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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

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

Appellate Case No. 2018-002185

Molly M. Morphew — Appellant

v.

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

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RECORD ON APPEAL -- VOLUME IV

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

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FERRO THOMAS M & LORRAINE B
788 BUTTERNUT RD
SUMMERVILLE, SC 29483-8407

Base Amount: $1,282.54
Penalties: $0.00
Fees: $0.00
Tax Amount: $1,282.54

Penalty Date	Penalty Rate
January 18	3%
February 2	10%
March 17	15%

Record Type: Real Property
Notice No.: R-2012-0001654-00
Tax Year: 2012

Payment Status: Unpaid
Paid Date:
Paid Amount: $0.00
Balance Due: $1,782.54

Map No.: 128-00-00-090-000C
District: 269
Assessed Value: 13,050
Appraised Value: 326,170
Description: BUTTERNUT ROAD EAST 788

Add To Cart

View/Print Tax Bill Return Slip

View/Print Tax Bill

Update Mailing Address Information

Search For Additional Records

1782.54/12
= 148.55

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First Federal

P O Box 118068

Charleston, SC 29423-8068

E-mail Address: mtgapp@firstfederal.com * Return all Appraisals to this email address.

Return invoice by separate e-mail. List (subject) in the e-mail as W12AW08756 DOREEN C CROSS
(MV# & Borrower's Name)

Return appraisal by separate e-mail. List (subject) in the e-mail as W12AW08756 DOREEN C CROSS
Revised Appraisals - Enter Revise Prior to MV# & Borrower's Name (MV# & Borrower's Name)

APPRAISAL REQUEST FORM

Date Requested: 12/06/2012
Requested By: Donna Beard

Processor Name: MADDY MCWHIRTER
Telephone number: 843-529-5659
Email: mmcwhirter@firstfederal.com

Fee Quoted to Borrower: $375 Please contact us if fee will be higher. *If fee appears higher than normal, it may include cost of two appraisals.

Appraiser: Jackson Appraisal Service
Phone: 843-571-6385
Email: jas@jacksonapp.com

Applicant(s): DOREEN C CROSS and STEPHEN C DUDEK Loan Type: Purchase

Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

**PLEASE RETURN APPRAISAL NO LATER THAN 12/13/2012

If you cannot meet this deadline, please contact the Loan Processor shown above immediately. Please contact borrower or agent within 3 business days of receipt of this order.

Appraisal Type: 1 Unit - 1004 Interior/Exterior

NEW NOTE AS OF Sept 2012: As of Oct 21 Forms 2055,2075,1075 exterior Appraisals are obsolete.

ALL APPRAISALS MUST INCLUDE LOT, BLOCK AND THE COST APPROACH WITH THE EXCEPTION OF LOTS, CONDOS, AND VA.

Photographs: Subject property (front, rear, street, kitchen, all baths, main living area, any physical deterioration, recent renovations). Comparables: Front

FHA Photos: Subject property (front, rear, both sides, street) and front only of comparables.

FNMA Form 1004MC is required on all 1-4 Unit properties including condos.

Message:
Attachments: Contract

Contact for Entry:

Business # 843-574-6111 Home # 843-871-7132 Cell #
Email address: DOREEN.CROSS@TRIDENTTECH.EDU

APPTM1
Rev 8/12

SwiftSend Document Delivery Report

Document Title:	appr req/cross/w12aw08756
Document Creator:	Request, Appraisal <mtgapp@firstfederal.com>
Document Created At:	12-06-2012 10:53 EST
Security:	Default
Document ID:	22277529
Billing Group:	First Federal Appraisal Request
Workgroup:	First Federal Bank
Recipients:	jas@jacksonapp.com Return-Receipt: X
Size:	1.12 MB
Page Count:	13
Expires:	02-04-2013 10:53 EST
Delivery Type:	document
Delivery Cost Estimate:	$3.10
Report Created At:	12-06-2012 10:54 EST

Jackson Appraisal Service, Inc.
1525 SAM RITTENBERG BLVD.
CHARLESTON, SC 29407
843-571-6385
Fed Tax ID# 57-1066492

INVOICE	12/13/2012 DATE	12M-729 FILE NUMBER	CASE NUMBER

Client: First Federal
P.O. Box 118068
Charleston, SC
29423

Item	Total
APPRAISAL FEE FOR SERVICES RENDERED	$ 375.00

Borrower: Doreen Cross & Stephen Dudek
788 E Butternut Road
Summerville, SC 29483
788 E Butternut Road

Must be paid before mail appr 12-14-12

Total: $ 375.00

Thank you

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: 843.881.3511

UNITED STATES OF AMERICA PATRIOT ACT
IMPORTANT APPLICANT INFORMATION

W12AW08756
12/05/2012

Borrower Name(s):

DOREEN C CROSS
STEPHEN C DUDEK

Lender:

FIRST FEDERAL BANK
2440 MALL DRIVE
NORTH CHARLESTON, SC 29406

Property Address:
788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Date: December 05, 2012

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT OR REQUESTING A LOAN.

To help the government fight the funding of terrorism and money laundering activities, the USA Patriot Act, a Federal law, requires all financial institutions to obtain, verify and record information that identifies each person who opens an account or requests a loan.

What this means for you: When you open an account, or apply for a loan, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

Doreen C Cross 12/10/12
Borrower's Signature Date

Stephen C Dudek 12/10/12
Borrower's Signature Date

Borrower's Signature Date

Borrower's Signature Date

Attorney Validated: _____ on _____
Signature Print Name Date

Name: DOREEN C CROSS
☐ DL # State:
☐ Passport # Country:
☐ Other:
Date Issued:
Date Expires:

Name: STEPHEN C DUDEK
☐ DL # State:
☐ Passport # Country:
☐ Other:
Date Issued:
Date Expires:

Name:
☐ DL # State:
☐ Passport # Country:
☐ Other:
Date Issued:
Date Expires:

Name:
☐ DL # State:
☐ Passport # Country:
☐ Other:
Date Issued:
Date Expires:

Loan Officer Name: 10334 WILLIAMS, ALLISON JHA Loan #
Loan Officer NMLS Registry #: 000000607897

IMAPP
Rev 3/12

SINGLE (1-4) FAMILY RESIDENCES INSURANCE WORKSHEET

A HOLD HARMLESS MUST BE SIGNED ANY TIME A POLICY COVERS LESS THAN 100% OF TOTAL COST NEW

I. **HAZARD- Deductible not to exceed 5%**

A. Total Estimate of Cost New: A. $ 374,660

B. Loan amount of the first mortgage: $ 242,400

Coverage: AND the highest credit amount of any 2nd mortgage: + $ —

$331,000 Total of Mortgages = B. $ —

C. Lesser of A or B C. $ 242,400

D. 80% of Total Cost New (80% of A.) D. $ 299,728

Expires: E. Higher of C or D is the MINIMUM amt of dwelling insurance required: E. $ 299,728

11-30-13

*** If policy/agent states that dwelling coverage amount provided is the "maximum insurable value", you may use this figure (must have confirmation in written form)

*** If policy includes "other structures", this MAY be counted on a case-to-case basis - MUST be signed off by Management

*** CAN count "replacement cost" as additional dwelling coverage

*** Replacement cost and maximum insurable value is NOT the same thing.

II. WIND & HAIL - **Deductible not to exceed 5%** Deductible: $5000.00

Hazard ins policy should show a separate W&H deductible. If none is shown, contact the agent and document the file that W&H deductible is the same as for "all perils". There *may* be a separate deductible for W&H. **If borrower's policy excludes W&H/Named Storm coverage, then a separate policy is required. W&H policy must be equal to the amount of coverage required for hazard.** *** THERE IS A 15 DAY WAIT PERIOD FOR NEW POLICIES ON NON-PURCHASE LOANS, AFTER THE POLICY OR INCREASED PREMIUM HAS BEEN PAID***

III. **FLOOD - Deductible not to exceed $5,000**

A. Loan amount of first mortgage $ —

AND the highest credit amount of any 2nd mortgage + $ —

Coverage: Total of Mortgages = A. $ —

B. Maximum flood insurance available B. $ 250,000

C. Total Estimate of Cost New: C. $ —

(if no estimated cost new, use replacement cost value from hazard ins policy)

Expires: D. Lesser of A,B or C is required to close: D. $ —

BEACHFRONT or BARRIER ISLAND PROPERTIES - *Extra* Flood Insurance is required when question C3 is checked on the flood certification form.

Lesser A or C (from above) $ —

LESS maximum flood insurance available: $ 250,000

EQUALS additional coverage required: $ —

INSCA1
Rev 8/12

9800 Fredericksburg Road
San Antonio, Texas 78288

USAA

CIC [redacted]

HOMEOWNERS
CERTIFICATE OF INSURANCE

USAA CASUALTY INSURANCE COMPANY

11/21/12

FIRST FEDERAL OF
CHARLESTON

PO BOX 118068
CHARLESTON, SC 29423-8068

POLICY INFORMATION AMENDED EFFECTIVE 11/30/12

Named Insured: DOREEN ANITA CROSS

Policy Number: [redacted] Loan Number: NOT AVAILABLE

Policy Form: HO 9 Effective Date: 11/30/12 Expiration Date: 11/30/13

ADDITIONAL INTEREST Interest: FIRST MORTGAGEE

Name: FIRST FEDERAL OF CHARLESTON
ITS SUCCESSORS AND/OR ASSIGNS, AS THEIR INTEREST

Address:

MAY APPEAR, PO BOX 118068
CHARLESTON, SC 29423-8068

PROPERTY INFORMATION

Location: 788 E BUTTERNUT RD
SUMMERVILLE, DORCHESTER, SC 29483-8407

Legal Description:

COVERAGE INFORMATION* Coverage applies only if a limit is shown.

Coverage	Limit	Coverage	Limit
Dwelling:	$331,000	Personal Liability:	
Other Structures:	$33,100	Medical Payments:	
Personal Property:			
Deductible: WIND AND HAIL ALL OTHER PERILS	$5,000 $1,000	Annual Premium:	$1,834.42

PREFERRED PROTECTION PLAN

See back of form for an important disclosure.

* Copy of contract available upon request.

DWGCOI 08-12

126240-0312_03
Page 1 of 2

First Federal

Date: December 12, 2012

Borrower: DOREEN C CROSS
Co-Borrower: STEPHEN C DUDEK
Address: 236 CADY DRIVE
SUMMERVILLE SC 29483

Loan # 7100323356
Subject Property: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

First Federal is pleased to inform you that your loan application has been approved contingent upon the terms and conditions listed below:

TERMS:

Type of Loan: CONV FIXED
Loan Amount: $242,400
Monthly Payment excluding escrow: $1,122.60
Interest Rate Lock Expiration Date: 02/03/13

Interest Rate: 3.750%
Term in Months: 360

TITLE TO PROPERTY:

The listed Mortgagor(s) will take title to the property as follows:

DOREEN C CROSS
STEPHEN C DUDEK

REQUIRED INSURANCE:

Hazard Insurance Coverage: Full replacement cost or 100% of the insurable value.
Flood Insurance Coverage, if required: Full replacement cost or 100% of the insurable value.

Flood Insurance required: NO Flood Zone: X

Contact your insurance company and apply for your insurance immediately. Fax a copy of the policy declaration page which lists the amount and type of coverage as well as the deductible. The name of the insured should read the same as the title to the property. The mortgagee clause should also be listed as follows:

Loan Number: 7100323356
First Federal Bank, its successors and/or assigns - ISAOA
As their interest may appear - ATIMA
P O Box 5942
Troy, MI 48007-5942

CONDITIONS:

Please provide all the conditions below within 3 business days of receipt of this approval letter.

1. This commitment is being issued subject to the receipt and review of an appraisal prepared for and ordered by First Federal. This appraisal *must* have a value after review of no less than $303,000. Should the appraisal review discover any adverse conditions that may affect the property to be used as collateral, the terms and conditions of this loan request may change subject to the aforementioned appraisal review.
2. The attached flood certification must be signed, dated and returned by fax or mail.
3. First Federal to request IRS transcripts for the last 2 years - Receipt & review of these transcripts.
4. FIRST FEDERAL TO OBTAINA VERBAL VERIFICATION OF EMPLOYMENT PRIOIR TO CLOSING.
5. PLEASE PROVIDE ALL FIRST FEDERAL DISCLOSURES SIGNED AND DATED.
6. LEGIBLE COPY OF THE SALES CONTRACT ALL ADDENDUMS.
7.
8.
9.
10.

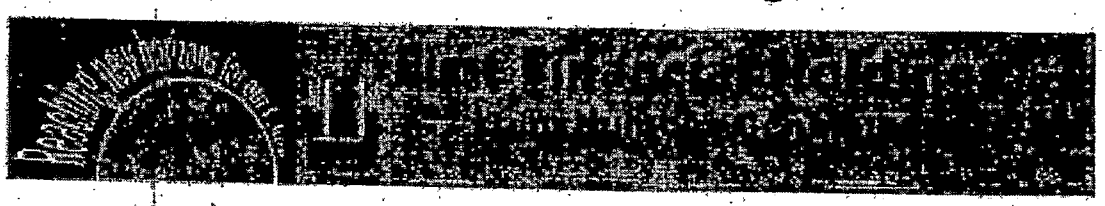
CLOSING ATTORNEY:

Your attorney will be contacted upon receipt and review of above conditions. At that time, you will be notified to schedule your closing.

Thank you for choosing First Federal as your lender. If you have any questions prior to closing, please feel free to contact me.

MADDY MCWHIRTER
mmcwhirter@firstfederal.com
Telephone: 843-529-5659
Fax: 843-737-7251
Toll Free: 800-768-3248
P. O. Box 118068
Charleston, SC 29423-8068

APPRVL
Rev 9/12



Success! The loan number 7100323356 has been assigned to CROSS on 12/12/2012 12:26:15 PM.

Add another loan number | Search Loan Number Database | Search Loan Service Database

For questions, submit a Help Desk ticket or call 529-5453 for immediate assistance.

Uniform Underwriting and Transmittal Summary

W12AM08756

I. Borrower/Property Information

Borrower Name: DOREEN C CROSS — SSN: [redacted]
Co-Borrower Name: STEPHEN C DUDEK — SSN: [redacted]
Property Address: 788 E BUTTERNUT RD, SUMMERVILLE, SC 29483

Property Type: [X] 1-unit; [ ] 2- to 4-units; [ ] Condominium; [ ] PUD [ ] Co-op; [ ] Manufactured Housing [ ] Single Wide [ ] Multiwide

Project Classification
Freddie Mac: [ ] Streamlined Review; [ ] Established Project; [ ] New Project; [ ] Detached Project; [ ] 2- to 4-unit Project; [ ] Reciprocal Review
Fannie Mac: [ ] P Limited Review New; [ ] Q Limited Review Est.; [ ] R Expedited New; [ ] S Expedited Est.; [ ] T Fannie Mae Review; [ ] U FHA-approved; [ ] V Refi Plus
[ ] E PUD; [ ] F PUD; [ ] I PUD; [ ] J Co-op; [ ] K Co-op; [ ] T Co-op

Occupancy Status: [X] Primary Residence [ ] Second Home [ ] Investment Property

Additional Property Information
Number of Units: 1
Sales Price: $ 303,000.00
Appraised Value: $ 340,000.00

CHM Project ID# (if any):
Project Name:
Property Rights: [X] Fee Simple [ ] Leasehold

II. Mortgage Information

Loan Type: [X] Conventional; [ ] FHA; [ ] VA; [ ] USDA/RHS

Amortization Type: [X] Fixed Rate—Monthly Payments; [ ] Fixed Rate—Biweekly Payments; [ ] Balloon; [ ] ARM (type); [ ] Other (specify)

Loan Purpose: [X] Purchase; [ ] Cash-Out Refinance; [ ] Limited Cash-Out Refinance (Fannie); [ ] No Cash-Out Refinance (Freddie); [ ] Home Improvement; [ ] Construction-to-Permanent

Lien Position: [X] First Mortgage; Amount of Subordinate Financing: $
(If HELOC, include balance and credit limit) [ ] Second Mortgage

Note Information
Original Loan Amount: $ 242,400.00
Initial P&I Payment: $ 1,122.60
Initial Note Rate: 3.750 %
Loan Term (in months): 360

Mortgage Originator: [ ] Seller; [ ] Broker; [ ] Correspondent
Buydown: [ ] Yes; [X] No
Terms:
Broker/Correspondent Name and Company Name:

If Second Mortgage
Owner of First Mortgage: [ ] Fannie Mae [ ] Freddie Mac [ ] Seller/Other
Original Loan Amount of First Mortgage: $

III. Underwriting Information

Underwriter's Name: SANDI STEELE
Appraiser's Name/License #: KATIE HEILICH 5425
Appraisal Company Name: Jackson Appraisal Service

Stable Monthly Income	Borrower	Co-Borrower	Total
Base Income	$ 5,324.00	$ 4,505.67	$ 9,830.67
Other Income	$	$ 1,455.00	$ 1,455.00
Positive Cash Flow (subject property)	$	$	$
Total Income	$ 5,324.00	$ 5,961.67	$ 11,285.67

Qualifying Ratios
Primary Housing Expense/Income: 12.62 %
Total Obligations/Income: 29.26 %
Debt-to-Housing Gap Ratio (Freddie): 16.64 %

Loan-to-Value Ratios
LTV: 80.00 %
CLTV/TLTV: %
HCLTV/HTLTV: 80.00 %

Qualifying Rate
[X] Note Rate: 3.750 %
[ ] % Above Note Rate: %
[ ] % Below Note Rate: %
[ ] Bought-Down Rate: %
[ ] Other: %

Level of Property Review
[X] Exterior/Interior
[ ] Exterior Only
[ ] No Appraisal
Form Number: 1004

Proposed Monthly Payments	
Borrower's Primary Residence	
First Mortgage P&I	$ 1,122.60
Second Mortgage P&I	$
Hazard Insurance	$ 152.87
Taxes	$ 148.55
Mortgage Insurance	$
HOA Fees	$
Lease/Ground Rent	$
Other	$
Total Primary Housing Expense	$ 1,424.02
Other Obligations	
Negative Cash Flow (subject property)	$
All Other Monthly Payments	$ 1,878.36
Total All Monthly Payments	$ 3,302.38

Risk Assessment
[ ] Manual Underwriting
[X] AUS
[X] DU [ ] LP [ ] Other
AUS Recommendation: A 1 DU Approve/Eligible
DU Case ID/LP AUS Key #: 1073356662
LP Doc Class (Freddie):
Representative Credit/Indicator Score: 702 697

Escrow (T&I)
[X] Yes [ ] No

Borrower Funds to Close
Required: $ 63,919.26
Verified Assets: $ 102,620.67
Source of Funds: LIQUID ASSETS
No. of Months Reserves: 27
Interested Party Contributions: 0 %

Community Lending/Affordable Housing Initiative: [ ] Yes [X] No
Home Buyer/Homeownership Education Certificate in file: [ ] Yes [X] No

Underwriter Comments
PURCHASE PRIMARY. CURRENT PRIMARY IS BEING RETAINED. SUBTRACTED RESERVES. BORROWER INCOME FROM SALARY -SHE IS PAID MONTHLY. COBORROWER SALARY FROM SALARY X 26/12 AND PENSION INCOME VALIDATED WITH LETTER FROM CO AND 2 MOS BANK STATEMENTS.

IV. Seller Contact and Contact Information

Seller Name: FIRST FEDERAL BANK
Seller Address: 2440 MALL DRIVE NORTH CHARLESTON, SC 29406
Seller No.:
Investor Loan No.:
Seller Loan No.: W12AM08756

Contact Name:
Contact Title:
Contact Phone Number: ext.
Contact Signature:

Allison Williams – Mortgage Loan Officer
First Federal Bank
(843)529-5894 Office
(800)768-3248 Toll Free
(843)875-1338 Fax
NMLS ID#607897
To apply online: www.firstfederal.com/allison

The highest compliment our mortgage clients can give us is the referral of their friends, family and business associates. Thank you for your business!

The information in this message, along with any attachments, is confidential and intended solely for the addressee(s). First Federal disclaims any responsibility for the contents of this message and attachments, if any. If you are not the intended recipient of this message, please contact the sender by reply e-mail and destroy all copies of the original message. Unauthorized review, use, disclosure or distribution is prohibited.

Doc: 29483

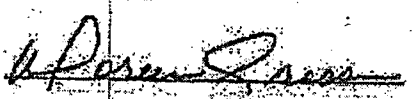
Future Plans for 236 Cady Drive, Summerville, SC 29483

To whom it may concern,

I am writing to communicate my intentions for this property located in Summerville, SC at 236 Cady Drive in the subdivision of Pinehill Acres.

After moving to my new residence, I plan to prepare 236 Cady for sale, or possibly rent, depending on the market response at that point in time.

Sincerely,
Doreen Cross



EMPLOYER LOCAL ADDRESSES

Doreen's Employer Address:

Trident Technical College
7000 Rivers Avenue
North Charleston, SC 29406

Stephen's Employer Address: *(please note: there is no local address)*

Mid-Atlantic Engineering Technical Services, Inc.
1501 Crossways Boulevard
Suite E
Chesapeake, VA 23320

PHONE: 757-512-6864
FAX: 757-410-0100

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- Ambulance Fee Payment
- Online Payment Information
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[redacted]

Font Size Share & Bookmark Print

CROSS DOREEN C
236 CADY DR
SUMMERVILLE, SC 29483-4502

Record Type: Real Property
Notice No.: R-2011-0001250-00
Tax Year: 2011

Base Amount: $668.45
Penalties: $0.00
Fees: $0.00
Tax Amount: $668.45

Payment Status: Paid
Paid Date: 1/4/2012
Paid Amount: $668.45
Balance Due: $0.00

Penalty Date	Penalty Rate
January 18	5%
February 2	10%
March 17	15%

Map No.: 129-05-16-036-0001
District: 209
Assessed Value: 4,360
Appraised Value: 109,825
Description: CADY DRIVE 236

[redacted]

First Federal

Dear Ms. Cross & Mr. Dudek

As we discussed, I am forwarding your application to our loan processing team. You can expect a call from the loan processor within 3 days of receipt of this letter. They will review with you the status of your application and provide you with information on what the next steps will be.

Attached is the Loan Application Checklist which includes the items we still need from you. If we receive the listed documents within 48 hours, we would anticipate a closing date by 12/31/12 unless unforeseen issues arise. Please forward the listed items directly to our Operations Center located at 2440 Mall Drive, Charleston, SC 29406, Attention Mortgage Processing Team #1 or to me.

If you have any questions, please feel free to contact me at (843)529-5894 or awilliams@firstfederal.com. My fax number is (843)875-1338.

Sincerely,

Allison

Allison Williams
Mortgage Loan Officer

First Federal Customer Loan Application Checklist

Customer Name: Cross/Dudek Date: 12/5/12

Thank you for your application. To expedite the loan process and to deliver a timely closing, we need the following documents delivered to us within 48 hours. If delivered within that time period, we anticipate a closing by 1/9/13 unless other unforeseen issues arise.

We will do everything within our control to deliver a timely closing as part of our service commitment to you. However, if we do not receive these items within 48 hours we may need to adjust your closing date accordingly.

The following information is required to begin processing your application.

	Application Deposit:
	Current Pay Stubs:
	W2 - most recent:
	Copy of Driver's License
	Two most recent years federal personal tax returns, signed/dated:
	Self-Employed: Two most recent years federal business tax returns, signed/dated:
	Self-Employed: YTD Profit and Loss (P&L) statement signed by accountant:
	Most recent 30 day complete bank statement:
	Copy of rental/lease agreement:
✓	Copy of divorce decree/child support agreement: Separation agreement
	Letter explaining credit issue(s):
	Copy of executed purchase contract:
✓	Copy of cancelled earnest money check: front & back
	Copy of builder contract/building plans:
	Completed gift letter:
	Homeowners insurance quote & declarations page:
	Copy of most recent property tax statement:
	Copy of deed:
✓	Completed disclosures/redisclosures: Sent 12/6/12
	EAL: Leave Open ____ Close EAL ____ Open New EAL $ ____
	Other:
✓	Other: Letter explaining what you'll do with Cady Dr Property
	Other:
✓	Other: Signed contract extension
	Other:
	Appraisal Type: 1004

Best contact method: Phone ___ E-Mail ___
Home ___ Work ___ Cell ___ # 574-6956 or
Email Address: doreen.cross@trident tech.edu

Please return these documents to the First Federal's Corporate Center:
First Federal 2440 Mall Dr Charleston, SC 29406 Attn: Mortgage Processing Team #1

DU Underwriting Findings

SUMMARY

Recommendation	Approve/Eligible		
Primary Borrower	DOREEN C CROSS	Co-Borrower	
Lender Loan Number	W12AW08756	Casefile ID	10733566662
Submission Date	12/17/2012 09:46AM	Submitted By	a0043shs
Submission Number	6	DU Version	8.3

Mortgage Information

LTV/CLTV/HCLTV	80.00% / 80.00% / 80.00%	Note Rate	3.750%
Housing Expense Ratio	12.62%	Loan Type	Conventional
Total Expense Ratio	29.26%	Loan Term	360
Total Loan Amount	$242400.00	Amortization Type	Fixed Rate
Sales Price	$303000.00	Loan Purpose	Purchase
Appraised Value	$340000.00	Refi Purpose	

Property Information

Address	788 E BUTTERNUT RD SUMMERVILLE, SC 29483	Property Type	Detached

RISK/ELIGIBILITY

1 The risk profile of this loan casefile appears to meet Fannie Mae's guidelines.

2 This loan casefile appears to meet Fannie Mae's eligibility requirements.

FINDINGS

3 The following risk factors represent strengths in the borrower's loan application:
Credit Profile
Loan Purpose
Total Expense Ratio

VERIFICATION MESSAGES/APPROVAL CONDITIONS

4 This loan is also subject to all other lender specified conditions and must comply with all applicable federal, state, and local laws and regulations.

