim to the property in question.

That raises the question of abuse of discretion and why the Master refused all these years to compel or require Defendants Dudek and Cross provide documentation to support their and their witnesses' claim the Dudeks had approved financing in 2012 and were ready and able to close escrow[26]. Plaintiff Morphew again claims collusion between all defendants. Both Bank Defendants [and co-defendant Nicholson] had a pecuniary interest in the sale of the property to Dudek/Cross; plus the Bank Defendants hiding the fact its clients and itself had acted in bad faith and unfairly, including discrimination by accepting and processing an incomplete application for mortgage credit on a non-negotiable or invalid sales contract. Additionally, the Bank Defendants felt it was necessary to hide the fact its clients and co-defendants Dudek/Cross critically breached their sales contract, by their own hand, in their failure to start or apply for financing before their

[25] It was discovered that it was forty-four (44) days after the above 'email' that Defendant Williams was contacted by Defendants Dudek to proceed with a mortgage loan or an application, and a credit check was pulled. Email is dated October 22, 2012 and initial loan application was made on December 5, 2012. Bank defendants had complete knowledge Defendants Dudek and Cross could have and should have applied for financing before their contract expired, did not complete their application and did not have a valid or negotiable sales contract therefore were denied financing on said property.

[26] Bank Defendant Williams had testified she had destroyed her communications/docs pertaining to her clients and the property or loan.

sales contract expired, leading to their ultimate failure to close escrow. Since this was no fault of the sellers, admitting this fact would have fatally effected the Dudeks' ability to compel specific performance or damages and/or they would have not been able to close on said property or take said property from Morphew. Ultimately, if the truth was told or disclosed, Morphew would have instead closed on said property, and none of the parties would have been harmed or damaged.

Further, bank defendants destroyed documents/communications between themselves and its clients in 2013, knowing litigation was pending, indicating they had something to hide, as referenced in the trial transcripts pg. 221-222.

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. Any expired pay stubs, bank statements, anything like that that would have not been relative. They would have shredded them, if I sent them all those documents they just shred them at the corporate offices anyway.*

They perjured during trial that there were no documents to produce for the subpoenas or trial because 'they were most likely destroyed at the corporate offices'. The information discovered and submitted to the courts after trial by the Ferros clearly shows all opposing parties and witnesses, specifically the Bank Defendants, gave false or misrepresented testimony, or hid or failed to disclose material pertinent evidence, therefore they and their evidence should have failed the credibility test. Moreover, the Master should have demanded additional material evidence or considered the Ferros Petition to the court before substantially using Williams' testimony or

evidence in its fact finding. These actions and the one's herein response imply negative implications in the actions or non-actions of the Bank Defendants, the opposing party(s), such as 'they clearly had something to hide'.

Further if the Master had not refused to consider the newly discovered evidence presented by the sellers Ferro months before he made its ruling or filed its Order, or demanded additional material evidence in fact finding or had not constantly refused Plaintiff Morphew's objections and motions to compel material evidence, she would not be in this position today, including but not limited to, kicked out of her home of 4+ years, and unable to live in her current residence.

Based on the reasons above, and the question as to the liability of the bank defendants, it is for a jury to decide the liability, if any, and the extent of that liability the bank defendants had and/or continue to have in the past or present ruling(s) or Order(s), and their liability for the damages Plaintiff has incurred because of their misconduct. Plaintiff Morphew respectfully requests this court to deny with prejudice the Defendants Motion for Summary Judgment.

2. Bank Defendants assert *"Plaintiff's allegations of fraud on the court cannot be supported by her allegations of false and/or misleading testimony or discovery abuses and thus fail as a matter of law,* [quoting],

> *Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, 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 v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003).*

Plaintiff has not alleged and cannot prove such egregious conduct on the part of the Bank Defendants and as such, cannot as a matter of law support her cause of action for fraud on the court.

Morphew disagrees. Morphew's complaint clearly alleges more than false and/or misleading testimony or discovery abuses. The allegations include fraud on the court, forgery and conspiracy. As stated herein, the Master relied extensively or almost wholly on the testimony or evidence produced or not produced by the bank defendants before or during trial, as this evidence was material and pertinent in its finding of fact and Order to compel Specific Performance. In the court of equity, the maxims of equity are legal maxims that serve as a set of general principles or rules which are said to govern the way in which equity operates. If one party fails to 'do equity' then they may not seek equity. "One who seeks equity must do equity" Equitable Maxim 2.4, and "He who comes into equity must come with clean hands" Equitable Maxim 2.4. It was imperative that the Dudeks provide a showing they were ready, able and willing to close escrow in order for the Master to have jurisdiction to render the relief of Specific Performance, and what better way to convince the Master than for the actual loan officer to provide such testimony under oath. Again, who would have thought that that a loan officer, and not a litigant to the case, would come into a court of law and equity and under oath give false or misleading information, or withhold evidence contrary to its own testimony? Obviously, neither the Master or Morphew questioned her integrity, therefore Williams exploited this trust and confidence, which makes the Bank Defendants' actions egregious in itself. Due to the vast level of perjury, misrepresentations or forgered evidence, and the substantial reliance the trial court and Morphew made on such evidence in its ruling, plus other allegations including but not limited to, conspiracy to commit fraud or collusion, and the subornation of perjury by an attorney and/or the intentional

concealment of documents by an attorney, which prevented Morphew from fully exhibiting and trying its case, Plaintiff Morphew contends this misconduct is considered extrinsic fraud or should rise to the level of extrinsic fraud.

Even if the fraud, unlawful actions or specific performance were litigated and ruled on in a valid and final judgment, and that determination was essential to the judgment, relitigation should not be prohibited. The South Carolina Court of Appeals has held there are instances where an issue was actually litigated and ruled on, but was not prohibited re-litigation in a subsequent action between the parties. In deciding whether relief should be granted in *Mr. T v. Ms. T*, 378 S.C. 127, 662 S.E.2d 413, 417 (Ct. App. 2008), the Court of Appeals held:

> 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:...
>
> > 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.

Mr. T v. Ms. T, 378 S.C. 127, 662 S.E.2d 413, 417 (Ct. App. 2008

In this case, it meets all 5 indispensable elements. Though the general opinion of the courts that false and/or misleading testimony will not ordinarily rise to extrinsic fraud (fraud on the court), as stated in the case quoted by Bank Defendants in their motion, ("...Less egregious misconduct.....will not ordinarily rise to the level of fraud on the court" Chewning v. Ford Motor Co. , 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003)), the term "will not ORDINARILY....." indicates its meaning that it can, and there are exceptions. Even if the egregious misconduct as stated herein does not rise to extrinsic fraud, this does not mean Plaintiff allegations of "fraud on the court" cannot be supported by her allegations of false and/or misleading testimony or discovery abuses and thus may not fail as a matter of law, therefore should be determined by a trial court or jury. Regardless, Morphew's allegations also include collusion and subornation of an attorney in said perjury, misrepresentations and hiding/withholding of material evidence pertinent to the outcome of a specific performance case –which IS egregious conduct and supports her action for fraud on the court in which the bank Defendants have substantial liability in. Plaintiff respectfully requests this court to deny with prejudice the Defendants Motion for Summary Judgment.

3. Defendants assert, "*Each and every remaining claim against the Bank Defendants is substantively a claim that the Bank Defendants committed perjury, which cannot support a civil cause of action even if true. There is no civil cause of action for perjury.*"

Morphew agrees in part and disagrees in part. Generally, perjury is not a civil cause of action, but it can rise to the level of extrinsic fraud (fraud on the court). As stated above #2, and herein, Plaintiff Morphew and/or the Master relied extensively or almost wholly on the testimony or evidence produced or not produced by the bank defendants, as this evidence was material and pertinent in Morphew's ability to fully present her case and critical in the Master's finding of fact

and Order to compel Specific Performance. Due to the conspiracy, the egregious amount of perjury, misrepresentations or forgered evidence, the substantial reliance the opposing parties and trial court had on it, and the fact the alleged perjury and withholding of evidence was suborned by an attorney or attorneys, Morphew contends this misconduct is extrinsic fraud or rises or should rise to the level of extrinsic fraud. Plaintiff respectfully requests this court to deny with prejudice the Defendants Motion for Summary Judgment.

4. The Bank Defendants assert, "*To the extent Plaintiff has any other remaining allegations against the Bank Defendants, they consist of allegations that the Bank violated banking regulations and/or policy for which no private right of action lies. These causes of action have already been dismissed by this Court.*"

Plaintiff Morphew agrees that any allegations that fall within bank violations of regulations and or policy were dismissed, but would like to note that, again, taken as a whole along with the allegations of misconduct within the remaining causes of actions, especially collusion and intentional withholding, hiding or destruction of material evidence, speaks only of egregious conduct, and supports Morphew's argument the bank defendants liability in this and the prior case should rise to the level of fraud on the court. It appears the Bank Defendants intentional failure to follow their own or Federal policies shows a complete disregard for rules and regulations, including the judicial system's rules and regulations, and supports Morphew's argument of bad faith and unfair dealings and a violation of their duty of care. For if policies, procedures or regulations had been followed as required, the Dudek/Cross application made on December 5, 2012 would never have been accepted for review in the first place as the Dudeks sales contract had expired and was not negotiable at the time Dudek and Cross made application.

Further, the testimony of Williams --which seemed to be the basis the Master used to fact find—along with the forgered evidence, would never have occurred. Moreover, if policies, procedures or regulations had been followed in and out of court most likely the prior litigation would never have even taken place, Morphew would have closed on her home in 2013, no damages to parties would have occurred, and the courts would not have been frauded. So yes, Morphew agrees there is no private right of action in the bank defendants' abuse or failure to follow policies, procedures or regulations, but it clearly supports discrimination, dishonesty, bad faith or unfair dealings and bad business practices, all which reflects on the credibility of the Bank Defendants. Plaintiff respectfully requests this court to deny with prejudice the Defendants Motion for Summary Judgment.

5. Bank Defendants assert, "*Any allegation of conspiracy, notably Plaintiff's seventh cause of action, fails as a matter of law because Plaintiff cannot show special damages.*"

Plaintiff disagrees. Defendants only argument in its claim is, again, a clip from Plaintiff Morphew's deposition, in which they ultimately failed to assert correctly.

In Morphew's deposition, bank defendants ask her "*If your conspiracy claim is dismissed, do your damages hold up?*" She answers *"yes"* meaning, if her cause of action for conspiracy does not survive, the other damages to the other causes of action in its complaint will hold up, while any special damages from conspiracy may not. Plaintiff Morphew respectfully requests this court to deny with prejudice the Defendants Motion for Summary Judgment.

6. Bank Defendants assert, "*Plaintiff's claim for her costs and expenses to litigate this action fails as a matter of law*" in its two (2) claims below.

Morphew agrees in part and disagrees in part.

A. *South Carolina courts have routinely denied pro se litigants awards of attorney fees.* Morphew agrees as pro se litigants are not attorneys therefore cannot claim "attorney fees" for themselves.

B. *Plaintiff's attempt to label her claim as costs instead of attorney's fees is merely form over substance. Plaintiff is asking the court to award her payment for her time for acting as her own lawyer.*

Plaintiff disagrees. Plaintiff Morphew has not asked for attorney's fees in relation to the time she has spent defending her rights. In its complaint, any "attorney fees" requested is for her actual attorney (John Massalon) in the prior case. This is separate from punitive or compensatory damages claim, which can include anything a jury decides, such as time lost from work to prepare documents in its defense, and prepare for and attend hearings and trials, travel time and expenses, and actual costs for mailings, filings, copies, etc., and loss of time with her family, and the undue stress and anxiety in defending her rights. Further, Morphew argues that as a pro se she is liable to follow all court rules and regulations (as she can be sanctioned if not), prepare and file all documents per the rules, conduct itself as a lawyer would in court, therefore her time should not be worth any less than an attorney's time spent doing the same, especially considering this isn't her job and she neither gets paid for its defense nor paid for time off from her regular work. Not compensating for "lost work" seems to indicate that a pro se litigant's job in which she supports her family is less meaningful than an attorney's and does not deserve reimbursement. Again, the defendants can attempt to twist her damages request but the Plaintiff's complaint clearly states punitive and compensatory damages, which can include

loss of the ability to make money to support her family, loss of time with her family and the undue stress and anxiety in defending her rights, as due process allows.

Moreover, the damages claimed, including punitive and compensatory, should be for a jury to decide at trial. Plaintiff respectfully requests this court to deny with prejudice the Defendants Motion for Summary Judgment.

7. Bank Defendants assert, *"No genuine issue as to any material fact exists as to any of Plaintiff's claims and those claims fail as a matter of law."*

Plaintiff disagrees.

First, bank defendants have not demonstrated no genuine issue of material fact exists. Second, as asserted herein, bank defendants' liability in this case or the prior case is a matter to be determined by a jury at trial. Plus Plaintiff challenges subject matter jurisdiction or loss of it, where the validity of the prior Order or the lawful ability of court to compel Specific Performance where the prevailing party substantially and critically failed to meet such requirements to file a complaint for Specific Performance has not been decide. Plaintiff respectfully requests this court to deny with prejudice the Defendants Motion for Summary Judgment.

To grant a motion for summary judgment, the court must find that "there is no genuine issue as to any material fact." Fed.R.Civ.P. 56(c). The judge is not to weigh the evidence but rather must determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001). "Summary judgment should not be granted even when there is no dispute as

to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts." *Piedmont Engineers, Architects and Planners, Inc. v. First Hartford Realty Corp.*, 278 S.C. 195, 196, 293 S.E. (2d) 706, 707 (1982). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Lanham, 349 S.C. at 289*289 362, 563 S.E.2d at 333 (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000)). "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." *Hall v. Fedor*, 349 S.C. 169, 173, 561 S.E.2d 654, 656 (Ct.App.2002) (citing *Young v. South Carolina Dep't of Corr.*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999)). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Id. at 173-74, 561 S.E.2d at 656. "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." *Murray v. Holnam, Inc.*, 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct.App. 2001) (citing *Carolina Alliance for Fair Employment v. South Carolina Dep't of Labor, Licensing & Regulation*, 337 S.C. 476, 523 S.E.2d 795 (1999)).

CONCLUSION

As stated herein, this is an independent action alleging fraud/fraud on the court, clearly stating both intrinsic and extrinsic fraud, and collusion to commit such fraudulent and unlawful actions or non-actions, resulting in an order procured through fraud, unclean hands or collusion, therefore cannot be barred by res judicata or collateral estoppel, and has no time limitations.

Further, the complaint claims the Defendants Dudek had critically failed the rules and guidelines of equity or specific performance, therefore that remedy or the remedy of damages was unlawful. It is clear the Master in Equity has complete knowledge of this fact and the fact the

Defendants may have committed fraud or fraud on the court in order to obtain a ruling in their favor, which raises the question of subject matter jurisdiction, or the lack or loss of it, or a void Order.

Plaintiff Morphew asserts that the Defendants and their witnesses (including Bank Defendants) in the prior case fabricated pretextual reasons why they couldn't schedule a closing date or failed to close, knowing the reasons were false and did not justify their failure. Said Bank Defendants then hid, withheld, forgered, lied or failed to disclose the true lending status or financial condition of its clients/co-defendants Dudek and Cross before, during and/or after trial, which the Dudeks' readiness and ability to tender payment as outlined herein is the essence to their lawful ability to compel Specific Performance.

Moreover, both the bank defendants (including its legal department) and its co-defendants' attorney/other co-defendant, David Collins, intentionally concealed the 2012 lending documents or the failed financial condition of the Dudeks from the opposing parties by lying and misrepresenting in its filings, answers, depositions, subpoenas or trial/hearings before, during and/or after trial. Further, the Defendants refuse to provide the Dudeks' 2017 lending file/communications in an attempt to cover up their [and their co-defendants] past and continuing unlawful actions. Just as concerning is the Bank Defendant, First Federal, and co-defendant Collins suborned Bank Defendants (including Williams and/or any employees or agents), co-defendants or witnesses to withhold or conceal Dudek and Cross' financial status or to forger, falsely, testify or misrepresent material evidence or facts. Specifically, Morphew asserts Dudek and Cross used the favorable and untruthful testimony of Williams fraudulently to create evidence that they met the requirements to lawfully compel specific performance, while all Defendants

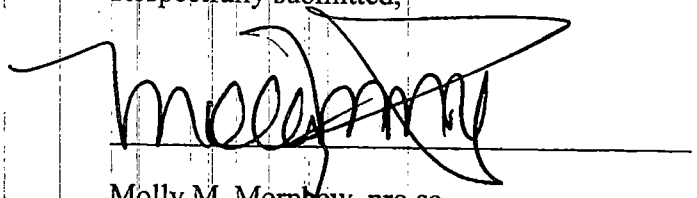
Plaintiff Morphew contends the bank defendants had a duty to inform her or the Master about the [whole and true] past or present financial condition of its co-defendants/clients, Dudek and Cross, as this condition or precedent was the very foundation of the prior case for Specific Performance, and is the origin of this current case. Therefore, the Defendants clearly have a liability in the fraud or unlawful actions and harm those actions have caused on the courts and Morphew.

Due to the extent of the fraud/fraud on the court committed and the conspiracy or collusion of many defendants to commit fraud in order to obtain a ruling in Dudek/Cross' favor, the Defendants liability in those actions, and because no substantial or additional evidence has been offered by the Defendants supporting their claims and testimony-- instead it's been refused over and over-- summary judgment is not appropriate.

Further, Plaintiff argues there are genuine issues, including but not limited to, did a de facto fiduciary relationship exist between the Bank Defendants and the Plaintiff, or the court? And what is the bank Defendants liability in making false or misrepresented statements in its responses to subpoenas; or what duty did the Bank Defendants owe the judge or court in the regular course of the trial or in its testimony; or what is the Bank Defendants' liability in the unlawful ruling made by the Master in the prior case? And now due to circumstances that have arisen since this current complaint was filed, what is the Bank Defendants liability in Plaintiff Morphew's loss and ejectment from her home? Equally, there is a genuine issue to what extent is the Bank Defendants liability in their approval and participation of a closing at which time its clients may not be considered being bona fide purchasers, especially when the bank Defendants and its co-defendants had complete knowledge of or notice of Morphew's claim to that title of that property. Because of these issues or questions of liability presented or ones that may be construed herein,

they should be determined by a jury of its presence or absence, therefore Plaintiff respectfully requests this court to deny with prejudice the Defendants Motion for Summary Judgment.

Respectfully submitted,



Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

August 24, 2018
Summerville, South Carolina

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

FILED-RECORDED
2018 SEP 27 PM 3:33
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 26th day of September, 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)

August 24, 2018
Summerville, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
Molly M. Morphew,	)	
Plaintiff,	)	
v.	)	**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
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 MAR -5 PM 4:30
CLERK OF COURT
DORCHESTER COUNTY

Pursuant to Rule 56, South Carolina Rules of Civil Procedure (SCRCP), and Rule 5(d), SCRCP, Plaintiff Molly Morphew, pro se, responds to the Defendants' Motion for Summary Judgement and respectfully moves this court for an Order dissolving or dismissing the Defendants' Motion in that it fails to meet the requirements for serving/filing a motion [for summary judgment].

On February 14, 2018, the Defendants' Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate filed a Motion for Summary Judgment claiming there is no genuine reason as to any material fact and the Defendants are entitled to judgment as a matter of law, and declare "affidavits to be subsequently filed and Memorandum of Law which may hereinafter be submitted". (**Attachment A** -Defendants Motion for Summary Judgment).

Rule 56(a), SCRCP states, "*For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the*

expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof." Rule 56(e), SCRCP states, "*Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule...*" Furthermore, pursuant Rule 6(d), SCRCP, "*For Motions—Affidavit. When a motion is to be supported by affidavit, the affidavit shall be served with the motion;*"

Defendants failed to file or serve the required affidavits and other documents or with its motion in support of their positions in its motion for summary judgment, therefore the Respondents ultimately failed to meet the requirement(s) of motions and petitions generally. Rule 56 and Rule 6(d) SCRCP.

Even if the motion was appropriate, discovery has been previously demanded of Defendant(s), and to date, Defendant has failed to respond to its discovery demand and its' time to do so had expired, prompting the Plaintiff to compel discovery and deem admissions admitted (see **Attachment B & C**, Motion to Compel and Motion to Deem Admissions Admitted filed respectively January 30 and February 1, 2018). Despite discovery being overdue and the pending motions to compel such discovery (both awaiting hearing dates to be set by the court at the next available roster), Defendants have moved for summary judgment. Defendant's failure to provide

discovery has hindered MORPHEW's ability to defend this case, plus due to the reason(s) above, properly oppose Defendants' motion for summary judgment. Accordingly, this Court should grant the dissolution or dismissal.

CONCLUSION

Due to the Defendants' failure(s) or reason(s) as stated above, Plaintiff respectfully moves this court for an Order dissolving or dismissing the Respondents' Motion for Summary Judgment.

Respectfully submitted,

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

February 26, 2018
Summerville, South Carolina

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

FILED
2018 MAR -5 PM 4:30
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 27th day of February, 2018, to:

Steven L. Smith, Esquire
P.O. Box 40578
Charleston, SC 29423-0578

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417

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 26, 2018
Summerville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 2016-CP-18-1706

FILED - RECORDED
2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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.

Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, Notice of Motion and Motion for Summary Judgment

2018 MAR -5 PM 4:31
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, will move before the Presiding Judge for the First Judicial Circuit, on the tenth (10th) day of the date of this Motion, or as soon thereafter as may be heard, for Summary Judgment.

This Motion for Summary Judgment is based upon 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. This Motion will be supported by Rule 56, South Carolina Rules of Civil Procedure, affidavits to be subsequently filed and Memorandum of Law which may hereinafter be submitted.

I certify that, in accordance with Rule 11, SCRCP, I have attempted to resolve this matter through consultation with opposing counsel, or that consultation is not required.

SMITH | CLOSSER, P.A.

Steven L. Smith (SC Bar No.: 05173)
Zachary J. Closser (SC Bar No.: 74005)
Samuel M. Wheeler (SC Bar No.: 101008
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorney for the Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate

2-7, 2018
Charleston, South Carolina
16-249

Attachment A

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, Woody Law Firm,

Defendants.

CERTIFICATE OF SERVICE

2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Summary Judgment was served by mailing, hand delivery or electronic mail on the following:

Molly M. Morphew
1605 Central Avenue, Ste 6/347
Summerville, SC 29483
morphew926@gmail.com

David A. Collins
P.O. Box 300052
Charleston, SC 29417
davidacollins2@aol.com

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576
aneuschafer@collinsandlacy.com

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368
ahill@gwblawfirm.com

Peggy M. Rochay

February 12, 2018
16-249

$25.00 REC'D

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

RECORDED
2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Molly Morphew,
( ) Plaintiff
v.
Carolina One Real Estate, et al.,
( ) Defendant
check box above indicating submitting party

Case No. 2016-CP-18-1706
MOTION INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Molly M. Morphew 1605 Central Avenue, Ste 6/347 Summerville, SC 29483 telephone: 843-514-7299 fax: e-mail: morphew926@gmail.com	Steven L. Smith - 5173 Smith | Closser, PA P.O. Box 40578 Charleston, SC 29423 telephone: 843-760-0220 fax: 843-552-2678 e-mail: ssmith@scnlaw.com

(x) 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: for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: YES /

SECTION II: Motion Type

(x) Written motion attached
( ) Form Motion --
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: 2-12-18

SECTION III: Motion Fee

(x) 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: _____ _____(print name)
( ) MOTION FEE COLLECTION: _____
( ) CONTESTED - AMOUNT DUE: _____

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.	)	
	)	

2018 MAR -5 PM 4:31
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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

Attachment B

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

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 1:59
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

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576

David A. Collins, pro se
P.O. Box 30052
Charleston, SC 29417

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

#22. 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, CarolinaOne Real Estate, Carrie Boyer, Woodby 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.
☐ Other:

JUDGE

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.	)	
	)	

2018 MAR -5 PM 4:31
CLERK OF COURT
DORCHESTER COUNTY
2018 FEB -1 PM 4:42
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.

Attachment C

Respectfully submitted,

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

January 30, 2018

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Molly Morphew was denied specific performance and closing on her home in 2013, after which she discovered fraud was committed on the court by Defendants Stephen Dudek and Doreen Cross 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 November 30, 2017. Plaintiff sent defendant a notice letter on January 3, 2018. (EXHIBIT "3"). Defendant's responses were due on or before January 1, 2018. To date, defendant has not served a response to the requests.

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 $1143.09 (EXHIBIT "2"), on the grounds that defendant failed to respond to an authorized method of discovery and her conduct in impeding discovery is without substantial justification and constitutes a misuse of the discovery process.

II. DEFENDANT'S FAILURE TO PROVIDE 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 did not respond or object to Plaintiff's Requests for Admission. 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

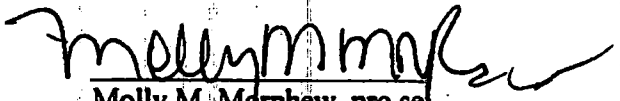
Service of requests for admission authorized by SCRCP 36(a) obligates a party to provide a timely response. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to this motion. SCRCP 36(a). Thus, this Court is instructed to impose monetary sanctions against Defendant for 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 $1143.09 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 Doreen Cross by Plaintiff served on November 30, 2017 and impose monetary sanctions against Defendant in the amount of $1143.09 payable within ten days.

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

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 -1 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 1st 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)

January 31, 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: 7/1/2020

ANTHONY SMITH NOTARY PUBLIC CHATHAM COUNTY, GA MY COMMISSION EXPIRES JULY 11, 2020

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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

Plaintiff Morphew, pro se, submits the following Brief in Opposition to Defendants Wooddy Law Firm and Carrie Boyer's DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S MOTION TO DISMISS. For the reasons set forth below, Morphew requests that this court Deny the Motion to Dismiss in its entirety.

Table of Contents

INTRODUCTION 1

ARGUMENTS 3

MOTION TO DISMISS STANDARDS 3

A. Defendants claim Morphew's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRP, "Failure to state facts sufficient to constitute a cause of action." 3

B. Defendants claim Morphew's Complaint should be dismissed pursuant Rule 12(b)(8), SCRCP, "Plaintiff has instituted a prior suit regarding the same subject matter and transactions." 9

Conclusion 10

Table of Authorities

Cases

Brown v. Leverette, 291 S.C 34, 353 S.E.2d 697 (1987) 4
McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) 4, 5
Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995) 4
Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) 4
Williams, 347 S.C. at 233, 553 S.E.2d at 499 4
Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974)2007) 4
Twombly, 550 U.S. at 556-57 4
Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001) 4
Flateau, 355 S.C. at 202, 584 S.E.2d at 415 4
Gentry v. Yonce,337 S.C. 1, 522 S.E.2d 137 (1999) 4
Baird, 333 S.C. at 527, 511 S.E.2d at 73 5
Gentry, 337 S.C. at 5, 522 S.E.2d at 139 5
Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) 5
Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987) 5
Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001) 5
Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) 5
Ballentine v. United States, 486 F.3d 806, 810 (3d Cir. 2007) 6
S.C. Public Serv. Comm'n v. City of Rock Hill, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977) .. 9
Beatty v. Liberty Mut. Ins. Group, 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008) 10

Statutes

S.C. Code Ann. §15-36-100(B) 6
Restatement (Second) of Torts § 552 8

Other Authorities

AMA, 420 S.E.2d at 874 8
James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed. 1996) 9

Rules

South Carolina Rule of Civil Procedure (SCRCP) Rule 12(b)(6) 3
SCRCP 12(b)(8) 9

INTRODUCTION

Morphew alleges in its Complaint:

- That the Defendants, as named above, have allegedly committed Fraud, Extrinsic Fraud – Fraud on the Court, Perjury, Violation of ABA Rules of Professional Conduct, Rule 4.1

Truthfulness in Statements to Others; Rule 5.3 Responsibilities Regarding Non-lawyer Assistants, Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud, Fraud - Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive, Obstruction of Justice; SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4 (a), Rule 3.4(d), Intentional Infliction of Emotional Distress, and Tortious Interference with Existing Contractual Relations.

- That the fraudulent actions or unlawful conduct of the Defendants were unknown to Morphew or the courts at the time before or during the trial.
- That discovery of the Defendants unlawful conduct was a direct result of Plaintiff Morphew becoming Pro-se and performing discovery over 100's of hours.
- The facts or allegations (Complaint ¶¶ 1-347, including those listed within each Cause of Actions), provide a detailed description of the method or process of the fraudulent actions or unlawful conduct of the Defendants, demonstrating conspiracy to defraud and how these actions were brought forth to trial.
- That the fraudulent actions or unlawful conduct of the Defendants were intentional and have attributed to cause:
    1. The Courts undue time, resources, and costs, and
    2. Morphew, excessive amounts of time, money and emotional distress, and loss principal, interest, and years of rightful ownership of the property at stake.

The Complaint contains all this and more in page after page of detailed facts or allegations or quotes (Complaint ¶¶ 1-347) that can be supported by material evidence and exhibits, and can be proved, without a doubt, at trial. Trials have been won with less evidence. Under any reading

of the applicable standard requiring particularity, Morphew meets and exceeds its pleading obligations.

Nevertheless, the Defendants, as named above, have moved to dismiss the Complaint, basing their Motion on South Carolina Rules of Civil Procedure (SCRCP) 12(b)(6), "the allegations support no valid claim for relief or cognizable cause of action against defendants", "Plaintiff lacks standing to assert the purported claims against the Defendants," "Plaintiff's failure to comply with the expert affidavit requirement of S.C. Code Ann. §15-36-100(B)," and (SCRC) 12(b)(8), "Plaintiff has instituted a prior suit regarding the same subject matter and transactions."

If Wooddy Law Firm and Carrie Boyer had reasonably done their due diligence, they would have recognized that the claims or issues raised and tried in the prior adjudicated suit are not the same claims or issues raised in this current Complaint, nor are the Defendants in this motion parties to the prior suit. Furthermore, the allegations, including that Morphew lacks standing to bring her claims, has been totally unsupported by the Defendants in their Motion to Dismiss, therefore lacks merit for grounds of dismissal. But even under Wooddy Law Firm and Carrie Boyer's unsupported standards, Morphew's Complaint is so thoroughly particularized that it must survive and Wooddy Law Firm and Carrie Boyer's motion must be dismissed.

ARGUMENTS

MOTION TO DISMISS STANDARDS

A. Defendants claim Morphew's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRP, "Failure to state facts sufficient to constitute a cause of action."

1. "The allegations support no valid claim for relief or cognizable cause of action against Defendants"

A motion to dismiss under Rule 12(b)(6) should be granted only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim which

would entitle it to relief. *Brown v. Leverette, 291 S.C 34, 353 S.E.2d 697 (1987); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997).* Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)*; see also *Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987)* (noting trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); *Williams, 347 S.C. at 233, 553 S.E.2d at 499* (finding that trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff). To survive a rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level" and have "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974)(2007).* A motion under Rule 12(b)(6) merely tests the legal sufficiency of a complaint, requiring a court to construe the complaint liberally, assume all facts as true, and draw all reasonable inferences in favor of the plaintiff. *Twombly, 550 U.S. at 556-57.*

Defendants claim 12(b)(6), but fail to clearly demonstrate the plaintiff has failed to state facts sufficient to constitute a cause of action. A trial judge in the civil setting 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).* "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Flateau, 355 S.C. at 202, 584 S.E.2d at 415*; see *Gentry v. Yonce,337 S.C. 1, 522 S.E.2d 137 (1999)*; see

also *Baird, 333 S.C. at 527, 511 S.E.2d at 73* (declaring that if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); *McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997)* (concluding that motion to dismiss cannot be sustained if facts alleged in complaint and inferences reasonably deducible therefrom would entitle plaintiff to relief on any theory of the case).

In deciding whether the trial court properly granted the motion to dismiss, this court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. See *Gentry, 337 S.C. at 5, 522 S.E.2d at 139*; see also *Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999)* (explaining that looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).* The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001)*; see also *Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997)* (stating motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case).

For these reasons above the courts should dismiss the Motion with prejudice based on the merits of the Complaint.

2. **"Plaintiff lacks standing to assert the purported claims against the defendants"**

A Motion to Dismiss for Lack of Standing is properly brought under Rule 12(b)(1) and decided under 12(b)(6) Standards — Elements of Article III Standing. A motion to dismiss for want of standing is . . . properly brought pursuant to Rule 12(b)(1), because standing is a jurisdictional matter." *Ballentine v. United States, 486 F.3d 806, 810 (3d Cir. 2007)*. Plaintiff disputes that the Defendants failed to properly bring their claim [for lack of standing] under the correct standard and therefore should be dismissed with prejudice in its entirety.

Even if the Defendants were correct in the standard their claim was brought under, the defense within the Defendants Motion to Dismiss lack any argument and is totally unsupported. Though the Defendants call out the nature of the Motion, there was no explanation as to the nature of the motion and the reasons therefore. Hence, the defendants failed to show that the plaintiff could prove no set of facts demonstrating "lack of standing".

For these reasons above, the courts should dismiss the Motion with prejudice in its entirety.

3. **"Plaintiff's failure to comply with the expert affidavit requirement of S.C. Code Ann. §15-36-100(B)"**

Per S.C. Code Ann. §15-36-100(B), "An action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the

time of the filing of the affidavit." Thought the Defendants state dismissal of Plaintiff's Complaint is required under this rule based on the Defendant's "interpretation" of the complaint as to purporting to allege professional negligence, Plaintiff argues the complaint has clearly defined with specificity what is alleged (meaning if "professional negligence" was the intention, the Complaint would have specifically called it out). For this reason, an affidavit of an expert witness is not required.

Even if the allegations could be interpreted as such, Plaintiff contends the actions of the Defendants were performed outside the normal process as required in their position, and though may not be considered individually as an unprofessional or unlawful action(s), when combined with the co-Defendants fraudulent or unlawful actions on the courts, the actions can be irrefutably regarded as Bad Faith and Unfair Dealings and [with] Conspiracy to Defraud, which will be indisputably proven at trial. Furthermore, the contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

Plaintiff alleges the Defendants made a false statement ("statement" can be in writing or orally) at the request of the opposing party, and gained to defend that party's intentional failure to close escrow (breach of contract). Due to the Plaintiff's prior action filed, these false statements were then brought forward at trial to defend their client's breach of contract. In this instance the Defendant(s) had a pecuniary interest in making the statement and he possessed expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful enquiry, and the

law places on him a duty of care with respect to representations made. *AMA,* 420 S.E.2d at 874.

Most courts that have allowed such a claim have adopted Restatement (Second) of Torts § 552, which provides:

> "One who, in the course of his/her business, profession or employment, or in any other transaction in which he/she has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he/she fails to exercise reasonable care or competence in obtaining or communicating the information.
>
> "Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss `suffered either by the person or one of a limited group of persons for whose benefit and guidance he/she intends to supply the information or knows that the recipient intends to supply it; and through reliance upon it in a transaction that he/she intends the information to influence or knows that the recipient so intends or in a substantially similar transaction."

Application of § 552 has varied widely, particularly in regard to the intent and knowledge requirements. Some courts do not require that the defendant's knowledge be specific or that it arise from any particular transmittal of information from the client, but rather, hold a professional liable to all persons who might reasonably been foreseen as relying upon his/her work product. In this instance Plaintiff asserts that the courts relied on the fraudulent act(s) and/or omissions or misrepresentations made by the Defendant(s), and the courts were prevented from making a lawful or informed ruling.

Plaintiff further alleges a collusion of the Defendants with their co-defendants, in a conspiracy to commit fraud/fraud on the courts, which deprived Morphew of the opportunity to present all of her case.

Morphew affirms her position the Defendants committed intentional misrepresentation [defined, "A statement made by the defendant, with the intent to deceive, that is known to be false or made recklessly and without regard to whether it is true or not."], and, in light of the Plaintiff's current position, could also be construed as "negligent misrepresentation" [defined, "A careless or inadvertent false statement in circumstances where care should have been taken"].

For these reasons above, the courts should dismiss the Motion with prejudice in its entirety based on the merits of the Complaint.

B. Defendants claim Morphew's Complaint should be dismissed pursuant Rule 12(b)(8), SCRCP, "Plaintiff has instituted a prior suit regarding the same subject matter and transactions."

The South Carolina Rule of Civil Procedure 12(b)(8), states "another action is pending between the same parties for the same claim."

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[1] providing a defendant a similar opportunity to demur; the 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

[1] The former statute, Section 10-642(3) of the South Carolina Code (1962), read in part as follows: "The defendant may demur to the complaint when it shall appear upon the face thereof that: (3) There is another action pending between the same parties for the same cause."

Civil Procedure 96-97 (2d ed. 1996). This approach is consistent with modern day practice under rules similar to the Appellate Court 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, the courts can 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).

Plaintiff would again like to point out if the Defendants had reasonably done their due diligence or discovery, they would have recognized that the Prior Civil Action is not between the same parties (i.e., none of the Defendants in this motion are a party to case #2013-CP-18-00183 (consolidated with 2013-CP-18-00074). Therefore, Rule 12(b)(8) is not an applicable standard for dismissal in their Motion to Dismiss.

Even if they were the same parties, Plaintiff contends the current action is an independent action alleging fraud, and specifically fraud upon the court arising from the material discovery after adjudication that the acts and omissions of the Defendants were indeed intentionally fraudulent, and carried out in bad faith and unfair dealings. This action also alleges to include Conspiracy to commit fraud as a basis for fraud on the courts. The remedy being damages (including Punitive), and sanctions for injury resulting from their unlawful behavior, and to deter the Defendants from continuing its conduct.

Accordingly, Plaintiff respectfully compels the court to dismiss with prejudice the Defendants Motion to Dismiss in its entirety.

Conclusion

For all the foregoing reasons, the court should deny Defendant's Motion to dismiss in its entirety.

Respectfully Submitted,

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) Civil Action Case No.: 2016-CP-18-1706
)
Molly Morphew,)
)
Plaintiff,)
)
v.) **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)

I certify that on this date a copy of the foregoing Plaintiffs Brief in Opposition to DEFENDANTS WOODDY LAW FIRM AND CARRIE BOYER'S MOTION TO DISMISS was served by mailing on the following:

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DORCHESTER COUNTY

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	Civil Action Case No.: 2016-CP-18-1706
Molly Morphew, Plaintiff, v. Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm Defendants	**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS ALLISON WILLIAMS AND SOUTH BANK f/k/a SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S MOTION TO DISMISS**

Plaintiff Morphew, pro se, submits the following Brief in Opposition to DEFENDANTS ALLISON WILLIAMS AND SOUTH STATE BANK f/k/a SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S MOTION TO DISMISS. For the reasons set forth below, Morphew requests that this Court deny the Motion to Dismiss in its entirety.

Table of Contents

INTRODUCTION 3
ARGUMENTS 6
MOTION TO DISMISS STANDARD 6
Defendants claim Morphew's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRP 6
1. Defendants claim Plaintiff has failed to properly plead facts sufficient to establish liability against Defendants Williams and Bank. 7
2. Defendants claim neither Williams nor Bank had a relationship with Plaintiff whereby a fiduciary duty existed. 9
3. Defendants claim Plaintiff has not established a right to rely on any statements or representations made by Williams or Bank. 11
4. Defendants claim Plaintiff does not have grounds to seek a declaratory judgment against Bank. 13
5. Defendants claim Plaintiff cannot establish a cause of action against Williams or Bank based on a Rule of Professional Conduct for lawyers. 14

6. Defendants claim Plaintiff cannot show a cause of action based on the violation of a rule of civil procedure..... 20

7. Defendants claim Plaintiff has not plead the necessary elements of fraud..... 23

8. Defendants claim, based on the allegations of the Complaint, Plaintiff cannot prove Interference with a Contractual Relationship..... 27

9. Defendants claim Plaintiff has failed to plead facts that would allow Plaintiffs to receive punitive damages as requested in this matter. 29

10. Defendants claim Plaintiff is not entitled to damages based on the alleged fraudulent statements made by Bank and Williams..... 30

Conclusion 32

Table of Authorities

Cases

Home Builders Ass'n of Miss., Inc. v. City of Madison, 143 F.3d 1006, 1010 (5th Cir. 1998)..... 4
Hartford Ins. Group v. LouCon Inc., 293 F.3d 908, 910 (5th Cir. 2002)..... 4
Bridges v. Wyandotte Worsted Co., 243 S.C. 1, 132 S.E.2d 18 (1963)..... 4
Brown v. Leverette, 291 S.C 34, 353 S.E.2d 697 (1987) 5
McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) 5
Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974 2007)..... 5
United States v. Tonelli, 577 F.2d 194, 198 (3d Cir. 1978)..... 7
Huff v. Jennings. at 149, 459 S.E.2d at 891..... 8
Ex parte Boykin, 656 So.2d 821, 826 n.4 (Ala. Civ. App. 1994)..... 9
James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed. 1996)..... 10
S.C. Public Serv. Comm'n v. City of Rock Hill, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977) 10
James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed. 1996)..... 10
First Nat'l Bank v. United States Fid. & Guar. Co., 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945)...11
Beatty v. Liberty Mut. Ins. Group, 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008)..... 11
Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993)..... 11
Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986)..... 11
Johns v. Johns, 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct. App. 1992) 12
Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62, 64 (Ct. App. 2000)..... 13

Other Authorities

Twombly, 550 U.S. at 556-57..... 5
Geo. P. Reintjes Co., 71 F.3d at 49..... 7
S.C. Code § 18-9-170..... 8
50 Am. Jur. 2d Libel & Slander § 548 (1995)..... 8
Jeffrey F. Ghent, Slander of Title: Sufficiency of Plaintiff's Interest in Real Property to Maintain Action, 86 A.L.R.4th 738 (1991)..... 8
Restatement (Second) of Torts § 623A (1977)..... 8
Restatement (Second) of Torts § 624 (1977)..... 9

Rules

SCACR Rule 205..... 4
South Carolina Rules of Civil Procedure (SCRCP) 12(b)(1)..... 4
SCRCP 12(b)(6)..... 5
SCRCP 241(b)(4) STAY AND SUPERSEDEAS IN CIVIL ACTIONS..... 8
SCRCP 12(b)(8)..... 10
Appellate Court Rule 12(b)(8)..... 10
Res judicata..... 11

INTRODUCTION

Morphew alleges in its Complaint:

- That Allison Williams and/or First Federal Bank have committed Fraud, Extrinsic Fraud, and specifically Fraud on the Courts; Fraud- Untrue assertion of fact [or equivalent]; Assertion made with knowledge of falsity and intent to deceive.
- That the Fraud(s) or Fraudulent actions on the courts or Plaintiff as set forth in the Complaint include [as a basis for fraud on the courts] actions of Perjury, Misrepresentation, Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud, Forgery, Obstruction of Justice, and Tortious Interference with Existing Contractual Relations, Forgery/falsifying documents with intent to defraud another;, and Intentional Infliction of Emotional Distress.
- That the actions or conduct of the Defendants were in violation of the Federal Rules of Civil Procedures, Rule 26. Duty to Disclose; General Provisions Governing Discovery; Rule 37 Failure to Make Disclosures or to Cooperate in Discovery; Sanctions; SC Rules of Professional Conduct Rule 8.4(c) Misconduct, SC Rules of Professional Conduct Rule 1.4(a)(4), Rule 3.4 (a), Rule 3.4(d), SC Rules of Professional Conduct Rule 1.2(d)), and violation of Federal Banking Rules and Regulations, (including Federal Housing Finance Board ("FHFB"), Office of Federal Housing Enterprise Oversight ("OFHEO"), and many other of the "Agencies") including discrimination, which is not tolerated in any form.
- That the actions or conduct of Defendant Williams was a 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)
- That the actions and conduct of the Defendants were in violation of First Federal banking rules, regulations and processes.

- That the unlawful or fraudulent actions of First Federal Bank and Allison Williams were unknown to Morphew or the courts at the time before or during the trial.
- That discovery of fraud was a direct result of Plaintiff Morphew becoming Pro-se and performing discovery over 100's of hours.
- The factual allegations (Complaint ¶¶ 1-347), including those listed within each Cause of Actions, provide a detailed description of the method or process of the fraudulent actions including when the fraud began, how the fraud was committed on the courts and/or on Morphew, and further demonstrates how the fraudulent acts and/or omissions have continued after the trial.
- Declaratory Judgment That No Contract Exists, as no valid contract was received by First Federal.
- That at all times material, First Federal Bank and/or Allison Williams did not, nor currently have, a valid Contract in which the court Order for Specific Performance can be performed, and failed [and continue to fail] to disclose that very pertinent material fact.
- That the fraudulent actions [of First Federal Bank and/or Allison Williams and/or its agents] on the courts were intentional and have caused, and continue to cause:
    1. The courts undue time, resources, and costs, and
    2. Morphew, excessive amounts of time, money and emotional distress, and/or loss principal, interest, and years of rightful ownership of the property at stake.

The Complaint contains all this and more in page after page of detailed factual allegations and quotes (Complaint ¶¶ 1-347) that can be supported by material evidence and exhibits, and can be proved, without a doubt, at trial. Trials have been won with less evidence. Under any reading

of the applicable standard requiring particularity, Morphew meets and exceeds its pleading obligations.

Additionally, Morphew's subject matter of Fraud on the Courts includes a supporting cause of action of perjury. To "perjure" yourself is to "knowingly make false or misleading statements under oath or to sign a legal document you know to be false or misleading". This crime is taken very seriously because the foundation of the legal system depends on trust and credibility. After all, just one sworn statement has the power to tip the scales of justice and dramatically alter someone's life, specifically Morphew. Perjury is considered a crime against justice, since lying under oath compromises the authority of courts, grand juries, governing bodies, and public officials.

The foundation of our republic is that we are a nation governed by laws, not by men. For the rule of law to be maintained, there must be a credible system of justice. Any effort to undermine the integrity of the judicial system subverts the principle of a nation of laws. And that system of justice depends for its very survival on maintaining the integrity of the oath that a person swears to tell the truth. Otherwise, if we turn a blind eye and allow people to lie under oath, destroy or hide evidence, or conspire to present false and misleading testimony, the entire notion of justice and truth become meaningless. Congressional Record, S1634, Congress USA (February 12, 1999).

Nevertheless, First Federal and Allison Williams have moved to dismiss the Complaint pursuant South Carolina Rules of Civil Procedures (SCRCP) 12(b)(6) "the Plaintiff has failed to allege facts sufficient to establish liability against them." Although the motion states many reasons why Plaintiff's complaint should be dismissed, they have been totally unsupported by the Defendants in their Motion to Dismiss, therefore lacks merit for grounds of dismissal. But even

under the Defendants' unsupported standards, Morphew's Complaint is so thoroughly particularized that it must survive and First Federal and Allison Williams' motion must be dismissed.

ARGUMENTS

MOTION TO DISMISS STANDARD

Defendants claim Morphew's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRP.

A motion to dismiss under Rule 12(b)(6) ["failure to state facts sufficient to constitute a cause of action"] should be granted only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. *Brown v. Leverette, 291 S.C 34, 353 S.E.2d 697 (1987)*; *McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997).* To survive a rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level" and have "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974, 2007).* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. Although "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a pleading that merely offers "labels and conclusions," or "a formulaic recitation of the elements of a cause of action will not do." *Twombly, 550 U.S. at 555.* Rule 8 of the Federal Rules of Civil Procedure requires that a complaint include facts (as distinct from legal "labels" and "conclusions") giving rise to a "plausible" (rather than merely "conceivable") entitlement to relief. Likewise, "a complaint [will not] suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancements.' " *Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 557).* A motion under Rule 12(b)(6) merely tests the legal sufficiency of a complaint, requiring a court to construe the

complaint liberally, assume all facts as true, and draw all reasonable inferences in favor of the plaintiff. *Twombly, 550 U.S. at 556-57.*

1. **Defendants claim Plaintiff has failed to properly plead facts sufficient to establish liability against Defendants Williams and Bank.**

As repeated above. To survive a rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level" and have "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974)2007).* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

The Defendants have committed perjury, obstruction of justice and fraud/fraud on the courts. That is a liability in itself. Facts clearly stated in the complaint. Perjury, also known as forswearing, is the intentional act of swearing a false oath or of falsifying an affirmation to tell the truth, whether spoken or in writing, concerning matters material to an official proceeding.[1][2] Contrary to popular misconception, no crime has occurred when a false statement is (intentionally or unintentionally) made while under oath or subject to penalty—instead, criminal culpability only attaches at the instant the declarant falsely asserts the truth of statements (made or to be made) which are material to the outcome of the proceeding. For example, it is not perjury to lie about one's age except where age is a fact material to influencing the legal result, such as eligibility for old age retirement benefits.

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1 "Perjury - What is it?" Law Advice: White Collar Crimes. FreeAdvice. December 2008. Retrieved 3 February 2014.

2 "Perjury The act or an instance of a person's deliberately making material false or misleading statements while under oath. – Also termed false swearing; false oath; (archaically forswearing." Garner, Bryan A. (1999). Black's Law Dictionary (7th ed.). St. Paul MN: West Group. p. 1160.

In this instance these acts or omissions were material and were critical to the outcome of the prior proceedings. Because of the fraudulent and unlawful actions of the Defendants, Morphew was prevented from presenting all of her case and/or resulted in preventing the courts from making a lawful or informed ruling in the prior civil actions. This is an abuse of the judicial process, specifically applied to perjury, where this crime is taken very seriously because the foundation of the legal system depends on trust and credibility. Perjury is considered a crime against justice, since lying under oath compromises the authority of courts, grand juries, governing bodies, and public officials. Plaintiff contends the pleaded facts within the complaint were not merely legal conclusions, opinions, or unwarranted averments of fact, but instead were facts material to the outcome of the proceedings. The facts or allegations in Morphew's complaint are unquestionably supported by material evidence and to be proven at trial.

Additionally, both the Bank and Williams had a duty of care to the Plaintiff. Closing their client's loan meant monetary gains for the Bank and/or to Williams. "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 enquiry, the law places on him a duty of care with respect to representations made to plaintiff." *Strasburger, 309 S.C. at 223, 420 S.E.2d at 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.*

For these reasons, the courts should dismiss with prejudice the Defendants Motion to Dismiss in its entirety.

2. **Defendants claim neither Williams nor Bank had a relationship with Plaintiff whereby a fiduciary duty existed.**

"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, 294 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").

Morphew contends a fiduciary duty did indeed exist between the Bank and the Plaintiff when they received (2) court ordered subpoenas for any information (including any e-mails, documents, and communications either electronic or otherwise) in regards to Dudek and Cross, their address, loan number, property TMS numbers, etc. A fiduciary relationship is defined as one "between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." "A fiduciary duty requires a party to place the interests of the other before his own." The Bank failed to provide the subpoenaed

information when requested by Morphew during discovery of the prior civil actions, and additionally provided false information in its place.