5 Based on the credit report obtained through Desktop Underwriter, this loan casefile must close on or before 03/05/2013. All credit documents must be dated within 90 days of the closing date. For new construction, the credit documents must be dated within 120 days of the closing date. For guidelines on the age of the appraisal or property inspection report, refer to the Fannie Mae Selling Guide.

6 If there is a home equity line of credit secured against the subject property the maximum allowable HCLTV is 97 percent and the terms of the home equity line of credit must be verified for compliance with the Fannie Mae Selling Guide. The HCLTV calculation is based on the maximum credit limit of the equity line.

7. The Adverse Market Delivery Charge will be applied when this mortgage loan is delivered to Fannie Mae, along with any applicable loan-level price adjustments. Refer to the Selling Guide and Loan-level Price Adjustment (LLPA) Matrix and Adverse Market Delivery Charge (AMDC) Information on efanniemae.com for specific details.

Credit and Liabilities

8 The following liabilities are listed on the credit report with a 'closed' account status, however, there is still an outstanding balance. For each liability that is not already listed on the loan application, document that the account is paid in full, or add the liability to the loan application and resubmit the case for underwriting.

Counted

Borrower	Creditor	Account Number	Balance
STEPHEN C DUDEK	USAA FSB	[redacted]	6104.00

Employment and Income

9 DOREEN C CROSS's income must be supported by a paystub or by a standard Verification of Employment (1005). The paystub must be dated no earlier than 30 days prior to the initial loan application date and it must include all year-to-date earnings. Additionally, the paystub must include sufficient information to appropriately calculate income; otherwise, additional documentation must be obtained. If a standard Verification of Employment (1005) will be obtained, it must include all year-to-date earnings.

10 STEPHEN C DUDEK's income must be supported by a paystub or by a standard Verification of Employment (1005). The paystub must be dated no earlier than 30 days prior to the initial loan application date and it must include all year-to-date earnings. Additionally, the paystub must include sufficient information to appropriately calculate income; otherwise, additional documentation must be obtained. If a standard Verification of Employment (1005) will be obtained, it must include all year-to-date earnings.

11 Document retirement, government annuity, or pension income for STEPHEN C DUDEK with one of the following documents: letters from the organization providing the income, retirement award letters, signed federal tax returns, IRS W-2 or 1099 forms, or two months bank statements. If the retirement income is paid in the form of a monthly distribution from a 401(k), IRA, or Keough retirement account, determine that the income will continue for at least three years after the date of the mortgage application.

12 Perform and document a verbal verification of employment for each borrower within 10 business days prior to the note date for all borrowers not using self-employment income for qualifying, and within 30 calendar days prior to the note date for all borrowers using self-employment income for qualifying. For borrowers with military income, a military Leave and Earnings Statement (LES) dated within 30 calendar days prior to the note date is acceptable in lieu of a verbal verification of employment.

13 Obtain a completed and signed Form 4506-T for all borrowers at both application and closing. Form 4506 or Form 8821 may be used in lieu of Form 4506-T.

Assets

14 Assets totaling $63919 must be verified. From the liquid assets listed on the 1003, at a minimum verify those accounts that are needed to satisfy this amount.

15 If depository assets are needed to support the amount of funds required for reserves, verify these assets with a verification of deposit or bank statements covering a one-month period. A satisfactory explanation and documentation should be provided for large deposits.

Property and Appraisal Information

16 Desktop Underwriter returned the following standardized address and census tract for the subject property: 788 E BUTTERNUT RD, SUMMERVILLE, SC 29483-8407, 010501. This is the address that Desktop Underwriter used in its property valuation and fieldwork recommendation. Regardless of the property fieldwork required by Desktop Underwriter, if this address is not valid for the subject property, an appraisal based on an interior and exterior property inspection reported on Form 1004 is required for this transaction. If the subject property is located in a condominium project, the appraisal must be reported on Form 1073.

17 An appraisal based on an interior and exterior property inspection reported on Form 1004 is required for this transaction.

18 Form 1004MC must be completed for any transaction on which an appraisal is obtained. Refer to the Fannie Mae Selling Guide for additional information.

OBSERVATIONS

19 This case was submitted to Desktop Underwriter version 8.3 by FIRST FEDERAL SAVINGS AND LOAN ASSOCIATI. The following information is associated with this loan: Casefile ID is 1073356662 and Submission number is 6. If the loan is delivered to Fannie Mae, the Casefile ID must be provided at delivery.

20 The following list of special feature codes is provided to assist you in determining which codes may be associated with this loan. Other codes may be required. Refer to the Fannie Mae Selling Guide for a comprehensive list.

Special Feature Code	Description
127/214	Desktop Underwriter loan

21 Based on the data entered, this loan casefile has been identified as a First Time Homebuyer case. The First Time Homebuyer indicator must be completed at delivery. Refer to the Fannie Mae Selling Guide for additional information.

22 The following Credit Report information is associated with this submission:

Borrower Name	Credit Agency	Credit Report ID	Credit Report Date
STEPHEN C DUDEK	EQUIFAX MORTGAGE SERVICES	P7QXS0	12/05/2012
DOREEN C CROSS	EQUIFAX MORTGAGE SERVICES	P7QXP6	12/05/2012

23 The following credit scores were obtained by the credit agency selected by the user and are included in the credit report:

Borrower	Credit Scores
DOREEN C CROSS	[redacted]
STEPHEN C DUDEK	

24 DU has identified the following credit report tradelines as accounts belonging to an authorized user:

Creditor	Account Number
SEARS/CBNA	[redacted]

25 The following sources of income were used in the underwriting analysis:

Borrower	Income Type	Amount
STEPHEN C DUDEK	Pension retirement income	[redacted].00
STEPHEN C DUDEK	Base employment income	[redacted].67
DOREEN C CROSS	Base employment income	[redacted].00

26 The following assets were counted towards available funds. With the exception of cash on hand, all available funds greater than the amount required to close have been added to cash reserves.

Borrower	Asset Type	Institution Name	Amount
DOREEN C CROSS	Checking Account	SC FEDERAL CREDIT UNION	[redacted]2.00
DOREEN C CROSS	Money Market Account	SC FEDERAL CREDIT UNION	[redacted]2.00
DOREEN C CROSS	Savings Account	SC FEDERAL CREDIT UNION	[redacted]6.00
DOREEN C CROSS	Savings Account	NAVY FEDERAL CREDIT UNION	[redacted]9.00
DOREEN C CROSS	Checking Account	NAVY FEDERAL CREDIT UNION	[redacted]4.67

27 The taxes and insurance payment from the retained REO has been added to the total expense payment used in the total expense ratio.

Underwriting Analysis Report

Recommendation	Approve/Eligible		
Primary Borrower	DOREEN C CROSS	Co-Borrower	
Lender Loan Number	W12AW08756	Casefile ID	1073356662
Submission Date	12/17/2012 09:46AM	Submitted By	a0043shs

PROPERTY INFORMATION

Property Address	788 E BUTTERNUT RD SUMMERVILLE, SC 29483	Number of Units	1
		Occupancy Status	Primary Residence

Property Type	Detached

MORTGAGE INFORMATION

Loan Type	Conventional	LTV/CLTV/HCLTV	80.00% / 80.00% / 80.00%
Amortization Type	Fixed Rate	Loan Amount	$242400.00
Balloon	No	Financed MI Amount	$0.00
Community Lending	No	Total Loan Amount	$242400.00
Payment Frequency	Monthly	Sales Price	$303000.00
Lien Type	First Mortgage	Appraised Value	$340000.00
Amt. Subordinate Fin.	$0.00	P&I	$1122.59
Loan Purpose	Purchase	Note Rate	3.750%
Refi Purpose		Qualifying Rate	3.750%
Owner Existing Mtg.		Bought Down Rate	0.00%
Buydown	No	Term (Months)	360

INCOME

Base	$9830.67
Commission	$0.00
Bonus	$0.00
Overtime	$0.00
Other	$1455.00
Positive Net Rental	$0.00
Subj. Pos. Cash Flow	$0.00
Total	$11285.67

QUALIFYING RATIOS

Housing Expense	12.62%
Total Expense	29.26%

EXPENSE RATIOS

Including ≤ 10 Mos.	29.26%
With Undisclosed Debt	29.26%

PROPOSED MONTHLY PAYMENT

First P&I (Qualifying)	$1122.59	Negative Net Rental	$0.00
Second P&I	$0.00	Subj. Neg. Cash Flow	$0.00
Hazard Insurance	$152.87	All Other Payments	$1878.36
Taxes	$148.55	Total Expense Payment	$3302.37
Mortgage Insurance	$0.00		
HOA Fees	$0.00	Present Housing Payment	$842.97
Other	$0.00		
Total Housing Payment	$1424.01		

FUNDS

Required	$63919.26	Net Cash Back	$0.00
Available	$102620.67	Reserves	$38701.41
Cash Back	$0.00	Months Reserves	27

The recommendation for this case is: Approve/Eligible

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FIRST FEDERAL

Interest Rate Agreement

Date: 12/05/2012
Loan Type: 1000
Loan Amount: $242,400.00
Term in Months: 360

Applicant(s): DOREEN C CROSS
STEPHEN C DUDEK
Property: 786 E BUTTERNUT RD
SUMMERVILLE, SC 29483

I acknowledge that I am locking my interest rate on my mortgage loan application. I understand that I must close my loan within 60 days from today if I choose to lock-in my interest rate.

DCC SCD Initial Here — If the loan has not closed within the 60 day lock period, the locked-in interest rate will expire. Should my locked-in interest rate expire, I understand that I must re-lock my interest rate at the higher of item #1 or item #2 below:

#1 The prevailing market interest rate, or
#2 The original locked-in interest rate

DCC SCD Initial Here — Prior to the 60 day lock expiration date, I can extend my lock period for a fee.

DCC SCD Initial Here — I elect to lock-in my permanent interest rate of 3.750 % with an origination fee of 1.000 % and 0 % discount point(s).
For adjustable rate loans only: _____ % index _____ % margin.

DCC SCD Initial Here — Signed form must be received by First Federal.

This agreement is valid only for the loan program and terms as outlined above. If I change loan programs, a new Interest Rate Agreement will be executed. Receipt of application deposit is required to lock in the interest rate.

Applicant Signature: Doreen C Cross — Date: 12/06/12

Co-Applicant Signature: Stephen C Dudek — Date: 12/06/12

Loan Officer Confirmation: Allison Miller — Date: 12/5/12
Loan Officer NMLS Registry #: 000000607897

INTRT
Rev 3/12

THIS RATE IS LOCKED

View Status History

Doreen C Cross
788 E Butternut Rd
Summerville, SC 29483

Loan Officer: williamsa **STATUS: Transmitted**

RATE: 3.75 %

Loan Number	
Morvision ID	W12AW08756
Loan Amount	$242,400.00
Home Value	$303,000.00
Sales Price	$303,000.00
FICO Score	697
Property Type	SF Detached PUD
Product	Conventional Fixed
Occupancy	Owner-Occupied
Purpose	Purchase
Term	30yr
Origination Fee	1.0%
Lock Period	60 days
Lock Expiration Date	2/3/2013 10:24:54 AM
Lock Submission Date	12/5/2012 5:07:21 PM
Pending Approval	NO
Exception Rate Change	-.250%
Exception Origination Fee Change	0%

REASONING: -.25 to rate for purchase special;
Approval reasoning - Purchase Special

Rate Breakdown	
Base Rate	3.500
Loan Amount	+0.000
Origination Fee	+0.000
Occupancy	+0.000
Risk Based Pricing	+0.500
Final Rate	4.000
Final Rate Change	-0.250
Final Rate; approved by cutlerp	3.750

Good Faith Estimate (GFE) Acknowledgment

Originator
FIRST FEDERAL BANK

2440 MALL DRIVE
NORTH CHARLESTON, SC 29406

Borrower
DOREEN C CROSS and STEPHEN C DUDEK

Date
December 05, 2012

Loan Number
W12AW08756

Property Address
788 E BUTTERNUT RD, SUMMERVILLE, SC 29483

By signing below, I acknowledge that I received, on the date shown by my signature, a completed copy of the Good Faith Estimate form (dated December 05, 2012).

Borrower

DOREEN C CROSS — Date: 12/10/12

STEPHEN C DUDEK — Date: 12/10/12

Date

Date

☐ Refer to the attached *Signature Addendum* for additional parties and signatures.

Good Faith Estimate (GFE)

OMB Approval No. 2502-0265

W12AW08756

Name of Originator: FIRST FEDERAL BANK	Borrower: DOREEN C CROSS and STEPHEN C DUDEK
Originator Address: 2440 MALL DRIVE, NORTH CHARLESTON, SC 29406	Property Address: 728 E NUTTERNUT RD, SUMMERVILLE, SC 29483
Originator Phone Number: 888-529-2220	Date of GFE: December 05, 2012
Originator Email:	

Purpose This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

Shopping for your loan Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

1. The interest rate for this GFE is available through 02/03/13@5:00pm EST. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through 12/21/12.
3. After you lock your interest rate, you must go to settlement within 60 days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least NA days before settlement.

Summary of your loan

Your initial loan amount is	$ 242,400.00	
Your loan term is	30 years	
Your initial interest rate is	3.750%	
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ 1,122.60 per month	
Can your interest rate rise?	☒ No	☐ Yes, it can rise to a maximum of %. The first change will be in
Even if you make payments on time, can your loan balance rise?	☒ No	☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	☒ No	☐ Yes, the first increase can be in and the monthly amount owed can rise to $. The maximum it can ever rise to is $
Does your loan have a prepayment penalty?	☒ No	☐ Yes, your maximum prepayment penalty is $
Does your loan have a balloon payment?	☒ No	☐ Yes, you have a balloon payment of $ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of $ 1,122.60.
Do we require you to have an escrow account for your loan?
☐ No, you do not have an escrow account. You must pay these charges directly when due.
☒ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges (See page 2.)	$ 3,024.00
B	Your Charges for All Other Settlement Services (See page 2.)	$ 5,198.16
A + B	Total Estimated Settlement Charges	$ 8,222.16

☒ **Late Charges.** If your payment is more than 15 days late, a late charge will be assessed as follows:

5.00% of the overdue payment.

Prepayment. If you pay off your loan early, you
- ☐ may ☒ will not have to pay a penalty.
- ☐ may ☒ will not be entitled to a refund of part of the finance charge.

☐ **Required Deposit.** The Annual Percentage Rate does not take into account your required deposit.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.

e means estimate

(E) Borrower DOREEN C CROSS 12/10/12 Date

(D) Borrower STEPHEN C DUDEK 12/10/12 Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

Instructions

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

Understanding which charges can change at settlement

These charges cannot increase at settlement	The total of these charges can increase up to 10% at settlement	These charges can change at settlement
• Our origination charge • Your credit or charge (points) for the specific interest rate chosen *(after you lock in your interest rate)* • Your adjusted origination charges *(after you lock in your interest rate)* • Transfer taxes	• Required services that we select • Title services and lender's title insurance *(if we select them or you use companies we identify)* • Owner's title insurance *(if you use companies we identify)* • Required services that you can shop for *(if you use companies we identify)* • Government recording charges	• Required services that you can shop for *(if you do not use companies we identify)* • Title services and lender's title insurance *(if you do not use companies we identify)* • Owner's title insurance *(if you do not use companies we identify)* • Initial deposit for your escrow account • Daily interest charges • Homeowner's insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with lower settlement charges, then you will have a higher interest rate.
- If you want to choose this same loan with a lower interest rate, then you will have higher settlement charges.

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	This loan in this GFE	This same loan with lower settlement charges	This same loan with a lower interest rate
Your initial loan amount	$ 242,400.00	$	$
Your initial interest rate[1]	3.750 %	%	%
Your initial monthly amount owed	$ 1,122.60	$	$
Change in the monthly amount owed from this GFE	No change	You will pay $ more every month	You will pay $ less every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be reduced by $	Your settlement charges will increase by $
How much your total estimated settlement charges will be	$ 8,222.16	$	$

[1] *For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.*

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name	FIRST FEDERAL SA			
Initial loan amount	$ 242,400.00			
Loan term	30 years			
Initial interest rate	3.750 %			
Initial monthly amount owed	$ 1,122.60			
Rate lock period	60			
Can interest rate rise?	NO			
Can loan balance rise?	NO			
Can monthly amount owed rise?	NO			
Prepayment penalty?	NO			
Balloon payment?	NO			
Total Estimated Settlement Charges	$ 8,222.16			

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

Understanding your estimated settlement charges

Your Adjusted Origination Charges

1. **Our origination charge** This charge is for getting this loan for you.	3,024.00
2. **Your credit or charge (points) for the specific interest rate chosen** ☒ The credit or charge for the interest rate of 3.750 % is included in "Our origination charge." (See item 1 above.) ☐ You receive a credit of $ _____ for this interest rate of _____ %. This credit reduces your settlement charges. ☐ You pay a charge of $ _____ for this interest rate of _____ %. This charge (points) increases your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	0
A Your Adjusted Origination Charges	$ 3,024.00

Your Charges for All Other Settlement Services

Some of these charges can change at settlement. See the top of page 3 for more information.

3. **Required services that we select** These charges are for services we require to complete your settlement. We will choose the providers of these services. Service / Charge / Service / Charge Credit report fee $ 30.00 / Tax service fee $ 64.00 CoreLogic/Flood/Cens $ 12.00 / Appraisal fee $ 375.00	481.00
4. **Title services and lender's title insurance** This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	1,575.00
5. **Owner's title insurance** You may purchase an owner's title insurance policy to protect your interest in the property.	100.00
6. **Required services that you can shop for** These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below Service / Charge / Service / Charge	0
7. **Government recording charges** These charges are for state and local fees to record your loan and title documents.	55.00
8. **Transfer taxes** These charges are for state and local fees on mortgages and home sales.	0
9. **Initial deposit for your escrow account** This charge is held in an escrow account to pay future recurring charges on your property and includes ☒ all property taxes, ☒ all insurance, and ☒ other: Mortgage Insurance when applicable.	505.74
10. **Daily interest charges** This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $ 24.90 per day for 30 days (if your settlement is 12/31/12).	747.00
11. **Homeowner's insurance** This charge is for the insurance you must buy for the property to protect from a loss, such as fire. Policy / Charge / Policy / Charge Hazard Insurance $ 1834.42	1,834.42
B Your Charges for All Other Settlement Services	$ 5,198.16
A + **B** Total Estimated Settlement Charges	$ 8,222.16

SETTLEMENT SERVICES PROVIDERS LIST

W12AW08756
12/05/2012

The attorneys and title agencies listed here do not have a common ownership interest with First Federal. They may or may not have a loan and/or a deposit account with is. These attorneys have been frequently used by our mortgage customers during the past year.

TRI-COUNTY AREA

NICHOLS LAW FIRM, LLC

Title Agency: West Ashley Title Agency
West Ashley
1224 Wappoo Road
Charleston, SC 29407
843- 414-8668

WEEKS AND IRVINE, LLC

Title Agency: Lowcountry Title
North Charleston
8086-B Rivers Ave.
N. Charleston, SC 29406
843-553-9800
West Ashley
873 Orleans Rd., Ste 102 ½
Charleston, SC 29404
843-571-2996
Mt. Pleasant
1100 Queensborough Blvd.
Mt. Pleasant, SC 29464
843-856-9800

Goose Creek
587 Crowfield Blvd.
Goose Creek, SC 29445
843-553-9100
Summerville
106 West 7th North St.
Summerville, SC 29483
843-876-7111

DALLIS & BADGER, P.A.

Title Agency: Ashley Marion Agency/Aegis Title Services, Inc.
Contact: W. Alex Dallis, Jr.
West Ashley
1721 Ashley River Road
Charleston, SC 29407
843-763-3783
Mt. Pleasant
1100 Queensborough Blvd, Suite 200
Mt. Pleasant, SC 29464
843-763-3783
Summerville
706 N Cedar St
Summerville, SC 29483
843-763-3783

BROWNYARD LAW FIRM, PA

Title Agency: Cypress Title, Inc.
1017 Chuck Dawley Blvd Suite 200
Mt. Pleasant, SC 29464
843-884-1658

HILTON HEAD ISLAND

FRASER & ALLEN, LLC

Title Agency: J Simon Fraser, PA
10 Palmetto Business Park, Suite 102
Hilton Head Island, SC 29928
843-785-3311

LAW OFFICES OF CATHERINE WEST OLIVETTI, LLC

Title Agency: Quiet Island Title, LLC
17 Executive Park Road, Suite 4
Hilton Head Island, SC 29928
843-341-9260

SSP01
Rev 7/12

DEFINITION OF TRUTH IN LENDING TERMS

ANNUAL PERCENTAGE RATE

This is not the Note rate for which the borrower applied. The Annual Percentage Rate (APR) is the cost of the loan in percentage terms taking into account various loan charges of which interest is only one such charge. Other charges which are used in calculation of the Annual Percentage Rate are Private mortgage Insurance or FHA Mortgage Insurance Premium (when applicable) and Prepaid Finance Charges (loan discount, origination fees, prepaid interest and other credit costs). The APR is calculated by spreading these charges over the life of the loan which results in a rate generally higher than the interest rate shown on your Mortgage/Deed of Trust Note. If interest was the only Finance Charge, then the interest rate and the Annual Percentage Rate would be the same.

PREPAID FINANCE CHARGES

Prepaid Finance Charges are certain charges made in connection with the loan and which must be paid upon the close of the loan. These charges are defined by the Federal Reserve Board in Regulation Z and the charges must be paid by the borrower. Non-inclusive examples of such charges are: Loan origination fee, "Points" or Discount, Private Mortgage Insurance or FHA Mortgage Insurance, Tax Service Fee. Some loan charges are specifically excluded from the Prepaid Finance Charge such as appraisal fee and credit report fees.

Prepaid Finance Charges are totaled and then subtracted from the Loan Amount (the face amount of the Deed of Trust/Mortgage note). The net figure is the Amount financed as explained.

AMOUNT FINANCED

The amount of interest, prepaid finance charge and certain insurance premiums (if any) which the borrower will be expected to pay over the life of the loan.

TOTAL OF PAYMENTS

The Amount Financed is the loan amount applied for less the prepaid finance charges. Prepaid finance charges can be found on the Good Faith Estimate/Settlement Statement (HUD-1 or 1A). For example, if the borrower's note is for $100,000 and the Prepaid Finance Charges total $5,000, the Amount Financed would be $95,000. The Amount Financed is the figure on which the Annual Percentage Rate is based.

INTEREST RATE AND PAYMENT SUMMARY

Discloses interest rates, principal and interest payment, taxes, insurance and PMI, MIP (if applicable) and total estimated payment.

For adjustable rate loans, additional columns explain the maximum rate during the first five years, maximum rate ever and the dates when these will occur. For loans with an introductory interest only period, the date of the first adjustment to principal and interest payment is given.

FIXED RATE
1000

Truth-in-Lending Disclosure Statement

Lender	Borrower	Date
FIRST FEDERAL BANK	DOREEN C CROSS and STEPHEN C DUDEK	December 05,2012
2440 MALL DRIVE NORTH CHARLESTON, SC 29406		Loan Number W12AW08756

☒ Preliminary
Loan Amt $242,400
☐ Final

Property Address: 188 E BUTTERNUT RD
SUMMERVILLE, SC 29483

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
3.868 %e	$ 165,983.0■ e	$ 238,153.00 e	$ 404,136.00 e

INTEREST RATE AND PAYMENT SUMMARY

	Rate & Monthly Payment
Interest Rate	3.750 % e
Principal + Interest Payment	$ 1,122.60e
Estimated Taxes + Insurance (Escrow) ☐ Includes Private Mortgage Insurance ☐ Includes Mortgage Insurance	$ 252.87e
Total Estimated Monthly Payment	$ 1,375.47e

☐ **Final Balloon Payment** due : $

☐ **Demand Feature.** This obligation has a demand feature.
☐ This loan is payable on demand and all disclosures are based on an assumed maturity of one year.

No Guarantee to Refinance. There is no guarantee that you will be able to refinance to lower your rate and payments.

Security. You are giving a security interest in:
☒ the goods or property being purchased.
☐ (brief description of other property)

☐ collateral securing other loans with us.

Assumption. Someone buying this property
☒ cannot assume the remainder of the mortgage on the original terms.
☐ may assume, subject to conditions, the remainder of the mortgage on the original terms.