Plaintiff contends First Federal intentionally failed to provide the true status of their clients financing per the contract, because they were directed by Dudek and Cross not to provide any such information. The Defendants knew their clients were in litigation with the sellers and maintained if they kept the file "open" the sellers would comply with the sales contract. They also knew the information was negative to the defense of Dudek and Cross and could seriously affect their client's lawsuit against the sellers and their client's defense against the Morphew complaint. Moreover, First Federal or Williams had a pecuniary interest in the Dudek/Cross closing on said sales contract, therefore it could be presumed they were acting in their own behalf, and not in the interest of the Plaintiff or the courts.

Even if Williams or the Bank did not have a "fiduciary" relationship with Plaintiff, they did have such relationship with the courts whereby a fiduciary duty existed - to place the court's interest and process above their own [in order not to undermine the integrity of the judicial system].

Furthermore, both banking and federal rules, regulations and processes were violated [which led to misrepresented evidence provided at trial]. The Bank and Williams committed perjury, misrepresentations and omitted pertinent material facts that were the core of the prior civil action(s). Those fraudulent acts and omissions led to the courts unlawful order for Specific Performance.

Morphew repeats, if 1) she had received the material facts (i.e., subpoenaed information) when requested, most likely a trial would never have taken place, and Plaintiff would not be in the current position she's in, and loss of excessive amounts of time and money, including excessive amounts of distress, and 2) due to the fraudulent act(s) and/or omissions, as stated herein, a) she

was prevented from presenting all of her case and/or b) the courts were prevented from making a lawful or informed ruling.

Thus, to determine whether a fiduciary relationship existed, this court must look to the particulars of the relationship between the parties, and if any doubt exists, the action should be delivered to the jury. In South Carolina, the existence of a fiduciary duty may be a factual question for the jury to determine. *Hotz v. Minyard, 304 S.C. 225, 403 S.E.2d 634, 637 (1991).*

For these reasons, the courts should dismiss the Defendants Motion to Dismiss in its entirety.

3. Defendants claim Plaintiff has not established a right to rely on any statements or representations made by Williams or Bank.

As repeated in 1 and 2 above. To survive a rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level" and have "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974)2007).* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

Firstly, the Plaintiff's prior civil action against the Bank's clients, co-Defendants Dudek and Cross, was for breach of contract, specifically not applying or securing financing, and failing to close escrow per the sales contract. The Defendants statements were material facts pertinent to the prior civil action(s). Morphew asserts she [as stated in the complaint] due to the fraudulent act(s) and/or omissions, as stated herein, she was prevented from presenting all of her case and/or the courts were prevented from making a lawful or informed ruling, which is an infringement of due process. Additionally, absent of herein stated fraudulent act(s) or omissions, 1) she (and all parties involved) would never have gone to trial or 2) be in this

position today if Defendants had conducted themselves with honesty, and good faith and fair dealings, or obeyed/ honored "The Agencies"[3] rules, regulations and processes.

Secondly, Plaintiffs complaint identifies that the court order for Specific Performance was fraudulently obtained (i.e., fraud on the courts).

Thirdly, the combined trial court Order of November 6th, 2013 (see **attachment 1**) is an "agreement" between the sellers, Dudek and Cross, and Morphew. Specific Performance was granted first to Dudek and Cross. They were to perform their sales contract and if they were unable to, they were to inform the Court AND Morphew immediately, then at which time Morphew would be granted Specific Performance and required to perform her sales Contract.

The court Order from the Prior Civil Action was adjudicated with the Morphew contract still valid and pending specific performance if the Defendants fail to perform. The court Order specifically states:

- The Morphew Contract is a valid contract.
- The Morphew Contract is a conditional contract.
- The Morphew Contract is fair, just and equitable.
- The Morphew Contract cannot be specifically performed unless the Dudek/Cross Contract is terminated because a condition of the contract cannot be performed.
- **Thus, if the Dudek/Cross Contract is terminated, Defendants Ferro specifically perform Plaintiff Morphew Contract according to its terms.**

[3] The Department of Housing and Urban Development ("HUD"), the Department of Justice ("DOJ"), the Office of the Comptroller of the Currency ("OCC"), the Office of Thrift Supervision ("OTS"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Federal Housing Finance Board ("FHFB"), the Federal Trade Commission ("FTC"), the National Credit Union Administration ("NCUA"), and the Office of Federal Housing Enterprise Oversight ("OFHEO") (collectively, "the Agencies") will not tolerate lending discrimination in any form. (FDIC Law, Regulations, Related Acts 5000 – Statements of Policy).

Morphew feels she has more than adequately established her and/or the courts legal right to rely on any statements or representations or omissions made by Williams or the Bank, and the courts should dismiss the Defendants Motion to Dismiss in its entirety.

4. Defendants claim Plaintiff does not have grounds to seek a declaratory judgment against Bank.

Plaintiff resists the Defendants claim she does not have "grounds" to seek declaratory judgment, but understands this may be a case where the declaration or construction is not necessary or proper at this time under all the circumstances.

While many disputes do present an "actual controversy" between the parties such that one party has standing to bring a lawsuit, not all disputes may be appropriately resolved through a declaratory judgment action. Declaratory relief is appropriate where a plaintiff needs direction from a court before from taking future action. Such direction will afford the litigant relief from uncertainty or insecurity. *Amer. Household Products, Inc. v. Evans Manufacturing, Inc., 139 F.Supp.2d 1235, 1239 (N.D. Al. 2001)*. In contrast, where the facts and circumstances in a dispute are such that damages or rights have already accrued, determination through a declaratory judgment action may be inappropriate. The object of the declaratory judgment is to permit determination of a controversy before obligations are repudiated or rights are violated. Where the rights of the partics have already accrued and the party seeking the declaratory judgment does not risk taking future undirected action, a declaratory judgment would be 'advisory'.

A declaratory judgment action is neither legal nor equitable per se. Rather, its character is determined by the nature of the underlying issue. *Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991)*; *Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime, 329 S.C. 206, 494 S.E.2d 465 (Ct. App. 1997)*. Courts "look to the kind of action in which the issue

involved would have been decided if there were no declaratory judgment procedure." *Felts, 299 S.C. at 216, 383 S.E.2d at 263.*

Though declaratory judgment may not be necessary or proper at this time, Morphew's Complaint is so thoroughly particularized that it must survive and First Federal and Allison Williams' motion must be dismissed.

5. **Defendants claim Plaintiff cannot establish a cause of action against Williams or Bank based on a Rule of Professional Conduct for lawyers.**

Plaintiff states in its Fraud complaint the Bank violated Rule 8.4: Misconduct, of the Rules Regulating the South Carolina Bar (Rules of Professional Conduct). 8.4(c) states, 'It is professional misconduct for a lawyer to commit a criminal act involving moral turpitude'. Moral turpitude can be described as conduct that is considered contrary to community standards of justice, honesty, or good morals. 8.4(e) states, "it is professional misconduct for lawyer to engage in conduct prejudicial to administration of justice," "It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; commit a criminal act involving moral turpitude; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; engage in conduct that is prejudicial to the administration of justice; state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud. The South Carolina version of this Rule also specifically includes criminal acts involving moral turpitude as professional misconduct. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer's abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization can suggest an inability to fulfill the professional role of lawyers." South Carolina Rules of Professional Conduct 8.4

Morphew argues First Federal failed to answer a subpoena for documentation material to the case or failed to answer in a timely manner. Morphew further alleges an intentional failure.

The proper handling of subpoenas and other document requests -including subpoenas from litigants in civil matters and federal, state, and local administrative subpoenas- is increasingly important for financial institutions not only to ensure compliance with legal obligations, but also as a means of minimizing the risk of civil and criminal penalties and reputational damage. Failing to appropriately handle a subpoena for records in a civil matter in which the financial institution is simply a witness providing documents can quickly turn the matter into an investigation of the financial institution for obstruction of justice. Recent federal investigations and prosecutions of financial institutions arising out of mishandled subpoenas demonstrate the grave risks posed by a

flawed subpoena response. Although subpoena compliance is important for any company, it is crucial for financial institutions.

There are three major risk areas in subpoena compliance for financial institutions. First, and most importantly, to the extent that the financial institution is determined not to have complied fully with the subpoena, it faces a host of potential adverse consequences. Failure to comply with a subpoena can be prosecuted as obstruction of justice. *United States v. Aguilar, 515 U.S. 593, 598 (1995)*; *United States v. Jeter, 775 F.2d 670, 679 (6th Cir. 1985)*; *United States v. Rasheed, 663 F.2d 843, 852 (9th Cir. 1981)*. Even if a financial institution is not actually charged with obstruction, a perception by prosecutors or regulators that the institution is not being fully cooperative and any investigation resulting from that perception can have long-term adverse reputational consequences for the institution, particularly with its regulators.

Second, receipt of a subpoena or the information gathered in response to a subpoena is increasingly being viewed as putting a financial institution on notice as to potential compliance issues and suspicious activity that perhaps may have to be reported to the government.

Third, because of the criminal penalties for improper disclosures, financial institutions must ensure that they do not disseminate information about the subpoena to individuals named in the subpoena or other individuals without a need to know.

This string of e-mails below clearly shows that First Federal and/or Williams was aware that their clients, Dudek / Cross had filed suit against the sellers. Further that First Federal's attorney should be advised as they could be drawn into a law suit and that it should be brought to the attention of Linda {Hitchcock} "is the ultimate person to decide this." And most importantly, at all times material, First Federal and/or Williams were aware that Plaintiff Morphew had filed a complaint against First Federal's clients Dudek / Cross for breach of contract and specific

performance from the sellers to the Morphew contract but still knowingly made false statements in response to discovery requests, and directed employee(s) to "not tell the truth" or misrepresent facts during trial.

Plaintiff claims Defendant(s) violated SC Rules of Professional Conduct RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL.

"A lawyer shall not: unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act; falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law; knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists; in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party; in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or request a person other than a client to refrain from voluntarily giving relevant information to another party unless: the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

"Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many

jurisdictions makes it an offense to destroy material for purposes of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information." South Carolina Rules of Professional Conduct, RULE 3.4: Fairness to Opposing Party and Counsel

Plaintiff alleges First Federal's legal department was aware of pending and then actual litigation that "they could be drawn into", and their Compliance Auditor, who denied the Dudek / Cross loan in January 2013, was/is in First Federal's legal department, but still First Federal answered 2 Subpoena's by stating they had no such customers and no such loans. This failure continued for 15 months and only when their loan officer and co-Defendant, Allison Williams, was subpoenaed to testify at trial did First Federal finally provide their records, but not in time for the trial. This was clearly an obstruction of justice and/or displayed a disregard for the legal system and their own professional rules of conduct. Morphew further reasons Williams was clearly briefed by First Federal attorneys in preparation for the trial and provided false testimony, incomplete truths and omitted material facts critical for the courts to make a lawful and informed decision. If First Federal had provided the subpoenaed documents as requested there may have never been a trial or Morphew would have been able to fully present her case as the law requires. If Williams had testified with honesty and integrity, as her position as a mortgage loan officer at First Federal would expect, the trial may have been ruled lawfully and fairly.

The Plaintiff has reasonably construed, based on professional experience, e-mails, phone calls or subpoenas listed below, that First Federal's legal department was involved from onset of

litigation through the 'trial prep' of their employee and co-Defendant Allison Williams[4]. Morphew contends First Federal, being notified of the litigation between the parties involved, took standard cautionary measures to ensure compliance and legal liability. Therefore the Rules of Professional Conduct for lawyers should apply and the Defendants Motion should be dismissed in its entirety.

January 3rd, 2013 11:29am Thurs Underwriting [Maddie McWerter] sends 10-day adverse letter to Defendants Dudek and Cross [requesting mandatory document that had been a prerequisite required within 10 days of application].

January 16th, 2013 5:46pm Wed Underwriting [Maddie McWerter] sends file to Sandy Steele for decline due to expired 10-day adverse letter (i.e., no response from Dudek and Cross).

January 18th, 2013 10.09am Fri Allison Williams replies to Sandi Steele and states *"This file is in litigation and the seller could sell at any moment. If that happens and the file is cancelled, that could be a problem. My advice has been to leave the file open until this pending litigation is resolved or until the docs / appraisal expires, but nobody is listening to me. The attorneys are in negotiation still as a couple of days ago but the buyer {Dudek / Cross} has placed an order that the seller cannot sell to anyone else until the matter is resolved. I think someone there should speak to our attorney about how to proceed. We could get drawn into this law suit if in fact becomes a law suit. Linda is the ultimate person that needs to decide this……I will e-mail the buyer again and see if there is any news & let you know. Thanks Allison"*

January 18th, 2013 10.09 am Allison Williams writes to Doreen Cross, Subject "*Any news girl?" and "Hey, Happy Friday! Any update*"

January 18th 2013 10.23am Doreen Cross reply to Allison Williams. "*We filed on the 11th and the seller's received on the 16th. We are hopeful to hear something today, but it is anyone's guess. If they comply, what do we have to re-do on the loan side of things? When I hear something, I'll let you know. Thanks for checking in. Happy Friday to you too! Doreen*"

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[4] *Note, it is common practice for a federal banking institution to provide pre-trial legal counseling to an employee when subpoenaed to trial for a customer.

January 18th 2013 10.23 am Allison Williams forwards Doreen's response to Sandi Steele with "*Hey see below from her today. She is asking me a question in this e-mail that I don't know how to respond. Any suggestions*?"

January 18th 2013 Sandy Steele declines loan due to "incomplete application" and sends to Margie Vincent, First Federal Compliance Officer, to complete. Sandy holds file until 1-23 due to Linda Hitchcock being OOO until then.

January 23rd 2013 Wed Margie Vincent reviews loan as "single female—declines as of 1/18/16 due to incomplete application.

January 30 2013 Wed Loan committee had 2nd review and signed off as agreeing with the original denial decision.

March 4 2013 Mon Subpoena sent to First Federal by Plaintiff's then attorney's Wills Massalon, requesting information of loan file for Dudek / Cross, and referencing the house address and TMS #

August 1 2013 Thur Second Subpoena sent to First Federal requesting this same information. Again answered by First Federal Employee in deposit operations.

August 8 2013 Thur Phone call from Wills, Massalon & Allen to First Federal to confirm and verify that there are no loans for Dudek / Cross with First Federal or relating to the house address or TMS# Attorney Ryan Neville is told "They could not [or would not] provide any information"

June 10, 2014 Mon Angie Miller, custodian of records for First Federal sends 200+ page file on Dudek / Cross loan file to litigating party's attorneys.
Quote "Attached are the documents responsive to the Subpoena issued on **March 4, 2013** regarding the above referenced matter. If I can be of further assistance, please feel to contact me in **the Legal Research Department** of First Federal, A Division of SCBT"

6. Defendants claim Plaintiff cannot show a cause of action based on the violation of a rule of civil procedure.

As repeated above #5.

Plaintiff alleges in its Compliant:

I. Rule 11 Signing Pleadings, Motions, and Other Papers:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

Plaintiff alleges in its Complaint:

II. Federal Rules of Civil Procedures, Rule 26. Duty to Disclose; General Provisions Governing Discovery;
(g) Signing Disclosures and Discovery Requests, Responses, and Objections.

(1) Signature Required; Effect of Signature. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name—or by the party personally, if unrepresented—and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) With respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(ii) Not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

As repeated in paragraph 6 below, the Plaintiff has reasonably construed, based on professional experience, e-mails, phone calls or subpoenas listed below (see paragraph 6 below), that First Federal's legal department was involved from onset of litigation through the 'trial prep' of their employee, Defendant Allison Williams. Morphew contends First Federal, being notified of the litigation between the parties involved, took standard cautionary measures to ensure compliance and legal liability. Later, when receiving the subpoenas during the Plaintiff's discovery, Morphew argues the false responses, lack of responses or severely delayed (claiming 'obstruction') response was due to the Banks intentional obstruction. Those reasons being they had a pecuniary interest (i.e., hoping the sellers would eventually 'fold' and they gain a large

mortgage loan), they were specifically directed by Dudek and Cross to not provide the damaging information, and/or due to First Federal's own failure to comply to cover suspicious activity, potential compliance issues or violations of banking rules, regulations and procedures.

At all times material, and with complete knowledge Cross and/or Dudek had been a long time client AND had currently applied and been denied (at their own hand) mortgage credit, the Bank signed [two separate] responses to discovery that they had "no such client(s)", there was "no such loan", and there was "no such TMS number(s)" (property per the Dudek and Cross sales contract). Morphew argues because of the criminal penalties for improper disclosures, financial institutions must ensure that they do not disseminate information about the subpoena to individuals named in the subpoena or other individuals without a need to know, therefore First Federal, as a federal bank, is required to strictly adhere to the processes in place for legal counsel to review all concerns for legal liability and/or subpoenas received. Therefore the rules of civil procedures should apply and the Defendants Motion should be dismissed in its entirety.

7. Defendants claim Plaintiff has not plead the necessary elements of fraud.

As repcated above. To survive a rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level" and have "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547, 570, 127 S. Ct. 1955, 1960, 1974, 2007).* "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

Fraud: "A false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed—that

deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury."

In this case intrinsic fraud that has been raised to the level of extrinsic fraud. Extrinsic fraud is collateral or external to the trial of the case. Stated another way, the fraud may be extrinsic if the defrauded party did not have access to the disputed information and did not have knowledge of the inaccuracies at the time of trial. The essential distinction between intrinsic and extrinsic fraud is the ability to discover the fraud. Equitable relief from a judgment "is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." *Bryan v. Bryan, 220 S.C. 164, 167-68, 66 S.E.2d 609, 610 (1951).*

"The subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud." *Chewning, 354 S.C. at 82, 579 S.E.2d at 610 (2003).* It's held that it's not limited to the finding of extrinsic fraud to misconduct of an attorney or an officer of the court. Fraud upon the court has been defined as "that 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 the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988)* (quoting H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 408 (2nd ed. 1985)) (emphasis added). The alleged fraud in Morphew's case is not solely perjury, misrepresentation or concealing documents, acts which alone would constitute intrinsic fraud, but involve act(s) of intrinsic fraud accompanied by intentional act(s) or scheme to defraud or mislead the court, making the fraud rise to the level of extrinsic fraud.

Fraud must be proved by showing that the defendant's actions involved five separate elements:

(1) **A false statement of a material fact.**

To be fraudulent, a false statement must relate to a material fact. The prior civil action of the Plaintiff was based on the Defendants breach of contract by their failure to apply and secure lending per contract and their intentional failure to close escrow. Morphew claimed due to their failures, they had no right to compel Specific Performance.

Defendants stated many false statements of material facts in regards to their clients lending status including these declarations, "*there is no such people or property address on file with our institution,*" and "*there were no records of any loans with that number at their institution*" (in response to 2 subpoenas for Dudek and Cross lending information during the discovery period), "*we received all information or documents requested from the buyers on 12/20/16,*" "*we were cleared to close on 12/20/16,*" "*our clients had secured financing but we could never set a closing date due to waiting on a document from the sellers,*" "*our clients applied for lending per contract,*" "*our clients did everything they could to close per contract,*" "*our clients could not apply for financing or order appraisal until the land survey dividing the land was recorded at the county.*"

(2) **Knowledge on the part of the defendant that the statement is untrue.**

Plaintiff clearly states, that all times material, the Defendants were well aware Dudek and Cross applied for financing after their sales contract expired (i.e., invalid sales contract at application), AND they never completed their mortgage application (i.e., failed to supply all the documents required to complete an application for review). Contrary to the false statements made above by the Bank or Williams, Defendants, with complete knowledge, knew their clients did not

apply or secure lending per contract, never submitted a complete application, were never cleared to close, and were NEVER "ready, able and willing to close" as legally required to compel Specific Performance.

(3) **Intent on the part of the defendant to deceive the alleged victim.**

In layman's terms the false statement must be made with the intent to deprive the victim of some legal right, in this case, deprived Morphew of her ability to present her full case at trial, and her legal right to the property [loss of vested property right (economic damages)]. Equitable relief from a judgment "is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." *Bryan v. Bryan, 220 S.C. 164, 167-68, 66 S.E.2d 609, 610 (1951)* Furthermore, the Defendants recklessly committed obstruction of justice and provided false or misleading information with an intent to deceive the parties to the prior civil action. Those actions plus their acts of perjury and misrepresentation, and omissions during the prior trial were intended to deceive the courts in order to sway its ruling in favor of their clients, and/or allegedly to cover up their own unlawful or fraudulent actions prior to the trial.

(4) **Justifiable reliance by the alleged victim on the statement(s).**

The victim's reliance on the false statement must be reasonable. Morphew's legal right to fully present her case (as stated herein) provides her 'justifiable reliance' on those statements made by the Defendants. The other alleged victim is the courts. In the judicial process, when a witness is sworn in, they swear to tell the truth, the whole truth, and nothing but the truth. This broad term includes "silence, when there was a duty to disclose". In both this oath and the judicial mechanics of trial, the court relied on the Defendants to uphold the standards of the court and to be truthful and forthright in order to make a lawful informed decision.

(5) Injury to the alleged victim as a result.

As repeated herein. Plaintiff was "deprived of the opportunity to fully exhibit and try her case," which violated her legal right. Furthermore, because of the fraudulent acts and omissions of the Defendants, Morphew has been deprived all these years of her legal right to the property, lost equity and interest advantages in ownership of the property [loss of a vested property right (economic damages] , and incurred excessive hours, money and emotional distress in obtaining the property, and defending her case.

Furthermore, the allegation that Morphew 'has not plead the necessary elements of fraud' has been totally unsupported by the Defendants in their Motion to Dismiss, therefore lacks merit for grounds of dismissal. But even under the Banks and Williams' unsupported allegation, Morphew's Complaint is so thoroughly particularized that it must survive and Dudek and Cross' motion must be dismissed.

8. Defendants claim, based on the allegations of the Complaint, Plaintiff cannot prove Interference with a Contractual Relationship.

A cause of action for tortious interference with contract is a tort cause of action separate from a cause of action arising from the contract itself. The cause of action for tortious interference with a contractual relationship is premised on the tortious behavior of someone not a party to the contract. Tortious interference with contract rights can occur where the tortfeasor disrupts the ability of one party to perform his obligations under the contract, thereby preventing the plaintiff from receiving the performance promised.

The South Carolina Supreme Court has explained the theory of the tort as follows: The theory of this doctrine is that the parties to a contract have a property right therein, which a third person has no more right maliciously to deprive them of, or injure them in, that he would

have to injure their property. Such an injury without sufficient justification, amounts to a tort for which the injured party may seek compensation by an action in tort for damages. *Chitwood v. McMillan, 189 S.C. 262 (S.C. 1939).*

Under South Carolina law, the elements of a cause of action for tortious interference with contract are: (1) the existence of the contract; (2) the Defendants knowledge of the contract; (3) the Defendants acted intentionally and improperly,; (4) the absence of justification; and (5) resulting damage. *Webb v. Elrod, 418 S.E.2d 559, 561 (S.C. Ct. App. 1992).* A tortious interference claim thus "presupposes the existence of a valid, enforceable contract." *Jackson v. Bi-Lo Stores, Inc., 437 S.E.2d 168, 171 (S.C. Ct. App. 1993).*

A motion under Rule 12(b)(6) merely tests the legal sufficiency of a complaint, requiring a court to construe the complaint liberally, assume all facts as true, and draw all reasonable inferences in favor of the plaintiff. *Twombly, 550 U.S. at 556-57.* Although the court must draw all justifiable inferences in favor of the Plaintiff, the Plaintiff must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence. Anderson, 477 U.S. at 252; *Stone v. Liberty Mut. Ins. Co., 105 F.3d 188, 191 (4th Cir. 1997).* Rather, the evidence must be such that the fact-finder reasonably could find for the nonmoving party. Anderson, 477 U.S. at 252 (i.e., the complaint must do more than simply leave open a possibility that the plaintiff could prove its case. Instead, the pleading must contain detail sufficient to create a reasonable expectation that discovery will surface evidence of wrongdoing). Plaintiff maintains a genuine issue of material fact concerning each element of the cause of action has been raised or inferred within the complaint, thus meeting the elements necessary to establish such tort, and can be proved unquestionably at trial.[5]

[5] Plaintiff states all facts, allegations and inferences within the complaint can be supported with material facts obtained during discovery.

For these reasons above, the Defendants Motion to Dismiss should be dismissed in its entirety

9. Defendants claim Plaintiff has failed to plead facts that would allow Plaintiffs to receive punitive damages as requested in this matter.

A person who commits fraud may be liable for damages, possibly including punitive damages[6], for the tort of deceit, which is the 2nd element of fraud (per para. 8 above). South Carolina allows punitive damages without limitation. In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence *S. C. Code § 15-33-135; King v. Allstate Ins. Co. , 251 S. E. 2d 194 (S. C. 1979).*

In addition to meeting the requisite burden of persuasion, plaintiff must also prove that the defendants performed some reprehensible act justifying punitive damages. Generally, the law requires some form of intentional or indifferent act. Specifically, the conduct deserving punitive damages includes fraud; the intentional misrepresentation of the truth or the concealment of a major fact causing another to act to their injury (Black's Law Dictionary, 7th Ed). In addition, conduct that is reckless; unreasonably risky without care for the risk to others, malicious; intending to harm another without reason or justification, justifies punitive damages. Other severe conduct is wanton and willful. Wanton conduct is the unreasonable or malicious risk of harm without a care for the consequences. The Defendants committed, knowingly and willfully, fraud/fraud on the courts, which should be considered to be to be an unfair and deceptive business practice in and therefore violates "the Agencies" laws, regulations or policies. Willful

[6] **Punitive Damages:** "damages exceeding simple compensation and awarded to punish the defendant." Punitive damages are awarded in addition to actual damages in certain circumstances. Punitive damages are considered punishment and are awarded when the defendant's behavior is found to be especially harmful [i.e., fraud on the courts], but are normally not awarded in the context of a breach of contract claim. See e.g. *O'Gilvie Minors v. United States 519 US 79 (1996)*

conduct, on the other hand, represents conduct that is not necessarily malicious, yet voluntarily and intentionally performed.

Per S.C. Code §15-32-520(A), "Bifurcated trials; clear and convincing evidence standard; factors for liability determination; review of jury determination; multiple defendants; All actions tried before a jury involving punitive damages, if requested by any defendant against whom punitive damages are sought, must be conducted in a bifurcated manner before the same jury."

The allegation that Morphew has failed to plead facts that would allow Plaintiffs to receive punitive damages as requested in this matter has been totally unsupported by the Defendants in their Motion to Dismiss, therefore lacks merit for grounds of dismissal. But even under the Banks and Williams' unsupported allegation, Morphew contends the complaint in itself, for fraud/fraud on the courts, clearly meets or exceeds the requirement to compel punitive damages. For these reasons above, the Defendants Motion to Dismiss should be dismissed in its entirety.

10. Defendants claim Plaintiff is not entitled to damages based on the alleged fraudulent statements made by Bank and Williams.

Generally, a ruling on a motion to dismiss under Rule 12(b)(6), SCRCP, must be based solely on the allegations contained in the complaint. *Baird v. Charleston County, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).* "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." *Jarrell v. Petoseed Co., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).*

As repeated in prior paragraphs. Furthermore, Morphew states that the Defendants' unlawful or fraudulent acts/conduct on the courts in the Prior Civil Actions, discovered after adjudication, directly affected or manipulated the court to erroneously rule in Dudek and Cross'

favor. Their fraudulent evidence and testimony substantially assisted in the courts unlawful ruling that their clients, Dudek and Cross, acted at all times in good faith and fair dealings, they were ready, able and willing to close at all times material, and their contract was and is currently valid and enforceable, hence allowing for Specific Performance. The Banks and Williams actions 1) deprived Morphew of her ability to present her full case at trial, 2) deprived her of her legal rights the property for all these years, loss of a vested property right (economic damages), resulting in equity and interest lost, and 3) have caused Morphew excessive time, money and personal distress.

Morphew's further allegations of Fraud/Fraud on the courts, which include perjury and falsifying of documents, is a particularly serious type of fraud because of the high degree of faith the Court placed in the truth of the representations. Perjury is considered a crime against justice, since lying under oath compromises the authority of courts, grand juries, governing bodies, and public officials.

The foundation of our republic is that we are a nation governed by laws, not by men. For the rule of law to be maintained, there must be a credible system of justice. Any effort to undermine the integrity of the judicial system subverts the principle of a nation of laws. And that system of justice depends for its very survival on maintaining the integrity of the oath that a person swears to tell the truth. Otherwise, if we turn a blind eye and allow people to lie under oath, destroy or hide evidence, or conspire to present false and misleading testimony, the entire notion of justice and truth become meaningless. Congressional Record, S1634, Congress USA (February 12, 1999).

In a case that includes perjury, the plaintiff must prove that the allegedly perjurious statement is not subject to a literal, truthful interpretation. *United States v. Tonelli, 577 F.2d 194, 198 (3d Cir. 1978).* Proof of perjury is not enough to establish fraud upon the court. e.g., Geo. P.

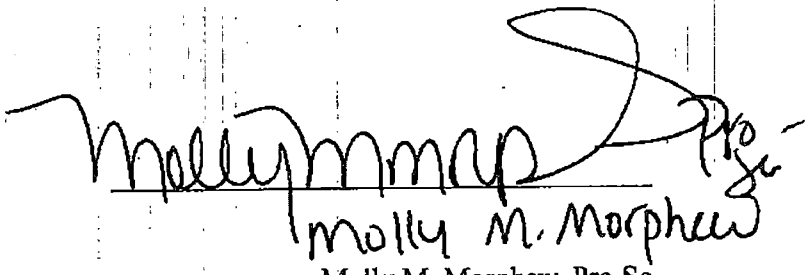
Reintjes Co., 71 F.3d at 49. In this case, however, accusation of perjury forms the basis of the fraud upon the court claim. Committing perjury, misrepresentations, obstruction of justice and forgery clearly demonstrates the Defendants Bad Faith and Unfair Dealings and plainly demonstrates a conspiracy to commit fraud, in that these actions directly affected, and are currently still affecting, the courts and Morphew. Morphew contends the complaint in itself, for fraud/fraud on the courts, clearly meets or exceeds the requirement to compel damages.

For these reasons above, and due the extent of the perjury committed, and the alleged conspiracy to commit fraud, the Defendants actions should be considered to be so outrageous and unlawful, that the courts dismiss the Motion with prejudice based on the merits of the Complaint.

Conclusion

For all the foregoing reasons, the Court should deny Defendant's Motion to dismiss in its entirety.

Respectfully Submitted,



Molly M. Morphew, Pro Se
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October 25, 2016

FORM 4

FILED - RECORDED

2016 OCT 31 AM 10:48

ORDER/JUDGMENT IN A CIVIL CASE

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

CASE NUMBER 2013CP1800183

2014 NOV -6 PM 12:26

CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)	DEFENDANT(S)
Molly M Morphew	Thomas Ferro Stephan Dudek Lorraine Ferro Doreen Cross

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.**

Jerry L. Clyburn — 3078 — 11/6/2014

Master in Equity / **Judge Code** / **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

ATTCH. #1

For Clerk of Court Office Use Only

This judgment was entered on **November 6, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **November 6, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

John A. Massalon PO Box 859 Charleston, SC 29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

David A. Collins PO Box 40578 Charleston, SC 29423
Thomas Ferro 788 East Butternut Road Summerville, SC 29483
Lorraine Ferro 788 East Butternut Road Summerville, SC 29483

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

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
EQUITY DIVISION

Civil Action No.: 2013CP1800074
consolidated with Civil Action No. 2013CP1800183

Stephen Dudek, Doreen Cross,
Plaintiffs

Versus

Thomas M Ferro, and Lorraine B Ferro,
Defendants

AND

Molly M Morphew,
Plaintiff

Versus

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro,
Defendants

ORDER

2014 NOV -5 PM 12:57
DORCHESTER COUNTY

Presiding Judge: James E. Chellis
Master in Equity

June 11, 2014 and Thursday, June 12, 2014

Appearances:

For Plaintiff Morphew:
Wills Massalon & Allen, LLC
John A. Massalon, Esquire
97 Broad Street
P. O. Box 859
Charleston, South Carolina 29402

For Defendants :Dudek & Cross
Law Firm of David A. Collins, LLC
David A. Collins, Esquire
P. O. Box 40578
Charleston, South Carolina 29423

Defendants:
Thomas M Ferro and Lorraine B Ferro,
Defendants,
Pro Se

Emily R. Mirek, Court Reporter and Notary Public

PREFACE

This is a breach of contract action. Plaintiff Morphew seeks enforcement of a contract for the purchase of real estate she entered into with Defendants Ferro on December 16, 2012 (the Morphew Contract). Defendants Dudek and Cross seek enforcement of a contract for the purchase of real estate they entered into with Defendants Ferro on October 23, 2012 (the Dudek/Cross Contract). The real property described in each contract is the same. It consists of a residential property on 6.006 acres near Summerville (the Real Property) Plaintiff's Exhibit 23, cf. endnote 10). All parties agree the residential real property is unique. All Parties agree both contracts are unambiguous.

Plaintiff Morphew and Defendants Ferro assert the latter contract, the first contract, is not enforceable. Plaintiff Morphew and Defendants Ferro assert Defendants Dudek and Cross failed to meet conditions of their contract in a timely manner. Plaintiff Morphew alternatively seeks damages against Defendants Ferro on breach of the Morphew Contract should the Court direct the specific performance of Dudek/Cross Contract. Hence, Defendants Ferro champion the Morphew Contract. As such, Plaintiff Morphew and Defendants Ferro have consistent positions on the Dudek/Cross Contract. The latter consistent positions diverge on the issue of Defendants Ferro's breach of the Morphew Contract.

This Court finds Plaintiff Morphew and Defendants Ferro consistent position untenable. The Dudek/Cross Contract is enforceable. This Court will order specific performance of that contract. The Morphew Contract is contingent on termination of the Dudek/Cross Contract. Hence, this Court will declare that contract enforceable only if Defendants Dudek and Cross fail to complete the performance of the Dudek/Cross Contract as ordered by this Court. Since the Dudek/Cross Contract is enforceable subject to conditions, this Court will fashion the remedy of specific performance giving due regard to the conditions. the time for completion of which will need to be reset, since the conditions are reasonably designed to protect all parties to the Contract. Plaintiff Morphew has a conditional contract that is not enforceable unless Defendants Dudek and Cross elect to terminate the contract as directed to be specifically performed. The Court's analysis follows.

GUIDING PRINCIPALS OF LAW & EQUITY

This Court is guided by many principals of law and equity. These guides include the following:

1. It is not the province of the courts to construe contracts broader than the parties have elected to make them or to award benefits where none was [sic] intended. *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 151, 533 S.E.2d 597, 601 (2000).
2. The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous. *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003).
3. The law by which a contract is to be governed, is resolved into the terms whereby it is entered into; provided that the contract be consistent with morality and not repugnant to law or the principles of public policy. *Satterwhite's Adm'rs v. McKie*, 16 S.C.L. 397, 398 (S.C. Const. App. 1824).
4. Where a contract's language is plain and unambiguous, the language used by the parties "determines the instrument's force and effect." *Jordan v. Sec. Group, Inc.*, 311 S.C. 337, 330, 428 S.E. 2d 705, 707 (1993).
5. A court reviewing a written contract must discern:
   [T]he intention of the parties and the meaning[, which] are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945); *see also ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct.App.2011) ("It is not the function of the court to rewrite contracts for parties."). "Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Helms v. Helms*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012).
6. If a promisor prevents or hinders the occurrence of a condition, or the performance of a return promise, and the condition would have occurred or the performance of the return promise been rendered except for such prevention or hindrance, the condition is excused, and the actual or threatened nonperformance of the return promise does not discharge the promisor's duty, unless (a) the prevention or hindrance by the promisor is caused or justified by the conduct or pecuniary circumstances of the other party: or (b) the terms of

the contract are such that the risk of such prevention or hindrance as occurs is assumed by the other party. Restatement (First) of Contracts § 295 (1932)

7. Impracticability excuses the non-occurrence of a condition if the occurrence of the condition is not a material part of the agreed exchange and forfeiture would otherwise result. Restatement (Second) of Contracts § 271 (1981).
8. Waiver is the voluntary and intentional relinquishment of a known right. *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387. It may be implied from circumstances indicating an intent to waive. *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981); *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Ct.App.1987). Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver. *Bonnette*, 282 S.E.2d 597. *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928-29 (Ct. App. 1994).
9. In the construction of a contract, the intention of the parties to be collected from the instrument, (if in writing,) should be constantly in view, and in their performance, good faith and fair dealing is always required. And from hence, [the Court] deduce[s] the rule that when a contract stipulates for the performance of a condition on the event of a contingency, the occurrence of which must be known to one of the parties, but not necessarily known to the other, it is the duty of him to whom it is known to give notice of it to the other. . . *Birdseye v. Davis*, 13 S.C.L. 296, 298, 297-98 (S.C. Const. App. 1822).
10. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. *Restatement (Second) of Contracts § 205 (1981).*
11. The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case." *Guignard v. Atkins*, 282 S.C. 61, 64, 317 S.E.2d 137, 140 (Ct.App.1984); *accord Bishop v. Tolbert*, 249 S.C. 289, 298, 153 S.E.2d 912, 917 (1967) ("The rule is well settled that the granting of specific performance is not a matter of absolute right, but rests in the sound or judicial discretion of the Court, guided by established principles, and exercised on a consideration of all the circumstances of each particular case."). "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct.App.1985). "[S]pecific performance ... is only available to enforce a contract that is fair, just, and equitable." *Hodge v. Shea*, 252 S.C. 601, 612, 168 S.E.2d 82, 87 (1969). "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).

FINDINGS OF FACT

1. The Dudek/Cross Contract is a conditional contract. Four conditions[1] are in the "printed matter" of the Contract. The parties agree these conditions require that "TIME IS OF THE ESSENCE." These conditions are found in Paragraph 3[2]; Paragraph 8;[3] Paragraph 12;[4] and Paragraph 19: Condition of Property (B. Inspection[5]) and (D. Wood Infestation[6]).

2. Ten conditions are set out in the Paragraph 29 Contingencies[7]. Notably, these ten conditions do not provide that time is of the essence. Moreover, these stipulations preempt the printed matter. These ten conditions are stated in three separate addenda, entitled Addendum A[8], Addendum B[9] and Addendum C[10].

3. The intention of the parties and the meaning of the Dudek/Cross Contract can be gathered primarily from the contents of the writing itself. In other words, this Court finds that the Dudek/Cross Contract is clear and unequivocal from the four corners of the instrument. This Court finds that the intent of the parties is the sale and purchase of the Real Property. Even though the conditions, in the stipulated contingencies, do not expressly require that time is of the essence, these stipulations do not materially discharge the time of the essence provisions. The parties intended that this transaction would occur on or before a date certain, specifically, November 30, 2012. The Dudek/Cross Contract's meaning is determined by the Contract's contents alone. This meaning is express. This Court finds the Dudek/Cross Contract is clear and capable of legal interpretation. Thus, this Court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. See, *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001). *Park Regency, LLC v. R & D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 534 (Ct. App. 2012).

4. The meaning[11] of the Dudek and Cross Contract is to give effect to the sale and purchase of the Real Property, a unique residential real property. This objective, i.e., to give effect to the intentions of the parties, culminates at that point in time when Defendants Ferro deliver a deed of conveyance[12] to Defendants Dudek and Cross in exchange for the purchase price. The purchase price is Three Hundred Three Thousand Dollars ($303,000.00). Defendants Ferro agree to pay Five Thousand Dollars ($5,000.00) of Defendants Dudek and Cross' closing costs.

5. Paragraph 6 of the Contract provides: "Purchase price shall be paid as follows: ■ Subject to financing. Financing to be obtained by ■ Conventional." Cross testified she and Dudek were

prepared to pay 20% of the purchase price in cash, financing 80% with a conventional residential loan.

6. Paragraph 3's closing date condition is dependent on successful completion of all of the conditions. This condition cannot be enforced until Defendants Dudek and Cross can deliver to Defendants Ferro the purchase price, discussed *infra*. Additionally, Defendants Dudek and Cross are not obligated to deliver the purchase price until Defendants Ferro perform the conditions for which they are responsible[13].

7. Defendants Ferro rely heavily on the failure of Defendants Dudek and Cross to have performed under Paragraph 8. A review of the condition reveals that the obligation to provide written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in the contract, is impossible. No other provision in the Dudek/Cross Contract alters the obligation to provide written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions.

8. Defendants Dudek and Cross's loan officer testified that the conventional residential loan is subject to rules and regulation. Her testimony indicates her financial institution has loan criteria that change. This testimony infers these rules and regulations are also banking regulations. She stated the regulations change from time to time. She testified that her financial institution provides pre-authorized loan approvals upon a potential borrower's successful application for an approval of residential financing. She testified pre-approval loan letters contain conditions that cannot be changed. She testified pre-approved loans evolve into loan applications. Her testimony established that pre-approved loan applications become loan applications when a specific property is identified. Her testimony also established that a signed application is not necessary for a loan officer to begin initiating the lender's processing. She testified that loan applications, if the potential borrower meets the loan processing conditions, thereafter evolve into loan commitments. She testified loan commitments contain conditions. Further, her testimony that a loan commitment for a conventional residential loan will always be subject to conditions; such as, the borrower's assets and liabilities remain substantially the same as they were at the time of the loan's application[14], continued verification of employment, mortgagee title insurance, free of liens and encumbrances, except those acceptable to the lender, *et. cet.*, (Plaintiff Exhibit 16, generally, and specifically, Residential Loan Commitment,

12/12/12). This testimony and documentary evidence is consistent with this Court taking judicial notice of the fact that conventional residential loan approvals without conditions are impossible to achieve.

9. Plaintiff Morphew and Defendants Ferro assert Defendants Dudek and Cross failed to perform this condition. This Court finds that an unconditional loan approval as described in Paragraph 8 is impossible[15] to achieve. In fact, an unconditional commitment for a conventional residential loan is impossible. A conventional residential loan commitment is subject to conditions. The legal effect of this impossibility is to excuse the condition. Hence, the culmination of the transaction on or before November 30, 2012 is excused.

10. The Court however finds that the temporal condition that TIME IS OF THE ESSENCE cannot be ignored altogether because the intent of the Dudek/Cross Contract was to complete the transaction with TIME IS OF THE ESSENCE. Notably, this Court finds the term is a mutual condition that conversely infers mutual benefits. The Contract created conditions for both parties to observe the resounding term, TIME IS OF THE ESSENCE[16]. In fact, Defendant Cross testified she immediately ordered a home inspection upon completion of the executed contract. (Transcript page 35, line 20). This act demonstrates Defendants Dudek and Cross understood the intent and meaning of the Dudek/Cross Contract.

11. The evidence reveals that Dudek and Cross had a completed home inspection by November 3, 2012. On that date, the evidence reveals Dudek and Cross provided Defendants Ferro a detailed list of critical concerns. The first of which embodies four points concerning the structural integrity[17] of the residence[18]. Additional critical concerns include plumbing water damage (6 points), moisture control (4 points), electrical issues (6 points), safety (4 points), utility maintenance (2 points), and four miscellaneous points. (Plaintiff's Exhibit 5; Transcript page 36, lines 5-8).

12. The Court finds Defendants Dudek and Cross detail of problems they wanted addressed consistent with their rights under the contract (Plaintiff's Exhibit 3, Dudek/Cross Contract Addendum A, Item 1) and infers they acted on the condition time is of the essence to achieve the November 30, 2012 closing date. Moreover, development of the critical concerns list and notifying Defendants Ferro within 10 days of the execution date of the contract supports this Court finding Defendants Dudek and Cross acted with good faith were dealing fairly with

Defendants Ferro. The detail of critical concerns establishes the importance of clear communication to avoid delays that poor communication invariably creates. The Defendant Cross testified Mr. Ferro's reply was a "few simple lines" indicating that he would take care of the structural problems, the electrical problems, would make sure that the bath leak in his bathroom was repaired, the floor would be repaired if needed and a few and other things like that (Transcript page 36, lines 12 – 20). This evidence is not controverted (Plaintiff's Exhibit 17, see Thomas Ferro email. dated November 11, 2012 @ 2:51 P.M.). Also, the uncontroverted evidence reveals a copy of the approved subdivision plat, dated October 20, 2012, was received by Defendants Dudek and Cross the Friday after Thanksgiving. The effective utility of which is Defendants Dudek and Cross were delayed until at least November 26, 2012 to further pursue the purchase price through the conventional residential financing. Moreover, the evidence reveals a wood infestation report (CL 100) was not provided until November 30, 2012. That report revealed a number of problems.

13. The Court finds that Defendants Ferro failure to address each item of critical concern in the manner in which it was presented violates Defendants Ferro's obligation to deal in good faith and fairly with Defendants Dudek and Cross. The Court finds Defendants Ferro's failure to immediately respond to Defendants Dudek and Cross in writing to the critical concerns to eliminate, or at least lessen, misunderstandings for Defendants Dudek and Cross to evaluate facts regarding their due diligence, together with Defendants Ferro's failure to provide an approved subdivision plat until effectively four (4) days prior to the Paragraph 3 date. and the utter failure to provide a timely "clear" CL 100, demonstrate that Defendants Ferro did not perform their obligations under the contract. These failures prevented or hindered the ability of Defendants Dudek and Cross to complete their evaluation of the property as the Contract provides (Plaintiff's Exhibit 17. see Susan Nicolson email dated. November 27, 2012 @12:44 P.M.). Thus, this Court finds Defendants Ferro's failures excuse the obligation of Defendants Dudek and Cross to deliver the purchase price on or before November 30. 2012 by the method of payment to which the parties agreed. Restatement (First) of Contracts § 295 (1932).

14. This Court finds the actions of Defendants Ferro establish they failed to observe TIME IS OF THE ESSENCE, a mutual obligation that the contract required. The contract expresses this refrain five (5) times in the printed matter. The Court finds that Defendants Ferro's failure to

respond with dispatch, and with clear intentions, effectively waives their right to assert Defendants Dudek and Cross did not comply with their obligation to observe that TIME IS OF THE ESSENCE.

15. The Court finds Defendants Dudek and Cross are willing, able and ready purchasers of the Real Property.

16. The Court finds the Dudek/Ferro Contract is enforceable.

17. The Court finds Defendants Ferro shall complete the sale of the property to Defendants Dudek and Cross.

18. The Court finds the Defendants Dudek and Cross' Paragraph 8 conditions are impossible. Nonetheless, Defendants Dudek and Cross are bound by the obligation of good faith and fair dealing which, when considered with the intent and meaning of the Contract, requires them to pursue conventional residential loan financing without delay. Since, the payment method to consummate the sale is a conventional residential loan, the date of the closing shall occur as soon as practicable once Defendants Dudek and Cross procure the loan commitment. Defendants Dudek and Cross shall enlist the services of a closing attorney to assure the conditions of the conventional residential loan commitment shall proceed with the urgency of time is of the essence. Thus, the intent and meaning of the Contract is reset to the date this Order becomes the law of the case.

19. The obligation to observe time of the essence applies to both Defendants Dudek and Cross and to Defendants Ferro. Since both parties are obligated to observe that time is of the essence both parties enjoy a reciprocal benefit by this provision. The Court finds the mutual obligation that the parties must deal with one another in good faith and with fairness must be addressed. The obligation for good faith and fair dealing, implied in every contract, is essential in the Dudek/Cross contract relationship with Defendants Ferro.

20. In this case, had the Defendant Ferro reciprocated this mutual contractual obligation, the sale and purchase of the Real Property would have occurred nearly two years ago, and would have saved all parties tremendous time, effort, expense and perhaps, as importantly, emotional equity. Regrettably, Defendants Ferro allowed an innocent third party, Plaintiff Morphew, in this consolidated case, to become entangled in an existing contractual relationship. In this Court's view, Defendants Ferro's acts demonstrate they failed to exercise a simple rule of common

decency that is, "do unto others as you would have them do unto you"[19]. A corollary to the noble principal is "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Restatement (Second) of Contracts § 205 (1981). See, *Birdseye v. Davis*, 13 S.C.L. 296, 297-98 (S.C. Const. App. 1822) (In the construction of a contract, ***the intention of the parties*** to be collected from the instrument, (if in writing,) should be constantly in view, and ***in their performance, good faith and fair dealing is always required.***) (This Court's emphasis).

21. The Court finds Defendants Ferro are in default of the Dudek/Cross Contract for the reasons stated in this Order. Pursuant to Paragraph 16, the Court finds Defendants Dudek and Cross are entitled to recover reasonable costs, including a reasonable attorney fee. To this end, Defendants are at leave to apply, on or before ten (10) days of the date of this Order, for costs and attorneys fees due from Defendants Ferro. This Court will schedule a factual hearing on or after 10 days from the date of filing the application to ascertain a reasonable attorney fee and what costs should be recovered. If Defendants Dudek and Cross fail to apply for costs and attorneys fees within ten (10) days of the entry of this Order, Defendants Dudek and Cross shall be deemed to have waived their rights under Paragraph 16.

22. Defendants Dudek and Cross seek specific performance of the Dudek/Cross Contract. Defendants Dudek and Cross claim against Defendants Ferro allege a breach of contract; however, they maintain the property is unique and no adequate remedy at law is available. This Court agrees. The property is six and six-one thousandth (6.006) acres on the outskirts of Summerville, South Carolina between the developing communities of Knightsville and Jedburg. In the last decade and one-half this area has enjoyed significant growth in commercial development in a rural setting. The Real Property is close to new public elementary and middle schools, and Summerville's private school, Pinewood Preparatory School. It presents easy access to the Town of Summerville, and U. S. Highway 78, which is the predominant route between the Summerville and the County Seat, St. George. In contrast, it is a far cry from a condominium and significantly different than a home in a tract builder's residential subdivision. This Court finds the property unique. Specific performance should be granted because there is no adequate remedy at law. Specific enforcement of the contract is equitable between the parties. See, *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000).

23. The Court finds the Dudek/Cross Contract is fair, just, and equitable. See, *Anthony v. Eve*, 109 S.C. 255, 263, 95 S.E. 513, 515 (1918); *McChesney v. Smith*, 105 S.C. 171, 176, 89 S.E. 639, 641 (1916).

24. Giving due regard to the terms of the contract and the facts and circumstances concerning the intent and meaning of the Dudek/Cross Contract, this Court finds it should order that done which ought to be done. Hence, compelling performance of the Dudek/Cross Contract is an equitable result. Moreover, giving effect to the intent and meaning of the contract by compelling Defendants Ferro to sell the property to Defendants Dudek and Cross promotes a just result.

25. The Court finds Defendants Dudek and Cross worked in good faith to consummate the sale. The evidence supports a finding Defendants Ferro acts and omissions demonstrated unfair dealing. Defendants Ferro fail to point to meaningful communication with Defendants Dudek and Cross whereas the acts of Defendants Dudek and Cross infer they acted with care, kept Defendants Ferro advised of the concerns they had. This Court finds Plaintiff's Exhibit 3 emails demonstrate Defendants Ferro obfuscated the intent and meaning of the contract in the performance of conditions incumbent upon them to fulfill. The Court finds Defendants Ferro acted without intent to fulfill the contract according to its plain terms. The circumstances imply Defendants Ferro attempted to use the contract's time of the essence provisions as an exemption, and tried to use it as a tool to avoid their having to deal with critical concerns raised by Defendants Dudek and Cross, who were acting at all times within their rights under the contract.