Filing/Recording Fees. $ 55.00e

Property Insurance. Property insurance may be obtained from anyone that is acceptable to Lender

e means estimate

ITEMIZATION OF AMOUNT FINANCED

Loan Number: N12AW08756 Date: December 05, 2012
Loan Amount $ 242,400.00
Name of Borrower: DOREEN C CROSS and STEPHEN C DUDEK

Address of Borrower: 236 CADY DRIVE
SUMMERVILLE, SC 29483
Name of Lender: FIRST FEDERAL BANK
Address of Lender: 2440 MALL DRIVE
NORTH CHARLESTON, SC 29406
Property Address: 788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

Itemization of Amount Financed of	$	238,153.00
Amount given to you directly	$	-68,316.42
Amount paid on your account	$	303,000.00
Amount paid to others on your behalf		
, seller	$	303,000.00
Appraisal fee to appraiser	$	375.00
Credit report fee to credit reporting agency	$	30.00
Hazard insurance to insurance agency	$	1,834.42
Flood insurance to insurance agency	$	
Settlement closing fees to	$	
Abstract or title search to title ins. co.	$	300.00
Document preparation fee to	$	
Misc. title fees to title co.	$	
Notary fee to Owners Insurance (L642)	$	100.00
Attorneys' fees to	$	
Title insurance premium to title ins. co.	$	773.00
Filing fee to public officials/recording	$	55.00
Survey	$	
Pest inspection	$	
	$	
	$	
	$	
	$	
	$	

Prepaid finance charges		
Loan origination fee	$	2,424.00
Loan discount	$	
Prepaid interest (30 days) @ 24.90	$	747.00
Mortgage insurance	$	
Commitment fee	$	
Buydown costs	$	
Tax service fee FIRST AMERICAN	$	64.00
Lender's inspection fee	$	
Assumption fee Rate Relock (L633)	$	
Amortization schedule fee	$	
Underwriting fee FIRST FEDERAL	$	600.00
Attorney fee	$	400.00
CoreLogic/Flood/Census	$	12.00
	$	
	$	
	$	
	$	
	$	
	$	
	$	
Total Prepaid finance charges	$	4,247.00

ARM. INDEX: MARGIN:

DOREEN C CROSS STEPHEN C DUDEK

Hoepa Rate Spread: Hoepa Fees: Hoepa Reportable:
High Price spread: 0 High Price Loan:

Wolters Kluwer Financial Service

VMP-9-799 (12/12)05 12/92

INSURANCE DISCLOSURES

Upon Loan approval, we will require that you maintain adequate property insurance, and flood insurance, if applicable, to fully cover our security interest in the property. You have the right to obtain property insurance coverage from any agent or insurance company of your choice, as provided by certain federal and state laws. First Federal's loan decision will not be conditioned upon, nor in any way influenced by, your choice of insurance agent or insurance company.

First Southeast Insurance, Inc. and First Federal are affiliated companies. First Southeast Insurance, Inc. can provide you with many insurance choices. First Southeast Insurance, Inc. would appreciate the opportunity to provide you with a property insurance quote and to review all your insurance needs. To locate an agent near you, please call 1-877-590-4284.

APPLICANT MUST SIGN AND DATE BELOW

This disclosure was viewed by Doreen C Cross and Stephen C Dudek electronically on 05/07/2012 as part of the online application process.

SERVICING DISCLOSURE STATEMENT

Lender	Borrower	Date
FIRST FEDERAL BANK	DOREEN C CROSS and STEPHEN C DUDEK	December 5th, 2012
		Loan Number
2440 MALL DRIVE, NORTH CHARLESTON, SC 29406		W12AN08756

Property Address

788 E BUTTERNUT RD
SUMMERVILLE, SC 29483

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED.

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

[X] We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.

[ ] We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.

[ ] The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.

By signing below, I/we acknowledge receiving a copy of this disclosure.

Applicant DOREEN C CROSS	12/10/12 Date	Applicant STEPHEN C DUDEK	12/10/12 Date
Applicant	Date	Applicant	Date

Prepared by:	EQUIFAX MORTGAGE SOLUTIONS 6 E. CLEMENTON RD GIBBSBORO NJ 08026 PHONE: 800-333-0037 FAX: (800)678-7079	Order No: Ordered: Completed: Loan No: Account No: Sources: Price: INDIV/JOINT: Requested By:	P7QXS0 12/05/2012 12/05/2012 W12AW08756 161FM38445 EFX XPN TU 18.40 INDIVIDUAL
Prepared for:	FIRST FEDERAL 2440 MALL DRIVE CHARLESTON, SC 29406		

APPLICANT

Name	Phone	SSN	Age/DOB	Marital Status
STEPHEN C DUDEK	8438717132	[redacted]	[redacted]955	

Current Address:
236 CADY DRIVE SUMMERVILLE SC 29483

MERGED CREDIT INFILE REPORT

SCORES

00697 BEACON 5.0 FACTA — STEPHEN DUDEK [redacted] — Equifax - 01

SCORE RANGE: 334 - 818

RBP PERCENTAGE: 48%

00010 PROPORTION OF BALANCES TO CREDIT LIMITS IS TOO HIGH ON BANK REVOLVING OR OTHER REVOLVING ACCOUNTS
00013 TIME ON DELINQUENCY IS TOO RECENT OR UNKNOWN
00011 AMOUNT OWED ON REVOLVING ACCOUNTS IS TOO HIGH
00018 NUMBER OF ACCOUNTS WITH DELINQUENCY
Y NUMBER OF INQUIRIES ADVERSELY AFFECTED THE SCORE BUT NOT SIGNIFICANTLY

0890 FAIR ISAAC — STEPHEN DUDEK [redacted] — Experian - 01

SCORE RANGE: 320 - 844

RBP PERCENTAGE: 42%

10 RATIO OF BALANCE TO LIMIT ON BANK REVOLVING OR OTHER REV ACCTS TOO HIGH
02 LEVEL OF DELINQUENCY ON ACCOUNTS
01 AMOUNT OWED ON ACCOUNTS IS TOO HIGH
13 TIME SINCE DELINQUENCY IS TOO RECENT OR UNKNOWN
08 TOO MANY INQUIRIES LAST 12 MONTHS

00698 FICO RISK SCORE CLASSIC — STEPHEN DUDEK [redacted] — TransUnion - 01

SCORE RANGE: 309 - 839

RBP PERCENTAGE: 44%

010 PROPORTION OF BALANCES TO CREDIT LIMITS IS TOO HIGH ON BANK OR OTHER REVOLVING ACCOUNTS
013 TIME SINCE DELINQUENCY IS TOO RECENT OR UNKNOWN
002 LEVEL OF DELINQUENCY ON ACCOUNTS
011 AMOUNT OWED ON REVOLVING ACCOUNTS IS TOO HIGH
I INQUIRIES DID IMPACT CREDIT SCORE AND, FOR MODELS THAT INDICATE IT, NO DEROGATORY INFO FOUND IN THE FILE

ALERTS

IDENTITYSCAN FOR STEPHEN DUDEK — SS [redacted] — Equifax - 01
IDENTITY SCAN: IDENTITY SCAN DID NOT DETECT ANY ALERTS.

SUMMARY REPORT

TRADE TYPE	#	TOTAL W/BAL	TOTAL BALANCE	TOTAL PYMT	TOTAL P/D	TOTAL 30	TOTAL 60	TOTAL 90	DATE LAST P/D
REAL ESTATE	0	0	0.00	0.00	0.00	0	0	0	
INSTALL	1	1	6104.00	337.00	0.00	0	0	0	
REVOLVING	17	2	27887.00	402.00	0.00	1	0	0	
COLLECT	0	0	0.00	0.00	0.00	-	-	-	
OTHER	0	0	0.00	0.00	0.00	0	0	0	
TOTAL	18	3	33991.00	739.00	0.00	1	0	0	

PUBLIC RECORDS	LIENS	JUDGEMENTS	FORECLOSURE	BANKRUPTCY	OTHER	TOTAL
TOTAL NUMBER	0	0	0	0	0	0

INQUIRES : 1 # NEW TRADES : 0

OLDEST TRADE OPEN : 10/1984

CREDIT HISTORY

ECOA	Creditor Name Account Number	Acct Type	Date Reviewed	Date Opened DLA	High Credit Terms	Months Reviewed	Balance Amt Payment Amt	Past Due Amt	Historical 30 60 90

**** DEROGATORY TRADES ****

1. I CHASE [redacted] R1 06/2012 11/2010 1000 20 0 0 1 0 0
11/2011

Type of Loan: CREDIT CARD / CHARGE ACCOUNT DEL DATES= 01/2012=R

B / EFX=01,XPN=01,TU=01

Comments: CURRENT ACCOUNT;WAS 30 DAYS PAST DUE DATE; PAID; ACCOUNT CLOSED AT CONSUMER'S REQUEST; ACCOUNT PAID; ACCOUNT CLOSED BY CONSUMER

**** NON DELINQUENT TRADES ****

2. I NAVY FCU [redacted] R1 11/2012 01/2008 [redacted] 58 17937 0 0 0 0
11/2012 REV224 224

Type of Loan: CREDIT CARD / CHARGE ACCOUNT

B / EFX=01,XPN=01,TU=01

Comments: OPEN; CURRENT ACCOUNT; CREDIT CARD; AMT IN HIGH CREDIT IS CREDIT LIMIT

3. I NAVY FCU [redacted] R1 11/2012 04/1999 18600 99 9950 0 0 0 0
11/2012 REV178 178

Type of Loan: CREDIT CARD / CHARGE ACCOUNT

B / EFX=01,XPN=01,TU=01

Comments: OPEN; CURRENT ACCOUNT; CREDIT CARD; AMT IN HIGH CREDIT IS CREDIT LIMIT

4. I USAA FSB [redacted] I1 11/2012 06/2011 11000 17 6104 0 0 0 0
11/2012 36M337 337

Type of Loan: AUTO

B / EFX=01,XPN=01,TU=01

Comments: OPEN; CURRENT ACCOUNT; AUTO

5. I CHASE [redacted] R1 05/2003 01/2000 2668 1 0 0 0 0 0

Type of Loan: CREDIT CARD / CHARGE ACCOUNT

B / XPN=01,TU=01

Comments: PURCHASED BY ANOTHER LENDER; ACCOUNT TRANSFERED TO ANOTHER OFFICE

CONTINUED ON NEXT PAGE

E C O A	Creditor Name Account Number	Acct Type	Date Reviewed	Date Opened DLA	High Credit Terms	Months Reviewed	Balance Amt Payment Amt	Past Due Amt	Historical 30 60 90
6. I	CHASE/CC [redacted]	R1	01/2007	09/1993 10/2006	460	99	0		0 0 0
	Type of Loan: CREDIT CARD / CHARGE ACCOUNT					B / EFX=01,XPN=01			
	Comments: PAID; CURRENT ACCOUNT; ACCOUNT PAID; ACCOUNT CLOSED BY CREDIT GRANTOR.								
7. I	DFS/WEBBANK [redacted]	R1	08/2012	01/2009 05/2009	5000	43	0	0	0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: OPEN; CURRENT ACCOUNT; AMT IN HIGH CREDIT IS CREDIT LIMIT; CHARGE								
8. I	GECRB/JCP [redacted]	R1	11/2012	10/1984 07/1999	124	99	0	0	0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: PAID; CURRENT ACCOUNT; ACCOUNT PAID; CLOSED; CHARGE								
9. I	GECRB/LOW [redacted]	R1	11/2012	05/2007 05/2011	500	67	0	0	0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: OPEN; CURRENT ACCOUNT; AMT IN HIGH CREDIT IS CREDIT LIMIT; CHARGE								
10. I	GECRB/SAMS [redacted]	R1	11/2012	10/2003 03/2012	800	99	0	0	0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: OPEN; CURRENT ACCOUNT; AMT IN HIGH CREDIT IS CREDIT LIMIT; CHARGE								
11. I	HSBC BANK [redacted]	R1	04/2008	08/2001 02/2008	3700	83	0	0	0 0 0
	Type of Loan: CREDIT CARD / CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: PAID; CURRENT ACCOUNT; ACCOUNT CLOSED AT CONSUMER'S REQUEST; ACCOUNT PAID; ACCOUNT CLOSED BY CONSUMER								
12. I	KOHLS/CAPONE [redacted]	R1	11/2012	09/2009 12/2009	800	38	0	0	0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: OPEN; CURRENT ACCOUNT; AMT IN HIGH CREDIT IS CREDIT LIMIT; CHARGE								
13. I	MIL STAR [redacted]	R1	09/2009	01/1994 03/2008	8200	99	0		0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: INACTIVE; CURRENT ACCOUNT; AMT IN HIGH CREDIT IS CREDIT LIMIT; CHARGE								
14. I	NAVY FCU [redacted]	R1	12/2012	07/1993 12/2010	5000	99	0		0 0 0
	Type of Loan: CHECK CREDIT OR LINE OF CREDIT					B / XPN=01,EFX=01,TU=01			
	Comments: OPEN; CURRENT ACCOUNT; LINE OF CREDIT; AMT IN HIGH CREDIT IS CREDIT LIMIT								
15. I	RSHK/CBNA [redacted]	R1	11/2012	02/2008 09/2008	800	56	0	0	0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: CANCELLED BY CREDIT GRANTOR; PAID; CURRENT ACCOUNT; ACCOUNT PAID								
16. I	SEARS/CBNA [redacted]	R1	11/2012	05/2007 03/2008	425	65	0	0	0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: PAID; CURRENT ACCOUNT; ACCOUNT IS INACTIVE; ACCOUNT PAID; CHARGE; CLOSED DUE TO INACTIVITY								
17. I	THD/CBNA [redacted]	R1	11/2012	06/2003 03/2008	800	99	0		0 0 0
	Type of Loan: CHARGE ACCOUNT					B / EFX=01,XPN=01,TU=01			
	Comments: PAID; CURRENT ACCOUNT; ACCOUNT IS INACTIVE; ACCOUNT PAID; ACCOUNT CLOSED BY CREDIT GRANTOR; CHARGE								

ECOA	Creditor Name Account Number	Acct Type	Date Reviewed	Date Opened DLA	High Credit Terms	Months Reviewed	Balance Amt Payment Amt	Past Due Amt	Historical 30 60 90
18. I	USAA SB [redacted]	R1	11/2012	06/2011	4000	17	0	0	0 0 0

Type of Loan: CREDIT CARD / CHARGE ACCOUNT

B / EFX=01,XPN=01,TU=01

Comments: OPEN; CURRENT ACCOUNT; CREDIT CARD; AMT IN HIGH CREDIT IS CREDIT LIMIT

PUBLIC RECORDS

PUBLIC RECORDS HAVE BEEN CHECKED FOR JUDGEMENTS, BANKRUPTCIES AND OTHER LEGAL ACTIONS INVOLVING THE SUBJECT AND/OR SPOUSE FROM OTHER SOURCES AND/OR THE REPOSITORIES LISTED BELOW WITH THE FOLLOWING RESULTS:

PUBLIC RECORD SOURCES: EFX XPN TU

NO PUBLIC RECORDS FOUND ✓

INQUIRIES WITHIN THE PAST 120 DAYS

Inquiry Party Name	Inquiry Date	B/C	Repository Source	Subscriber Code
FIRST FEDERAL	12/05/2012	B	Transunion - 01	Z 00008281

BORROWER and CO-BORROWER ADDRESS INFORMATION

Address	B/C	Repository Source	From Date	Reported Date
236 CADY DR SUMMERVILLE, SC 29483	B	Equifax	05/01/2012	12/01/2012
419 EDWARD DR LADSON, SC 29456	B	Equifax	04/01/2002	11/01/2010
MILDET USNS SPICA FPO SAN FRANCISCO, CA 96678	B	Equifax	04/01/2002	11/01/2010
236 CADY DR SUMMERVILLE, SC 29483	B	Experian	02/01/2000	07/01/2011
PO BOX 50922 SUMMERVILLE, SC 29485	B	Experian	06/01/2003	06/01/2003
50922 PO BOX 50922 SUMMERVILLE, SC 29485	B	TransUnion		12/01/1999

BORROWER and CO-BORROWER EMPLOYMENT / ADDRESS INFORMATION

Employer Name & Address	Position	Income	From Dt	To Dt	B/C	Source
USN	E5	UNK			B	Equifax
US NAVY	US NAVY	UNK			B	Equifax
CSSI INC			08/01/2001	06/01/2001	B	Experian
US NAVY			08/01/1999	08/01/1999	B	Experian
CSI INC		UNK			B	TransUnion

FILE VARIATION

Source	B/C	Name	SSN	DOB
Equifax - 01	B	STEPHEN C DUDEK ✓	[redacted] ✓	[redacted]1955
Experian - 01	B	STEPHEN C DUDEK ✓		1955 ✓
TransUnion - 01	B	STEPHEN C DUDEK		1955

COMMENTS

--- ADDITIONAL INFORMATION ---

ECIS-01 B ADDRESS DISCREPANCY (N) NO SUBSTANTIAL DIFFERENCE OCCURRED

ECIS-01 B CREDIT REPORT SSN: [redacted]

ECIS-01 B CREDIT REPORT SSN CONFIRMED: Y ✓

ECIS-01 B INQUIRY SSN: [redacted]

ECIS-01 B INQUIRY SSN DATE ISSUED: 1971

ECIS-01 B INQUIRY SSN STATE ISSUED: NC

ECIS-01 B SSN MATCH INDICATOR: YYYYYYYYY

XPN-01 B DISPLAYED SSN IS THE SAME AS INQUIRY SSN

XPN-01 B SSN MATCH INDICATOR: YYYYYYYYY

TU-01 B 05 - Exact match between SSN on input and SSN on file

BORROWER: SSN ISSUE STATE:NC SSN ISSUE DATE: 1971 EQUIFAX

*PAYMENT AMOUNTS MARKED WITH AN ASTERISK(*) HAVE BEEN CALCULATED AT 5% OF THE BALANCE OWING OR $10.00 WHICHEVER AMOUNT IS GREATER

SUBSCRIBER INFORMATIONS

Code	Name & Address	Phone	Source
458ON13374	CHASE 201 N. WALNUT ST DE1 1027 WILMINGTON DE 19801	8009559900	Equifax
3206390	CHASE PO BOX 9180 PLEASANTON CA 94566	8005560011	Experian
401HZ00615	CHASE/CC 225 CHASTAIN MEADOWS CT. NW KENNESAW GA 30144	8009559900	Equifax
608FF02660	DFS/WEBBANK PO BOX 81607 AUSTIN TX 78708	8002932210	Equifax
404DC02910	GECRB/JCP P.O. BOX 965008 ORLANDO FL 32896	8005420800	Equifax
404LH00044	GECRB/LOW P.O. BOX 965005 C811 ORLANDO FL 32896 500	8004441408	Equifax
404DV00193	GECRB/SAMS P.O. BOX 965005 ORLANDO FL 32896 500	8009641917	Equifax
183BB17492	HSBC BANK PO BOX 5253 CAROL STREAM IL 60197	8004776000	Equifax
668DC04698	KOHLS/CAPONE PO BOX 3115 MILWAUKEE WI 53201 311		Equifax
682FC10260	MILSTAR 3911 S WALTON WALKER BLVD DALLAS TX 75265 041		Equifax
491ON24219	NAVY FCU ONE SECURITY PLACE MERRIFIELD VA 22119 000	8003363333	Equifax
1720115	NAVY FCU PO BOX 3700 MERRIFIELD VA 22119	8886426328	Experian
905HZ00082	RSHK/CBNA PO BOX 6497 SIOUX FALLS SD 57117 649		Equifax
646DC09286	SEARS/CBNA 133200 SMITH RD CLEVELAND OH 44130		Equifax
485FP00552	THD/CBNA PO BOX 6497 SIOUX FALLS SD 57117 649		Equifax
805BB02443	USAA FSB PO BOX 33009 SAN ANTONIO TX 78265	8005318722	Equifax
650ON10000	USAA SB PO BOX 33009 SAN ANTONIO TX 78265	8005318722	Equifax

CREDIT BUREAU INFORMATION

Equifax Information Svc. LLC
P. O. Box 740241
Atlanta, GA 30374
800-685-1111
www.equifax.com

Experian
701 Experian Parkway
P. O. Box 2002
Allen, TX 75013
888-397-3742
www.experian.com/reportaccess

TransUnion, LLC
P. O. Box 1000
Chester, PA 19022
866-887-2673
www.transunion.com

The reporting bureau certifies that: (a) public records have been checked for tax liens, judgments, foreclosures, garnishments, bankruptcies, and other legal actions involving the subject(s) with the results indicated above;or (b) equivalent information has been obtained through the use of a qualified public records reporting service with the results indicated above. The records of real estate transfers which do not involve foreclosures may be excluded.

Equifax Credit Services certifies that the information provided in this report meets the requirements of the U.S. Dept. of HUD, FHA, VA, USDA, RECD & FSA, Fannie Mae and FHLMC.

The information is confidential and not to be divulged except as required by PUBLIC LAW 91-508, 93-579, 94-239.

ORDER NUMBER: P7QXS0
CONSUMER REPORTING AGENCY:
EQUIFAX MORTGAGE SOLUTIONS
6 E. CLEMENTON RD
GIBBSBORO NJ 08026
PHONE: 800-333-0037

DATE ORDERED: 12/05/2012
REPORT PREPARED FOR:
FIRST FEDERAL
2440 MALL DRIVE
CHARLESTON, SC 29406
PHONE:

BORROWER'S INFORMATION
NAME: STEPHEN DUDEK

OFAC Report

COMPLIANCE DATA CENTER, INC - EQUIFAX

STEPHEN DUDEK
NO MATCH FOUND IN CDC'S OFAC DATABASE. ✓

End of report, COMPLIANCE DATA CENTER, INC. - EQUIFAX

12/06/12 Customer Information File Inquiry 14:51:05

DOREEN C CROSS
236 CADY DR
SUMMERVILLE SC 29483-4502

CIF number: C004265
Short name: CROSS DOREEN C
Tax ID number: [redacted]
Class: PERSONAL
Language: ENGLISH

Opt-out Customer Messages

1 of 1

	Num	Deposits	Avg Rate	Num	Liability	Avg Rate	Other
Direct	0	.00	.0000%	1	.00	.0000%	0
Indirect	0	.00	.0000%	0	.00	.0000%	0
Related	0	.00	.0000%	0	.00	.0000%	0

Opt	Account No	Type	Relationship	Balance	Remarks	A/A
_	[redacted]	RE RES F		74,031.78		
_	[redacted]	INT BANK		.00		
_	[redacted]	RE RES F		.00	Paid Off	

Bottom

F1=Addl func F3=Exit F5=Customer F6=Messages F9=Profitability F11=Related Cust
F12=Previous F14=Loan Bal. F15=Credit Line F16=Tax Reporting F18=Guarantors

First Federal
Verified by: D Reid
Date: 12-Oct-12

12/12/12 Loan Inquiry Page 01 of 15 12:03:09

DOREEN C CROSS
236 CADY DR
SUMMERVILLE SC 29483-4502

CIF number: C004265
Phone: (H) (843) 871-7122 Birth date:
(B) [redacted] [redacted]1961
Tax ID number:
Loan type: 10 RE I-4 RES FIXED
Loan number: 7100237733 L
100% Sold 1 of 2
Officer 10334 A B WILLIAMS
Org date/Maturity 6/24/11 7/01/26
Loan term/remaining pmts 180 M / 158
Next payment due date 6/01/13
Next scheduled pay date 1/01/13
Payment amount 842.97
Princ & Int pmt 610.87
Escrow Payment Amt 232.10
Current Amount Due .00
Amount Past Due .00
Total Amount Due .00
Payment type/freq Int. included 1 M

More...

Messages	Escrow	Escrow-Tracking Only
Original loan amt		84,000.00
Current balance		74,031.78
Accrued interest		1,118.77-
Late charges due		.00
Current payoff		72,938.01
Payoff good thru		12/12/12
Nxt period payoff		.00
One months interest		231.35
Int base/rate Amortized		3.750000%
Per diem		7.64903
Other Charges		25.00
Amt partially paid		.00
Payment suspense		.00
Last payment date		12/03/12

F1=Addl functions F3=Exit F4=Sweep Inquiry F5=History
F6=Messages F8=Maintenance F9=Relationships F24=More Keys

Inonel

12/12/12 Loan Inquiry Page 02 of 15 12:03:13
DOREEN C CROSS

Messages Escrow Escrow-Tracking Only

Bank discount	.00	Loan number	7100237733 L
Balloon Payment	.00	100% Sold	1 of 2
Sold balances	.00	Interest rebate	.00
Participation ID Number		R-T-Cure date/notices	0/00/00 000
Overline Fee Amount	.00	Next review date	
Add Overline Amount to Next Bill	N	Collateral ins exp date	
Branch number	085	UCC expiration date	
Call report code	254	First payment date	8/01/11
Collateral code	700	Interest paid-to date	5/01/13
Purpose code	05	Last maintenance date	11/01/12
G/L group code	200	Original maturity date	7/01/26
Class code	P	Date of loan setup	6/29/11
Department code	R	Last renewed date	
Deferred Int	.00	Lst ren/ext balance	.00
Paid to Defer Int	.00	Date paid off	0/00/00
Y-T-D int. paid	3,155.92	Accrual balance	75,879.21
Secondary accrual	.00	Maturity grace/rate	0 / 0.000000%
Annual income amt	[redacted]	Minimum interest	.00
Vehicle ID number		Sub-Prime Lending	N

More...

F1=Addl functions F3=Exit F4=Sweep Inquiry F5=History
F6=Messages F8=Maintenance F9=Relationships F24=More Keys

Inonel

12/12/12 Loan Inquiry 12:03:19

CIF number: C004265 Account number: 7100237733 1
Short name: CROSS DOREEN C Loan type: RE 1-4 RES FIXED

Escrow/Insurance List

5=Display

Opt	Seq #	Type	Payee Name	Track Only?	Next Date	Distribution Amount
_	003	CT	DORCHESTER COUNTY SC TREASURER	N	12/01/13	658.86
_	002	FI	CORELOGIC FLOOD DATA SERVICES	Y	0/00/00	.00
_	001	HI	USAA	N	12/01/13	1,830.70

Bottom

F5=Escrow Analysis F12=Previous Press Enter for balances

Inonel

12/12/12 LOAN INQUIRY 12:03:26

DOREEN C CROSS C004265 7100237733 L

Collateral Message

IMAGED
C 236 CADY DRIVE
C SUMMERVILLE, SC 29483
C LOT 43 & 44 BLK N PINEHILL ACRES
C TMS#1290505020
Lot Value 30,000
Policy Parcel: [redacted]
Policy Parcel:
Non Saleable:

Expiration Date	User Code
0/00/00	LS1
0/00/00	103
0/00/00	103
0/00/00	103
0/00/00	103
0/00/00	103
0/00/00	103
0/00/00	103
0/00/00	NSL

Bottom

F3=Exit F10=All Accounts F20=Fold/Unfold

Inonel

Read Disclosure for Combined

Prir

STATEMENT OF ACCOUNT

ACCESS NUMBER
[redacted]
STATEMENT PERIOD
09/10/12 - 10/09/12
ACCOUNT NUMBER
[redacted]

#BNELLSV
[redacted]
STEPHEN C DODER
236 CADY DR
SUMMERVILLE, SC 29483-4502

Summary of your deposit accounts

	Previous Balance	Deposits/ Credits	Withdrawals/ Debits	Ending Balance	YTD Dividend
Active Duty Checking 1698808704	[redacted]	$3,910.40	$5,043.47	[redacted]	$11.8
Membership Savings 1698809001	$[redacted]	$557.27	$0.00	[redacted]	$9.6
Totals	$[redacted]	$4,467.67	$5,043.47	[redacted]	$17.5

Checking

Active Duty Checking - [redacted]

Joint Owner(s): NONE

Date	Transaction Detail	Amount($)	Balance($)
09-10	Beginning Balance		[redacted]
09-12	Check 5960	25.00-	
09-13	Paid To - Berkeley Elec Elec bill Chk 5320428	184.00-	
09-19	Paid To - Twc Charlotte Mthly Svc Chk 9100001	160.56-	
09-19	Check 5966	71.71-	
09-20	Deposit - Mid Atlantic Eng Quickbooks 01Afd9	1,377.39 ✓	
09-21	Transfer To Credit Card	1,703.92-	
09-21	Transfer To Credit Card	1,920.59-	
09-24	Paid To - Amerigas Online Pmt Chk 12114128	94.56-	
09-24	Cash Withdrawal	200.00-	
09-27	Deposit - US Treasury 310 Xxva Benef 01Afd3	251.00 ✓	
09-27	Deposit - DFAS-Cleveland Ret Net 01Afd1	907.81 ✓	
09-28	Dividend	0.79	
10-01	Transfer To Shares	25.00-	
10-01	Paid To - USAA P&C Ins Online Pmt Chk I2114125	80.00-	
10-03	Paid To - Dorchester Co Util Bill Chk 5390604	37.90-	
10-04	Deposit - Mid Atlantic Eng Quickbooks 01Afd1	1,377.39 ✓	
10-04	Paid To - AT&T Online Pmt Chk 12114128	62.32-	
10-04	Paid To - T-Mobile Online Pmt Chk 12114128	140.00-	
10-05	Paid To - USAA Feb Loan Pmt Chk 31407426	337.91-	
10-09	Ending Balance		

Your account earned $0.79, with an annual percentage yield earned of 0.050%, for the dividend period from 09-01-2012 through 09-29-2012

Items Paid

Date	Item	Amount($)	Date	Item	Amount($)
09-13	ACH	184.00	10-04	ACH	62.32
09-19	ACH	160.56	10-04	ACH	140.00
09-24	ACH	94.56	10-05	ACH	337.91

PREVIOUS STMT

10-01	ACH	80.00	09-12	005960 - Check	25.00
10-03	ACH	37.98	09-19	005966 - Check	71.71

Overdraft Line of Credit - [redacted]

Credit Limit	$5,000.00	Minimum Amount Due	$0.0
Outstanding Principal Balance	$0.00	Past Due Amount	$0.0
Outstanding Interest Charge	$0.00	Payment Due Date	Non
Outstanding Fees	$0.00		
Total Outstanding Balance	$0.00		
Available Credit	$5,000.00		

Date	Transaction Detail	Amount($)	Fee($) ($)	Interest($)	Principal($)	Principa. Balance($
09-10	Beginning Balance					0.0
	No Transactions This Period					
10-09	Ending Balance					0.0

Fee(s)

Total fee(s) for this period	0.00

Interest

Total interest for this period	0.00

2012 Totals Year-to-Date

Total fee(s) charged YTD	$0.00
Total interest charged YTD	$0.00

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Interest Charge	Balance Subject to Interest Rate
Chkg Protect Advance	15.900%	$0.00	$0.00

Daily Periodic Rate = 0.043442623%
Annual Percentage Rate = 15.900%

Savings

Membership Savings - [redacted]

Joint Owner(s): NONE

Date	Transaction Detail	Amount($)	Balance($
09-10	Beginning Balance		[redacted]
09-28	Dividend	0.38	
10-01	Transfer From Chk/MMSA	25.00	
10-09	Deposit	531.89	
10-09	Ending Balance		

Your account earned $0.38, with an annual percentage yield earned of 0.250%, for the dividend period from 09-01-2012 through 09-28-2012

Back

SOUTH CAROLINA FEDERAL
CREDIT UNION

LIFESIMPLIFIED

P.O. Box 190012, N. Charleston, SC 29419-9012
Tel 843-797-6000 Toll Free 800-845-0342
www.scfederal.org

Premium Checking account owners enjoy fee-free checking when the monthly required minimum balance and one qualifying relationship is met. Visit scfederal.org/Personal-Banking/Checking/Premium-Checking for fee-free options.

Simple Checking account owners enjoy fee-free checking when two monthly qualifying relationships is met. Visit scfederal.org/Personal-Banking/Checking/Simple-Checking for fee-free options.

Self-Service Checking account owners can sign up for Bill Pay. Once registered for Bill Pay, you must use the service to pay at least one bill each month, otherwise there will be a non-usage fee.

DOREEN C CROSS
236 CADY DR
SUMMERVILLE SC 29483

STATEMENT OF ACCOUNT

SAVINGS ACCOUNT
SUFFIX NO. [redacted]06

Beginning Balance: [redacted]

DATE	DESCRIPTION	AMOUNT	BALANCE
10/01	DIVIDEND	4.76	[redacted]55
10/22	Deposit	1,120.65	[redacted].40

Annual Percentage Yield earned from 07/01/12 through 09/30/12 is .05
Credit Union bylaws require that members maintain a minimum $5.00 share account balance.
YTD Dividends: 27.76

MONEY MARKET ACCOUNT
SUFFIX NO. [redacted]

Beginning Balance: [redacted]
A dividend of 9.53 will be posted to your account on 11/01/12

DATE	DESCRIPTION	AMOUNT	BALANCE
10/01	DIVIDEND	10.28	[redacted]81

Annual Percentage Yield earned from 09/01/12 through 09/30/12 is .25
YTD Dividends: 22.61

SIMPLE CHECKING
SUFFIX NO. [redacted]71

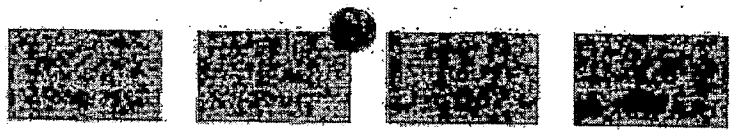
Beginning Balance: [redacted].74

Deposits	3,346.01	
Checks	0.00	
Debits*	3,000.00	
Maint/Service Charges	0.00	
Ending Balance		[redacted].75
* Transactions other than checks		
Average Daily Balance		[redacted].11

Summary of Overdraft and Returned Item Fees

	Total for this period	Total year-to-date
Total Overdraft Fees	0.00	0.00
Total Returned Item Fees	0.00	0.00

DATE	DESCRIPTION	
10/02	Deposit	[redacted]
10/12	ACH Withdrawal CHASE CARD SERV	
10/15	ACH Withdrawal	1,000.00 [redacted]



DATE	DESCRIPTION	AMOUNT	BALANCE
	CAP ONE AUTO		
10/31	Deposit ACH TRIDENT TECHNOL - CREDITS	3,155.48	[redacted].75
10/31	ACH Withdrawal FIRST FEDERAL OF	1,000.00	4,442.75

YTD Dividends: 0.00

IRA YTD Dividends	Other YTD Dividends	Total YTD Dividends	Total YTD Withholding	Total YTD Forfeitures
0.00	50.37	50.37	0.00	0.00

IRA OWNERS receiving periodic payments, please note: Payments from your IRA are subject to federal income tax withholding, unless you elect no withholding. To change your withholding election, complete the appropriate form provided by your credit union. Withholding from IRA payments, when combined with other withholding, may relieve you from payment of estimated income taxes. However, your withholding election does not affect the amount of income tax you pay.

IRA OWNERS are required to provide written direction for all prior year contributions. This includes direct deposits or transfers.

FEE REFUNDS Our standard procedure is to refund fees only in the event of credit union error. Since fees are applied to cover the cost of processing, they may not be waived unless there has been a credit union error.

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at 1-800-845-0432 or in Charleston at 797-8300 or write us at South Carolina Federal Credit Union PO Box 190012 N Charleston, SC 29419-9012 as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

1 Tell us your name and account number (if any).
2 Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
3 Tell us the dollar amount of the suspected error.

Your Rights and Our Responsibilities After We Received Written Notice

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

In Case of Errors or Inquiries about Your Statement Bill

If you think your statement bill is wrong, or if you need more information about a transaction on your statement bill, write us on a separate sheet at South Carolina Federal Credit Union PO Box 190012 N Charleston, SC 29419-9012 as soon as possible. We must hear from you no later than 60 days after we sent you the first statement bill on which the error or problem appeared. You can telephone us at 1-800-845-0432 or in Charleston at 797-8300, but doing so will not preserve your rights.

In your letter, give us the following information:
- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your statement bill that are not in question. While we investigate your questions, we cannot report you as delinquent or take action to collect the amount you question.

Outstanding Items ITEM NO	AMOUNT

SOUTH CAROLINA FEDERAL
credit union

LIFE[illegible]

P.O. Box 190012, N. Charleston, SC 29419-9012
Tel 843.797.8300, Toll Free: 800.840.0432
www.scfederal.org

Get $100 bucks!

Find out how at scfederal.org/100Bucks

Act today-limited time!

DOREEN C CROSS
236 CADY DR
SUMMERVILLE SC 29483

STATEMENT OF ACCOUNT

SAVINGS ACCOUNT
SUFFIX NO. 00

Beginning Balance: [redacted]79

A dividend of 4.78 will be posted to your account on 10/01/12

Credit union bylaws require that members maintain a minimum $5.00 share account balance.
YTD Dividends: 23.00

MONEY MARKET ACCOUNT
SUFFIX NO. 79

Beginning Balance: [redacted].71

A dividend of 10.28 will be posted to your account on 10/01/12

DATE	DESCRIPTION	AMOUNT	BALANCE
09/01	DIVIDEND	10.62	[redacted]33

Annual Percentage Yield earned from 08/01/12 through 08/31/12 is .25
YTD Dividends: 12.33

SIMPLE CHECKING
SUFFIX NO. 71

Beginning Balance: [redacted]7

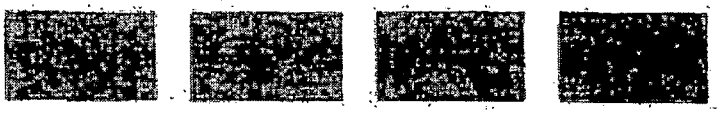
Deposits	3,119.97
Checks	0.00
Debits*	3,000.00
Maint/Service Charges	0.00
Ending Balance	[redacted]4
*Transactions other than checks	
Average Daily Balance	[redacted]10

Summary of Overdraft and Returned Item Fees

	Total for this period	Total year-to-date
Total Overdraft Fees	0.00	0.00
Total Returned Item Fees	0.00	0.00

DATE	DESCRIPTION	AMOUNT	BALANCE
09/13	ACH Withdrawal CHASE CARD SERV	-1,000.00	[redacted]
09/14	ACH Withdrawal CAP ONE AUTO	-1,000.00	[redacted]
09/28	Deposit ACH TRIDENT TECHN101 CREDITS	3,119.97	[redacted]
09/28	ACH Withdrawal FIRST FEDERAL OF	-1,000.00	[redacted]

PREVIOUS



YTD Dividends:		0.00		
FOR 2012 REPORTING:				
IRA YTD Dividends	Other YTD Dividends	Total YTD Dividends	Total YTD Withholding	Total YTD Forfeitures
0.00	35.33	35.33	0.00	0.00

IRA OWNERS receiving periodic payments, please note: Payments from your IRA are subject to federal income tax withholding, unless you elect no withholding. To change your withholding election, complete the appropriate form provided by your credit union. Withholding from IRA payments, when combined with other withholding, may relieve you from payment of estimated income taxes. However, your withholding election does not affect the amount of income tax you pay.

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1. Tell us your name and account number (if any).
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3. Tell us the dollar amount of the suspected error.

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We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

In Case of Errors or Inquiries about Your Statement-Bill

If you think your statement-bill is wrong, or if you need more information about a transaction on your statement-bill, write us (on a separate sheet) at South Carolina Federal Credit Union PO Box 190212 N. Charleston, SC 29419-9012 as soon as possible. We must hear from you no later than 60 days after we sent you the first statement-bill on which the error or problem appeared. You can telephone us at 1-800-845-0432 or in Charleston at 797-8300, but doing so will not preserve your rights.

In your letter, give us the following information:
- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your statement-bill that are not in question. While we investigate your questions, we cannot report you as delinquent or take action to collect the amount you question.

Outstanding Items	
ITEM NO.	AMOUNT

NAVY FEDERAL Credit Union

STATEMENT OF ACCOUNT

ACCOUNT NUMBER

STATEMENT PERIOD
10/30/12 - 11/29/12

ACCOUNT NUMBER

[redacted]

Summary of your deposit accounts

	Previous Balance	Deposits/ Credits	Withdrawals/ Debits	Ending Balance	YTD Dividends
Active Duty Che[redacted]					
Membership Sav[redacted]					
Total[redacted]					

Checking:

Active Duty Checking - [redacted]

Owner Name(s): JOINT

Date	Transaction Details	Amount($)	Balance($)
10-31	Beginning Balance		
10-31	[redacted]	586.93-	
10-31	Check #664		
10-31	[redacted]		
11-01	[redacted]	200.00	
11-02	[redacted]		
11-02	[redacted]	200.00-	
11-02	[redacted]	751.05	
11-02	[redacted]	303.83	
11-02	[redacted]	0.15	
11-02	[redacted]	1,377.32	
11-02	[redacted]	25.00-	
11-02	[redacted]	20.00-	
11-02	[redacted]	37.99-	
11-02	[redacted]	62.50-	
11-02	[redacted]	140.50-	
11-02	[redacted]	1,000.00-	
11-02	[redacted]	337.91-	
11-02	[redacted]	490.00	
11-02	[redacted]		

Items Paid

Date	Item	Amount($)	Date	Item	Amount($)
10-31	ACH	140.50	11-01	ACH	140.50
10-31	ACH	140.50	11-02	ACH	337.91
11-01	ACH	80.33	11-01	005427 - Check	1,000.00
11-02	ACH	37.99	11-02	005428 - Check	490.00
11-02	ACH	89.00	11-19	005429 - Check	25.00

[redacted]-980 +
963.000 -
963.000 -
963.000 -
963.000 -
963.000 -
963.000 -
[redacted]6706+
- 100.00 Withdrawal
[redacted].07

1549

Overdraft Line of Credit [redacted]

Credit Limit	[redacted]	Minimum Amount Due	$0.00
Outstanding Principal Balance	$0.00	Past Due Amount	$0.00
Outstanding Interest Charge	$0.00	Payment Due Date	None
Outstanding Fees	$0.00		
Total Outstanding Balance	$0.00		
Available Credit	[redacted]		

Date	Transaction Detail	Amount($)	Total ($)	Payment($)	Principal($)	Interest Balance($)
10-10	Beginning Balance					0.00
	No Transactions This Period					
11-09	Ending Balance					0.00

Fee(s)

Total fee(s) for this period	0.00

Interest

Total interest for this period	0.00

2012 Totals Year-to-Date

Total Fee(s) Charged YTD	$0.00
Total Interest Charged YTD	$0.00

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Interest Charge	Balance Subject to Interest Rate
Share Protect Advance	15.9000%	$0.00	$0.00

Daily Periodic Rate = 0.043562500%
Annual Percentage Rate = 15.9000%

Savings

Membership Savings [redacted]

Date Opened: 2008

Date	Transaction Detail	Amount($)	Balance($)
10-10	Beginning Balance		[redacted]
10-22	Credit Card Cash Advance	700.00	
10-23	Sav Adjustment ER	700.00	
10-22	Transfer to Credit Card	700.00-	
10-31	Dividend	0.03	
11-01	Transfer From Chk/MMSA	25.00	
11-06	Withdrawal By Cash	25.00-	
	Membership Savings	Continued from previous p	

Date Opened: 2008

Date	Transaction Detail	Amount($)	Balance($)
11-09	Ending Balance		[redacted]

Your account earned 30.13, with an annual percentage yield earned of 0.250%, for the dividend period from 09-30-2012 through 10-31-2012

unacceptable source of funds

1689.49
- 700.00
989.49

This fax was sent with GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

FannieMae — Request for Verification of Employment

Privacy Act Notice: This information is to be used by the agency collecting it or its assignees to verify whether you qualify as a prospective mortgagor under its program. It will not be disclosed outside the agency except as required and permitted by law. You do not have to provide this information, but if you do not your application for approval as a prospective mortgagor or borrower may be delayed or rejected. The information requested in this form is authorized by Title 38, U.S.C., Chapter 37 (if VA); by 12 USC, Section 1701 et. seq. (if HUD/FHA); and Title 42 USC, 1471 et. seq., or 7 USC, 1921 et. seq. (if USDA/FmHA).

Instructions: Lender - Complete Items 1 through 7. Have applicant complete Item 5. Forward directly to employer named in Item 1.
Employer - Please complete either Part II or Part III as applicable. Complete Part IV and return directly to lender named in Item 1.

Part I - Request

1. To (Name and address of employer)	2. From (Name and address of lender)
MAETS 1501 CROSSWAYS BLVD STE E CHESAPEAKE, VA, 23320	FIRST FEDERAL BANK 2440 MALL DRIVE NORTH CHARLESTON, SC 29406 888-529-2220

I certify that this verification has been sent directly to the employer and has not passed through the hands of the applicant or any other interested party.

3. Signature of Lender	4. Title	5. Date	6. Lender's No. (Optional)
	PROCESSOR	12/12/2012	1112A0087358

I have applied for a mortgage loan and stated that I am now or was formerly employed by you. My signature below authorizes verification of this information.

7. Name and Address of Applicant (Include employee or badge number)	8. Signature of Applicant
STEPHEN C TINNEY SS# [redacted] 206 CRAW PRIOR SUMMERVILLE, SC 29483	See Attached Authorization X

Part II - Verification of Present Employment

9. Applicant's Date of Employment	10. Present Position	11. Probability of Continued Employment
4/16/2012	TERM SVCS NETWK TECH III	Excellent

12A. Current Gross Pay (Enter Amount and Check Period)
$ [redacted] ☐ Annual ☐ Weekly ☐ Other (Specify) ☐ Monthly ☒ Hourly

12B. Gross Earnings

Type	Year To Date	Past Year	Past Year
Base Pay	Thru 11/16/12 $ [redacted]	$ N/A	$ N/A
Overtime	$	$	$
Commissions	$	$	$
Bonus	$	$	$
Total	$ [redacted]	$	$

13. For Military Personnel Only

Pay Grade		
Type	Monthly Amount	
Base Pay	$	
Rations	$	
Flight or Hazard	$	
Clothing	$	
Quarters	$	
Pro Pay	$	
Overseas or Combat	$	
Variable Housing Allowance	$	

14. If Overtime or Bonus is Applicable, is its Continuance Likely?
Overtime ☐ Yes ☐ No Bonus ☐ Yes ☐ No

15. If paid hourly - Specify Average Hours per Week: 40

16. Date of Applicant's Next Pay Increase: 1/2/2013

17. Projected Amount of Next Pay Increase: 3%

18. Date of Applicant's Last Pay Increase: N/A

19. Amount of Last Pay Increase: N/A

20. Remarks (If employee was off work for any length of time, please indicate time period and reason)
STEPHEN IS A DIRECT ONSITE SUPPORT INDIVIDUAL FOR OUR GOVERNMENT CUSTOMER. MAETS DOES NOT CURRENT HAVE A PHYSICAL BUILT MORE LOCATION IN SC.

Part III - Verification of Previous Employment

CUSTOMER ADDRESS IS CHARLESTON ATLANTIC, SUBMISSIONS

21. Date Hired	23. Salary/Wage at Termination Per (Year) (Month) (Week)
22. Date Terminated	Base _____ Overtime _____ Commissions _____ Bonus _____
24. Reason for Leaving	25. Position Held

Part IV - Authorized Signature

Federal statutes provide severe penalties for any fraud, intentional misrepresentation, or criminal connivance or conspiracy purposed to influence the issuance of any guaranty or insurance by the VA Secretary, the HUD/FHA, FmHA/FHA Commissioner, or the HUD/CPD Assistant Secretary.

26. Signature of Employer	27. Title (Please print or type)	28. Date
Rodney "Fred" Vaerewyck	DIRECTOR OF HUMAN RESOURCES	12/13/2012
29. Print or type name signed in Item 26	30. Phone No.	
RODNEY "FRED" VAEREWYCK	(757) 512-5220	

Request for Verification of Employment
VMP 26
Wolters Kluwer Financial Services

Fannie Mae
Form 1005 July 96
VMP26 (1-1005).07
Page 1 of 1

+ Please Provide a local Address
+ Phone # if possible to Charleston SC, or state if Employee Commutes ect.

From: First Federal To: 9175741000100 Page: 2/2 Date: 12/12/2012 2:25:38 PM
This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

Williams, Allison

From: Cross,Doreen [Doreen.Cross@tridenttech.edu]
Sent: Friday, May 11, 2012 6:47 AM ?
To: Williams, Allison
Cc: 'Stephen G. Dudek'
Subject: RE: List
Attachments: crossDudekInfoRequest051112.pdf

Allison, There are a couple of items we still owe you.

1. Stephen's most recent 30 days of YTD paystubs (he started last month, please advise)
2. Stephen's 2010 W-2's (he's hunting for it)
3. Stephen's employer does not have a local address (I couldn't believe it either)

There are no rental properties
The tree farm is not insured

I want to get you what I have so you can add to the list, if needed. Thank you. -Doreen [574-6956]

From: Williams, Allison [mailto:AWilliams@Firstfederal.com]
Sent: Wednesday, May 09, 2012 4:23 PM
To: Cross,Doreen
Subject: List

Hey Doreen, Here's your list of things we need to get started. I could add to it later depending on how things progress. Let me know if you have any questions. Thanks!

1) most recent 30 days of year-to-date paystubs for both of you
2) copies of your 2011 & 2010 W-2's
3) proof of his pension
4) local street addresses for both of your employers
5) copies of your most recent bank statements - please include all pages
6) tax returns for 2011 if you are renting any property
7) copy of the tax bill on the lot

I can't think of anything else at present. You can email or fax these. Let me know if you are going to fax them.

Allison Williams - Mortgage Loan Officer
(843) 529-5894 Office
(843) 209-2904 Cell
(843) 875-1338 Fax
(800) 768-3248 Toll Free
NMLS ID#607897
awilliams@firstfederal.com
to apply online: www.firstfederal.com/allison

The highest compliment our mortgage clients can give us is the referral of their friends, family and business associates. Thank you for your business!

The information in this message, along with any attachments, is confidential and intended solely for the addressee(s). First Federal disclaims any responsibility for the contents of this message and attachments, if any. If you are not the intended recipient of this message, please contact the sender by reply e-mail and destroy all copies of the original message. Unauthorized review, use, disclosure or distribution is prohibited.

5/11/2012

Mid Atlantic MAETS Engineering Technical Services, Inc.

December 13, 2012

Ms. Madeline McWhirter
First Federal Bank
2440 Mall Drive
North Charleston, SC 29406

Re: FannieMae Request for Verification Of Employment

Dear Ms. McWhirter,

This letter is written on the behalf of Stephen C. Dudek and is an official notice of his employment with MAETS in South Carolina.

A little background, MAETS is a veteran owned small business formed in 2004 and exists to provide professional engineering and information technology services support to the U.S. Department of Defense and Military Services worldwide.

One of the MAETs points of pride is to have assembled a highly qualified team of personnel with extensive experience in the U.S. Stephen C. Dudek is a part of this team and it is because of this experience Stephen was selected to provide direct support for one of our government customers in South Carolina at their location.

That said, MAETS currently does not have a brick and mortar establishment in South Carolina therefore, he and many of our others employees in the Charleston area, commute from their homes in the Charleston Metropolitan Area to our customer's site in North Charleston, SC. If a specific work site address and phone number is required, please contact me and I will obtain permission from the customer to forward that information.

Feel free to contact me with any questions or concerns you may have either by email gvaerewyck@maets.net or call me at (757) 512-5220.

Sincerely,

Godfrey "Fred" Vaerewyck

Godfrey "Fred" Vaerewyck
MAETS HR Director/FSO
(757) 512-5220 (office)
(757) 408-8952 (cellular)

1501 Crossways Blvd., Suite E
Chesapeake, VA 23320
757.512.6864
757.410.0100 - Fax

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Mid Atlantic MAETS Engineering Technical Services, Inc.