CONCLUSIONS OF LAW

1. The Findings of Fact shall be deemed Conclusions of Law. The Conclusions of Law shall be deemed Findings of Fact. Additional Conclusions of Law are as follows:

2. The Dudek/Cross Contract is valid.

3. The Dudek/Cross Contract is a conditional contract.

4. The Dudek/Cross Contract is fair, just, and equitable.

5. Paragraph 12 of the Dudek/Cross Contract is impossible to perform. Defendants Dudek and Cross's failure to comply with Paragraph 12 is excused. However, Defendants Dudek and Cross did all they could have done to achieve a conventional residential loan to complete the method of payment. Moreover, they carried into execution of the terms of the Contract with the approbation of Defendants Ferro.

6. Defendants Ferro frustrated the rights of Defendants Dudek and Cross to perform their due diligence. Thus, Defendants Ferro excused the intent and meaning of the contract to culminate on or before November 30, 2012 with TIME IS OF THE ESSENCE.

7. Defendants Ferro's acts and omissions waived their right to require this Court to give effect to the intent and meaning of the contract to culminate on or before November 30, 2012 with TIME IS OF THE ESSENCE.

8. Defendants Ferro are in default of the Dudek/Cross Contract. Defendants Dudek and Cross have a contractual right to pursue recovery of a reasonable attorney fee and costs of this action. In order to assert this right, Defendants Dudek and Cross shall apply to recover these costs and fees on or before ten (10) days of the entry of this order.

9. Defendants Dudek and Cross have demonstrated they are willing, able and ready to purchase the Real Property, however, since approximately two (2) years have passed since the agreement was originally made, in order to give effect to the intent and meaning of the contract, they are granted the right to update their due diligence requirements while they renew their loan application.

10. Defendants Dudek and Cross shall be entitled to an updated Residential Home Inspection in accord with Paragraph 19 (B) that is satisfactory to them.

11. Defendants Ferro shall procure a CL 100 in accord with Paragraph 19 (D) that is satisfactory to Defendants Dudek and Cross.

12. The Dudek/Cross Contract intends and means that Defendants Dudek and Cross are to purchase the Real Property for Three Hundred Three Thousand Dollars ($303,000.00) and the method of payment shall be a conventional residential loan. The closing costs shall be paid as set forth in the Dudek/Cross Contract.

13. Defendants Ferro shall observe the obligation of good faith and fair dealing in performance of the Dudek/Cross Contract.

14. Defendants Ferro shall perform those conditions of the contract they are responsible for without delay. They shall inform in writing with specificity the Defendants Cross and Dudek what, if any, repairs they intend to complete to meet the satisfaction of Defendants Dudek and Cross. Although the finding of this Court established the Defendants right to personal satisfaction, the standard of satisfaction must meet the test of a reasonable person (*supra*,

endnote 13). In assessing what is reasonable the obligation of good faith and fair dealing prevails.

15. Defendants Ferro shall deliver a deed upon payment of the purchase price that complies with the provisions of Paragraph 3. and Addendum A and Addendum B of the Special Stipulations.

16. This Order shall be construed to terminate the Morphew Contract upon the exchange of the purchase price by Defendants Dudek and Cross for delivery of the deed by Defendants Ferro. Hence. at that point in time, Defendants Dudek and Cross grant of mortgage lien to their conventional residential loan lender shall be free of the encumbrance of the Morphew Contract.

17. The Morphew Contract cannot be specifically performed unless the Dudek/Cross Contract is terminated because a condition of the contract cannot be performed.

18. If the Dudek/Cross Contract is terminated, Defendants Dudek and Cross shall notify this Court and Plaintiff Morphew immediately, and file with this Court the written termination of Contract specifying the condition of the contract that could not be performed.

19. The Morphew Contract is a valid contract.

20. The Morphew Contract is a conditional contract.

21. The Morphew Contract is fair, just and equitable.

22. Thus, if the Dudek/Cross Contract is terminated, Defendants Ferro specifically perform Plaintiff Morphew Contract according to its terms.

23. Since the Morphew Contract is an enforceable contract conditioned on the termination of Defendants Dudek and Cross Contract, Defendants Ferro are not in default of the Morphew Contract. Absent a default, Plaintiff Morphew is not entitled to recover her costs and attorney's fee. NOW THEREFORE, IT IS

ORDERED, ADJUDGED, AND DECREED that Defendants Ferro shall deliver a deed of conveyance to the Real Property to Defendants Dudek and Cross in exchange for the purchase price in accord with the terms of sale and purchase contained in the Dudek/Cross Contract as directed to be given effect by the Findings of Fact and Conclusions of Law set forth in this Order. AND, IT IS

SO ORDERED, ADJUDGED, AND DECREED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
November 6, 2014

[1] Paragraph 11. is not contested, however, this accounts for a fifth condition with Time is of the Essence. The Court considers it in construing the intent and meaning of the Dudek/Cross Contract.

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 1[30 ~~December 31~~ ,2012 , not later than 6:00 p.m. **Time is of the essence.** Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 90,000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. **Time is of the essence.** Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐will ☐will not be added to the mortgage. VA funding fee ☐will ☐will not be added to the mortgage.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. 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.**

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by November 20, 2012. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. **Time is of the essence.** If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before November 30, 2012. **Time is of the essence.** If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

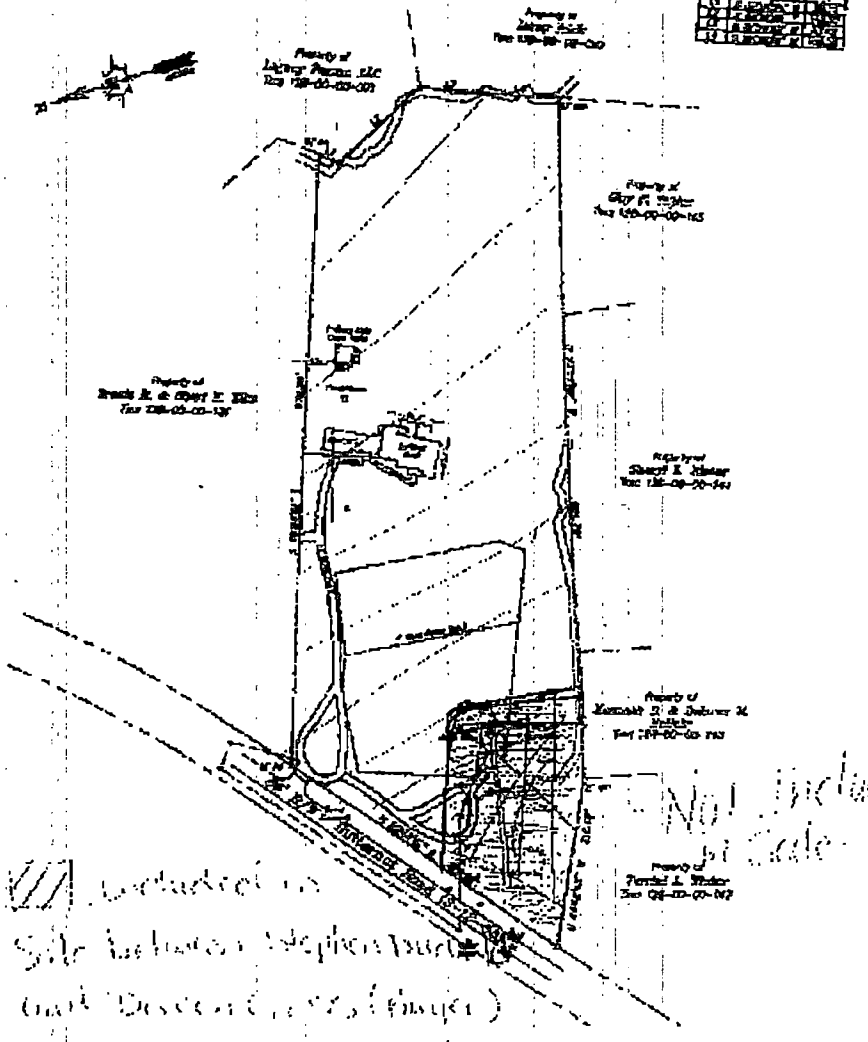
29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum (B) (3) (C)

The undersigned Parties hereby agree as follows.

1. Buyer total satisfaction of home inspection and CL100. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septic tank hasn't been service in the past yr. then Seller agrees to have it serviced.5. Seller agrees to have the property subdivided to include in this sale the 2340 sf house, storage bldg and 5 acres. Any costs will be the responsibility of the Seller. Seller to give copies of any and all paperwork of this process to include copies of the survey. Cont. next pg. (B) + C

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SC Sellers Disclosure due to not legible of what is currently on the MLS. 9. Seller to leave current 3 ea. fencing paddock where it currently is. 10. Seller to leave any and all materials used in construction of home to included but not limited to wood flooring material, fence material, etc.

Addendum



Not included in Sale

Included in Site between Stephen Hurt and Dessert Crossing

[11] The meaning of the contract and the intent of the parties to it is one and the same thing. To interpret the lawful meaning is to discover the intention of the parties as found within the agreement. Our Court acknowledges contractual language coupling the terms "intent and meaning." Cf., *Mordecai v. Stults*, 16 S.C. 622, 622 (1882) (interpreting a power of sale in a mortgage, the Court acknowledges language of the mortgage, "the conditions and recitals thereof, according to the true intent and meaning); *Hext v. Jarrell*, 34 S.C.L. 11, 14 (S.C. App. L. 1848) (the intent and meaning of a deed); *Edwards v. Sartor*, 69 S.C. 540, 48 S.E. 537, 537 (1904) (the Court acknowledges language of "true intent and meaning of note and condition thereunder written" in a mortgage, see. also, *Kaphan v. Ryan*, 16 S.C. 352, 353 (1882) (true intent and meaning of said bond, secured by a mortgage); *Crawford v. Owens*, 79 S.C. 59, 60 S.E. 236, 237 (1908) (the Court acknowledges language of "the terms of the contract according to its true intent and meaning" addressing a bond surety for the faithful performance of a contract); *Satterwhite's Adm'rs v McKie*, 16 S.C.L. 397, 398 (S.C. Const. App. 1824) ("the obvious meaning and intent of the parties to the contract.").

[12] Paragraph 3 describes the particulars of the conveyance; this provision is modified by conditions set out in condition of the Special Stipulations.

[13] Addendum A requires the Paragraph 19 (B) and Paragraph (D) conditions to meet a standard totally acceptable to the Buyer. See. *Restatement (First) of Contracts § 265 (1932):* A promise in terms conditional on the promisor's satisfaction with an agreed exchange, gives rise to no duty of immediate performance until such satisfaction; but where it is doubtful whether words mean that a promise is conditional on the promisor's personal satisfaction with an agreed exchange, or on the sufficiency of that exchange to satisfy a reasonable man in the promisor's position, the latter interpretation is adopted. The Court finds the term "total satisfaction" means Dudek and Cross are not required to pay the purchase price until Dudek and Cross are personally satisfied with the Paragraph 19 (B) & (D) conditions. In any event, Cross testified despite Defendants Ferros' failure to answer in kind the questions concerning the home inspection and after she procured a structural engineer's report acceptable to her (she had a relative, who is an engineer, review the calculations) she was satisfied that the residence was structurally sound a reservation contained in her home inspection report. Dudek testified he never received a satisfactory CL 100 (Transcript page. 104, line 23). Hence, she did not have an opportunity to determine if it was satisfactory.

[14] The Court takes Judicial Notice that at a conventional residential loan closing borrowers are required to sign a Uniform Residential Loan application. The application is made under oath. This fact further supports the impossibility of the Paragraph 8 condition.

[15] Impossibility that would discharge the duty to perform a promise excuses a condition if (a). . ., or (b) existence or occurrence of the condition is no material part of the exchange for the promisor's performance and the discharge of the promisor will operate as a forfeiture. Restatement (First) of Contracts § 301 (1932). This Court applies this rule to the facts of this case as follows:

> Dudek and Cross had a duty (promise to perform) to procure unconditional financing within 20 days of signing the contract. The Contract calls for a conventional residential loan. Unconditional residential loan financing is impossible. The occurrence of the condition to procure unconditional financing in 20 days is not a material part of the exchange because delivery of the deed depends on delivery of the purchase price not procurement of the loan within twenty days of the signing of the contract and the discharge of Dudek and Cross's duty to procure unconditional loan approval would operate as a forfeiture of the contract.

[16] It is well established in this state that time is not of the essence of a contract to convey land unless made so by its terms expressly or by implication. Bishop v. Tolbert, 249 S.C. 289, 153 S.E.2d 912 (1967). When the contract does not include a provision that "time is of the essence," the law implies that it is to be done within a reasonable time. Hobgood v. Pennington, 300 S.C. 309, 387 S.E.2d 690 (Ct.App.1989). In equity, strict compliance with time limits contained in a contract will not ordinarily be enforced, except with regard to option contracts. Dargan v. Page, 222 S.C. 520, 73 S.E.2d 705 (1952). Faulkner v. Millar, 319 S.C. 216, 219-20, 460 S.E.2d 378, 380 (1995).

[17] Defendant Cross testified:
"the piers were not supporting anything, they were jus there. I didn't understand why all these piers were there, they were not touching the house (Transcript page 38, lines 1-3) Dudek corroborates and elaborates: "We were concerned about the extra piers under the crawl space because they were just there, they weren't at supporting anything, that surprised me. And yes, we were concerned about the crack tile in the front foyer and in the master bathroom. The back porch where the concrete was sinking, I thought it was just an add on so I wasn't sure, if it was an add on it was just settling, that didn't worry me that much. But the biggest thing was the structure of the house, the extra piers there for the supports because they were there and they weren't doing anything (Transcript page 98, l. 24 – page 99, l. 9).

[18] The house is a fairly heavy house, it is made of steel and it has installed CompCore on the outside of it with rebar in it, so I was concerned about the structure (Transcript page 38, lines 6 – 9).

[19] The moral principle, that men in their intercourse with each other should act with perfect fairness, is as broad as the foundation on which society is erected, and, in some form or other, we find it incorporated into the laws of every well regulated society. "Do unto others as you would have them do unto you," is the substratum of every civilized code; and the well known rule that no one shall profit by his own wrong, or profit by his own fraud, is built upon it- and wherever it is apparent that one man has profited by fraud and circumvention, to the loss or injury of another, he must respond. Minter v. Dent, 37 S.C.L. 205, 207 (S.C. App. L. & Eq. 1832)

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2016-CP-1801706
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
	)	
Stephen Dudek, Doreen Cross, Carolina One, Susan Nicholson, Wooddy Law Firm, Carrie Boyer, First Federal, Allison Williams, David A. Collins, Michael Scarafile	)	
	)	
Defendants.	)	
	)	

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CLERK OF COURT
DORCHESTER COUNTY

Pursuant to Rule 56, South Carolina Rules of Civil Procedure (SCRCP), and Rule 6(d), SCRCP, Plaintiff Molly Morphew, pro se, responds to the Defendants' Motion for Summary Judgement and respectfully moves this court for an Order dissolving or dismissing the Defendants' Motion in that it fails to meet the requirements for serving/filing a motion [for summary judgment].

On February 14, 2018, the Defendants' Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate filed a Motion for Summary Judgment claiming there is no genuine reason as to any material fact and the Defendants are entitled to judgment as a matter of law, and declare "affidavits to be subsequently filed and Memorandum of Law which may hereinafter be submitted". (**Attachment A** -Defendants Motion for Summary Judgment).

Rule 56(a), SCRCP states, "*For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the*

expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof." Rule 56(e), SCRCP states, "*Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule...*" Furthermore, pursuant Rule 6(d), SCRCP, "*For Motions—Affidavit. When a motion is to be supported by affidavit, the affidavit shall be served with the motion;*"

Defendants failed to file or serve the required affidavits and other documents or with its motion in support of their positions in its motion for summary judgment, therefore the Respondents ultimately failed to meet the requirement(s) of motions and petitions generally. Rule 56 and Rule 6(d) SCRCP.

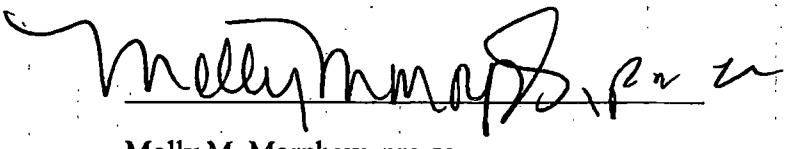
Even if the motion was appropriate, discovery has been previously demanded of Defendant(s), and to date, Defendant has failed to respond to its discovery demand and its' time to do so had expired, prompting the Plaintiff to compel discovery and deem admissions admitted (see **Attachment B & C**, Motion to Compel and Motion to Deem Admissions Admitted filed respectively January 30 and February 1, 2018). Despite discovery being overdue and the pending motions to compel such discovery (both awaiting hearing dates to be set by the court at the next available roster), Defendants have moved for summary judgment. Defendant's failure to provide

discovery has hindered MORPHEW's ability to defend this case, plus due to the reason(s) above, properly oppose Defendants' motion for summary judgment. Accordingly, this Court should grant the dissolution or dismissal.

CONCLUSION

Due to the Defendants' failure(s) or reason(s) as stated above, Plaintiff respectfully moves this court for an Order dissolving or dismissing the Respondents' Motion for Summary Judgment.

Respectfully submitted,



Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483

February 26, 2018
Summerville, South Carolina

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

CLERK OF COURT
DORCHESTER COUNTY
2018 MAR -5 PM 4:30
FILED RECORDED

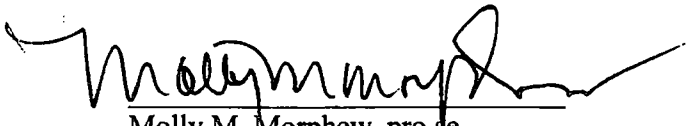
I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 27th day of February, 2018, to:

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 26, 2018
Summerville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO. 2016-CP-18-1706

FILED - RECORDED
2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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.

Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, Notice of Motion and Motion for Summary Judgment

2018 MAR -5 PM 4:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate, will move before the Presiding Judge for the First Judicial Circuit, on the tenth (10th) day of the date of this Motion, or as soon thereafter as may be heard, for Summary Judgment.

This Motion for Summary Judgment is based upon 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. This Motion will be supported by Rule 56, South Carolina Rules of Civil Procedure, affidavits to be subsequently filed and Memorandum of Law which may hereinafter be submitted.

I certify that, in accordance with Rule 11, SCRCP, I have attempted to resolve this matter through consultation with opposing counsel, or that consultation is not required.

SMITH | CLOSSER, P.A.

Steven L. Smith (SC Bar No.: 05173)
Zachary J. Closser (SC Bar No.: 74005)
Samuel M. Wheeler (SC Bar No.: 101008
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorney for the Defendants, Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile and Carolina One Real Estate

2-7, 2018
Charleston, South Carolina
16-249

Attachment A
901

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, Woody Law Firm,	)	
	)	
Defendants.	)	

2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Summary Judgment was served by mailing, hand delivery or electronic mail on the following:

Molly M. Morphew
1605 Central Avenue, Ste 6/347
Summerville, SC 29483
morphew926@gmail.com

David A. Collins
P.O. Box 300052
Charleston, SC 29417
davidacollins2@aol.com

Amy L. Neuschafter, Esquire
Collins & Lacy, PC
11945 Grandhaven Drive, Ste D
Murrells Inlet, SC 29576
aneuschafer@collinsandlacy.com

Amy L. B. Hill, Esquire
Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202-7368
ahill@gwblawfirm.com

Peggy M. Rochay

February 12, 2018
16-249

$25.00 PD

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED RECORDED
2018 FEB 14 AM 11:21
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS

Molly Morphew,
( ) Plaintiff
v.
Carolina One Real Estate, et al.,
( ) Defendant
check box above indicating submitting party

Case No. 2016-CP-18-1706
MOTION INFORMATION FORM AND COVER SHEET

name, SC Bar no. and address of plaintiff's attorney	name, SC Bar no. and address of defendant's attorney
Molly M. Morphew 1605 Central Avenue, Ste 6/347 Summerville, SC 29483 telephone: 843-514-7299 fax: e-mail: morphew926@gmail.com	Steven L. Smith - 5173 Smith | Closser, PA P.O. Box 40578 Charleston, SC 29423 telephone: 843-760-0220 fax: 843-552-2678 e-mail: ssmith@scnlaw.com

(x) 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: for Summary Judgment
Estimated Time Needed: 30 minutes Court Reporter Needed: YES /

SECTION II: Motion Type

(x) Written motion attached
( ) Form Motion –
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: 2-12-18

SECTION III: Motion Fee

(x) 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: _____ _____(print name)
( ) MOTION FEE COLLECTION: _____
( ) CONTESTED - AMOUNT DUE: _____

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

NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY RESPONSES

2018 MAR -5 PM 4:31
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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 (10th) 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

Attachment B

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

425. 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

CASE NO.
2016-CP-180-1706

v.

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

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.
☐ Other:

JUDGE

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.	)	
	)	

RE-RECORDED
2018 MAR -5 PM 4:31
CLERK OF COURT
DORCHESTER COUNTY

RE-RECORDED
2018 FEB -1 PM 4:42
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.

Attachment C

Respectfully submitted,

Molly M. Morphew, pro se
786 E. Butternut Rd.
Summerville, SC 29483
(843-514-7299)

January 30, 2018

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Molly Morphew was denied specific performance and closing on her home in 2013, after which she discovered fraud was committed on the court by Defendants Stephen Dudek and Doreen Cross 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 November 30, 2017. Plaintiff sent defendant a notice letter on January 3, 2018. (EXHIBIT "3"). Defendant's responses were due on or before January 1, 2018. To date, defendant has not served a response to the requests.

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 $1143.09 (EXHIBIT "2"), on the grounds that defendant failed to respond to an authorized method of discovery and her conduct in impeding discovery is without substantial justification and constitutes a misuse of the discovery process.

II. DEFENDANT'S FAILURE TO PROVIDE 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 did not respond or object to Plaintiff's Requests for Admission. 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 $1143.09 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 Doreen Cross by Plaintiff served on November 30, 2017 and impose monetary sanctions against Defendant in the amount of $1143.09 payable within ten days.

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

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 -1 PM 4:42
CLERK OF COURT
DORCHESTER COUNTY
FILED RECORDED

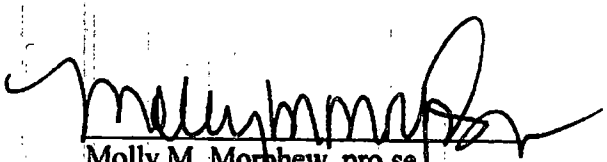
I HEREBY CERTIFY true and correct copies of the foregoing have been provided by Mail this 1st day of February, 2018, to:

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)

January 31, 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: 7/1/2020

ANTHONY SMITH
NOTARY PUBLIC
CHATHAM COUNTY, GA
MY COMMISSION EXPIRES JULY 11, 2020

OTHER

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

DEFENDANTS ALLISON WILLIAMS AND SOUTH STATE BANK f/k/a SCBT, SUCCESSOR IN INTEREST TO FIRST FEDERAL BANK'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

FILED - RECORDED
2016 NOV -4 AM 11:35
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Defendants Allison Williams ("Williams") and First Federal, properly named South State Bank f/k/a SCBT, successor in interest to First Federal Bank ("Bank") (collectively, the "Defendants"), by and through their undersigned attorneys, file this Memorandum of Law in Support of Their Motion to Dismiss.

FACTUAL BACKGROUND

This case revolves around Plaintiff's attempt to purchase a property located in Summerville, South Carolina. Defendants Dudek and Cross (the "Buyers") entered into a contract for the purchase of the property with the sellers of the property (the "Sellers"). Plaintiff also entered into a contract with the Sellers for purchase of the property. With competing contracts for the property outstanding, litigation between the Buyers, Sellers, and Plaintiff ensued. Neither the Bank nor Williams were parties to the previous litigation. The previous litigation resulted in an order from Dorchester County Master-in-Equity awarding priority to the Buyers' contract over the Plaintiff's contract. (*See*, 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, Attachments 1 and 2).

Plaintiff filed this action alleging that the Bank and Williams were not truthful in discovery responses in the previous litigation. Plaintiff further alleges that the Bank and Williams acted wrongly during the processing of the lending contract with the Buyers to purchase the land.

LEGAL STANDARD

"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.

ARGUMENT

Plaintiff has alleged a total of eighteen causes of action; ten of which are alleged against Defendants. The ten applicable causes of action include: **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; **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.

I. The Plaintiffs causes of action based in fraud fail because the Plaintiff has not properly plead the elements of fraud to the heightened requirements required.

The Plaintiff alleges that Defendants committed fraud against the Plaintiff in both the First and Twelfth causes of action. "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Rule 9(b), SCRCP. "Fraud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to her or to surrender a legal right" *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003). The elements are fraud are;

> (1) a representation, (2) its falsity, (3) its materiality, (3) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury.

Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). A complaint is fatally defective if it fails to allege all nine elements and should be dismissed by the court pursuant to a motion to dismiss. *Id.*

Plaintiff's fraud complaints deal exclusively with representations made by parties to this action to the court in the previous litigation of this matter. Plaintiff's first cause of action includes only one paragraph not directed exclusively to Defendant Collins and it refers only generally to all defendants. It reads "At all times material and with complete knowledge

otherwise, [all] Defendant(s) or its agent(s) made false statements and/or misrepresentations and/or omitted material information pertinent to the case and/or committed perjury and/or committed forgery." (Complaint, ¶ 81). This completely fails to allege facts sufficient to show all nine factors of fraud. Defendants do not know what statements Plaintiff allege form the basis of this claim. Defendants further cannot identify allegations sufficient to show why Plaintiff believes any such statements are false, material, intended to be relied upon. Nor can Defendants identify any allegations supporting the elements of fraud relevant to the hearer. Importantly, the "hearer" in this instance is the court, not Plaintiff. As such, the Plaintiff cannot and has not shown the consequent and proximate injury of the hearer.

Plaintiff's Twelfth cause of action also sounds in fraud. Each paragraph indicating a statement made by the Defendants is in reference to testimony made at the trial of this matter in magistrate's court. (*See*, Complaint ¶¶ 266(2), (5), (7), and (8)). Again, Plaintiff fails to plead with particularity all nine elements of fraud. Specifically, Plaintiff fails to state with particularity that the statements were indeed false, the materiality of the statements, knowledge of its falsity, or any other element of fraud. Again, the hearer in all of these instances is the court. Plaintiff cannot and has not shown the consequent and proximate injury of the hearer. Plaintiff's actions for fraud fail to state facts sufficient to constitute a cause of action. As such, Plaintiff's first and twelfth cause of action should be dismissed.

Plaintiff also includes a cause of action for "Bad Faith and Unfair Dealings and/or Accompanied by Fraudulent Action; conspiracy to defraud." (*See*, Complaint ¶¶ 188-212). In this cause of action, Plaintiff identifies only one action taken by the Defendants. Namely, "First Federal accepted or unlawfully accepted an invalid and/or unsigned sales contract that contained no sellers name for mortgage loan processing." (Complaint ¶ 197). Plaintiff fails to identify any

other actions of Defendants which form the basis of this cause of action against Defendants. For this reason alone, Plaintiffs claims for this cause of action should be dismissed.

Further, to the extent Plaintiff's claims for bad faith and unfair dealings rely on the existence of a contract between Plaintiff and Defendants, Plaintiff has failed to allege one. Further, as noted above, actions for fraud must be plead with particularity and allege all nine elements of fraud. As to Defendants, Plaintiff has wholly failed this requirement. Therefore, because the complaint has not pleaded facts to form the basis of this complaint, this cause of action should be dismissed as to the Defendants.

II. The Plaintiff's causes of action for perjury, violations of the Federal Rules of Civil Procedure, violations of South Carolina Rules of Professional Conduct, Obstruction of Justice, and unstated Federal rules, Regulations, Banking rules, and banking regulations fail because no private right of action exists for these claims.

The Plaintiff alleges causes of action against the Defendants for perjury, violations of the Federal Rules of Civil Procedure, violations of the South Carolina Rules of Professional Conduct, Obstruction of Justice, and unstated and uncited Federal Rules and Regulations and Banking Rules and Regulations. Each of these causes of action should be dismissed because no actionable private right of action can exist as stated.

A. Perjury

There is no civil cause of action for perjury. "As a general rule, no civil action lies for damages resulting from false statements under oath constituting perjury or from subornation of false testimony. Thus, no action for damages lies for false testimony in a civil suit whereby the litigant fails to recover a judgment, or a judgment is rendered against him or her." 60A Am Jur 2d Perjury § 7. "Authorities are unanimous in holding that generally a person who is damaged by perjured testimony in a civil suit does not have a cause of action for damages arising out of such

perjured testimony." *Frist v. Gallant*, 240 F.Supp. 827, 828 (D.S.C. 1965). Because no such cause of action exists, Plaintiff cannot support any claim for relief based on perjury. As such, this cause of action should be dismissed.

B. Violations of the Federal Rules of Civil Procedure

There is no cause of action for violations of the Federal Rules of Civil Procedure. A "violation of the Federal Rules of Civil Procedure does not give rise to an independent federal cause of action." *Rogers v. Furlow*, 729 F.Supp. 657, 660 (D.Minn. 1989) (*See also*, *Hurst v. Harbert*, 2013 U.S. Dist. LEXIS 188138 (E.D.Va. 2013) ("rules governing procedure in the federal courts do not give rise to private causes of action.") (citing, *Good v. Khosrowshahi*, 296 F.App'x 676, 680 (10th Cir. 2008))). Further, upon information and belief, the previous cause of action which forms the gravamen of Plaintiff's current complaint were not subject to the Federal Rules of Civil Procedure. As such they were not controlling and any violation of them during the previous trial would be inconsequential. Because no cause of action exists for any violation of the Federal Rules of Civil Procedure, Plaintiff cannot maintain a claim for relief based on any violation. As such, the claim should be dismissed.

C. Violations of the South Carolina Rules of Professional Conduct

There is no civil cause of action for violations of the South Carolina Rules of Professional Conduct. The "Rules of Professional Conduct do not, in themselves, create a cause of action or establish evidence of negligence per se..." *Spence v. Wingate*, 395 S.C. 148, 161, 716 S.E.2d 920, 927 (2011). While the Rules of Professional Conduct are applicable to establish duties owed by attorneys to clients, neither of the Defendants are attorneys. Because no cause of action exists for any violations of the South Carolina Rules of Professional Conduct, Plaintiff cannot support any claim for relief based on their violation. As such, this cause of action should be dismissed.

D. Obstruction of Justice

There is no civil cause of action for obstruction of justice. "The claim fails because there is no civil claim for obstruction of justice under federal law, and there is no South Carolina appellate case law recognizing such a claim." *Hess v. Lander Univ.*, 2006 U.S. Dist. LEXIS 9127, 23 (D.S.C. 2006). Because no such cause of action exists, Plaintiff cannot maintain a claim for relief based on an obstruction of justice theory. As such, the claim should be dismissed.

E. Unstated and uncited Federal Rules and Regulations and Banking Rules and Regulations

Plaintiff argues that the Defendants have violated federal banking rules and regulations, FDIC rules and regulations, and banking rules and regulations but fails to cite any statutes, regulations, or rules that Defendants are alleged to have violated. Plaintiff notes that "upon information and belief," certain actions she alleges occurred violate some unspecified statute or regulation. (*e.g.*, Complaint, ¶¶ 288-293). This leaves the Defendants in the unenviable position of filling in the gaps and trying to identify what statute, regulation, or rule the Plaintiff is alleging they violated.[1] The Defendants are wholly unable to prepare a defense to these allegations. Plaintiff's claim for violations of uncited statutes, regulations, and rules cannot support a claim for relief. As such, the Plaintiff's claim must be dismissed.

III. Plaintiff's claims for Intentional Infliction of Emotional Distress and Tortious Interference with a Contract fail because the Complaint fails to state a claim for relief.

The Plaintiff's claims for the torts of intentional infliction of emotional distress and tortious interference with a contract fail because they fail to state a claim for relief.

> To state a claim for intentional infliction of emotional distress, a plaintiff must show (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially

[1] Plaintiff does insert a footnote which references an alleged FDIC Statement of Policy. Plaintiff makes no attempt to state with particularity how this ties into the allegations of the case, how any statement of policy was applicable to the Defendants, or how the Defendants violated any statement of policy.

> certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by plaintiff was so severe that no reasonable person could be expected to endure it.

Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (2004). In her seventeenth cause of action, Plaintiff fails to identify which actions of the Defendants caused any emotional distress to Plaintiff. (*See*, Complaint ¶ 326-27). Taking the facts in the light most favorable to Plaintiff, Defendants' conduct consist of making a loan to the Buyer Defendants and testifying about it. At its worst, the Complaint alleges that Defendants violated certain policy technicalities in making such a loan (although Plaintiff fails to allege what policy, rule, regulation, or statutes Defendants violated in doing so). Plaintiff also suggests that Defendants failed to produce documents pursuant to a subpoena until a day before trial of the previous litigation. This is hardly conduct "so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community." Further, there is no reading of these allegations that would suggest that Defendants intentionally inflicted emotional distress on Plaintiff. Defendants had no connection with Plaintiff until the previous trial of this matter. Plaintiff's claim for intentional infliction of emotional distress should fail because it fails to state facts that would support a claim.

The elements of a cause of action for tortious interference with a contract are: "(1) existence of a valid contract, (2) the wrongdoer's knowledge thereof, (3) his intentional procurement of its breach, (4) the absence of justification, and (5) resulting damages." *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993). Plaintiff alleges that she had a binding contract with the sellers. (*See*, Complaint, ¶ 336). Plaintiff cursorily alleges that

the Defendants knew about that contract but fails to identify facts to support that contention. (*See*, Complaint, ¶ 338). Plaintiff, in her complaint, fails wholly to state facts indicating any intentional procurement of its breach and the absence of justification. The Complaint fails to state facts sufficient to form a basis for a claim of tortious interference with a contract. As such, it should be dismissed.

IV. Plaintiff's request for Declaratory Judgment that no contract exists should fail.

Plaintiff seeks a declaratory judgment that no contract exists between the Buyers and Sellers in this case. This is sought on the theory that no valid "sales contract exists, or ever existed, between Dudek/Cross [buyers] and First Federal." (Complaint, ¶ 272). Plaintiff has no right to seek to deem a contract between Defendants and any of their clients invalid. To bring a declaratory judgment action to determine the validity of a contract, the person must be an interested party. S.C. Code Ann. § 15-53-30. Plaintiff is not a party to either contract, is not an assignor of rights to either contract, and has no rights affected by the contracts. Plaintiff does not have standing to pursue a declaratory judgment that the contract between Defendants and buyers is invalid.

Further, the ultimate declaration Plaintiff seeks is that the contract between Buyers and Sellers is invalid. (*See*, Complaint ¶ 273). The previous litigation which forms the basis of many of the complaints in this action, clearly found that the contract between Buyers and Seller is enforceable. "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." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). To establish res judicata, the defendant must prove (1) identity of the parties; (2) identity of the subject matter; (3) adjudication of the issues in the former suit. *Id.* As identified by the

Complaint and Order attached to Plaintiff's Brief in Opposition to Dudek and Cross' Notice of motion and Motion to Dismiss and Motion and Motion for Sanctions, Plaintiff sought a declaratory judgment that the contract between the buyers and sellers was breached. This is the exact same relief sought in this matter. This cause of action is barred by Res Judicata.

V. CONCLUSION

For the foregoing reasons, Defendants request that this Court dismiss this matter and all claims asserted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

GALLIVAN, WHITE & BOYD, P.A.

By: _____

Amy E.B. Hill, SC Bar # 68541
Jordan M. Crapps, SC Bar # 100580
Post Office Box 7368
Columbia, South Carolina 29202
ahill@gwblawfirm.com
jcrapps@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

Attorneys for Allison Williams and First Federal, properly named South State Bank f/k/a SCBT, successor in interest to First Federal Bank

Columbia, South Carolina
November 2, 2016

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,	)	
	)	ANSWER OF DEFENDANT
vs.	)	DAVID COLLINS
	)	
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
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.

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

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

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

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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
2017 DEC 19 AM 10:58
CHERYL [illegible]
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.

DAVID A. COLLINS, LLC

David A. Collins
P. O. Box 30052
Charleston, SC 29417
(843)224-3779
Davidacollins2@aol.com

December 19, 2017

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

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
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From: Rosalee Baldwin
Sent: Tuesday, December 19, 2017 2:38 PM
To: Becky Stevens
Subject:

As you requested.

Rosalee Baldwin
Deputy Clerk/Common Pleas
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5200 East Jim Bilton Blvd.
St. George, SC 29477
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Fax: (843) 563-0178
Email: rbaldwin@dorchestercountysc.gov

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From: Molly Morphew <morphew926@gmail.com>
Date: January 19, 2018 at 2:37:43 PM EST
To: BStevens@dorchestercounty.net
Subject: Case #2016-CP-18-1706

Good afternoon, Ms. Stevens-

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

Thank you and kindest regards,

Molly Morphew, pro se
843-514-7299

From: Molly Morphew <morphew926@gmail.com>
Date: January 23, 2018 at 5:26:10 PM EST
To: BStevens@dorchestercountysc.gov
Subject: Case #2016-CP-18-1706

Good afternoon, Ms. Stevens-

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

My Motion requesting entry of default and default judgment, along with a proposed Order, was filed on November 27th, 2017. The Entry of Default is November 27th, 2017.

Thank you and kindest regards,

Molly Morphew

Sent from my iPhone

From: Molly Morphew <morphew926@gmail.com>
Date: January 24, 2018 at 11:59:37 AM EST
To: Becky Stevens <BStevens@dorchestercountysc.gov>
Subject: Re: Case #2016-CP-18-1706

Thank you for the update, and have a great day!

Kind regards,
Molly Morphew

Sent from my iPhone

> On Jan 24, 2018, at 8:08 AM, Becky Stevens <BStevens@dorchestercountysc.gov> wrote:
>
> It is still with the Judge under review.
>
> 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
>
> -----Original Message-----
> From: Molly Morphew [mailto:morphew926@gmail.com]
> Sent: Tuesday, January 23, 2018 5:26 PM
> To: Becky Stevens
> Subject: Case #2016-CP-18-1706
>
> Good afternoon, Ms. Stevens-
> May I inquire as to the status of the Default Judgement against Defendant David Collins (only)?
>
> My Motion requesting entry of default and default judgment, along with a proposed Order, was filed on November 27th, 2017. The Entry of Default is November 27th, 2017

Thank you and kindest regards,

Molly Morphew

Sent from my iPhone

On Feb 5, 2018, at 8:23 AM, Becky Stevens <BStevens@dorchestercountysc.gov> wrote:

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?

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: Molly Morphew [mailto:morphew926@gmail.com]
Sent: Sunday, February 04, 2018 2:31 PM
To: Becky Stevens
Subject: Civil Case #2016-CP-1801706 Morphew v. Stephen Dudek, Doreen Cross, et al

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.

Thank you and kind regards,

Molly Morphew, pro se
843-514-7299

From: Molly Morphew <morphew926@gmail.com>
Date: February 7, 2018 at 7:11:51 AM EST
To: Becky Stevens <BStevens@dorchestercountysc.gov>
Subject: Re: Civil Case #2016-CP-1801706 Morphew v. Stephen Dudek, Doreen Cross, et al

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?

Me: *"I'm requesting a damages hearing...in which an Entry of Default was entered on November 27, 2017".*
You: *"You submitted a proposed order, thereby not making it necessary for a hearing. Do you want to retract that now?"*

Me: "No I do not want to retract it"
"Please ignore my recent request for a damages hearing, and my apologies for any misunderstanding on my part."

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

Kind regards,

Molly Morphew

On Tue, Feb 6, 2018 at 2:06 PM, Becky Stevens <BStevens@dorchestercountysc.gov> wrote:

Ms. Morphew,

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?

Becky Stevens

Chief Deputy Clerk of Court/Common Pleas

Dorchester County Clerk of Court's Office

5200 E. Jim Bilton Blvd.,

St. George, SC 29477

843-832-0108

bstevens@dorchestercountysc.gov

From: Molly Morphew [mailto:morphew926@gmail.com]
Sent: Tuesday, February 06, 2018 1:07 PM
To: Becky Stevens
Subject: Re: Civil Case #2016-CP-1801706 Morphew v. Stephen Dudek, Doreen Cross, et al

Hi Becky,

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 was 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 it's 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!

Kindest regards,

Molly Morphew

On February 13, 2018 at 7:37 PM, Molly Morphew <morphew926@gmail.com> wrote:

Ok...no "book"...but my question was: "when did the clerk **enter** David Collins' default upon the calendar?" --

And, yes, I have reviewed South Carolina Rules of Civil Procedure, Rule 55 Default, for "Entry" and "Judgment".

The first step in obtaining default judgment is the entry of default. Entry of default is an interlocutory notation in the record made on the plaintiff's motion *"[w]hen 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)"*." Rule 55(a).

The rule provides that the clerk shall enter default if [his] default is made to appear by affidavit or otherwise.

-->I filed my motion for default entry and judgment on November 27, 2017, which included an affidavit and documentation proving he failed to plead or otherwise defend, an affidavit of costs/damages, and a proposed "Default Judgment" (i.e., order).

-->My motion explicitly requested [due to the forgoing statements in the affidavit] "*that the Clerk of Court enter the default of Defendant in this matter*" (see last paragraph of Affidavit)

-->Per Rule 55(a), the clerk was supposed to enter the default.

-->I'm attempting to verify that the "ENTRY" (not to be confused with "Judgment") was entered per Rule 55 on November 27th. And if it was not entered on November 27th, then what date was it entered?

*Note: I came into the court on a Friday and had 2 separate motions to file, one for "Entry" and the other for "Judgment". You told me I didn't need to file both motions as only one was needed because it covered both the entry and judgment. You also told me to add a paragraph at the end stating "*Based on the foregoing, Morphew requests that the Clerk of Court enter the default of Defendants in this matter.*" I left to fix my motion and came back on the following Monday and filed the combined motion.

As to "JUDGMENT" ...Per Rule 55(b)(2) Default, Judgment: "*...the party entitled to a judgment by default shall apply to the court therefor;... If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application.*" A "Judgment" can only be entered by a judge.

-->I filed my motion for judgment on November 27th, 2017, as my motion filed was a combined motion for "Entry" AND "Judgment", as stated above.

-->My motion package I submitted included a proposed order for judgment (Default Judgment) and the affidavit of costs/damages along with a spreadsheet of said costs/damages.

As to "DAMAGES" ...Rule 55(b)(2) Default, Judgment also states: "*If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages...the court may conduct such hearing or order such references as it deems necessary and proper...*"

-->You told me a hearing to determine the damages isn't necessary since I submitted the damages affidavit with the Motion;

--> So no, I am not requesting a "damages hearing", as I'm sure, if during her review for default judgment, the judge feels like another hearing to determine damages is necessary, she will direct one to be scheduled.

-->But I'm confused. You stated what is under review with the judge is "*an Order for Entry of Default and directs the Clerk of Court to set the matter for a damages hearing*", but this Order should not be applicable-- as again, you stated a damages hearing is not required so this order would be invalid.

Conclusion:

I really need to obtain clarification, so if you could please answer these questions as they are critical to this case.

1) I would like to please verify that the "ENTRY" for default against David Collins was entered on the calendar on November 27th. Please provide the entry or docket number.

2) If an entry of default was not entered, please provide the reason why, as the rule states upon motion and affidavit the clerk shall enter the default. (SCRCP Rule 55(a)).

3) I have been waiting on an Order for judgment from the judge [who is currently reviewing the motion package], so can you please confirm that my proposed order for Default Judgment is under review, and that entry of default judgement is what I am waiting on. If this is not correct, please tell me what "Order(s)" the court is trying to decide?

3) Why is an Order for Entry of Default [that directs the Clerk of Court to set the matter for a damages hearing] being reviewed? If a damages hearing is not required as you told me previously, then isn't this proposed Order invalid?

Again, I'm concerned because I thought I was waiting on a default judgment against Collins, but I cannot seem get a clear answer. I need clarification as to when the entry of default was entered (i.e., what is the Docket #), where my Motion for default entry and judgment is currently at, and why 2 1/2 months have passed since filing and no Order entered. I'm sure you can imagine my frustration and concern, as this case has a scheduling order and this default ruling is key to proceeding.

Thank you very much in advance, and best regards,

Molly Morphew

RULE 55
DEFAULT

(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).

(b) Judgment. Judgment by default may be entered as follows:

(1) Cases Involving Liquidated Damages or Sum Certain Amounts. When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

(2) All Other Cases. In all other cases, **the party entitled to a judgment by default shall apply to the court therefor;** but no judgment by default shall be entered against a minor or incompetent person unless represented in the action by

a guardian ad litem who has appeared therein. **If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper** and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute. Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action.

(3) Attorneys Fees. If a party seeks to recover attorneys fees in connection with a default judgment, a hearing pursuant to subdivision (b)(2) of this rule shall be required unless: (i) the party seeking attorneys fees specifies in the motion for default judgment that such motion includes a request that the court award attorneys fees and also files an affidavit of attorneys fees; (ii) notice of such motion and affidavit is provided to the defaulted party by first class mail to the last known address of such party; and (iii) no objection is filed by the opposing party within 10 days of service of such motion and affidavit.

Note:

These Rules 55(a) and 55(b)(1) are drawn from Federal Rule 55 with two changes. This Rule 55(a) requires that the Court enter all judgments by default and preserves Circuit Rule 15. Federal Rule 55(b) permits the Clerk to enter judgments by default for sums certain, if there has been no appearance, and if the defendant is not a minor or incompetent person; and that provision was deleted. **The language directing the Clerk to enter the default upon the calendar** and a reference to Rule 38, Jury Trial of Right, **is added.** These changes clarify, but do not change, the operation of the Rule.

Note to 1999 Amendment:

The 1998 Amendments to Rule 55 gave a clerk of court authority to enter default judgments in cases where judgment is sought for a liquidated amount or for a sum certain. These amendments remove that authority and provide that **default judgments, regardless of the nature of the damages being sought, may only be entered by a judge.**

On Mon, Feb 12, 2018 at 4:53 PM, Becky Stevens <BStevens@dorchestercountysc.gov> wrote:

> We do not have a Default book anymore—we are computerized. Please refer to the Rules and statutes relating to defaults.

Becky Stevens

Chief Deputy Clerk of Court/Common Pleas

Dorchester County Clerk of Court's Office

5200 E. Jim Bilton Blvd.,

St. George, SC 29477

843-832-0108

bstevens@dorchestercountysc.gov

From: Molly Morphew [mailto:morphew926@gmail.com]
Sent: Monday, February 12, 2018 4:49 PM

To: Becky Stevens
Subject: Re: Civil Case #2016-CP-1801706 Morphew v. Stephen Dudek, Doreen Cross, et al

Good afternoon , Ms. Stevens-

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

Kind Regards,

Molly Morphew, pro se

To: Rick Willis <rwillisteam@gmail.com>

Rick,
This communication shall be formal notice to terminate the contract of sale with Stephen Dudek and Doreen Cross.
This notice is being tendered because the closing did not occur on or before the
date in the contract of sale and the buyers failure to obtain loan approval as per the date in the contract.

Regards,
Tom and Lorraine Ferro

---------- Forwarded message ----------
From: **RingCentral** <notify@ringcentral.com>
Date: Sun, Dec 16, 2012 at 4:30 PM
Subject: New Fax Message from (843) 881-3856 on 12/16/2012 at 01:30 PM
To: Fax <rickwillis8@yahoo.com>

You Have a New Fax Message

From:	(843) 881-3856
Received:	Sunday, December 16, 2012 at 01:30 PM
Pages:	1
To:	(888) 803-1570 (Fax)

To view this message, please open the attachment or login to your RingCentral account by clicking here.

Thank you for using *RingCentral*.

RELEASE OF AGREEMENT TO BUY AND SELL REAL ESTATE

This release entered into this 16th day of December, 2012, between the undersigned Buyer(s), the undersigned Seller(s), and the undersigned Brokers for that certain Agreement to Buy and Sell Real Estate dated 10/20/12, _____, covering the following property located in:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut

Tax Map 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

WITNESSETH: That each of the parties hereto in consideration of each of the parties releasing all of the other parties from the aforesaid Agreement to Buy and Sell Real Estate, do hereby release each of the other parties and Escrow Agent to said Agreement from any and all claims, actions or demands whatsoever which each of the parties hereto may have up to this date against any of the other parties hereto by reason of said Agreement to Buy and Sell Real Estate.

It is the intention of this Agreement that any responsibility or obligations or rights by virtue of said Agreement are by this release declared null and void and of no further force or effect.

The Escrow Agent holding the deposit under the terms of said Agreement is hereby directed and instructed forthwith to disburse said deposit held in escrow in the following manner:

$ 1,000.00 To Stephen Dudek, Doreen Cross

$ _____ To _____

$ _____ To _____

_____ To _____

Other _____

IT IS FURTHER understood and agreed that this Release is executed by the undersigned voluntarily and is not based on any representations made by any other party hereto or by the Escrow Agent.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Buyer
Stephen Dudek — Date

Buyer
Doreen Cross — Date

BROKER/LISTING
Rick Willis/The Group, Llc — 12-16-12 Date

BROKER/SELLING
Carolina One — Date

Seller
Thomas Ferro — 12/16/12 Date

Seller
Lorraine Ferro — 12-16-12 Date

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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GM

Rick Willis< rwillisteam@gmail.com>

788 E. Butternut

2 messages

Rick Willis < rwillisteam@gmail.com> Sun, Dec 16, 2012 at 4:49 PM

To: Susan Nicholson <snicholson@carolinaone.com>

Susan,

As you can see by the email below the sellers of 788 E. Butternut have tendered written communication that they choose to terminate the contract of sale with your clients.

Please find attached a release signed by the sellers for you to obtain the signature of your clients.

As you can see by way of the wording in both paragraph 3 and 8 of the purchase agreement the words **time is of the essence** is bolded and underlined.

Paragraph 8 clearly states "Buyer will take any action that is needed or requested by lender to process the loan application." .....Obviously since the appraisal was not done or completed until this past week the buyer obviously did not authorize the lender to order the appraisal or stopped the appraisal process if the lender attempted to order the appraisal earlier.

The sellers decision is final and not subject to negotiation.

Respectfully,

Rick
843-327-3017
843-971-4002

--------- Forwarded message ---------
From: **THOMAS FERRO** <ftomferro@bellsouth.net>
Date: Sun, Dec 16, 2012 at 3:27 PM
Subject: contract cancellation

On Wed, Dec 5, 2012 at 2:38 PM, Carrie Boyer <cboyer@wooddylaw.com> wrote: To: Susan Nicholson

As requested. We will have to have proof that the damages have been repaired. Thanks.