Fax Coverpage

To:	Ms. Madeline McWhirter	From:	Godfrey Vaerewyck Director of Human Resources
Company:	First Federal Bank	Date:	December 13, 2012
Fax:	(843) 737-7251	Subject:	FannieMae VOE and MAETS Letter ICO Stephen Dudek

To Ms. McWhirter,

In response to your FannieMae Request for Verification Of Employment (VOE) fax dated December 12, 2012, a completed form and a MAETS In the Case OF (ICO) Stephen Dudek follow this cover page.

Please confirm receipt.

I trust this submission completes this action on the part of me as MAETS's representative. If there are any issues, comments, or recommendations, please feel free to contact me at one of the numbers below or by email to: gvaerewyck@maets.net.

Sincerely,

Godfrey "Fred" Vaerewyck

Godfrey "Fred" Vaerewyck
Director of Human Resources &
Facility Security Officer (FSO)
MAETS, Inc.
1501 Crossways Blvd., Suite E
Chesapeake, VA 23320
(757) 512-5220 (office)
(757) 408-8952 (cellular)
We are an Equal Opportunity Employer

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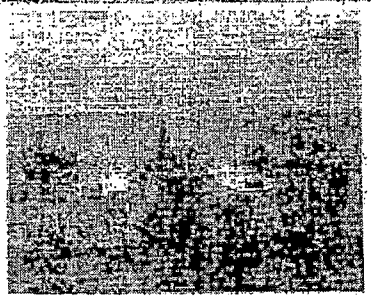

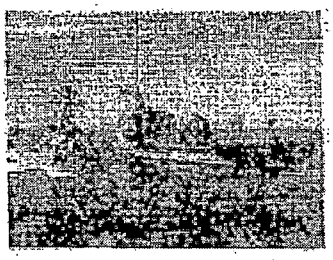

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MAETS Inc. 1201 Crossways Boulevard Suite E Chesapeake,VA 23320 United States ph: 757 512 0284 fax: 757 410 0103

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Contact Us
maetsinc.com/contactus.html
Employee Contact Information Main office number (757) 512-6064 ROD SMITH ext 100 rsmith@maets.net ADAM WHITE ...

Meat - Wikipedia, the free encyclopedia
en.wikipedia.org/wiki/Meat
Etymology · History · Growth and ... · Biochemical composition
In some cases, specific meats (especially from pigs and cows) are forbidden within religious traditions.

Related searches for MAETS

Meats Online	Meat Cuts
Meat Coupons	Wholesale Meats
Meat Eater	Pink Slime Meat

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Free Business profile for MAETS at 1501 CROSSWAYS BLVD, CHESAPEAKE, VA, 233238913, US. MAETS specializes in: . This business can be reached at .

meats - Dictionary.com | Find the Meanings and Definitions of ...
dictionary.reference.com/browse/meats
noun 1. the flesh of animals as used for food. 2. the edible part of anything, as a fruit or nut: Crack the walnuts and remove the meats. 3. the essential point or ...

Maets - Courtland, Virginia (VA) | Company Profile
www.manta.com/c/mtc7ssc/maets
25000 Shady Brook Trail Courtland, VA
Maets company profile in Courtland, VA. Our free company profile report for Maets includes business information such as contact, sales and financial data.

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Cook's Thesaurus: Meats Category
www.foodsubs.com/FGMeats.html
Home > meats. Meats Category Poultry . Beef . Pork. Lamb. Veal. Other Meats, including rabbit, ostrich, and frog's legs.

QUALITY MEATS
qualitymeatsnyc.com
Quality Meats, the new restaurant created by The Smith & Wollensky Restaurant Group and designed by AvroKO.

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ssmeats.com
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Prime Meats is a farm to table restaurant created in the spirit of the inns and dining rooms found in New York at the turn of the century. Prime Meats is influenced ...

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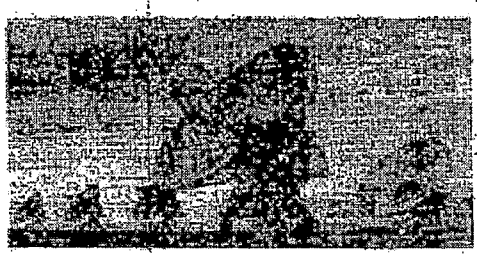
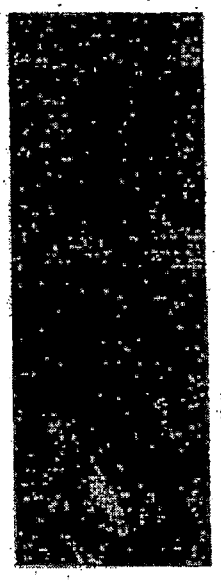


Employee Contact Information
Main office number (757) 512-8364

ROD SMITH rsmith@maets.net	ext.109
ADAM WHITE awhite@maets.net	ext.108
BERNIE SMITH bsmith@maets.net	ext.107
BETH HUGHES bhughes@maets.net	ext.125
TOM HABIGHORST thabighorst@maets.net	ext.119



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Mailing Address: SPAWARSYSCEN Atlantic: Charleston Attn: (Office Mail Code) P. O. Box 190022 North Charleston, SC 29419-9022. Shipments: Receiving Officer ...

Contact Us
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Charleston Naval Weapon Station, Charleston, South Carolina
www.globalsecurity.org/military/facility/charleston_nws.htm
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www.public.navy.mil/spawar/Atlantic/Pages/Home.aspx
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SPAWARSYSCEN Atlantic Public Profile
www.beyondtheorg.com/employers/30502/public_profile
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start.yahoo.com/company/research/3/top4/spawar
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www.bisk.org/news/local_news/spawar_systems_center_atlantic...1294
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- Main Switchboard - Phone Number Information (843) 218-4000, DSN 588-4000
- General Information - (843) 218-3390
- Questions about SSC Atlantic portion of this website, including site content, accessibility, public affairs and media issues should be addressed to the Public Affairs Office, email sealant_ch_pao@navy.mil, telephone (843) 218-5801.
- Commanding Officer, SSC Atlantic - (843) 218-5000
- Small Business Program Office - (843) 218-5115 or (843) 218-5920, FAX (843) 218-6912

Mailing Address:

SPAWARSYSCEN Atlantic Charleston
Attn: (Office Mail Code)
P. O. Box 190022
North Charleston, SC 29419-9022

Shipments:

Receiving Officer, SPAWARSYSCEN Atlantic
Attn: (Name and Code)
M/F: _____ (Fill in your code or requisition number)
1005 Trident Street
Hanahan, SC 29410

SPAWAR SYSTEMS CENTER ATLANTIC (NEW ORLEANS LOCATION)

General Information (Use Charleston phone number) - (843) 218-3390

Mailing Address:

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Attn: (Office Mail Code)
2251 Lakeshore Drive, Bldg. 2
New Orleans, LA 70145-0001

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General Information (Quarterdeck) - (757) 443-0700

Mailing Address:

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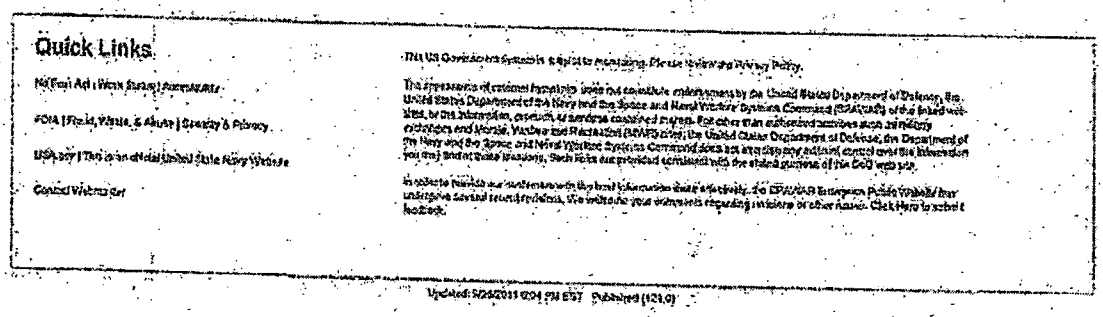
Attn: (Office Mail Code)
1837 Morris Street, Suite 3311
Norfolk, VA 23511-3432

SPAWAR SYSTEMS CENTER ATLANTIC (DETACHMENT SAN DIEGO)

General Information - (619) 556-7685

SPAWAR SYSTEMS CENTER ATLANTIC (DETACHMENT YOKOSUKA, JAPAN)

General Information - 011-81-616-043-6231



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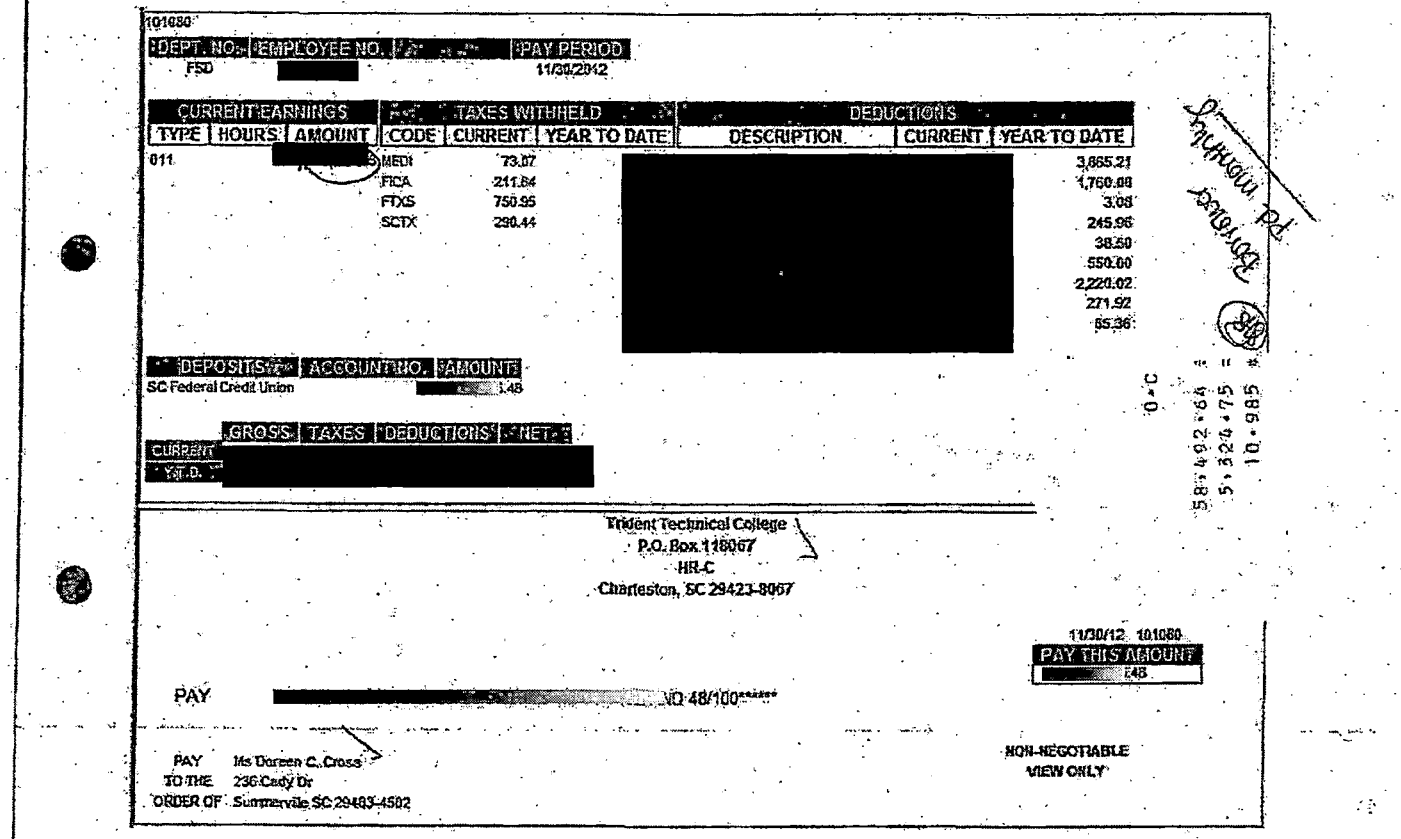

101080

DEPT. NO.	EMPLOYEE NO.	PAY PERIOD
FSD	[redacted]	11/30/2012

CURRENT EARNINGS			TAXES WITHHELD			DEDUCTIONS		
TYPE	HOURS	AMOUNT	CODE	CURRENT	YEAR TO DATE	DESCRIPTION	CURRENT	YEAR TO DATE
011	[redacted]	[redacted]	MEDI	73.07		[redacted]		3,865.21
			FICA	211.84				1,760.88
			FTXS	750.95				3.08
			SCTX	290.44				245.96
								38.50
								550.00
								2,220.02
								271.92
								65.36

DEPOSITS	ACCOUNT NO.	AMOUNT
SC Federal Credit Union	[redacted]	[redacted]

	GROSS	TAXES	DEDUCTIONS	NET
CURRENT	[redacted]			
Y-T-D				

0-C
58,492.64 =
5,324.75 =
10.985 #

Trident Technical College
P.O. Box 118067
HR-C
Charleston, SC 29423-8067

11/30/12 101080
PAY THIS AMOUNT
[redacted]

PAY [redacted] NO 48/100*****

PAY Ms Doreen C. Cross
TO THE 236 Cady Dr
ORDER OF Summerville, SC 29483-4502

NON-NEGOTIABLE
VIEW ONLY

099485

[redacted]

FSD 0001849 10/31/2012

DESCRIPTION	CURRENT	YEAR TO DATE
[redacted]		

CODE	CURRENT	YEAR TO DATE
MEDI	73.07	729.53
FICA	211.64	2,113.08
FTXS	750.85	7,283.37
SOTX	290.44	2,882.25

TYPE	HOURS	AMOUNT
011	[redacted]	

[redacted]

SC Federal Credit Union [redacted]

CURRENT	[redacted]	1,326.10	843.17
Y.T.D.	[redacted]		

Trident Technical College

P.O. Box 118067

HR-C

Charleston, SC 29423-8067

10/31/12 099485

[redacted]

PAY [redacted] D 46/100*****

PAY	Ms Doreen C. Cross
TO THE	236 Cady Dr
ORDER OF	Summerville SC 29483-4502

NON-NEGOTIABLE

VIEW ONLY

097890

[redacted]

FSD 0001849 09/30/2012

TYPE	HOURS	AMOUNT
011	[redacted]	

CODE	CURRENT	YEAR TO DATE
MEDI	73.07	641.09
FICA	211.64	1,856.92
FTXS	737.90	6,532.42
SCTX	286.79	2,550.61

DESCRIPTION	CURRENT	YEAR TO DATE
[redacted]		

[redacted]

SC Federal Credit Union [redacted]

[redacted]

CURRENT	[redacted]	1,309.40	895.38 [redacted]
Y-T-D	[redacted]		

Trident Technical College
P.O. Box 118067
HR-C
Charleston, SC 29423-8067

09/28/12 097890

[redacted]

PAY [redacted] D 97/100*****

PAY	Ms Doreen C. Cross
TO THE	238 Cady Dr
ORDER OF	Summerville SC 29483-4502

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VIEW ONLY

MAETS
1501 Crossways Blvd., Suite E
Chesapeake, VA 23320

Stephen C. Dudek
236 Cady Dr.
Summerville, SC 29483-4502

Direct Deposit

Employee Pay Stub	Check number:	Pay Period: 11/12/2012 - 11/25/2012	Pay Date: 11/30/2012
Employee		SSN	Status (Fed/State)	Allowances/Extra
Stephen C. Dudek, 236 Cady Dr., Summerville, SC 29483-4502		[redacted]	Single/Withhold	Fed-2/MSC-0

Earnings and Hours	Qty	Rate	Current	YTD Amount
Holiday	24.00	[redacted]		
Direct Labor	36.00			
PTO				728.00
H&W Benefit				984.35
	60.00		[redacted]	

Deductions From Gross	Current	YTD Amount
125 -Dental Insurance (pre-tax)	-2.69	-43.04
125-Vision Insurance (pre-tax)	-0.52	-8.32
401(k) Emp.	-166.40	-2,346.24
Flexible Spending Account	-100.00	-1,400.00
	-269.61	-3,797.60

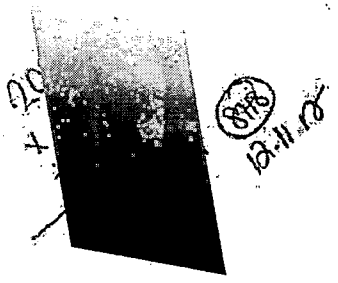
Taxes	Current	YTD Amount
Federal Withholding	-206.00	-3,468.00
Social Security Employee	-83.07	-1,377.95
Medicare Employee	-28.68	-475.72
SC - Withholding	-115.26	-1,936.32
	-433.01	-7,257.99

Net Pay	[redacted]

Direct Deposit	Amount
Checking - [redacted]8704	[redacted]

Paid Time Off	Earned	YTD Used	Available
Vacation	4.62	29.00	82.85

Taxable Company Items	Current	YTD Amount
Taxable Group Term Life	0.99	15.36
Memo		
Direct Deposit		



MID ATLANTIC ENGINEERING TECHNICAL SERVICES, INC., 1501 Crossways Blvd., Suite E, Chesapeake, VA 23320

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MAETS
1501 Crossways Blvd., Suite E
Chesapeake, VA 23320

Stephen C. Dudek
236 Cady Dr.
Summerville, SC 29483-4502

Direct Deposit

Employee Pay Stub	Check number	Pay Period: 09/17/2012 - 09/30/2012	Pay Date: 10/05/2012

Employee	SSN	Status (Fed/State)	Allowances/Extra
Stephen C. Dudek, 236 Cady Dr., Summerville, SC 29483-4502	[redacted]	Single/Withheld	Fed:2/SC:0

Earnings and Hours	Qty	Rate	Current	YTD Amount
PTO	8.00			
Direct Labor	72.00			
Holiday				
H&W Benefits				

Deductions From Gross	Current	YTD Amount
125 -Dental Insurance (pre-tax)	-2.69	-32.26
125-Vision Insurance (pre-tax)	-0.52	-6.24
401(k) Emp.	-166.40	-1,662.64
Flexible Spending Account	-100.00	-1,000.00
	-269.61	-2,719.18

Taxes	Current	YTD Amount
Federal Withholding	-205.00	-2,674.00
Social Security Employee	-93.06	-1,045.68
Medicare Employee	-28.68	-351.01
SC - Withholding	-115.26	-1,975.18
	-133.00	-5,556.87

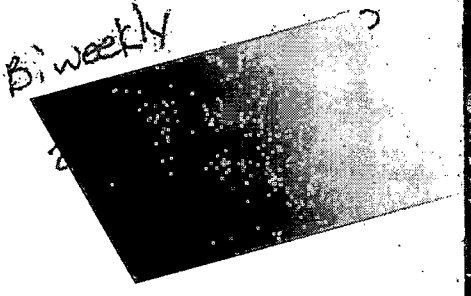
Net Pay [redacted]

Direct Deposit	Amount
Checking - [redacted]8704	[redacted]

Paid Time Off	YTD Used	Available
Vacation	28.00	27.44

Taxable Company Items	Current	YTD Amount
Taxable Group Term Life	0.99	11.40
Memo		
Direct Deposit		

Bi weekly



MID ATLANTIC ENGINEERING TECHNICAL SERVICES, INC., 1501 Crossways Blvd., Suite E, Chesapeake, VA 23320 Powered by Intuit Payroll

RETIREE ACCOUNT STATEMENT

STATEMENT EFFECTIVE DATE	NEW PAY DUE AS OF	SSN
NOV 20, 2012	NOV 30, 2012 ✓	[redacted]

PLEASE REMEMBER TO NOTIFY DFAS IF YOUR ADDRESS CHANGES

✓ P01 STEPHEN CRAIG DUDEK USN R
236 CADY DRIVE
SUMMERVILLE SC 29483-4502

DFAS-CL POINTS OF CONTACT

DEFENSE FINANCE AND ACCOUNTING SERVICE
US MILITARY RETIREMENT PAY
PO BOX 7130
LONDON KY 40742-7130

COMMERCIAL (216) 522-5955
TOLL FREE 1-800-321-1080
TOLL FREE FAX 1-800-469-6559

myPay
https://myPay.dfas.mil

PAY ITEM DESCRIPTION

ITEM	OLD	NEW	ITEM	OLD	NEW
GROSS PAY	.00	[redacted]	FITW	.00	115.27
VA WAIVER	.00		ADDL FITW	.00	130.00
SBP COSTS	.00		SITW	.00	40.00
TAXABLE INCOME	.00		NET PAY	.00	[redacted]

see fax sent deposits to evidence receipt for 2 mos. SBP 12-11-12

PAYMENT ADDRESS

DIRECT DEPOSIT

YEAR TO DATE SUMMARY (FOR INFORMATION ONLY)

TAXABLE INCOME:	[redacted]
FEDERAL INCOME TAX WITHHELD:	2,697.97
STATE TAX WITHHELD FOR SOUTH CAROLINA	440.00

TAXES

FEDERAL WITHHOLDING STATUS:	SINGLE	STATE CODE:	SC
TOTAL EXEMPTIONS:	.00	STATE INCOME TAX WITHHELD:	40.00
FEDERAL INCOME TAX WITHHELD:	115.27		
ADDITIONAL FITW:	130.00		

SURVIVOR BENEFIT PLAN (SBP) COVERAGE

SBP COVERAGE TYPE:	SPOUSE ONLY	ANNUITY BASE AMOUNT:	[redacted]
SPOUSE ONLY COST:	14.90	SPOUSE DOB:	[redacted]1974

THE ANNUITY PAYABLE IS 55% OF YOUR ANNUITY BASE AMOUNT WHICH IS 327.55
YOU HAVE PAID 203 MONTHS TOWARD YOUR 360 MONTHS OF PAID UP RC/SBP COVERAGE. ONCE YOU
HAVE PAID AT LEAST 360 MONTHS TOWARD YOUR COVERAGE AND TURN AGE 70, YOUR COSTS

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), Stephen Dudek, Deveon Orrin (hereinafter called "BUYER"), and Seller(s), Thomas M. and Lorraine B. Ferro (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 29485

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 is, 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 11/30 December 07, 2012, not later than 5:00 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 $ ~~one hundred~~ 305,000.00
Three Hundred 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 (Broker) 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.

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), Stephen Dudek, Doreen Cross (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: 766 E Butternut Rd.

Tax Map # 128-00-00-096 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 11/30 ~~December 31~~, 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.

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 seperate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be $ ~~295,000.00~~ 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 - Trolley Road 1574 Old Trolley Road, Summerville, SC 29485 Shaun Sheridan
Phone: (843) 810-1041 Fax: (843) 285-1167 Liz Donnelly
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See other copy for Signatures

Legible copy

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 $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. AHS provided by Carolina One.

11. **EXPIRATION OF OFFER:** The 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 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.

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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 (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.

(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

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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 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 C. Dudek Date 20 OCT 2012 Time 1:45
Stephen Dudek

WITNESS: Susan Nicholson Date 10.20.12 Time 1:48

BUYER: Doreen Cross Date 10 2012 Time 1:47
Doreen Cross

WITNESS: Susan Nicholson Date 10.20.12 Time 1:48

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

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 E Butternut 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 septics 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 pg. (a) + 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 21 Oct 2012 Time 1:45 pm

WITNESS: _____ Date 10.20.12 Time 1:48 pm

BUYER: _____ (Deceased, Estate) Date 10 2012 Time 1:47 pm

WITNESS: _____ Date 10.20.12 Time 1:48 pm

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

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Carolina One Real Estate - Trolley Road 1530 Old Trolley Road Summerville, SC 29485
Phone: 8434191015 Fax: 8432023169 Susan Nicholson

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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 288 E Butternut 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:

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.

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 Dudok	Date 25 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Dezeen Cross	Date 10/20/12	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER:	Date	Time
WITNESS:	Date	Time
SELLER:	Date	Time
WITNESS:	Date	Time

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Carolina One Real Estate - Trolley Road 1530 Old Trolley Road Summerville, SC 29483
Phone: 8434191015 Fax: 8432023160 Susan Nicholson

145 Browning

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Application Details

City, State, ZIP:	Summerville , SC	Attached?	N
County:	Berkeley	Estimated Taxes:	$900.00
Realtor Name:		Association Dues:	
Realtor Phone:	()-		

Loan Information

View Pricing Adjustments | View Loan Summary

Partner Product Code:	1000	Interest Rate:	4.250%
Product Display Name:	30 Year Fixed Rate	APR:	4.507%
Mortgagebot Product ID:	11645	Discount Points:	0.000%
Loan Purpose:	Purchase	Index:	
Occupancy:	Primary Residence	Margin:	
Indicative Credit Score:	690	Change Periods:	
Borrower Est. Credit Score:		Escrows:	Y
Loan Amount:	$250,000.00	P&I:	$1,229.85
Subordinate Financing:		Taxes and Ins:	$229.17
Total Loan Amount:	$250,000.00	PITI:	$1,459.02
HELOC Draw Amount:		Lock Period:	60 Day
Sales Price/Estimated Value:	$300,000.00	Rate Expiration Date:	
LTV / TLTV / HTLTV:	83.34% / 83.34% / NA	Home Equity Purpose:	
Estimated Closing Cost:	$5,877.87		
Cash Required to Close:	$57,742.63		
Estimated Closing Date:	6/20/2012		

Underwriting Information

View Pre-Approval Letter | View DU Results

Underwritten By:	Desktop Underwriter	Key Number/Case File ID:	1073356682
Approved in Consumer Advisor?	Yes	Credit Reference Number	5PHMK8/5PHMK8
Recommendation:	Approve/Eligible	Doc Classification:	
CDU Status:	0 - Imported/Custom DU not enabled	CDU Recommendation:	
If Primary AU not used, reasons:			
If PowerApprove used and not approved, reasons:			
Evaluation Status:			

Application Deposit Information

Application Deposit Amount:	$0.00	Account Number:	
Payment Method:		Credit Card Expiration:	

Custom Questions

ID	Question	Answer
Borrower acknowledgement	Acknowledgement and Agreement The undersigned specifically	I/We have read the above acknowledgement and agreement.

Berkeley County Government

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Tax Information for Parcel #: [redacted]

Tax Year	Receipt #	Assessed Value	Taxes Owed	Due Date	Paid Date	Receipt Name	Status
2011	0050615	80.00	22.88	01/15/2012	12/16/2011	CROSS DOREEN C	PAID
2010	0029679	80.00	22.95	01/15/2011	01/07/2011	CROSS DOREEN C	PAID
2009	0051893	80.00	22.62	01/15/2010	12/23/2009	CROSS DOREEN C	PAID
2008	0029546	80.00	23.09	01/15/2009	10/15/2008	CROSS DOREEN C	PAID
2007	0029250	80.00	22.44	01/15/2008	12/31/2007	CROSS DOREEN C	PAID
2006	0028728	80.00	21.32	01/15/2007	11/14/2006	CROSS DOREEN C	PAID
2005	0027923	80.00	21.77	01/15/2006	10/21/2005	CROSS DOREEN C	PAID

2011 Tax payments via Internet available until March 17, 2012

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-12-#2.2

2011 PROPERTY TAX NOTICE

CLARENDON COUNTY
TREASURER
P.O. BOX 1251
MANNING, S.C. 29102-1251

IF YOU HAVE QUESTIONS ABOUT THIS TAX NOTICE OR OTHER TAX MATTERS, PLEASE CALL THE APPROPRIATE NUMBER.

Personal Property
COUNTY AUDITOR Patricia Ortiz 803-435-8413
(Car, Boat, Aircraft, Business, Personal Property Closing, Homestead Exemptions)

Real Property
COUNTY ASSESSOR 803-435-8481
(Land, Buildings, Mobile Homes, Legal Residence, Agriculture Use, Manufacturing Improvements)

COUNTY TREASURER Brad Evans 803-435-8307
(Collection of real property and mobile homes taxes)

DELINQUENT TAX COLLECTOR 803-435-8481
(Collection of delinquent property taxes)

CROSS DOREEN C
236 Cady Dr
Summerville SC 29483-4502

tray 3 55
Sod # 23153

SAVE THIS NOTICE.
A COPY WILL COST $2.00

DESCRIPTION OF REAL PROPERTY		PLAT E1054-9 BLACK OAK SUBD			
RECEIPT NUMBER		DIST	NO ACRES	NO LOTS	NO BLDG
008425-11-3		20	2.94		

MAP NUMBER / WATERCRAFT			
247-00-01-082-00			
	APPRAISED VALUE Land	Bldg	ASST RATIO
OWNER RESIDENTIAL			
AG USE VALUE			
OTHER	20600		6%

	LEVY	TAXES
COUNTY	183.0	226.92
SCHOOL	123.9	153.64
CITY		
TOTAL	306.9	380.56
LESS EXEMPTION		31.23
TOTAL DUE		349.33

	ASSESSMENT				
	LAND	BUILDING	PERSONAL	PENALTY ASSESSMENT	TOTAL ASSESSMENT
OWNER RESIDENTIAL					
AG USE VALUE					
OTHER	1240				1240

TAX DOLLAR BREAKDOWN		SCHOOL ORD.	150.04	HOSPITAL BONDS	20.48
CITY		SCHOOL DEBT	.00		.00
COUNTY ORDINARY	169.64	VOCATIONAL SCH	3.60		.00
COUNTY DEBT	4.71	LIBRARY	.00		.00
FIRE ORDINARY	30.75	FIRE DEBT	1.36		.00

"Your tax bill was decreased by $28.27 due to the 1% Sales Tax for School Debt Reduction."

APPEAL PROCEDURES

PERSONAL PROPERTY LICENSED OR REGISTERED WITH A STATE AGENCY MUST BE APPEALED TO THE COUNTY AUDITOR IN WRITING AND GIVEN ON OR BEFORE THE DUE DATE OF THE TAX NOTICE. OTHER PERSONAL PROPERTY UNDER THE JURISDICTION OF THE COUNTY AUDITOR AND CONTROLLED BY REGULATION OF THE SOUTH CAROLINA DEPARTMENT OF REVENUE MAY BE APPEALED TO THE DEPARTMENT OF REVENUE IN WRITING BY TAX DUE DATE.

ALL REAL ESTATE ASSESSMENT, INCLUDING MOBILE HOMES, IS MADE BY THE COUNTY ASSESSOR. ALL ADDRESS CHANGES FOR REAL PROPERTY ARE MADE BY THE COUNTY ASSESSOR.

ALL WATERCRAFT, AIRCRAFT AND COUNTY BUSINESS PERSONAL PROPERTY ASSESSMENTS ARE MADE BY THE COUNTY AUDITOR. ALL ADDRESS CHANGES FOR PERSONAL PROPERTY ARE MADE BY THE COUNTY AUDITOR. ALL CORRECTIONS TO TAX NOTICES MUST BE MADE BY THE COUNTY AUDITOR.

TAX RECEIPTS ARE NULL AND VOID WHEN PAYMENT IS MADE BY A CHECK WHICH FAILS TO CLEAR THE BANK.

PENALTY	
JAN. 18 - FEB. 1 - 3%	359.81
FEB. 2 - MAR. 16 - 10%	384.26
AFTER MAR. 16 - 15%	401.79

PAY THIS AMOUNT ON OR BEFORE	PAYING AMOUNT
JAN. 17TH, 2012	349.33

Lot Tax Bills

11-20-11

PD 121411

Berkeley County Government

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Ownership | Tax Info | Map Info | Property Card

Ownership & Location Information

Parcel #:	1780003082
Location:	NO SITE ADDRESS AVAILABLE
Legal Description:	LOT BLK
On Tax Books As:	CROSS DOREEN C
Deed Book/Page:	4170 /0288
Plat Book/Page:	CAB Q /206J
Present Owner:	CROSS DOREEN C
Lender Name:	NONE ON FILE
Tax District:	08
Neighborhood:	D130 /LEBANON AREA
Deed Recorded Date:	08/11/2004
# Of Buildings:	0
Current Taxable Value:	2,200.00
Current Taxable Value may reflect CAP or Market Value:	FUTURE USE

Property Card is from AssessPro -- Non standard html port # 91 is used to deliver the property card

- Print current page's data

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Jedburg Rd
Vacant land
#1

Berkeley County Government

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Ownership | **Tax Info** | Map Info | Property Card

Tax Information for Parcel #: 1780003082

Tax Year	Receipt #	Assessed Value	Taxes Owed	Due Date	Paid Date	Receipt Name	Status
2011	0050614	90.00	25.15	01/15/2012	12/16/2011	CROSS DOREEN C	PAID
2010	0029678	90.00	25.23	01/15/2011	01/07/2011	CROSS DOREEN C	PAID
2009	0051892	90.00	24.87	01/15/2010	12/23/2009	CROSS DOREEN C	PAID
2008	0029545	90.00	25.39	01/15/2009	10/15/2008	CROSS DOREEN C	PAID
2007	0029249	90.00	24.67	01/15/2008	12/31/2007	CROSS DOREEN C	PAID
2006	0028727	90.00	23.44	01/15/2007	11/14/2006	CROSS DOREEN C	PAID
2005	0027922	90.00	23.93	01/15/2006	10/21/2005	CROSS DOREEN C	PAID

2011 Tax payments via Internet available until March 17, 2012

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-12= 3.00

Unofficial Berkeley County Property Card

Summary Information:

TMS: 1780003082
Parent TMS: 178-00-03-001
Owner Information:
CROSS DOREEN C
236 CADY DR

SUMMERVILLE , SC 29483-4502

Council District: C7
Fire District: F20
Tax District: T08
TIS Zone: 1
Jurisdiction: 1P
Acres: 8.51
Lots: 0.0

Neighborhood: D130 - LEBANON AREA
Appraiser ID: MR
Lot: Block: Section:
Zoning: F-1
Homestead Exempt: No
Notes:
SPLITS/VAC BO
SALES/ VAC NO CHG BO 8/04

Site addresses:

Previous Owner History:

Owner: SMOAK BURBAGE Sale Date: 08/10/2004 Sale Price: $72,250.00 Deed Book-Page: 4170 - 0288 Plat: CAB Q - 206J
Owner: MEADWESTVACO FORESTRY Sale Date: 02/27/2004 Sale Price: $0.00 Deed Book-Page: 3865 - 0118 Plat: CAB Q - 162

Sales Information:

Last Sale Date: 08/10/2004
Recording Date: 09/11/2004
Sale Price: $72250

Plat Information: CAB Q - 206J
Deed Book: 4170
Deed Page: 0288

Sales Validity: 0
Validity Other:

Valuation Information:

Building Market: 0
Land Market: 181,700

Building Taxable (4% Res): 0
Building Taxable (6% Other): 0
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 0
Land Taxable (4% Ag): 2,200
Land Taxable (6% Ag): 0

Total Taxable Value: 2,200 Total Assessment: 90

Fee Summary:

Fee Name	Fee Amount
Acreage Fire Fee	5

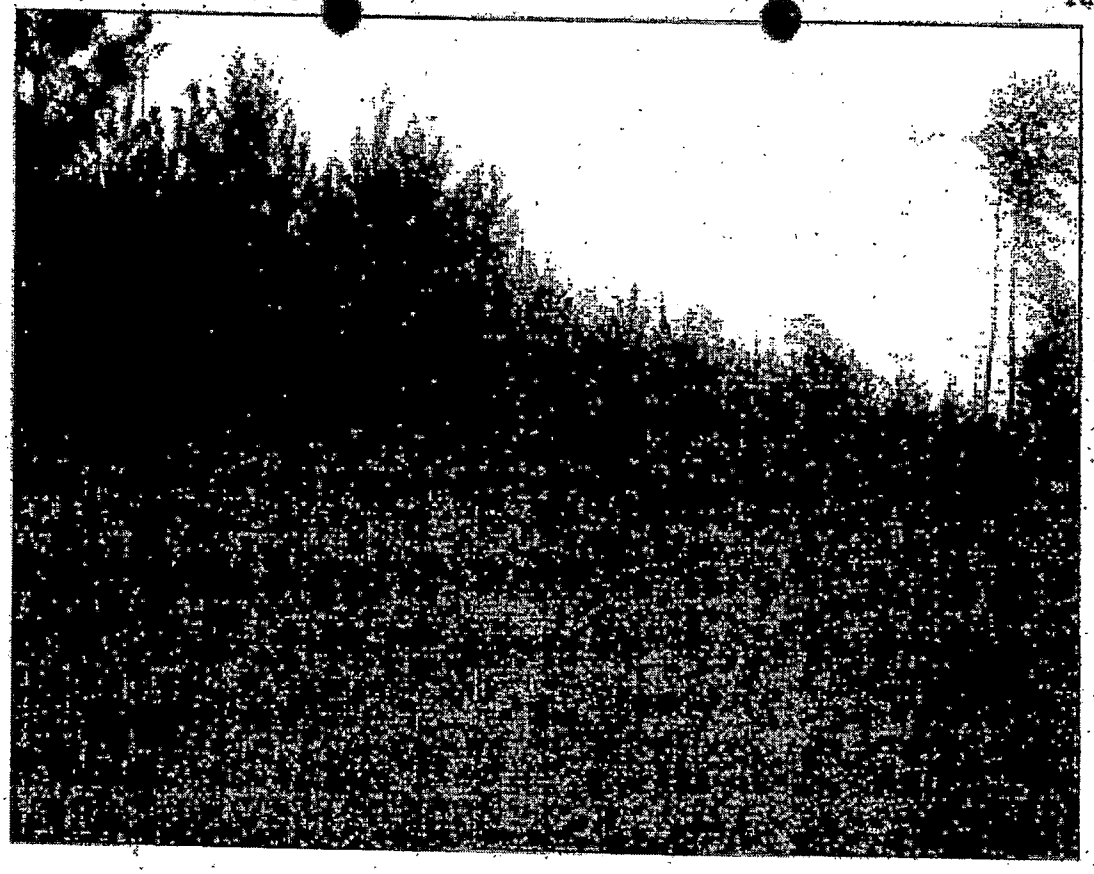
Building Information:

Building Count: 0
Residence Count:

Yard Item Count: 0
Mobile Homes on Property: 0

Jedburg Rd
vacant land

Image on file:



Berkeley County Government

SERVING YOU ONLINE RATHER THAN IN LINE

Ownership | Tax Info | Map Info | Property Card

Ownership & Location Information

Parcel #:	1780003093 ✓
Location:	NO SITE ADDRESS AVAILABLE
Legal Description:	LOT BLK
On Tax Books As:	CROSS DOREEN C ✓
Deed Book/Page:	4170 /0288
Plat Book/Page:	CAB Q /206J
Present Owner:	CROSS DOREEN C
Lender Name:	NONE ON FILE
Tax District:	08
Neighborhood:	D130 /LEBANON AREA
Deed Recorded Date:	08/11/2004
# Of Buildings:	0
Current Taxable Value:	2,000.00
Current Taxable Value may reflect CAP or Market Value:	FUTURE USE

Property Card is from AssessPro -- Non standard html port # 91 is used to deliver the property card

-- Print current page's data

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Jedburg Rd
Vacant land
#2

Unofficial Berkeley County Property Card

Summary Information:

TMS: 1780003093
Parent TMS: 178-00-03-062
Owner Information:
CROSS DOREEN C
236 CADY DR

SUMMERVILLE , SC 29483-4602

Council District: C7
Fire District: F20
Tax District: T08
TIS Zone: 1
Jurisdiction: 1P
Acres: 8.51
Lots: 0.0

Neighborhood: D130 - LEBANON AREA
Appraiser ID: MR
Lot: Block: Section:
Zoning: F-1
Homestead Exempt: No
Notes:
SPLITS/VAC BO

Site addresses:

Previous Owner History:

Owner: SMOAK BURBAGE Sale Date: 08/10/2004 Sale Price: $72,250.00 Deed Book-Page: 4170 - 0288 Plat: CAB Q - 206J

Sales Information:

Last Sale Date: 08/10/2004
Recording Date: 08/11/2004
Sale Price: $72250

Plat Information: CAB Q - 206J
Deed Book: 4170
Deed Page: 0288

Sales Validity: 0
Validity Other:

Valuation Information:

Building Market: 0
Land Market: 181,700

Building Taxable (4% Res): 0
Building Taxable (6% Other): 0
Building Taxable (4% Ag): 0
Building Taxable (6% Ag): 0

Land Taxable (4% Res): 0
Land Taxable (6% Other): 0
Land Taxable (4% Ag): 2,000
Land Taxable (6% Ag): 0

Total Taxable Value: 2,000 Total Assessment: 80

Fee Summary:

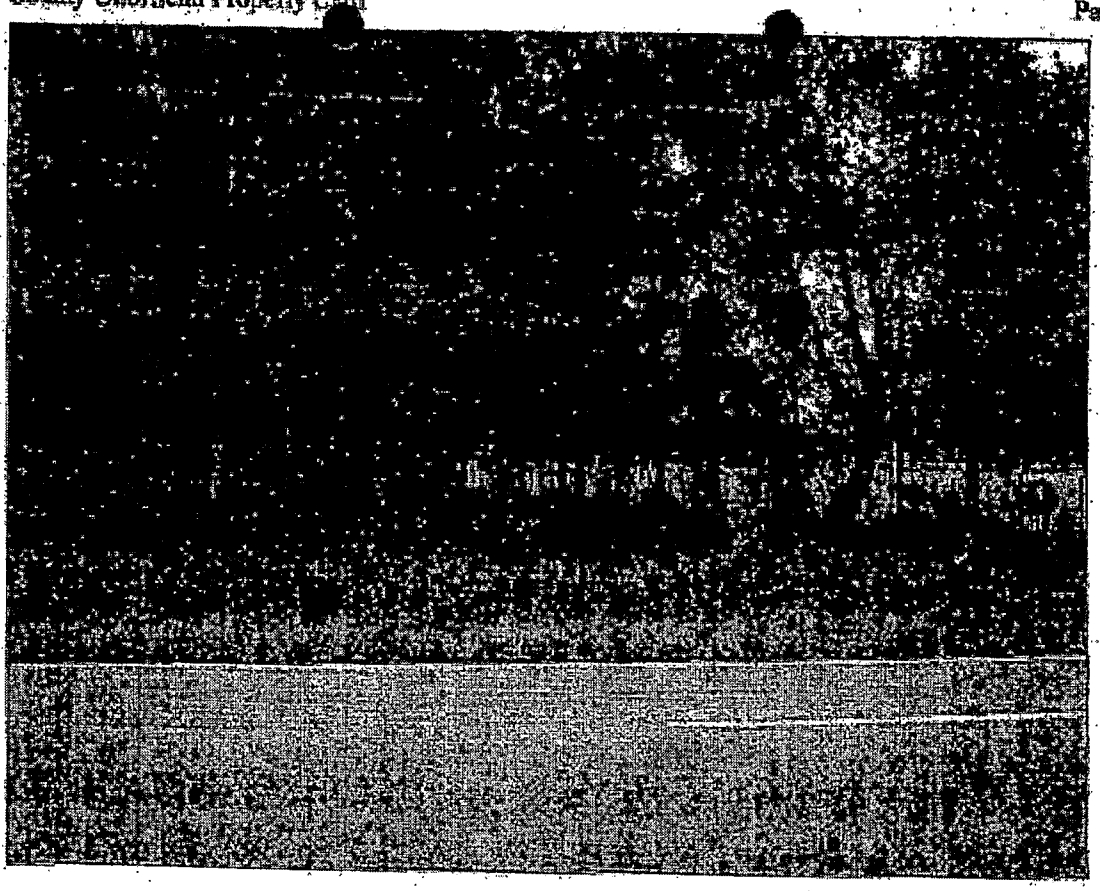
Fee Name	Fee Amount
Acreage Fire Fee	5

Building Information:

Building Count: 0
Residence Count:

Yard Item Count: 0
Mobile Homes on Property: 0

Image on file:



WOODDY, CISA & DODDS, LLP
ATTORNEYS AND COUNSELORS AT LAW
[illegible] DODDS BOULEVARD
MT. PLEASANT, SOUTH CAROLINA 29464

[illegible]
TELEFAX (803) 881-1511

AUBREY J. WOODDY, JR.
FRANK M. CISA
JOHN L. DODDS, III.
MARGARET E. DODDS

AUBREY J. WOODDY, III
OF COUNSEL

WITH OFFICES AT
[illegible] AVENUE, SUITE A
NORTH CHARLESTON, SC 29406
(803) 553-1511
TELEFAX NUMBER (803) 569-0100

April 29, 1998

Doreen C. Cross
240 Cady Drive
Summerville, SC 29483

RE: Pinehill Acres

Dear Ms. Cross:

Enclosed please find your original deed whereby Wayne W. Cross conveyed the above-captioned property to you.

You will note that the deed is dated March 13, 1998, and was duly recorded in the RMC Office for Dorchester County on March 20, 1998, in Book 1917, Page 320.

Although this conveyance has been admitted to the public records for the County of Dorchester, it is our suggestion that this original be kept by you in a safe place with your other important papers for future reference.

This is a reminder that you will be responsible for all subsequent taxes during your ownership of this property. If the seller has not provided you with the tax bill prior to December 1st, please check with your County Treasurer and obtain your tax bill.

Further, we remind you that for any year in which you occupy this property as your principal residence, you are eligible for a special 4% residential tax rate if you file for this assessment prior to December 31st of that year. If you do not receive a notice to file in the mail, contact your County Assessor. If you fail to apply for the 4% tax rate, your taxes may be computed at a 6% rate, causing a severe shortage in your escrow account with your lender.

It was a pleasure handling this transaction for you and if we can be of service in the future, please call on us.

Thank you and with best wishes, I am

Very truly yours,

Sharon T. Smith
Secretary to A.J. Wooddy, Jr.

current primary

BK 1917PG320

State of South Carolina,

County of Dorchester

FILED-RECORDED

Mar 20 10 46 AM '98

LINDA McGARVY
REGISTER
MESNE CONVEYANCE
DORCHESTER COUNTY, SC

RECORDED IN
REGISTER OF DEEDS OFFICE
APR 21 1998
DORCHESTER COUNTY, SC

DORCHESTER COUNTY
SC Deed Tax
Fee Collected Tax Fee
Filing Fee 11.00
Postage 4
LINDA L. McGARVY
Register of Mesne Conveyance

KNOW ALL MEN BY THESE PRESENTS, THAT

Wayne W. Cross

in the State aforesaid for and in consideration of the sum of

One Dollars & NO/100 LOVE AND AFFECTION FOR MY WIFE DOLLARS,

to me in hand paid at and before the sealing of these presents by

Doreen C. Cross

in the State aforesaid, County aforesaid the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said

Doreen C. Cross, her Heirs and Assigns forever, a one half undivided interest in and to

the following described property to wit:

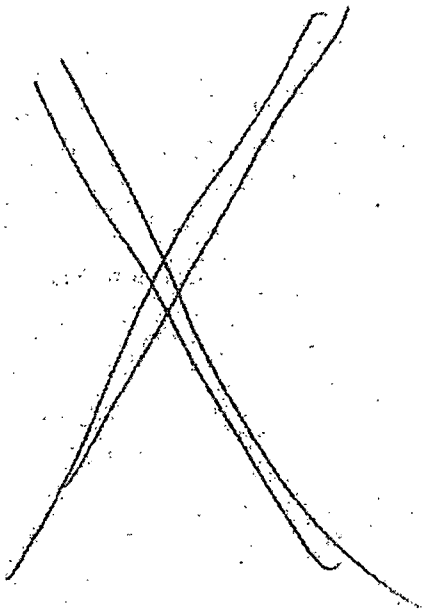
See Schedule A attached hereto and by this reference made a part hereof.

SUBJECT TO covenants, restrictions, easements of record and taxes for the current year.

Recorded 8th Day
of April 1998
in Book — Page —
Auditor, Dorchester County, SC

Ref: Wells Real Estate - 830 Main Street - Ste A - N. Chas, S.C. 29406-9276

BK 1917PG321



TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Doreen C. Cruse

her Heirs and Assigns forever, a one half undivided interest.

BK 1917PG322

Schedule A

All those certain two (2) pieces, parcels or lots of land, situate, lying and being in Pinehill Acres Subdivision, near the Town of Summerville, in Dorchester County, South Carolina, being a rectangular shape, measuring on the Northeastern and Southwestern sides a distance of 200 feet each, and on the Northwestern and Southeastern sides a distance of 100 feet each, be the same measurements more or less, buttings and bounding according to the plat hereinafter referred to as follows, to-wit: Northeastern on Lot 42 of Block N of Section U of said Pinehill Acres Subdivision and Northwestern of Lots 17 and 18 of Block N, of Section U of said Pinehill Acres Subdivision. The above lots of land will more fully appear as Lots 43 and 44, Block N, Section U of said Pinehill Acres Subdivision, reference being had to a plat by Thomas Z. Young, Surveyor, dated July 5, 1977 and recorded in Plat Book 16 at Page 119 in the RMC office for Dorchester County.

This being the same property conveyed to Doreen C. Cross and Wayne H. Cross by deed of Randy Raymond Koivisto and Debra Ann Koivisto dated October 11, 1985 and recorded in the RMC Office for Dorchester County in Book 548 at Page 13.

TMS# 129-05-05-020

Grantee's Address: 240 Cady Drive
Summerville, SC 29483

File No: 94-3034A

AND I do hereby bind myself and my BK 1917PG323 Heirs, Assigns,

Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said

Doreen C. Cross, her

Heirs and Assigns, against me and my Heirs, and all persons whomsoever as may be lawfully claiming,

or to claim the same or any part thereof.

WITNESS my Hand and Seal this 13th day of March

in the year of our Lord one thousand nine hundred and Ninety-eight and in the two hundred and

Twenty-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Diana Smith

Wayne W. Cross (L.S.)
Wayne W. Cross

Mary A. Ingram

(L.S.)

The State of South Carolina,

Charleston County.

PERSONALLY appeared before me THE UNDERSIGNED WITNESS

and made oath that he/she saw the within named

Wayne W. Cross

sign, seal, and as his act and deed, deliver the within written Deed, and that

he/she with THE OTHER WITNESS

witnessed the execution thereof.

SWORN to before me, this 13th

day of March A.D. 1998

Mary A. Ingram (SEAL)
Notary Public of South Carolina
My Commission Expires:
7-16-2002

Diana Smith

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 16 day of March 1998
at 10:44 A.M. and recorded
in book 190 page 320
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

BK 1917P6324

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.

2. The property being transferred is located at 240 Cady Drive, Summerville, SC 29483 bearing DORCHESTER COUNTY TAX MAP NUMBER 129-05-05-020 was transferred by Wayne W. Cross to Doreen C. Cross on 3/13/98.