Carrie Boyer
Real Estate Paralegal

THE WOODDY LAW FIRM, LLC
Goose Creek Office
597 Old Mount Holly Road, Suite 202
Goose Creek, SC 29445
Phone: 843.553.6799
Fax: 843.553.0724

Mt. Pleasant Office
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Phone: 843.881.3700
Fax: 843.881.2511

From: Susan Nicholson < snicholson@carolinaone.com >
Date: Wed, Dec 5, 2012 at 2:46 PM
Subject: Re: CL100 Copy - Dudek
To: Carrie Boyer <cboyer@wooddylaw.com>

OK thanks!

WOn Wed, Dec 12, 2012 at 5:22 PM, Carrie Boyer < cboyer@wooddylaw.com > wrote:
I haven't ever received anything on the repairs required in the CL100. Please advise - thanks!
--
Carrie Boyer
Real Estate Paralegal

THE WOODDY LAW FIRM, LLC

Goose Creek Office
597 Old Mount Holly Road, Suite 202
Goose Creek, SC 29445
Phone: 843.553.6799
Fax: 843.553.0724

Mt. Pleasant Office
622 Johnnie Dodds Blvd.
Mt Pleasant, SC 29464.
Phone: 843.881.3700
Fax: 843.881.2511

From: **Susan Nicholson** <snicholson@carolinaone.com>
Date: Wed, Dec 12, 2012 at 5:23 PM
Subject: Re: Status of Repairs - Dudek
To: Carrie Boyer <cboyer@wooddylaw.com>

They have done the treatment just waiting on the contractors letter.

Gmail

Rick Willis< rwillisteam@gmail.com>

788 E. Butternut

1 message

Michael Scarafile< mcs@carolinaoneplus.com>
To: "rwillisteam@gmail.com" <rwillisteam@gmail.com>
Cc: Susan Nicholson <snicholson@carolinaoneplus.com>

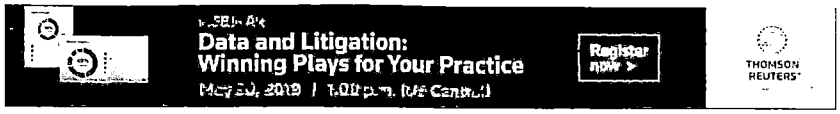
Thu, Dec 20, 2012 at 2:14 PM

Rick,

>
> I am writing with respect to 788 E. Butternut. First and foremost, the Buyers position is that they have a valid contract to purchase this property, have not agreed to release this contract and it is their desire to work with the Seller towards closing. Alternatively, they are prepared to enforce their rights in this contract through the filing of a Lis Pendens and a suit for specific performance.
>
> As you are aware, Susan Nicholson represents the Buyers Stephen Dudek and Doreen Cross. My hope is that, prior to them getting outside counsel involved and filing a motion for specific performance, we can resolve this matter among ourselves.
>
> I am also in receipt of your email from December 17th and must take exception with several points your raise. First off, while you are correct about the Buyers' obligations under paragraph 8, you are incorrect in your "legal" interpretation. Furthermore, paragraph 8 provides that, if the Buyers were in default, such default is pursuant to paragraph 16 which requires the Seller to provide "a 5 day written notice" which gives the Buyers the right to cure any default. (if they did not have a right to cure, there would not be a five day required period and this interpretation has been upheld in court). Based on your email, assuming your interpretation of paragraph 8 is correct, 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.

To work towards closing, and in the spirit of good faith, the Buyers are willing to pay $1,300 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 holiday.

>
> At this point, there are two options. The first is to close, allowing both sides to move forward and put this matter to rest this week, or alternatively the Buyers can file an action for both damages and specific performance. An action for specific performance will involve the filing of a Lis Pendens which would protect their rights in the property and also prevent the Sellers from selling the home to any other buyer. The second option would also necessitate excessive fees and costs to be incurred by both sides as we debate, over the next 18-24 months, contract provisions and the reasons for any delays. We are more than prepared to provide any and all communications between the Buyers and their lender.
>
> Please let me know how your client would like to proceed. Our choice is clearly to close and we look forward to hearing from you. I also wish you a nice holiday season.
>
> Michael Scarafile
> President/General Counsel
> Carolina One Real Estate
> 4024 Salt Point Parkway



IN RE: David A. Collins

Supreme Court of South Carolina.

IN RE: David A. Collins, Respondent.

Appellate Case Nos. 2016-001503

Decided: July 20, 2016

ORDER

The Office of Disciplinary Counsel petitions this Court to place respondent on interim suspension pursuant to Rule 17(b) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). The petition also seeks appointment of the Receiver pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent consents to the relief requested in the petition.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Peyre Thomas Lumpkin, Esquire, Receiver, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Peyre Thomas Lumpkin, Esquire, Receiver, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

Within fifteen days of the date of this order, respondent shall serve and file the affidavit required by Rule 30, RLDE. Should respondent fail to timely file the required affidavit, he may be held in civil and/or criminal contempt of this Court as provided by Rule 30, RLDE.

Costa M. Pleicones C.J.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of David A. Collins, Respondent.

Appellate Case No. 2020-000624

Opinion No. 27984
Submitted May 22, 2020 – Filed June 24, 2020

DISBARRED

John S. Nichols, Disciplinary Counsel, and Ericka McCants Williams, Assistant Disciplinary Counsel, both of Columbia, for the Office of Disciplinary Counsel.

Harvey M. Watson III, of Ballard & Watson, of West Columbia, for Respondent.

PER CURIAM: In this attorney disciplinary matter, Respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (the Agreement) pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement, Respondent admits misconduct and consents to the imposition of disbarment. We accept the Agreement and disbar Respondent from the practice of law in this state, retroactive to the date of his interim suspension.[1] The facts, as set forth in the Agreement, are as follows.

---

[1] The Court placed Respondent on interim suspension on July 20, 2016. *In re Collins*, 417 S.C. 72, 789 S.E.2d 577 (2016).

Facts

Matter I

In February 2016, Respondent received two checks, each for $225,000, from his clients to make a settlement offer to resolve a civil litigation matter (the Walters/Taylor funds). Respondent deposited one check into his trust account on February 12, 2016, and the other on February 22, 2016. Prior to making these deposits, Respondent's trust account contained a balance of $184.55. After depositing the first check on February 12, 2016, Respondent conducted a series of eighty-six unauthorized electronic funds transfers from the Walters/Taylor funds in his trust account to his law firm operating account and an account identified in the Agreement as "****3183****." By July 6, 2016, the Walters/Taylor funds were significantly depleted, with only $63,957.36 remaining in the trust account.

On June 17, 2016, the clients requested the return of the Walters/Taylor funds because Respondent was unable to produce settlement documents. On July 17, 2016, Respondent falsely stated to his clients that he had used the Walters/Taylor funds to invest in a company producing military supplies, he would be receiving profits from that investment in the near future, and he would pay the clients back. At his clients' insistence, Respondent accessed his trust account online and showed the clients the account balance. Unable to convince the clients to allow him to leave $10,000 in the account because "it wasn't their money," Respondent delivered two certified checks for $31,500 each to the clients, leaving a balance of $52.44 in the trust account.

Respondent was arrested and charged with breach of trust with fraudulent intent, value $10,000 or more. On March 2, 2020, Respondent pled guilty and was sentenced to ten years' imprisonment, suspended to five years' probation. Respondent was ordered to pay $30,000 in restitution at a rate of not less than $500 per month, and complete 250 hours of public service employment.

Matter II

On May 9, 2013, Respondent received $72,383.29 from the proceeds of a sale of jointly owned property (the English/Sexton funds). Respondent was to hold the English/Sexton funds in trust pending resolution of a dispute between the sellers as to the distribution of the money. Respondent deposited the proceeds check into his

trust account on May 10, 2013. On May 14, 2013, Respondent began a series of sixteen unauthorized electronic funds transfers from the English/Sexton funds in his trust account to his law firm operating account and the ****3183**** account. By September 9, 2013, the English/Sexton funds were depleted with only $6.81 remaining in Respondent's trust account.

On October 15, 2014, the Master-in-Equity presiding over the dispute between the sellers regarding the distribution of the English/Sexton funds issued an order requiring Respondent to disburse $48,426.90 of the English/Sexton funds to E. Sexton; $18,112.69 to J. White; and $5,460.51 to J. English. On November 10, 2014, at a hearing before the Master, Respondent falsely represented that he was holding the funds in trust pending resolution of the case. On the day of the hearing, Respondent's trust account contained $86.81 and his operating account $1.16.

Matter III

Respondent was hired to represent clients in a civil action. On February 26, 2016, Respondent entered into an "Agreed Order Regarding Sanctions and Limiting Evidence," in which Respondent agreed to a sanction of $2,500. Respondent paid the sanction from his personal funds. Respondent did not consult with his clients prior to or after entering into the agreement. The clients learned of the sanctions order during a March 2016 deposition.

In July 2016, the opposing party moved for summary judgment. The trial court granted summary judgment on July 14, 2016, shortly before the Court placed Respondent on interim suspension. Respondent did not inform his clients of the summary judgment order prior to his suspension. The clients received their file from the Receiver on August 28, 2016, and did not learn of the deficiencies that led to the trial court's grant of summary judgment until August 24, 2016, after the deadline to seek a motion to alter or amend the judgment or file an appeal.

Matter IV

Respondent used the misappropriated English/Sexton funds and Walters/Taylor funds to pay for office supplies, payroll, phone bills, continuing legal education classes, and at least one political donation. Respondent also made payments towards personal debts, payments to business partners, and payments to himself in cash.

From May 2013 through July 2016, Respondent processed numerous client transactions unrelated to the English/Sexton funds or the Walters/Taylor funds through his trust account. Respondent was unable to demonstrate he properly handled those other funds because he failed to maintain records of deposit, a receipts and disbursements journal, client ledgers, or monthly reconciliations, as required by Rule 417, SCACR (Financial Recordkeeping).

Law

Respondent admits that, by his conduct, he violated Rules 1.15(a) (holding client property or property of third persons separate from the attorney's own property and keeping financial records related to the property); 1.15(d) (requiring, upon receiving funds in which a client or third party has an interest, (1) an attorney notify the client or third party, (2) prompt delivery of the funds to the client or third party upon request, and (3) prompt rendering of a full accounting regarding such property); and 1.15(g) (forbidding the use or pledging of any entrusted property to obtain credit or other personal benefit for the attorney), RPC, Rule 407, SCACR. Respondent further admits his conduct violated Rules 8.4(b) (committing a criminal act that reflects adversely on an attorney's honesty, trustworthiness, or fitness); 8.4(d) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(e) (engaging in conduct that is prejudicial to the administration of justice), RPC, Rule 407, SCACR.

Respondent also admits his conduct constitutes grounds for discipline under Rule 7(a)(1), (4), and (5), RLDE, Rule 413, SCACR (violating the Rules of Professional Conduct; being convicted of a crime of moral turpitude or a serious crime; and engaging in conduct tending to pollute the administration of justice or bringing the courts or the legal profession into disrepute).

Conclusion

We find Respondent's misconduct warrants disbarment. Accordingly, we accept the Agreement and disbar Respondent from the practice of law in this state, retroactive to the date of this interim suspension. Respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty (30) days of the date of this opinion. Respondent shall also enter into a restitution agreement with

the Commission within sixty (60) days of the date of this opinion for the payment of restitution to the clients from whom he misappropriated funds.

Further, in addition to completing the requirements for reinstatement outlined in Rule 33, RLDE, Rule 413, SCACR, Respondent shall complete the Legal Ethics and Practice Program Trust Account School prior to seeking reinstatement. Finally, within fifteen (15) days of the date of this opinion, Respondent shall file an affidavit with the Clerk of Court showing he has complied with Rule 30, RLDE, Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

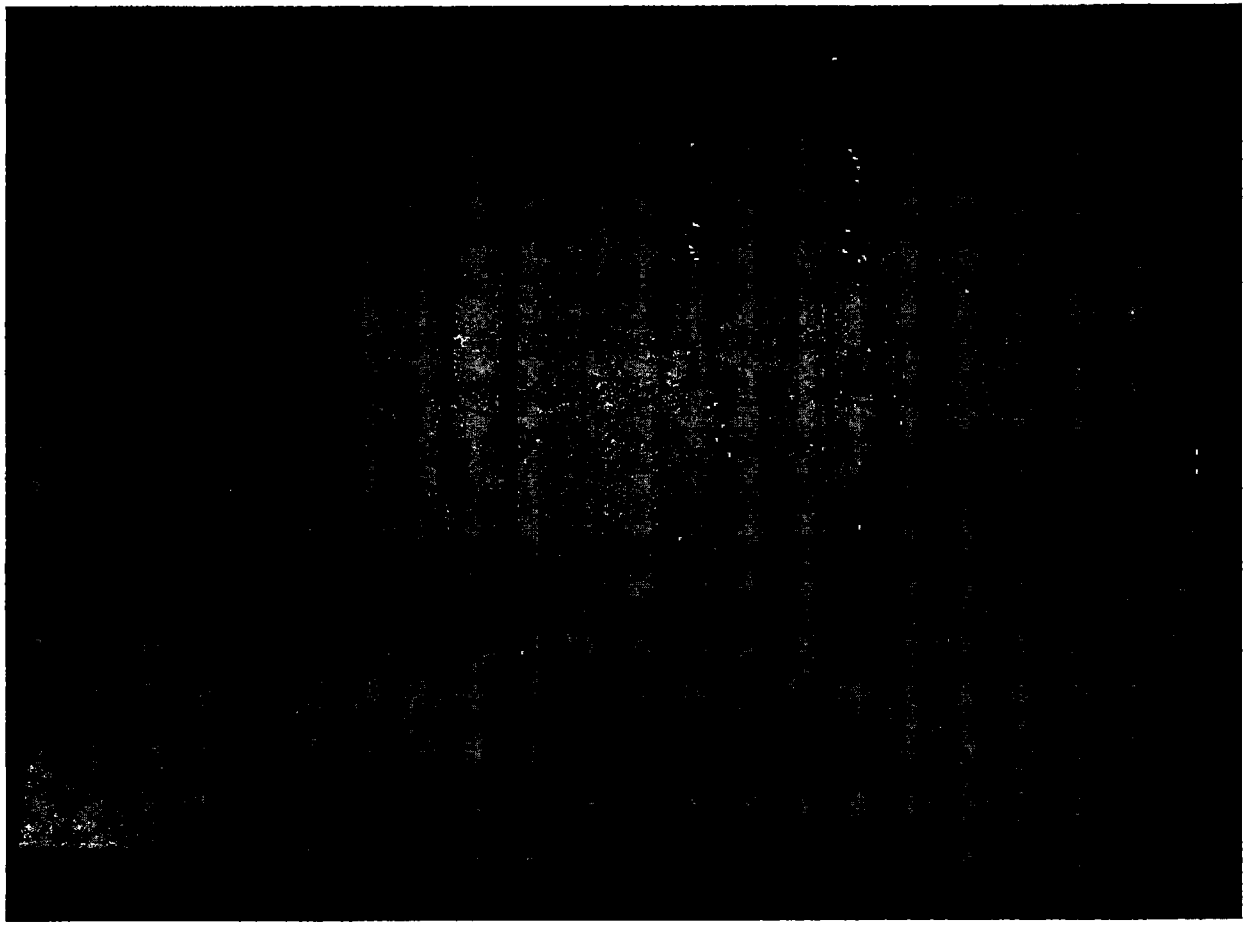
BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

From: Lorraine Ferro <lbferro3200@gmail.com>
To: "firegirl0926@yahoo.com" <firegirl0926@yahoo.com>
Sent: Wednesday, September 10, 2014, 1:43:15 PM EDT
Subject: Judge Chellis

Hi Molly,
I'm not sure if John Massalon let you know but the Judge is not going to consider anything we sent him! He is only going to consider the lawyers responses. It seems like he has made a decision already, but just wants to go over their exhibit list for a final once-over. Very disappointing, plus there is another delay with David being sick.

We still haven't recovered from the whole KY debacle. I thought for sure we would be done with this by now.

Thank you,
Lorraine



Sent from my iPhone

Exhibit "B"

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

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1. **PARTIES:** This legally binding Agreement entered into on October 20, 2012 between, Buyer(s), Stephan Dudek, Doreen Cress (hereinafter called "BUYER"), and Seller(s), _____ (hereinafter called "SELLER"). The property shall be deeded in the name(s) of: TBD

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE ☐LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 789 E Butternut Rd.

Tax Map# 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____.

No personal property will convey as a part of this sale, except as described: All appliances including refrigerator, as well as all window treatments.

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before ~~10 days after~~ _____, 2012, not later than 8:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ ~~333,000.00~~ 303,000.00

Three hundred three thousand ~~Two Hundred Ninety Five Thousand~~ and 00/100 ~~---~~ dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: _____

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 1,000.00 Buyer and Seller authorize Carolina One Real Estate as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☒Check, or ☐Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

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Carolina One Real Estate • Valley Road (843) Valley Road Summerville, SC 29483 Sara Nicholson
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CLERK OF COURT
DORCHESTER COUNTY
2013 JAN 15 PM 3:44

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 90.000 % loan (loan-to-value ratio) within 10 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 20 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐will ☐will not be added to the mortgage. VA funding fee ☐will ☐will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to Contribute $3,000-towards Buyers Closing Costs.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐will ☐will not be issued at closing, if applicable. The warranty premium will be paid at closing by the ☐ Buyer or ☒ Seller not to exceed $ 700.00. AHS provided by Carolina One.

11. **EXPIRATION OF OFFER:** This offer from Buyer shall be withdrawn at 6 o'clock p M. on October 22, 2012 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 15 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later then the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowners association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS. The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based paint and lead based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built in appurtenant equipment or appliances. All inspections shall be completed by November 20 2012. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (GL100) from a licensed and bonded pest control operator on or before November 30 2012. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

hen wall and ceiling

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) Repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment; or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) Residential Dwellings Built before 1978: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyers expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☐ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. APPRAISED VALUE: (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE

28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum A, B + C

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen Dudek	Date 20 OCT 2012	Time 1:45
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
BUYER: Dorothy Cross	Date 10 20 12	Time 1:47
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
SELLER: Virginia Ferris	Date 10/24/12	Time 11:45 AM
WITNESS: K Ferris	Date 10/24/12	Time 11:45 AM
SELLER: Kathleen Ferris	Date 10/24/12	Time 11:46 AM
WITNESS: Virginia Ferris	Date 10/24/12	Time 11:46 AM

LISTING AGENT AND COMPANY Rick Willis The Group, LLC

SELLING AGENT AND COMPANY Susan Nicholson Carolina One Real Estate

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Susan Nicholson Carolina One Real Estate

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ADDENDUM A

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In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property; ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 N Buttercup Rd.

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

1. Buyer total satisfaction of home inspection and CL100. 2. Seller to make free all liens and clear, insurable and marketable title. 3. Seller to have all utilities on the home for buyer to have a home inspection done. 4. Seller to provide any and all paperwork of septic tank. If septic tank hasn't been service in the past yr. then Seller agrees to have it serviced. 5. Seller agrees to have the property subdivided to include in this sale the 2250 sf house, storage bldg and 5 acres. Any costs will be the responsibility of the Seller. Seller to show copies of any and all paperwork of this process to include copies of the survey. Cont. next pg. (B) + C

10/22/12

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: M. C. Dudek (Stephen Dudek)	Date 21 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Wendy Brown (Wendy Brown)	Date 10.2012	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Ferro	Date 10/24/12	Time 11:48
WITNESS: Kelly J Ferro	Date 10/24/12	Time 11:48
SELLER: Kathleen Ferro	Date 10/24/12	Time 11:49
WITNESS: Kelly J Ferro	Date 10/24/12	Time 11:49

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®!

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Carolina One Real Estate - Trolley Road 1530 Old Trolley Road Summerville, SC 29485
Phone: 8434191015 Fax: 8452023169 Susan Nicholson 145 Brownlee

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

ADDENDUM B

© Carolina One Real Estate

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E Butternut Rd.

Tax Map # 130-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Also, remaining property that is subdivided from this sale shall have restrictions of NO MOBILE HOMES allowed. 7. If Seller has a current termite bond then Seller shall transfer to Buyer at no cost to buyer. 8. Seller to re-do SE Saltern Pinelumber due to not legible of what is currently on the MH. 9. Seller to leave current 3 ac. fencing paddock where it currently is. 10. Seller to leave any and all materials used in conservation of home to included but not limited to wood flooring material, fence material, etc. Buyer shall grant water & sewer easement to adjacent 2 acres ~~of~~ ff

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Stephen C. Dudek	Date 20 OCT 2012	Time 1:45 pm
WITNESS: Susan Bredekamp	Date 10.20.12	Time 1:48 pm
BUYER: Deneen Green	Date 10.2012	Time 1:47 pm
WITNESS: Susan Bredekamp	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Frost	Date 10/24/12	Time 11:48
WITNESS: Ely J Frost	Date 10/24/12	Time 11:48
SELLER: Margaret Frost	Date 10/24/12	Time 11:49
WITNESS: Ely J Frost	Date 10/24/12	Time 11:49

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Carolina One Real Estate - Trolley Road 1530 Old Trolley Road Summerville, SC 29485 145 Browning
Phone: 8434191018 Fax: 8432723169 Susan Nicholson
Produced with zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Steele, Sandi

From: Williams, Allison
Sent: Friday, January 18, 2013 10:09 AM
To: Steele, Sandi
Subject: RE: DOREEN CROSS

This file is in litigation and the seller could decide to sell at any moment. If that happens and the file is cancelled, that could be a problem. My advice is and has been to leave the file open until this pending litigation is resolved or until the docs/appraisal expires, but nobody is listening to me. The attorneys are in negotiation still as of a couple days ago & the attorney for the buyer has placed an order that the seller cannot sell to anyone else until the matter is resolved. I think someone there should speak to our attorney about how to proceed. We could get drawn into this law suit if it in fact becomes a law suit. Linda is the ultimate person that needs to decide this... I will email the buyer again and see if there is any news & let you know. Thanks, Allison

From: Steele, Sandi
Sent: Friday, January 18, 2013 9:59 AM
To: Williams, Allison
Subject: DOREEN CROSS

Hi Allison,

I received this file for decline due to borrower not sending a contract extension.....I just wanted to verify you had not heard from her before I process this file out....

Thanks! Sandi

Sandi Steele
First Federal
2440 Mall Drive Suite 100
North Charleston, SC 29406
Phone: 843-529-5840
Toll Free: 800-768-3248 x5840
Fax: 843-529-5816

"The highest compliment our mortgage clients can give us is the referral of their friends, family and business associates." Thank you for your business!

DORCHESTER COUNTY SHERIFF'S OFFICE
L C Knight, Sheriff
101 Ridge Street
Suite 1
Saint George, SC 29477

FILED-RECORDED
2019 JAN 25 AM 8:34
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

MOLLY M MORPHEW
PLAINTIFF(s)

vs

STEPHEN DUDEK AND DOREEN CROSS
DEFENDANT(s)

Case Number: 2018CP181661

AFFIDAVIT OF NON-SERVICE

SERVICE OF: DOREEN CROSS
788 E BUTTERNUT RD
SUMMERVILLE, SC 29483 [Home Address]

COURT: DORCHESTER COUNTY COMMON PLEAS

PERSONALLY comes the undersigned, who says on oath that as of the 19th day of December, 2018, after several attempts to serve the above CERTIFICATE OF SERVICE, CIVIL ACTION COVERSHEET, COMPLAINT AND AFFIDAVIT, EXHIBITS, SUMMONS on DOREEN CROSS, he/she was unable to complete service in accordance with applicable statutes and the Rules of Civil Procedures in effect. Service could not be completed for the following reasons: I LEFT A CARD ON THE DOOR, SHE RETURNED MY CALL. SHE REFUSED TO SET UP A TIME AND PLACE TO MEET AND TOLD ME GOOD LUCK FINDING HER. I WAS ABLE TO TRACK THE PHONE NUMBER BACK TO TRIDENT TECH. I THEN VERIFIED EMPLOYMENT AND CALLED HER BACK. SHE THEN SET UP A TIME TO MEET, SHE WAS A NO SHOW. THIS NEEDS TO BE SENT TO CHARLESTON COUNTY TO SERVE HER AT WORK.

Notary Statement

SWORN to before me on this the 19th day of December, 2018.

Angie Williams
Notary Public for The State of South Carolina

My Commission Expires 4.13.20

ANTHONY HORNE

DORCHESTER COUNTY SHERIFF'S OFFICE
L C Knight, Sheriff

101 Ridge Street
Suite 1
Saint George, SC 29477

FILED-RECORDED
2019 JAN 25 AM 8:34
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

MOLLY M MORPHEW
PLAINTIFF(s)

vs

STEPHEN DUDEK AND DOREEN CROSS
DEFENDANT(s)

Case Number: 2018CP181661

AFFIDAVIT OF NON-SERVICE

SERVICE OF: STEPHEN DUDEK
788 E BUTTERNUT RD
SUMMERVILLE, SC 29483 [Home Address]

COURT: DORCHESTER COUNTY COMMON PLEAS

PERSONALLY comes the undersigned, who says on oath that as of the 18th day of December, 2018, after several attempts to serve the above CERTIFICATE OF SERVICE, CIVIL ACTION COVERSHEET, COMPLAINT AND AFFIDAVIT, EXHIBITS, SUMMONS on STEPHEN DUDEK, he/she was unable to complete service in accordance with applicable statutes and the Rules of Civil Procedures in effect. Service could not be completed for the following reasons: I LEFT SEVERAL CARDS ON THE DOOR HIS WIFE DID CALL ME BUT WOULD NOT GIVE ME AND INFO ON HOW TO CONTACT HIM.