3. The deed is NOT EXEMPT from the deed recording fee, and the FAIR MARKET VALUE IS _____.

4. The deed is exempt from the deed recording fee because (Use new exemption numbers and explain reason for exemption):
EXEMPTION # 7 (see new exemption numbers on enclosed sheet) AND
EXPLANATION FOR EXEMPTION an in family transfer.

5. As required by code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: purchaser.

6. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

SWORN to before me this 13th day of March 19 98

Notary Public for SC
My Commission Expires 8/31/2003

OTHER:

MATTER NOT SERVED, FILED OR PRESENTED IN THIS CASE TO THE LOWER COURT; INCLUDED IN THE RECORD IAW APP. COURT ORDER

The South Carolina Court of Appeals

Stephen Dudek, Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Respondents,

And

Molly M. Morphew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro, Respondents.

Appellate Case No. 2017-001393

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James E. Lockemy C.J.

J.

J.

FILED

August 24, 2020

Columbia, South Carolina

cc:
Molly M. Morphew
Steven L. Smith, Esquire
Samuel Melvil Wheeler, Esquire
Thomas Ferro
Lorraine Ferro
The Honorable James E. Chellis

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
JUN 05 2015
SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Master in Equity

Case No. 2013-CP-18-0183 consolidated with
Case No. 2013-CP-18-0074

Stephen Dudek and Doreen Cross . . . . . Respondents

v.

Thomas M. Ferro and Lorraine B. Ferro . . . . . Appellants.

AND

Molly M. Morphew . . . . . Appellant

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and
Loraine Ferro, Defendants,

Of Whom

Stephen Dudek and Doreen Cross are . . . . . Respondents.

FINAL BRIEF OF RESPONDENTS
STEPHEN DUDEK and DOREEN CROSS

David Athell Collins
P.O. Box 40578
Charleston, SC 29405-0578
(843) 760-0220
(843) 552-2678 facsimile
Davidacollins2@aol.com
Attorney for Respondents Doreen Cross and Stephen Dudek

Other Parties of Record:

Molly M. Morphew, *pro se*
788 East Butternut Road
Summerville, SC 29483

Thomas & Lorraine Ferro, *pro se*
5501 Carson Street
Denver, CO 80239

TABLE OF CONTENTS

Table of Authorities ii

FACTS 1

ARGUMENT 3

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The instant appeal arises from an Order of the Master in Equity of Dorchester County granting Respondents' complaint and ordering specific performance of a sales contract between Respondents and Appellants Thomas and Lorraine Ferro. Molly Morphew, the individual who purchased the property at issue following the breach of Respondents' contract, brought suit against both Respondents and the Ferros, seeking specific performance of her subsequent contract, or, in the alternative, damages in the event the Respondents' contract was found enforceable. The two actions were consolidated for trial, the Trial Court having concluded that the principal position of all of the Appellants was that the Ferro-Morphew contract was valid.

The Ferros appeared *pro se* during the trial phase, and have filed a *pro se* Notice of Appeal. Morphew was represented by counsel initially, but is now also *pro se* in this appeal. The Initial Brief filed by Appellant Morphew indicates, in its introduction, that it is apparently being filed on behalf of all of the Appellants, jointly, and certainly the bulk of the argument seems to be that the initial contract between Respondents and the Ferros is unenforceable. It has a signature line for the Ferros, but is signed exclusively by Appellant Morphew. Ms. Morphew, is, of course, not an attorney and cannot represent any party other than herself. Time has now expired on the right of the Ferros to file a separate Initial Brief.

I. FACTS

The facts of this action are set out in detail in the Order of the Trial Court of November 6, 2014. On October 23, 2012, Respondents entered into a contract for the purchase of a parcel of real property, located in Summerville, with the Ferros. Morphew entered into a contract with the Ferros, for the purchase of the same parcel, on December 16, 2012. The Dudek/Cross contract, as is standard in the real estate industry, contained a "Time is of the Essence" provision, and by its own terms was to close not later than November 30, 2012.

It did not close at that time, and the Ferros believed that Respondents herein had failed to fulfill a significant contingency: i.e., they had not obtained conventional financing by that time. The Ferros subsequently sold the property to Appellant Morphew. The Trial Court found, and the parties have never disagreed, that the property is unique and that its value cannot be compensated for by mere money.

The parties have also consistently agreed that Respondents had not obtained conventional financing, as required by the contract, prior to the scheduled date. The focus of the disagreement is whether or not this failure was excused, and whether or not the failure was actually caused by the Ferros' failure to meet their duties under the contract. The Trial Court concluded, as a Finding of Fact and as a Conclusion of Law, that the failure was excused. Specifically, the Trial Court found that the Ferros had made it impossible to comply with this requirement because of their failures to timely provide documents and complete necessary repairs. The Court found that the actions of the Ferros in failing to adequately communicate with Respondents and to meet certain other duties demonstrate that the Ferros "obfuscated the intent and meaning of the contract in the performance of conditions incumbent upon them to fulfill." Order, p. 11. As a result, the Trial Court ordered that the timing of the contract be reset in order that the parties might complete its terms, and ordered that the Ferros sell the property to Respondents as soon as Respondents were able to obtain conventional financing.

In addition, the Trial Court found that the contract between the Ferros and Morphew was contingent upon the failure of Respondents to meet the financing contingencies, and would only become effective if Respondents terminated their prior contract. Because this contract had not yet come into being, the Court found that the Ferros had not breached it and Morphew was not entitled to damages or other relief. Unfortunately, notwithstanding the Order of the Trial Court,

it appears that the Ferros – who now seem to reside in Colorado – have not transferred ownership but have permitted Morphew to move into the home. The Ferros continue to refuse to complete their obligations under the original Dudek/Cross contract, which remains incomplete at this time.

II. ARGUMENT

A. Appellant Morphew Lacks Standing to Argue the Merits of the Contract Between Respondents and Appellants Thomas and Lorraine Ferro, Sellers of the Property.

As noted *supra*, the Initial Brief ostensibly submitted on behalf of all of the Appellants, jointly, is a *pro se* document signed exclusively by Appellant Molly Morphew. Although it contains a signature line for the Ferros, neither of them – let alone both – have signed it. Ms. Morphew is not an attorney and is not authorized under the laws of the State of South Carolina to represent anyone other than herself. *See* S.C. Code § 40-5-310 ("No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar..."). Morphew's Initial Brief cannot, by statute, be read to include arguments made by other parties, including the Ferros.

There are a total of five separate, although essentially overlapping, arguments made in the Initial Brief. With the possible exception of Number V,[1] all of the arguments raise alleged errors in the manner in which the Trial Court dealt with the contract between the Ferros and Respondents. Despite the statement contained in the Order that Morphew and the Ferros "have consistent positions on the Dudek/Cross Contract," this is insufficient to confer standing on Morphew to challenge the validity of a contract to which she is not a party. That Morphew wishes to have the opinion of the Trial Court with respect to the enforcement of the first sales

[1] This argument, addressed *infra*, addresses primarily whether or not Ms. Morphew sought damages or merely the enforcement of her contract. As is further explained below, it is completely immaterial whether or not Ms. Morphew sought exclusively specific performance or alternative remedies.

contract overturned does not give her the ability to challenge any of the terms of or conclusions drawn from the examination of that contract.

Although the remedy fashioned by the Trial Court upon finding that the contract between Respondents and the Ferros was enforceable was in specific performance rather than in damages, there is no question but that the entirety of this action is founded upon a simple claim of breach of contract. In order to bring an action for breach of contract, one must, first and foremost, have a contract. Morphew had a contract with the Ferros, a contract which is clearly contingent upon a finding that the prior contract, the contract with Respondents, is invalid and unenforceable. Morphew has every right and the ability to bring suit against the Ferros under her contract with them, should the contingency remaining in her contract come to pass. She has, however, no relationship, contractual or otherwise, with Respondents. She has no stake in the contract between the parties to that contract, is not in privity with Respondents, and lacks standing to argue the position advocated by the Ferros with respect to their contract.

It is axiomatic that a part must have standing in order to institute an action. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003). In order to have standing, one must have a personal stake in the subject matter of the action. *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. South Carolina Dep't of Natural Res.*, 345 S.C. 594, 550 S.E.2d 297 (2001). One must, in other words, be the real party in interest. *Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 519 S.E.2d 567 (1999).

That having been said, it would almost seem, on first glance, that Morphew has an actual and substantial interest in the contract between Respondents and the Ferros, because she too wishes to purchase the particular and singular parcel of real property at issue. Full examination

of the facts of these two consolidated actions shows that is incorrect. It is highly significant, in this respect, that this appeal arises from a consolidation of two entirely different actions, brought together for trial purposes merely because the witnesses were identical, and because the contract between Morphew and the Ferros was entirely contingent upon a preliminary finding that the contract with Respondents was invalid. Consolidation for trial does not, however, transform Morphew into a party in interest with regard to Respondents' contract.

As a general rule, "one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of contract between the defendant and a third party is not, as such recoverable by the plaintiff." *Windsor Green Owners Ass'n v. Allied Signal,, Inc.*, 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004). Over the years, the courts and legislature of this State have created a number of exceptions to this time-honored rule. Direct privity with the owner of a project is not required in order to impose a mechanic's lien. S.C. Code § 29-5-20; *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 762 S.E.2d 561 (2014). The South Carolina Supreme Court has recently held that privity is not a requirement for a third party who is an intended beneficiary of a will to bring an action in malpractice against an attorney whose negligent drafting of the document defeated or diminished the client's intent. *Fabian v. Lindsay,* ___ S.C. ___, 765 S.E.2d 132 (2014).. It is no longer required in order to bring an action under the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10; *see Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 666 S.E.2d 247 (2008).

None of the exceptions applies in the instant matter. Morphew is completely unconnected to the contract between Respondents and the Ferros. She is not a third party beneficiary of their contract and does not fall into any of the statutory or common law exceptions

to the requirement of privity. She can neither bring suit upon nor defend the contract between the sellers of the property and the original purchasers. She is not a party and has no interest in the litigation. That her own contract with the Ferros is contingent upon whether or not Respondents finally close on the property she also wants does not, in a legal sense, make her a party in interest to the outcome of the Ferro-Dudek/Cross litigation.

In short, Morphew cannot represent the Ferros, and lacks standing to bring arguments on their behalf. Almost without exception, the Initial Brief filed *pro se* by Molly Morphew attacks the validity of the Dudek/Cross – Ferro contract. These are not arguments that can be made by an individual not a party to that contract. Even though Molly Morphew has an interest in the real property at the heart of this action, she lacks the legal interest in the first contract that would permit her to defend it on appeal. As Morphew clearly lacks standing to make any arguments with respect to the validity or the invalidity of the original contract, all those portions of her Initial Brief that focus on this issue should be stricken.

B. Even If Morphew Has Standing to Raise Issues Related to the Contract Between Respondents and the Ferros, Her Arguments Regarding the Master's Findings of Fact and Conclusions of Law Are Without Merit.

Morphew has made a total of five substantive arguments in her Initial Brief. The first two jointly purport to challenge the legal conclusions of the Trial Court; those arguments are predicated upon the second two, which attack his factual findings. The fifth argument, which is independent of the claims made with respect to the Dudek/Cross – Ferro contract, contends that the Trial Judge mis-comprehended Morphew's complaint. For the sake of convenience, these groups of arguments will be dealt with together.

1) The Legal Conclusions of the Trial Court Are Correct, and This Court Should Not Review *De Novo* the Findings of Fact Below.

"An action for breach of contract is an action at law." *Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004). "In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law...The trial judge's findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Id.* As noted in the Order, both Respondents and Morphew brought their actions to enforce contracts entered into with the Ferros. This action is, consequently, an action at law – although the Trial Court determined that the only appropriate remedy was in equity – and the scope of this Court's review is limited to errors of law. The facts should not be reviewed *de novo*, and the Findings of the Trial Court should be upheld unless there is no evidence to support them.

Morphew's second set of two arguments – that the Master in Equity who tried the action erred by finding facts not in the record and that he relied upon unreliable testimony and consequently demonstrated bias in favor of Respondents – are direct challenges to the facts as found by the Trial Court. The Court below made extensive findings of fact in its Order. After a thorough review of the contract between Respondents and the Ferros, and after careful examination of the testimony of the parties and the loan officer with whom Respondents were dealing, the Trial Court concluded that it was apparent from the evidence that the Ferros had breached the contract with Respondents by failing to comport themselves in a manner showing good faith and fair dealing.

As in any case, the legal conclusions drawn are predicated upon the factual scenario before the Court. In this case, the lengthy factual findings made by the Trial Court led it to the

inescapable conclusion that, as a matter of law, the Ferros had breached their contract with Respondents. The further conclusion drawn from that is that any alleged breach committed by Respondents is excused as a result of the prior breach, and that Respondents are entitled to the appropriate remedy for the breach by the Ferros. In this instance, as a house is not a fungible asset, and compensation in money damages would have been insufficient, the Trial Court ordered the equitable remedy of specific performance.

The entirety of Morphew's arguments regarding enforcement and breach of the Dudek/Cross – Ferro contract is based upon her insistence that many of the facts expressly found by the Trial Court are incorrect. The bulk of the argument consists of emphasis on those of the facts presented which support Morphew's position[2] and claims that this Court should disregard any testimony to the contrary.

This entire string of purported "arguments" presented by Morphew is nothing more than the quintessential contention that this Court should review the facts *de novo* and apply its own version of those facts to the case. There is no legal argument; there is no actual claim that the Trial Court applied the wrong law. There is no dispute regarding what constitutes a breach of contract, or that the Trial Court incorrectly analyzed the components of that cause of action.[3] Rather, despite the extensive and lengthy discussion of the testimony heard by the finder of fact in this case, Morphew wishes to have this Court conclude that only those facts, or those inferences drawn from some of the facts, should be considered. She contends only that the actual findings of fact below are incorrect.

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[2] Actually, the emphasis is on that testimony that would support the position the Ferros most likely would have taken had they ever filed a brief. *See, Section A, supra.*

[3] The second "Statement of Issues on Appeal", which reads "[d]id the master in equity err in concluding that the failure of Respondents to meet their conditions of their contract in a timely manner incapable of being defended" certainly appears to be a legal argument. Unfortunately, it is incomprehensible.

The Trial Judge, acting as the exclusive finder of fact in this action, heard all of the testimony, considered the credibility of the witnesses presented to him, and reviewed all of the evidence presented at trial. The first 10 pages of his 14-page Order detail the Findings of Fact made as a result of the careful consideration of that testimony. Morphew clearly believes that the Trial Court should have believed different testimony, and should have placed greater reliance on some of the facts, as presented by some of the witnesses, than on others. It is not the role of this Court to reconsider the factual determinations made below. *Electro Lab, supra.* Despite recognition of this principle, Morphew would nonetheless have this Court reverse the Trial Judge on the facts of the case.

Not only is Morphew's Initial Brief completely devoid of any argument on her own behalf, it is completely devoid of any actual legal argument at all. She is asking that this Court re-try the action, by reviewing all of the Findings of Fact and concluding that her version is correct. This is not the role of the Court of Appeals, and the Trial Court should be affirmed.

2) The Only Arguments Regarding Morphew Herself Are Moot.

Section V of the Initial Brief contains the only errors assigned to anything having to do with Molly Morphew, the only signatory to the Brief. Morphew claims, first, that the Master in Equity committed reversible error when he said in his Order that Morphew was asking for damages; and second, that he similarly erred in stating that the Ferros championed her contract with them. Neither of these arguments has any relevance whatever.

It is entirely immaterial whether Morphew sought specific performance of her contract, or specific performance with a claim for damages in the alternative. The Trial Court found that her contract was enforceable, but that its enforceability was contingent upon a decision by Respondents to cancel their prior, and also enforceable, contract. If Respondents close on the

property, Morphew is free to pursue damages against the Ferros at that time, if damages are appropriate. If Respondents fail to close, Morphew is similarly free to remain in the house. Her prayer for relief in the Court below is not material to any issue on appeal.

Her second assertion is both difficult to understand and is similarly immaterial. The Trial Court found that Morphew and the Ferros were, in essence, on the same side with respect to the enforceability of Respondents' contract. Here again, Morphew appears to object to the inference that the Ferros "championed" her contract with them only because she sought damages as an alternative remedy. It is completely irrelevant why, in subjective terms, the parties felt one contract was enforceable and another was not. The Trial Court found that the two sets of Appellants were lined up on the same side of the argument, opposed to Respondents. Their internal feelings about why they were so aligned make no difference.

CONCLUSION

For the reasons above, the instant appeal should be dismissed, and the decision of the Master in Equity of Dorchester County affirmed in its entirety.

Respectfully submitted,

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CERTIFICATE OF COUNSE

The undersigned hereby certifies that Appellants' Final Brief is in compliance with Rule 211 (b) of the South Carolina Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of Final Brief of Respondents Stephen Dudek and Doreen Cross, including the Certificate of Counsel, has been served this 15 day of May, 2015, via ordinary U.S. Mail, upon the following:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

Stephen Dudek, Doreen Cross — Respondents

v.

Thomas M. Ferro, Lorraine B. Ferro — Respondents,

And

Molly M. Morphew, — Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro — Respondents

---

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FACTS

Without restating all the facts and arguments which have been thoroughly set forth in its opening brief, the Appellant offers the following facts with arguments for clarification or defense in regards to this case and the Respondents' Brief.

STATEMENTS OF THE CASE

This appeal arises out of two separate cases brought in the Dorchester County Court of Common Pleas, *Stephen Dudek, et al. v. Thomas M Ferro, et al.*, Case No. 2013-CP-18-00074 and *Molly M Morphew v. Thomas Ferro, et al.*, Case No. 2013-CP-18-00183. On October 24, 2012, Respondents Stephen Dudek and Doreen Cross (collectively referred to as the "Dudeks" or Respondents") entered into a purchase contract with Thomas and Lorraine Ferro (collectively referred to as the "Ferros"), under which the Dudeks agreed to buy from the Ferros a home and real property ("Home"), located in Dorchester County, South Carolina. (**R. pg. 90-97**). On December 16th, 2012, sixteen (16) days after Dudeks' sales contract expired, and after the Ferros submitted a termination notice to Dudeks, Appellant Molly M. Morphew ("Morphew" or "Appellant") entered into a separate and successive contract. In its Initial brief, the Dudeks misrepresent Morphew's sales contract or agreement to purchase with the Ferros. Contrary to the Dudeks' statement that it was a contingency contract, *"under which she agreed to buy the Home, if the Dudeks failed to close on the Home*," Appellant clarifies she entered into a separate and successive contract, under which she agreed to buy the Home...PERIOD. There was no agreement that her willingness to purchase the property was based on the Dudek's failure to close on the home. Instead, the agreement clearly states that "the contract" itself was contingent to the seller's receiving the signed termination notice (release) from the Dudeks, and if said release was not signed and returned then either party to its contract would have "an escape clause"(i.e., the option of declaring the contract null and void on or before December 30, 2012 with no penalties or repercussions) (**R. pg. 120**).

Instead of signing the release, over forty-five (45) days later, and only when the Dudeks received notice from the Ferro's attorney that the Ferros have decided to sell to another buyer that

they immediately filed a lis pendens on January 11, 2012, to prevent the closing (**R. pg. 437, email dated January 15, 2013 9:09am**). On January 15, 2013 they filed their complaint for Specific Performance. On January 31, 2013, Appellant filed its complaint for Specific Performance. Both cases were consolidated under Case No. 2013-CP-18-00183, by way of a consent order filed on September 18, 2013. (**R. pg. 21**)

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 ("Lower Court"). After discovering evidence that the Dudeks had seriously misled them –and the Master -- regarding their performance of the sales contract contingencies, and had, by their own hand, seriously breached their sales contract [specifically, they ultimately failed to obtain mortgage credit or were denied lending because of their own actions, not the Ferros], that their sales contract was null and void, and that the Ferros had every legal right to request and receive a signed cancellation request [in order for Morphew to close], the Ferros submitted a pleading statement and attached the newly discovered material evidence to support their claims. (**R. pg. 128-193**). The Master had refused to review or rule on this motion or pleading statement submitted, as he was only going to review the attorney's statements. (**R. pg. 438**). No ruling or Order was filed on the issues presented on the Ferro pleading nor were the Ferros' allegations addressed or ruled on in its Order of November 6, 2014.

On November 6, 2014, the Lower Court issued an order awarding the Dudeks specific performance ("Specific Performance Order"). (**R. pg. 3-20**). Both Morphew and the Ferros appealed the Specific Performance Order. (See Stephen Dudek v. Ferro, Appellate Case No. 2014-002633). On January 11, 2017, this Court affirmed the Lower Court's award of specific performance to the Dudeks in an unpublished opinion, numbered 2017-CP-019. (**R. pg. 27-30**). Morphew initially petitioned for a rehearing, but she voluntarily dismissed the petition on February 9, 2017, at the request of the Ferros and only because they were in severe economic distress and the Appellant does not believe an innocent party should be harmed any further. (**R. pg. 306-307**). This Court granted the dismissal and issued remittitur on February 15, 2017. (**R. pg. 31-32**). Following

remittitur, the Dudeks moved the Lower Court in March, 2017 for an order setting a schedule for them to close on the Home. **(R. pg. 309-310).** The Lower Court heard the motion on Monday, March 27, 2017, and allowed Morphew "to receive, in hand, proof of Dudeks' secured financing per their specific performance claim and their 2012 sales contract before being required to seek and secure alternate residence". It also allowed Morphew a total of 45 days, after receiving such proof in hand, to vacate, and if a closing took place within that 45 days, Morphew would pay a daily rate compared to her current rental agreement with the Ferros. Morphew stated in her proposal that she would vacate as soon as possible once receiving said proof, as she didn't trust the Dudeks due to the substantial evidence and allegations in her Fraud/fraud on the court complaint, proving they had been denied financing due to never completing their application. The Dudeks' stated they had not been denied. The Master claimed the fraud allegations/fraud complaint had no bearing on this case and continued. Additionally, the Ferros had objected to the damages being sought by the Dudeks and stated the Dudeks' had previously waived their right to damages, and even if they didn't waive their right, they were never served any accounting or request for damages for review. Moreover, the Dudeks had changed the sales contract purchase price in its proposed Order for closing, which the Ferros also objected to. Because of the objections and questions to the validity of the damages, The Master allowed an Answer to be filed and reviewed by the court to address the objections by Morphew and the Ferros before making his ruling. The Lower Court issued an order on Monday, April 3, 2017, setting the terms of closing. **(R. pg. 37-42)**. Unfortunately, it erred by filing its Order before receiving and reviewing the Answer filed on April 6, 2017, by the Ferros and Morphew, therefore claiming it had no choice but to convert the Answer, sua sponte, to a Motion 59(e). Morphew objected, but was overruled. The lower court scheduled a hearing on the 'Answer/59(e) motion' for May 12, 2017. **(R. pg. 341-362)**. The Dudeks erroneously state in its initial brief, "*Out of an abundance of caution, the Lower Court considered Morphew's "Answer" a Rule 59, SCRCP, motion to reconsider and issued a new Closing Order on May 17, 2017.* Morphew objects that the Answer was not "Morphew's Answer" but instead, Morphew's AND Ferros Answer, and should be

referenced so. Further, it was not out of an abundance of caution or any consideration to Morphew or the Ferros that the lower court considered the Answer to be a Rule 59 motion, but instead it was only because the lower court erred by prematurely filing the Order before the Answer it requested was filed. The Master stated he had already informed all parties of its action prior to this hearing in an email, and explained again during the hearing that when an Order has already been issued he has no choice but to convert the Answer to a 59(e) Motion (**R. pg. 425, lines 2-12**).

> COURT: *Well, let me back up, and I'll explain to you my position on the Motion, which I basically – I sent an e-mail to everybody and Explained to you what – the only way to interpret the Answer, because there's an order that's been entered, is that it must be construed as a Rule 59E motion to amend or alter that order. So the motion that we're hearing is that motion, the Answer, which it asserts in it a number of things.*

The 'motion' was heard, and again during this hearing and in the motion, the issue of whether or not the Dudeks had a valid contract at all, or that they failed to meet specific performance pre-requirements or that they had not nor were able or ready to perform their contract contingencies was again brought up. (Reference 59(e) Motion Hearing Transcripts, May 12, 2017, pgs. 33 (lines 5-21); pg. 34 (lines 23-25) and pg-35 (lines 1-21); (Pg. 58 lines 9-25)). The Master even questioned 'what did the bank having a [valid] contract have to do with ready, able and willing' (Reference 59(e) Motion Hearing Transcripts, May 12, 2017, pgs. 35 (lines 11-21)). Morphew argues, having a valid and negotiable sales contract or ready and able to tender payment for closing has everything to do with "ready, able and willing" in order to compel specific performance; as does the fact the Dudeks were never approved for financing (and in fact, were denied lending) on said property per their sales contract. At a minimum, the Dudeks must demonstrate that they were ready and willing to perform their part of the contract on November 30, 2012, the date the lease expired, or on January 15, 2013, the date they brought the action for

specific performance. The record indicates that the Dudeks were not in a position to pay the Ferros the purchase price for said property on either date, as indicated in *Ingrams v. Kasey's* below:

> "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 on February 28, 1994, the date the lease expired, or on March 14, 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). This clearly indicates there is a prerequisite to seeking specific performance, particularly 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 a loan or secure per contract terms or close escrow), 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 pre-requisites to, lawfully and in good faith and fair dealings, compel specific performance.