Notary Statement

SWORN to before me on this the 19th day of December, 2018.

Angie Williams
Notary Public For The State of South Carolina

My Commission Expires 4.13.2021

354
ANTHONY HORNE

First Federal

W12AW08756

Date 01/03/2013

DOREEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

Re: Request for additional information

Dear Applicant(s):

Thank you for trusting us with your residential loan application.

As discussed during the application process, we require all necessary loan documents within 10 days of your initial application. As of today, First Federal has not received all the requested documents. We are missing the following items:

1. PLEASE PROVIDE A SALES CONTRACT EXTENSION SIGNED BY ALL PARTIES.
2. FIRST FEDERAL TO OBTAINA VERBAL VERIFICATION OF EMPLOYMENT PRIOIR TO CLOSING.
3.

Please fax or drop off these documents at any one of our convenient locations.

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 and any corresponding interest rate lock agreements. Should you decide at a later date to furnish the above items, we can assist you with a new application.

Please call me with any questions. My contact information is shown below. I look forward to providing you with your home financing.

Sincerely,

NMLS Registry #000000607897

Statement of Credit Denial, Termination or Change

Lender	Applicant	Date
FIRST FEDERAL BANK	DOREEN CROSS	January 31st, 2013
2440 MALL DRIVE	236 CADY DRIVE	Application or Loan Number
NORTH CHARLESTON, SC 29406	SUMMERVILLE, SC 29483	W12AW08756

"We" means Lender. "You" means Applicant.

Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Description of Account, Transaction or Requested Credit.

Mortgage Loan

Description of Action Taken: SEE BELOW

Principal Reasons for Credit Denial, Termination or Other Action Taken Concerning Credit

- [X] Credit Application Incomplete
- [ ] Insufficient Number of Credit References Provided
- [ ] Unacceptable Type of Credit References Provided
- [ ] Unable to Verify Credit References
- [ ] Temporary or Irregular Employment
- [ ] Unable to Verify Employment
- [ ] Length of Employment
- [ ] Income Insufficient for Amount of Credit Requested
- [ ] Excessive Obligations in Relation to Income
- [ ] Unable to Verify Income
- [ ] Length of Residence
- [ ] Temporary Residence
- [ ] Unable to Verify Residence
- [ ] No Credit File
- [ ] Limited Credit Experience
- [ ] Poor Credit Performance with Us
- [ ] Delinquent Past or Present Credit Obligations with Others
- [ ] Collection Action or Judgment
- [ ] Garnishment or Attachment
- [ ] Foreclosure or Repossession
- [ ] Bankruptcy
- [ ] Number of Recent Inquiries on Credit Bureau Report
- [ ] Value or Type of Collateral not Sufficient
- [ ]
- [ ]
- [ ]
- [ ]
- [ ]

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

First Federal

January 31, 2013

DOREEN C CROSS
STEPHEN C DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

Loan Application # W12AW08756

DOREEN CROSS

Thank you for considering First Federal for your mortgage needs. Enclosed you will find our check number #643216 in the amount of $13.20 for the unused portion of your loan application fee, and a Statement of Credit Denial, Termination or Change. Please keep us in mind for any mortgage and banking services you may need in the future.

***If you have any questions regarding this loan application, please contact your loan officer*.** Thank you for your prompt attention to this matter.

Thank you,

Margie Vincent

Margie Vincent
Compliance Auditor

Enclosure

Statement of Credit Denial, Termination or Change

Lender	Applicant	Date
FIRST FEDERAL BANK 2440 MALL DRIVE NORTH CHARLESTON, SC 29406	STEPHEN DUDEK 236 CADY DRIVE SUMMERVILLE, SC 29483	January 31st, 2013 Application or Loan Number W12AW08756

"We" means Lender. *"You"* means Applicant.

Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Description of Account, Transaction or Requested Credit.

Mortgage Loan

Description of Action Taken. SEE BELOW

Principal Reasons for Credit Denial, Termination or Other Action Taken Concerning Credit

- [X] Credit Application Incomplete
- [ ] Insufficient Number of Credit References Provided
- [ ] Unacceptable Type of Credit References Provided
- [ ] Unable to Verify Credit References
- [ ] Temporary or Irregular Employment
- [ ] Unable to Verify Employment
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- [ ] Excessive Obligations in Relation to Income
- [ ] Unable to Verify Income
- [ ] Length of Residence
- [ ] Temporary Residence
- [ ] Unable to Verify Residence
- [ ] No Credit File
- [ ] Limited Credit Experience
- [ ] Poor Credit Performance with Us
- [ ] Delinquent Past or Present Credit Obligations with Others
- [ ] Collection Action or Judgment
- [ ] Garnishment or Attachment
- [ ] Foreclosure or Repossession
- [ ] Bankruptcy
- [ ] Number of Recent Inquiries on Credit Bureau Report
- [ ] Value or Type of Collateral not Sufficient
- [ ]
- [ ]
- [ ]
- [ ]
- [ ]

Disclosure of Use of Information Obtained from an Outside Source

[X] Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the *Fair Credit Reporting Act* to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

First Federal

January 31, 2013

DOREEN C CROSS
STEPHEN G DUDEK
236 CADY DRIVE
SUMMERVILLE SC 29483

Loan Application # W12AW08756

STEPHEN DUDEK\

Thank you for considering First Federal for your mortgage needs. Enclosed you will find our check number #643216 in the amount of $13.20 for the unused portion of your loan application fee, and a Statement of Credit Denial, Termination or Change. Please keep us in mind for any mortgage and banking services you may need in the future.

Sent with Doreen's letter

***If you have any questions regarding this loan application, please contact your loan officer*.** Thank you for your prompt attention to this matter.

Thank you,

Margie Vincent

Margie Vincent
Compliance Auditor

Enclosure

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
DORCHESTER COUNTY

Gmail Molly Morphew <morphew926@gmail.com>

October 1st Motions

6 messages

Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> Thu, Oct 18, 2018 at 11:19 AM
To: "Samuel M. Wheeler" <swheeler@scnlaw.com>, Jordan Crapps <jcrapps@gwblawfirm.com>, Amy Neuschafer <aneuschafer@collinsandlacy.com>, Molly Morphew <mollymorphew1@gmail.com>, Molly Morphew <morphew926@gmail.com>, "Steven L. Smith" <ssmith@scnlaw.com>, "Peggy M. Rochay" <prochay@scnlaw.com>, Will Kalivas <wkalivas@scnlaw.com>, David Collins <davidacollins2@aol.com>
Cc: Becky Stevens <BStevens@dorchestercountysc.gov>

Good Morning,

Since trial was scheduled to take place in less than two weeks, as a courtesy, Judge Murphy would like to inform all of the parties of her rulings on several motions which were heard on October 1st. First, Defendants Wooddy Law Firm and Carrie Boyer's Motion for Summary Judgment is **GRANTED** as to all remaining causes of action. Second, Defendants Stephen Dudek, Doreen Cross, Susan Nicholson, Michael Scarafile, and Carolina One Real Estate's Motion for Summary Judgment is **GRANTED** as to all remaining causes of action. Third, Defendants Allison Williams and First Federal's Motion for Summary Judgment is **GRANTED** as to all remaining causes of action. Fourth, Plaintiff's Motion for Entry of Default as to David Collins is **DENIED**. Lastly, Defendant David Collins's Motion to Dismiss which was treated as a Motion for Summary Judgment pursuant to Rules 12(b)(6) and 56(c, e), SCRCP is **GRANTED** as to all remaining causes of action. Due to Judge Murphy's rulings on these motions, all remaining motions are now moot.

While findings of fact and law along with instructions to counsel to prepare proposed orders are generally included with these emails, Judge Murphy decided it would be best for all of the parties if the Court prepared the orders instead. We are currently in the process of preparing these orders, all of which will include detailed findings of fact and law, and all of you will be notified when these are filed with the Court. In the meantime, if you have any questions or concerns, please feel free to contact me.

Best,

Chandler

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments!

Becky Stevens <BStevens@dorchestercountysc.gov> Thu, Oct 18, 2018 at 11:43 AM
To: "Murphy, Maite Law Clerk (Chandler D. Rowh)" <mmurphylc@sccourts.org>, "Samuel M. Wheeler" <swheeler@scnlaw.com>, Jordan Crapps <jcrapps@gwblawfirm.com>, Amy Neuschafer <aneuschafer@collinsandlacy.com>, Molly Morphew <mollymorphew1@gmail.com>, Molly Morphew <morphew926@gmail.com>, "Steven L. Smith" <ssmith@scnlaw.com>, "Peggy M. Rochay" <prochay@scnlaw.com>, Will Kalivas <wkalivas@scnlaw.com>, David Collins <davidacollins2@aol.com>

Woohoo! So its over!

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

[Quoted text hidden]

Samuel M. Wheeler <swheeler@scnlaw.com> Tue, Oct 23, 2018 at 10:19 AM
To: "Murphy, Maite Law Clerk (Olivia Broderick)" <mmurphylc@sccourts.org>
Cc: Jordan Crapps <jcrapps@gwblawfirm.com>, Amy Neuschafer <aneuschafer@collinsandlacy.com>, Molly Morphew <mollymorphew1@gmail.com>, Molly Morphew <morphew926@gmail.com>, "Steven L. Smith" <ssmith@scnlaw.com>, "Peggy M. Rochay" <prochay@scnlaw.com>, Will Kalivas <wkalivas@scnlaw.com>, David Collins <davidacollins2@aol.com>, Becky Stevens <BStevens@dorchestercountysc.gov>

Chandler,

I think it is pretty clear from the orders forthcoming, but can you please confirm that no one will need to attend the trial roster meeting on Monday, October 29th?

Thank you.

Best,

Sam

Smith | Closser, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Exhibit "B"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. ~~2013-CP-18-~~ 2013-LP-18-18
Stephen Dudek and Doreen Cross	)	
Plaintiffs,	)	
vs.	)	LIS PENDENS
Thomas M. Ferro and Lorraine B. Ferro	)	
Defendants	)	

CERTIFIED COPY
2013 JAN 11 PM 3:27
CLERK OF COURT
DORCHESTER COUNTY

Notice is hereby given that an action has been commenced and is pending in this Court upon complaint of the above named Plaintiffs against the above named Defendants for the specific performance of a contract of sale dated October 12, 2012, on the below described real estate:

All that certain piece, parcel, or lot of land, situate, lying and being near Jedburg, Dorchester County, South Carolina, being shown and designated as Tract B containing 8.006 acres, more or less, and being delineated on a plat entitled "Plat showing the subdivision of property owned by Estate of St. ClairA Knight, III, located near Jedburg, Dorchester county, South Carolina" dated August 7, 1997, prepared by Ashley Surveying, Inc. and recorded in the RMC Office for Dorchester County in Plat book J-26. Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

This being a portion of the property conveyed to the Estate of St. Clair A. Knight, III, under the Last Will and Testament of St. Clair Ainsley Knight, III, by Catherine H. Knight, Personal Representative, as filed in Horry County Probate Court Case No. 97-ES-26-152.

TMS Number 128-00-00-090

LAW OFFICE OF DAVID A. COLLINS, LLC

David Athell Collins, Esquire
Attorney for Plaintiff
P. O. Box 40578
Charleston, SC 29423
(843) 760-0220

North Charleston, SC
January 11. 2012

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

1. **PARTIES:** This legally binding Agreement entered into on December 16, 2012 between, Buyer(s), Molly M. Morphew, (hereinafter called "**BUYER**"), and Seller(s), Thomas Ferro, Lorraine Ferro, (hereinafter called "**SELLER**"). The property shall be deeded in the name(s) of: Molly M. Morphew

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres) Tract B-1

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☐public sewer system or to ☒septic tank or to ☒public water or to ☒well system or to ☐other _____

No personal property will convey as a part of this sale, except as described: Elec Cooktop, Dishwasher, Waher/Dryer Connections, Garbage Disposal, Satellite Dish

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before 1/30/13; 1/30/13, not later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

6. **PURCHASE PRICE** shall be $ 280,000.00 Two Hundred Eighty Thousand dollars.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐Cash; or ☒Subject to Financing. Financing to be obtained by ☒Conventional ☐Seller ☐VA ☐FHA ☐Other terms: N/A

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of $ 5,000.00 Pd. To Seller's ~~Buyer and Seller authorize _____, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash; ☐Check; or ☐Other. Earnest money is deposited in Escrow with _____ on or before _____. If earnest money check is not honored upon presentation, Buyer does not guarantee payment of a check or checks accepted earnest money. All earnest money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit will be credited to the Buyer.~~

MM BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 96.500 % loan (loan-to-value ratio) within 5 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 30 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☒will ☐will not be added to the mortgage. VA funding fee ☐will ☒will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller agrees to pay up to $7,000 towards buyers closing costs, prepaids, allowables and non allowables at closing.

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐will ☒will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐Buyer or ☐Seller not to exceed $ N/A.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at N/A o'clock N/A M. on N/A unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed N/A consecutive days from the original closing date. 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.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☐ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

[ ] BUYER [ ] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by N/A, N/A. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before At Closing, . Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) **Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, _____. **(Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information).** This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) **Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. **APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

[MM] BUYER [____] BUYER [ ] SELLER [ ] SELLER HAVE READ THIS PAGE

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proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. ~~**COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.~~

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.**

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28. **NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See Addendum "A"

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M Morphew Molly M. Morphew Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Thomas Ferro Thomas Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

SELLER: Lorraine Ferro Lorraine Ferro Date 12/16/12 Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY The Group, Llc

SELLING AGENT AND COMPANY The Group, Llc

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐BUYER'S AGENT OR ☐SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

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ADDENDUM A

In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER, ☐ OTHER _____ covering the ☐ real property, ☐ business, ☐ premises — commonly known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 788 E. Butternut (6 Acres)

Tax Map # 128-00-00-090 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Property is being purchased in "As Is" condition. This contract is a "back up" contract. It is contingent upon an existing contract of sale to receive a signed release so that this contract becomes the primary contract. In the event the existing contract does not receive a signed release, this agreement may be declared null and void by either party on or before December 30, 2012 with written notice and deposit money returned to purchaser. Attached plat shows property being purchased. Seller agrees to pay 6% of the sales price at closing to The Group, Llc as compensation for this transaction.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Molly M. Roxphew	Date 12/16/12	Time	
WITNESS:	Date	Time	
BUYER:	Date	Time	
WITNESS:	Date	Time	
SELLER: Thomas Ferro	Date 12/16/12	Time	
WITNESS:	Date	Time	
SELLER: Josephine Ferro	Date 12/16/12	Time	
WITNESS:	Date	Time	

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The Group, LLC. 2060 Skyhawk Ct, Mt. Pleasant, SC 29466
Phone: 843-971-4002 Fax: 888-803-1570 Charlene Willis

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788 E. Buttern

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2013, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for seven transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: _____ Seller Date _____ Buyer _____ Date 12/6/12

Rev. 1/0_

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM, MALFUNCTION OR DEFECT WITH ANY OF THE FOLLOWING:

		Yes	No	No Representation
1.	Foundation, slab, fireplace/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure ___ Brick mono lithic pour green house	☐	☑	☐
2.	Roof (leakage or other problem)? a. Approximate age of roof covering steel roof 8yrs.	☐	☑	☐
3.	Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☑	☐
4.	Electrical system (switches, wiring, panel, switches, fixtures, etc)?	☐	☑	☐
5.	Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☑	☐
6.	Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ cooling unit ___	☐	☑	☐
7.	Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county ☑ community system ___ private well ☑ b. water pipes are: copper ___ galvanized ___ PVC/CPVC ☑ polybutylene ___	☐	☑	☐
8.	Septic system? a. Type of system: septic tank ☑ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ☑ c. Has the septic system been serviced/pumped during your ownership?	☐	☑	☐
9.	Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☐	☑	☐
10.	Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ☑	☐	☑	☐
11.	Drainage, grading or stability of soil or retaining structure?	☐	☑	☐
12.	Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ☑ exhaust fan ___ ceiling fan ☑ sump pump ___ irrigation system ☑ cable TV wiring or satellite dish ☑ security system ___ or other systems ___	☐	☑	☐

Initials ___ Seller ___ Date ___ Buyer ___ Date 12/16/12

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

		Yes*	No	No Representation
13.	Room additions or other structural changes?	☐	☑	☐
14.	Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☑	☐
15.	Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☑	☐
16.	Previous damage caused by fire?	☐	☑	☐
17.	Violations or variances of building codes or zoning ordinances?	☐	☑	☐
18.	Restrictions to property use? (covenants or deed)	☐	☑	☐
19.	Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☑	☐
20.	Lawsuits, foreclosures, bankruptcy, tax liens, judgments, tax or other liens, proposed assessments or notice from any governmental agency, that could affect title to the property?	☐	☑	☐
21.	Owners' association fees or "common area" expenses or assessments?	☐	☑	☐
22.	Flood hazards or that the property is in a federally-designated flood plain?	☐	☑	☐
23.	Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☑	☐
24.	Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☑	☐

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

Initials: _____ Seller _____ Date _____ Buyer MM Date 12/16/12

"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 768 E Butternut Rd Simpsonville, SC 29483

The property is currently: owner-occupied ✓ leased ___ in an estate ___ in foreclosure ___
vacant ___ (If vacant, how long? ___)
Owner's Name(s): Tom Ford

Owner(s) acknowledge having examined this application before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date: 12/16/12

Owner Signature: _____ Date: 12/16/12

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: _____ Date: 12/16/12

Purchaser Signature: _____ Date: _____

This form is approved by the South Carolina Real Estate Commission.

DUAL AGENCY AGREEMENT

THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT.

This Dual Agency Agreement is entered into between Molly M. Moxphew, Buyer, and The Group, Llc, Real Estate Company, Thomas Ferro, Lorraine Ferro, Seller, and The Group, Llc, Real Estate Company for Property located at 788 E. Butternut (6 Acres), Summerville, 29483.

The term "Broker" includes the real estate firm, broker-in-charge and associated licensees.

1. **DUAL AGENCY:** Seller and Buyer agree that Broker shall serve as both Seller's agent and Buyer's agent in the sale of Seller's property to Buyer in accordance with Section 40-57-137(M)(1) of the South Carolina Code of Laws, which provides in part, that "...In acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited." The parties agree that without permission from the party about whom the information pertains, Broker shall not disclose to the other party the following information:
   a) That a party may agree to a price, terms, or any conditions of sale other than those offered;
   b) The motivation of a party for engaging in the transaction, unless disclosure is otherwise provided by state law or regulation; and
   c) Any information about a party which that party has identified as confidential unless disclosure is otherwise required by state law or regulation.
2. **BROKER'S DUAL AGENCY ROLE:** Because Broker is serving as Agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to represent Seller and Buyer in a balanced and fair manner. Broker shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and Buyer. Seller and Buyer understand and acknowledge that:
   a) Prior to the time this agreement was entered into, Broker acted as the exclusive Agent of Seller and acted as exclusive Agent of Buyer.
   b) In those separate roles Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker.
   c) Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.
3. **SELLER'S AND BUYER'S ROLES:** Because of Broker's Dual Agency relationship, Seller and Buyer understand and acknowledge that:
   a) Seller and Buyer have determined that the advantages of entering into this Dual Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
   b) Seller and Buyer each have the responsibility of making their own decisions as to what terms are to be included in any agreement to buy and sell between the Seller and Buyer.
   c) Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Dual Agency role as expressed herein to provide balanced and fair representation of Seller and Buyer and to encourage communication between Seller and Buyer rather than acting as an advocate or exclusive agent.
   d) Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent.
   e) Seller and Buyer may seek independent legal counsel to assist them with the negotiation and preparation of a buy and sell agreement or with any matter relating to the transaction which is the subject matter of a buy and sell agreement.
4. **PREVIOUS AGENCY AGREEMENTS:** The parties agree that this Agreement shall modify any agency agreements previously entered into by Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Dual Agency Agreement shall control.
5. **DURATION OF DUAL AGENCY:** The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

6. FAIR HOUSING: The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

7. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the execution of this dual agency agreement or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

8. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DUAL AGENCY AGREEMENT.

Seller Thomas Ferro — Date 12/16 — Time

Seller Lorraine Ferro — Date 12/16/12 — Time

Buyer Molly M. Morphew — Date 12/16/12 — Time

Buyer — Date — Time

The Group, Llc
Real Estate Brokerage (Name of Real Estate Co.)

By: Broker/Assoc. Licensee — Date 12-16-12
Rick Willis

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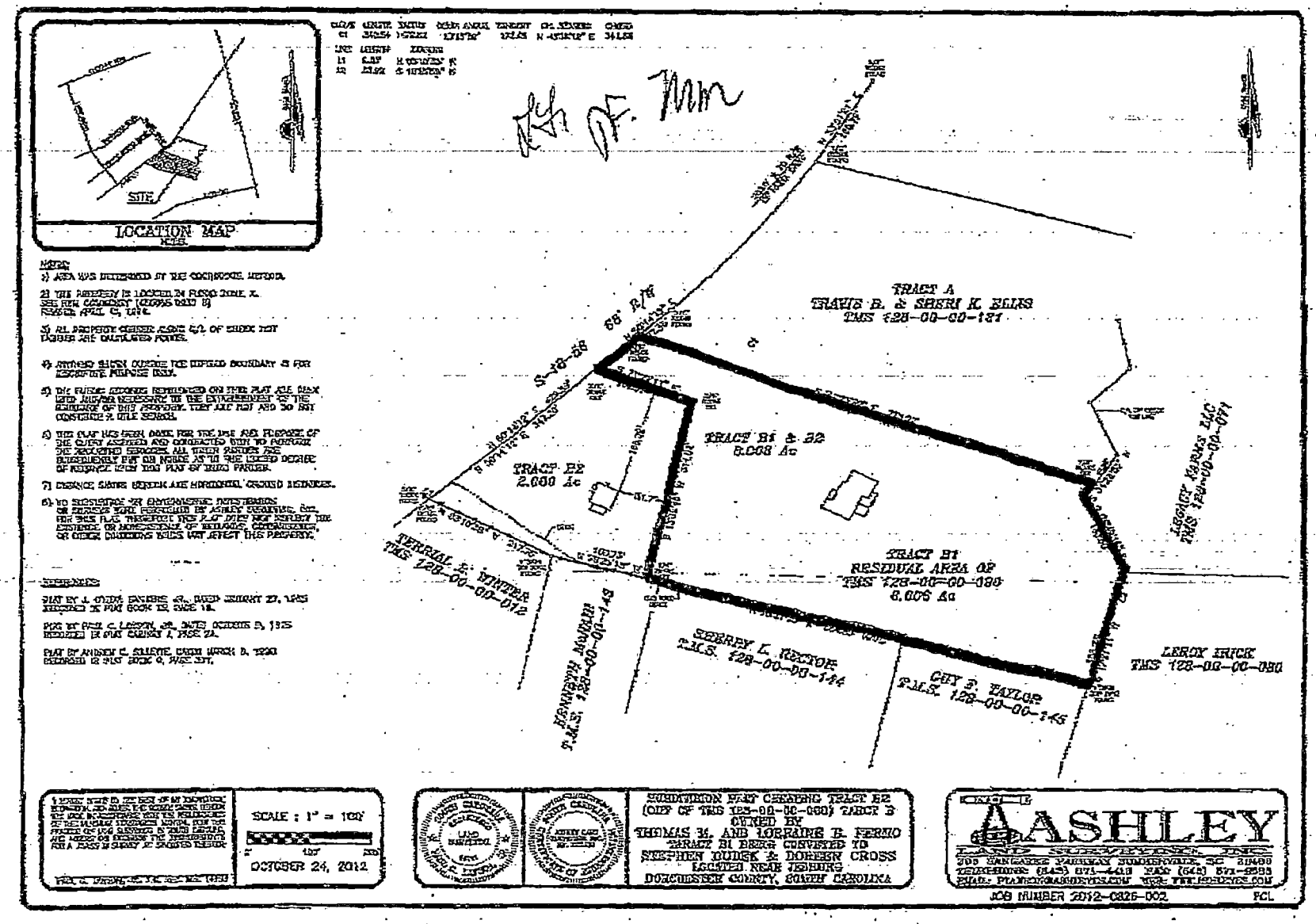
LOCATION MAP
SITE
TRACT A
TRAVIS B. & SHERI K. ELLIS
TMS 128-00-00-131
TRACT B1 & B2
8.008 Ac
TRACT B2
2.000 Ac
TRACT B1
RESIDUAL AREA OF
TMS 128-00-00-080
6.006 Ac
LEGACY FARMS LLC
TMS 128-00-00-051
TERRIAL E. WINTER
TMS 128-00-00-012
HIGHWAY 78
S.C.R.S. 128-00-00-143
SHERRY L. RECTOR
P.I.N.S. 128-00-00-144
CHY E. TAYLOR
P.I.N.S. 128-00-00-145
LEROY IRICK
TMS 128-00-00-080
SCALE : 1" = 100'
OCTOBER 24, 2012
SUBDIVISION PLAT CREATING TRACT B2
(OFF OF TMS 128-00-00-080) TRACT B
OWNED BY
THOMAS M. AND LORRAINE B. FERRO
TRACT B1 BEING CONVEYED TO
STEPHEN BUDICK & DOREEN CROSS
LOCATED NEAR JEDBURG
DORCHESTER COUNTY, SOUTH CAROLINA
ASHLEY
JOB NUMBER 2012-0826-002
PCL