Morphew and the Ferros had no knowledge of this fact until after trial, in which the Ferros submitted its petition to inform the Master of the Dudeks failings to meet Specific Performance requirements and their unlawful or bad faith and unfair dealings during trial. The petition was refused and the facts ignored. Morphew argues it appears the court of equity did not have a clear understanding of the minimum specific performance requirements and therefore erred not verifying with material documentation that the Dudeks' had indeed secured financing per their sales contract or pursuant to specific performance. It should have compelled the Dudeks to produce such material evidence, especially when facts and proof contrary to their testimony was presented, but instead

declared the pertinent and material facts presented, first from the Ferros and then by Morphew, as moot or irrelevant to the case. The Lower Court issued a new Closing Order on May 17, 2017. (**R. pg. 45-54**). Morphew has currently appealed the new Closing Order in this appeal.

On Wednesday, May 31, 2017, Morphew received a notice from Dudeks' attorney in this case, Mr. Smith, that a closing has been scheduled for Friday, June 2, 2017, and Appellant will need to vacate on or before Friday. Morphew requested proof of financing per the court Order (**R. pg. 52, paragraph 13**). The very next day, Morphew receives a notice from the Ferros, stating IF a closing takes place the buyers will contact Morphew regarding the rent. If a closing does not take place then the Ferros will contact her. Morphew received no communication from either party. On Monday, Morphew contacted the Ferros and was informed a closing did take place and was assured the buyers would contact her regarding the rent due while she vacates. Instead of receiving said communication, Morphew received a Motion for Rule to Show Cause (Contempt)/Ejectment/Fees on or about Tuesday, June 6, 2017. On Wednesday, June 7, Morphew receives an email from the clerk that a hearing is scheduled for tomorrow morning, Thursday, June 8, 2012, for Contempt/ Ejectment. In order to not hold up the courts, or to waive her right to object to not being served the Rule, Morphew files an answer -- objecting to (including but not limited to) personal jurisdiction, Respondents' lack of affidavit, lack of justification for an "emergency" hearing, the ambiguity of the Lower Courts closing Orders prejudice, and misrepresented facts in the Respondents Motion-- and attends the hearing. (**R. pg. 365-378**) The Master opened the hearing by dissolving the Rule as improvidently granted [failed to contain the required affidavit establishing grounds for Court's issuance of a Rule to Show Cause] per Morphew's Answer and issued an Order for such on June 8, 2017, "*Upon presentation of an affidavit establishing grounds for the Court's issuance of a Rule to Show Cause, this court will reconsider the issuance of a Rule to Show Cause, and set a time for hearing the same accordingly.*" (**R. pg. 57-59**) No Affidavit was or ever has been presented. The hearing was continued for the following week, June 12, 2017, to hear the final items on the motion.

Morphew argues the June 12th hearing was aggressive, one-sided or partial, and appeared to

be a misguided reaction of the court. Though Morphew testified in its Answer and at trial that she honestly understood the Lower Courts May 17 Order to allow Morphew to obtain proof of financing as the Master/opposing party had previously agreed to in the March 27th hearing, that Morphew had material documentation supporting her defense of Contempt and Ejectment-- and the Dudeks stated in the hearing they had no intention of holding Morphew in Contempt-- MR. SMITH: *What we really want is the ejectment part. We want her out pursuant to this Court's order. The contempt, the rule to show cause, honestly, I know you – probably, if you order an ejectment, you're going to not hold her in contempt; you're going to allow the contempt to be purged if she just gets out. I mean, that's all we want. .We don't want Ms. Morphew to do anything except leave us alone and get out of the house we bought. So what we are asking this Court to do is to issue an order of ejectment pursuant to your previous order that she needs to leave.* (**R. pg. 431 line 13 through R. pg. 432 line 1**), the Lower Court, in its obvious frustration to end the case once and for all, decided Morphew was an obstructionist. Morphew argues this "finding of fact" opinion is based on error of facts presented by the Dudeks' to make Morphew look bad. Again, no documented proof was provided, only testimony from the Dudeks. The Lower Court ruled that "the Dudeks had a closing scheduled for May 3rd and canceled it because of their agreement with Morphew to give her 45 days to vacate first, and that she is still in the house, therefore she is an obstructionist trying to derail the closing". Morphew objected, and provided proof that it was not her fault it was canceled. Morphew further argued that she did not 'throw up her hands" in protest or stated, "oh, I haven't had my notice", and she was not the cause that prompted Mr. Smith to advise his clients not to close on that date and reschedule it. Instead, it was Ms. Ferro [informed Mr. Smith via e-mail] that the closing could not take place at that time because the damages issue was not yet heard and ruled on, which had everything to do with the closing papers and what they would be receiving back." (**R. pg. 421**) Morphew provided those emails to the Lower Court. Ultimately, and between those two communications (communications that Attorney Smith was involved in or had complete knowledge of), the cancellation of their [alleged] scheduled closing had nothing to do with the Appellant. Therefore the Master erred in his finding of fact

Morphew was the cause of the Dudeks initial closing failure therefore ruling her an obstructionist.

Morphew also raised the issue of ambiguity or confusion in the conflicting actions of the opposing parties, and in the Master's rulings during hearings and its Orders. This an issue to abuse of discretion, as not only did the Lower Court allow for conflicting testimonies from the Dudeks and its attorney, it never required material evidence to prove their testimonies, and only required Morphew to provide evidence/proof. Even when material documentation was presented defending its position, the Master ultimately called Morphew a liar.

> THE COURT: *Ms. Morphew, let me make it specifically clear to you right now.*
> MS. MORPHEW: *Yes, sir.*
> THE COURT: *I do not find any of that testimony credible.*
> MS. MORPHEW: *What is that, Your Honor?*
> THE COURT: *Because I don't believe you.*
> MS. MORPHEW: *Your Honor, I took an oath, and I actually --*
> THE COURT: *I don't believe what you stated. Do you understand that?*
> **(R. pg. 434 line 18 through R. pg. 435 line 5)**

The Appellant has cause to believe the Lower Court or Master has been partial, whether it's because of its frustration that Morphew has taken this case this far[1] or because Morphew is pro se, and throughout litigation has based its findings of facts on the opposing party's (including their attorney and its witnesses) testimony alone, and further have refused to review or address the material issues or proof provided by Morphew or the Ferros. Morphew contends the actions[2] by the opposing parties and within the Lower Court have been conflicting and without documented support, causing confusion and ambiguity. Take for example, on March 27th, 2017, the Lower court and the opposing party agreed to Morphew's proposed plan for vacating[3] ("Vacating Agreement"),

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[1] **(R. pg. 433 lines 2-7)**
[2] Motions, hearings, rulings, Orders, findings of fact, etc.
[3] Proof of financing in hand before Morphew was required to seek and secure alternate living arrangements. Once proof was in hand, then Morphew had 15 days to find and secure another place to live, then 30 more days to move.

and allowed Morphew and Ferros to file an Answer to the Dudeks' Motion for closing schedule. Though no time limit was placed on its filing, the Answer was filed within 10 days of the hearing, but the Lower Court erred by filing its April 3rd Order before reviewing the Answer, therefore had to convert the Answer to a Rule 59(e) motion and schedule another hearing. Additionally, the premature Order did not address the ruling it made regarding the Vacating Agreement, but Morphew - and the Dudeks- continued to honor said agreement. Though the Vacating Agreement" has been distorted or misrepresented by the Dudeks to assist in their own defense at the hearing, causing further confusion to the litigation, it still demonstrates the Vacating Agreement was still in place between the parties [as of May 2, 2017]. The Order also stated Morphew was to vacate on or before closing after receiving notice from the Dudeks. **(R. pg. 39, paragraph 8)**. Since there was no closing or scheduled closing, and the Vacating Agreement was still in place, Morphew had no legal or financial obligation to vacate until she was notified of a closing date AND proof of 2012 financing ability in hand. Morphew had only been acting to protect her rights and acting in line with the Vacating Agreement from the March 27th hearing.

Then to make matters even more confusing and prejudiced, at the hearing on May 12th, and without being raised by the opposing party, the Court "changed its mind" and denied or reversed the Vacating Agreement, "just because." But on its May 17th Order, it stated that Morphew demanded five (5) items, one (1) of which is fair, but the other four (4) she does not have any legal right to, and that its April 3rd Order did specifically address granting a right to approved financing. Morphew again thought the court was being fair and allowed her the one (1) item, "granting a right to approved financing," but not the other 4 items. Morphew did not feel asking for proof of their approved 2012 financing per Specific Performance or their sales contract was unfair or that it prejudiced the Dudeks, as this proof is supposedly in their possession or at their fingertips, and has been for 5 years. Morphew asserts that this simple proof would end this case, its Fraud Case, and

its Constructive Trust Case, and remove any claim that the Lower Court erred or abused its discretion in this litigation, with the exception of the Ejectment/Contempt/Fees Order. But she knows she won't get it as it doesn't exist. The Respondents know it, its witnesses know it, and its attorney(s) know it, and the only defense they have is to try to get this case closed by misrepresenting facts and painting Morphew into a bad or unfair person. It's clear all allegations regarding the Dudeks unlawful actions is true because not once have they denied them or offered proof to support or render those claims false. Combined with the fact the Lower Court also had knowledge of those fraudulent facts before filing his Order of November 6, 2014 leads one to believe there has been an abuse of discretion, and partiality towards the Dudeks, maybe for just the reason to "close this case" and be done with it.

Morphew contends that throughout the litigation of this case, and during the hearings on the issues on appeal, it appears the testimony only of the Dudeks and its witnesses is enough for the Lower Court to base its findings of facts in their favor. Though Morphew also provided testimony during the Contempt hearing(s), but also irrefutable proof to defend its position, she has been dismissed as an obstructionist with no rights to the property. Further, the Respondents have misrepresented facts to this case and attempt to paint Morphew into an unfair and contemptuous person, when all Morphew has done is protect her rights and tried to prevent an injustice. Morphew is not the one who frauded the court, or 'stole' someone else's property or claim to property, and only ask for justice where justice is deserved, as the "[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). "There is no time limitation which would bar a civil court from granting relief from a final judgment upon ground of fraud upon the court under rule providing for relief from judgment and court could, at any time, set aside judgment for after-discovered fraud upon the court.' Fed.Rules Civ. Proc. rule 60(b). 28 U.S.CA.

ARGUEMENTS

I. **Appellant disputes the Respondents Position that the Specific Performance Order is the unappealed law of this case, requiring this Court to affirm the Lower Court's rulings.**

A. An appellate courts mandate rule is a form of law of the case distinguished largely by its (almost-always) mandatory nature. Law of the case, a judge-made doctrine, generally refers to lower-court decisions that the court, in its discretion, may later change in subsequent rulings, although as "law of the case," such decisions generally are adhered to throughout the court proceedings. The mandate rule is more exacting. As its name suggests, it is "mandatory" that the court follow the appellate court's rulings. The court cannot take actions that are contrary to the mandate or revisit the appellate court's conclusions. Thus, the issues decided by the appellate court and within the scope of the judgment are deemed incorporated within the mandate and precluded from further adjudication unless specifically remanded to the court to address. *Engel Indus., Inc. v. Lockformer* Co., 166 F.3d at 1382–84. The court, however, has discretion to take actions consistent with or not covered by the mandate.

The actions brought forth in this appeal were not litigated and ruled on by the Lower Court, therefore the Mandate issued by this court does not address the action or issues of fraud/fraud on the court or conspiracy to commit fraud by the opposing party (including its attorney and its witnesses) in order to obtain the ruling for Specific Performance in their favor and can be reviewed by this court.

Respondents declare that "law of the case" brings finality to the case. Morphew disagrees, and that finding reconsideration of an appellate determination appropriate if there is significant new evidence, or blatant error that would result in serious injustice.

"But as is often the case, even the "mandatory" nature of the mandate rule has exceptions. In certain narrow circumstances, the court may revisit issues decided on appeal or covered by the mandate. For instance, the mandate may not preclude a court's reconsideration where

there are subsequent factual discoveries or changes in the law. *Invention Submission Corp. v. Dudas*, 413 F.3d 411, 414–15 (4th Cir. 2005) (finding reconsideration of an appellate determination appropriate if there is a dramatic change in law, significant new evidence, or blatant error that would result in serious injustice); *EEOC v. Sears, Roebuck & Co.*, 417 F.3d 789, 796 (7th Cir. 2005) (finding reconsideration of an appellate determination appropriate where there has been an intervening change in law). Thus, the judge-made mandate rule is not wholly inflexible. *United States v. Bell*, 988 F.2d 247, 251 (1st Cir. 1993) ("After all, the so-called 'mandate rule' . . . is simply a specific application of the law of the case doctrine and, as such, is a discretion-guiding rule subject to an occasional exception in the interests of justice.").

American Bar Association, "Why the Appellate Mandate Matters", Jennifer Swize – March 6, 2012

In this case, subsequent and substantial pertinent material evidence was discovered after trial by the prior Defendants/sellers ("Ferros") and presented to the Lower Court months before its Order was filed. The issues and evidence proved that the Respondents could not lawfully compel Specific Performance and had made false testimony in regards to all or the majority of their claim. These issues or claims were not heard and ruled on, but instead refused by the Master (**R. pg. 438**). The same issues and evidence was presented to this court on appeal, but was not reviewed and ruled on (**R. pg. 27-30**). Again, these same issues and evidence were brought to the Lower Court during the hearing for a Closing Order, the additional hearing for second Closing Order, and in the Contempt/Ejectment hearing. Each time refused and dismissed as 'moot' or not relevant to this case.

The Lower Court had a duty to consider the Respondents unclean hands and fraudulent actions or non-actions. 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. (*Universal Oil Prods. Co. v. Root Refining Co.*, 328 U.S. 575 (1946).) 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 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE, 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). "There is no time limitation which would bar a civil court from granting relief from a final judgment upon ground of fraud upon the court under rule providing for relief from judgment and court could, at any time, set aside judgment for after-discovered fraud upon the court." Fed.Rules Civ. Proc. rule 60(b). 28 U.S.CA.[4] Therefore, the Master should have considered the fraud and facts presented before his court before issuing his Order of November 6, 2014 or demanding a closing on said property or attempting to 'close' or 'end' this case.

The Master had stressed– in the name of justice-- the importance of parties to follow court orders and the affects when not strictly followed, particularly on the administration of justice.

> COURT: *The jail sentence will be for purposes of my -- the inherent power that I have and must exercise when parties fail to obey the Court's orders.*

[4] http://jfk.hood.edu/Collection/Civil%20Actions%20Procedures-Subjects/Citations/Citation%2005.pdf pg. 625

It's imperative that our -- that parties to lawsuits abide by orders of the Court. And the failure to do so affects the administration of justice in ways that you cannot imagine right now, Ms. Morphew. But if I make an order and a party doesn't abide by it, then what's the next party going to do if not abide by the next order? **(R. pg. 436 lines 8-19)**

But what about a party's effect on the administration of justice when they fail to abide by the rules and laws in its filings or litigation? There are laws and rules against acting in bad faith and unfair dealings, knowingly filing frivolous claims, failing or intentionally failing to provide initial discovery, unlawfully continuing to litigate a frivolous claim, an attorney knowingly making false statements at hearings or trials, an attorney suborning its clients or witnesses to falsely testify or misrepresent pertinent material facts to the case, forgered material evidence, continuing to litigate the frivolous complaint, and misrepresenting/falsely testifying to the court(s) about the very core of its case or material facts – which also directly violates the oath taken in court "to tell the truth, the whole truth and nothing but the truth".

Besides the Respondents and its attorney's extensive disregard for the judicial rules, guidelines or statutes, the damages that have occurred because of the Respondents' years of unlawfulness is undue and substantial. Not only have they cost, and continue to cost, all parties (including the courts) extensive time, money and resources, but they have managed to sway the Lower Court into issuing a final closing Order and have unlawfully taken what they had no legal claim to from the beginning of litigation of this case. Further, the Lower Court had full knowledge of the Dudeks' failings or unlawful actions but did nothing to prevent this injustice, and instead rewarded the Dudeks. The Lower Court's errors or abuse of discretion and the opposing party's actions or non-actions affect the administration of justice far more than Morphew's alleged "intentional" failure to vacate her home per a court Order. If unlawfulness, bad faith and fair dealing or fraud/fraud on the court has been alluded to or presented to the court, especially before an Order was issued, that court has the obligation to take notice and review the evidence before a

further injustice to the courts and the innocent parties is done.

B. Respondents claim the alleged fraud went unchallenged because Morphew or the Ferros did not file a motion pursuant to Rule 60 (b) and therefore cannot be used to unsettle the law of the case.

Morphew disagrees. There is nothing in the Rules that states Morphew or the Ferros had to file a Rule 60(b) motion, only that Rule 60 *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. Instead they appealed and presented the issues and evidence in the appeal. These issues were not heard and ruled on. Morphew filed an independent action pursuant to the saving clause Rule 60(d) in the civil court for fraud/fraud on the court with the remedy being damages. When fraud/fraud upon the court[5] 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 court have been directly corrupted.[6]

Based on the fact specific performance was fraudulently and unlawfully compelled, the prior Order is void and no longer equitable that the judgment should have prospective application. The South Carolina courts rely on the equity maxim: "He who seeks equity must do equity." *Norton v. Matthews*, 249 S.C. 71, 152 S.E.2d 680 (1967). S Schwartz, 'The Case for Specific Performance' (1979) 89 Yale Law Journal 271. In the specific performance case, equity did not favor the granting of specific performance as a matter of sound judicial discretion. The Respondents acknowledge the Lower Court had knowledge about the new evidence and alleged fraud, but still granted specific performance. Morphew claims she was unfairly prejudiced because the evidence does not otherwise support the Lower Courts Findings, and this evidence has been ignored over and over. If

[5] 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

[6] 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.

the Respondents had acted in good faith and fair dealings and not committed fraud/fraud on the court or if the Lower Court had not erred or abused its discretion, its apparent the outcome of this case would not have taken place or have been a different outcome over three (3) years ago, and Morphew would not have been displaced from her home of four (4) years. For these reasons stated herein, this court should reverse the Lower Court's Orders.

II. Morphew's disagrees that final issue on appeal lacks merit because she did not voluntarily submit to the jurisdiction of the Lower Court in the Respondents Motion for Rule to Show Cause for Contempt/Ejectment/Attorney's Fees.

In its Brief, the Respondents claim the Lower Court had personal jurisdiction over her in the Contempt proceedings, because she appeared in in the original case therefore subjected herself to the jurisdiction of the Lower Court. They further stated all post-remitter hearings and orders are in the same case, therefore the Lower Court had personal jurisdiction. Morphew disagrees. A contempt proceeding regarding contemptuous conduct outside the presence of the court, as here, must be commenced by service of process, which includes a rule to show cause. *State v. Johnson,* 249 S.C. 1, 152 S.E.2d 669 (1967). As stated in its Initial Brief, Morphew was never personally served the Rule to Show Cause, nor did she waive her right to object to service by attending the hearing, as she raised or objected in her Answer or during the hearing. When service is challenged, the record must affirmatively show that service of process was correctly made. *Jensen v. Doe,* 292 S.C. 592, 358 S.E.2d 148 (Ct.App.1987) citing *Matheson v. McCormac*, 186 S.C. 93, 195 S.E. 122 (1938). Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised. *Shinn v. Kreul,* 311 S.C. 94, 427 S.E.2d 695 (Ct.App.1993); see also *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993). In its Initial Brief, Morphew attested the record did not affirmatively show that service of process was made or correctly made (reference Appellant's Initial Brief, pg. 16).

Further, an affidavit supporting a Rule to Show Cause was never presented, and the Lower Court ruled in its Order dissolving the Rule to Show Cause an affidavit was required for the Court to consider it again. In its Order Dissolving the Rule to Show Cause for Contempt, "*Upon presentation of an affidavit establishing grounds for the Court's issuance of a Rule to Show Cause, this court will reconsider the issuance of a Rule to Show Cause, and set a time for hearing the same accordingly.*" (**R. pg. 57-59**). To decide a case, a court must have a combination of subject (subjectam) and either personal (personam) or territorial (locum) jurisdiction. Because the Lower Court did not have personal jurisdiction over Morphew during these proceedings on appeal, the issue of subject matter jurisdiction is immaterial.

Morphew is not sure where the Dudeks found that Morphew was complaining of lack of notice for the closing hearings (March 27th and May 12th) or for the continued Contempt/Ejectment hearing (June 12, 2017), as she clearly did not raise issue in those regards. Therefore Morphew cannot defend an issue that she did not raise.

As to the Respondents claim the court "bent over backwards in an attempt to give due weight to Morphew's "Answer" to the Dudeks Motion to Set Closing, Morphew contends the Lower Court only scheduled an additional hearing because it erred by filing its Order before receiving the Ferro AND Morphew Answer. The Master explained to all parties previous to the hearing and during the hearing that because the Order was filed before the Answer, it had no choice but to rule the Answer a Rule 59(e) motion. This action was objected to by Morphew (and by Respondents' own attorney) during the May 12th hearing. This action was clearly not for the benefit of Morphew or the Ferros, but instead for the court to correct its own error. Further, it was clear the Master did not give due weight to the Ferros/Morphew's Answer as it found presumed allegations of fraud/fraud on the court as irrelevant or material facts that the Dudeks' failed to meet specific

performance requirements at all times material as being moot, both instances which should have had considerable weight in its issuing a closing order.

The Respondents further claim courts have wide latitude in its discretion [ordering Rules and Ejectment]. Morphew agrees but using wide latitude in its discretion 'just to close this case' appears as an abuse of that discretion.

Morphew never refused to vacate the home. She did not want to place herself in a position where the imposition, time and money it takes to secure alternate residence for her family and animals (horses included) was vast especially when a closing had not even been scheduled or was tentative, without proof they were able and ready to close.

The parties had an agreement that proof of financing would be received first and foremost. Morphew presented a valid argument to which her Vacating Agreement was based on: Based on past history, the Dudeks had lied about their closing ability in the past, hence the reason for Morphew's Vacating agreement. This agreement not only provided security to Morphew that she was not wasting her time, money and effort by vacating before a closing took place, but it provided a fair plan that did not prejudice the Dudeks or the Ferros, as the Judge was giving them 60 days from the March 27th hearing to close escrow. Moreover, this agreement to provide their 2012 proof of financing per their October 2012 sales contract was not only fair and non-prejudicial, but it would have ended any of the Appellant's additional claims [the Respondents continually complain about] that Morphew has on them. Morphew argues the additional actions against the Defendants, though all supported by the unlawful or fraudulent actions of the Dudeks, they are three (3) separate and different causes with three (3) separate remedies. This does not make her an obstructionist, as she has never prevented a closing. Instead it was the opposing party(s) and their own issues that prevented or delayed any closing scheduled or allegedly scheduled. In order to be an obstructionist preventing a closing, a closing would have to be scheduled AND it would have to be shown with clear and convincing evidence that Morphew was at fault for that closing to not have taken place.

As Morphew has demonstrated in its Answer to Contempt Motion and herein, only 2 closing dates (in 2017) were established and she did not prevent either from happening. Morphew was honest in her testimony, and test fied the order to "Vacate on or before closing" was ambiguous and too broad or vague and put her in a position of being prejudiced. Morphew has also demonstrated she and the Dudeks were, at all times, acting on the Vacating agreement -- as the Dudeks never objected to and even partially quoted as an [alleged] reason they cancelled the May 2017 closing[7], stating they "cancelled the May closing in order to give Morphew her '45 days to vacate.'" Additionally, when receiving notice on May 30th, 2017 of the June 2nd, 2017 scheduled closing she again requested the proof of financing per the court order. The opposing party did not object to her reminder.

To confirm the Vacating agreement was still in place, and her rental agreement had not been terminated she received notice from the sellers on June 1st, 2017, that the Dudeks will get with her about the rent IF a closing takes place[8]. Morphew's lease was not terminated, was in place before the Order of Specific Performance and years before the Closing Order. The Dudeks knew of this lease agreement, agreed to Morphew's Vacating agreement, knew she was still in place when they decide to close escrow, did not object or make an objection to the courts before closing, and were going to "get with Morphew" regarding the rent if the closing took place. Morphew was acting in correlation to the opposing parties' actions, and acting under the lawful rulings and contracts with the best of her intentions and abilities, all amidst the confusion and parties' lack of including Morphew in their communications, specifically in regards to closing. Morphew further contends it was next to impossible to balance her lease agreement, the courts ambiguous or flip-flop decisions or rulings, the actions [or lack of] action of the Dudeks and Ferros, and maintaining her legal rights

[7] The previous "alleged" and tentative closing on April 3rd, 2017, was 'noticed' to the parties only 7 days before it was to allegedly take place and never established as the Dudeks had to seek another closing attorney for the reason their title search came back clouded [by their own lis pendens]. This obviously had nothing to do with Morphew or her obstructing a closing.

[8] The Vacating agreement included a stipulation that "if a closing took place within the 45 days after receiving proof of financing, then Morphew would pay a daily rate compared to her current rent of $1600/month until vacancy."

[without waiving any] during the litigation of this case, and especially since the remitter. Therefore, the Lower Court erred in its finding of fact or ignored the evidence Morphew provided to support the fact Morphew neither refused to vacate but instead was acting upon legal rights or the Vacating agreement. Further, the Court erred in its finding of fact, or ignored evidence proving to the contrary, that Morphew tried to prevent a closing, as no closing scheduled or allegedly scheduled was ever cancelled due to any action of Morphew.

Again, as stated herein, the court lacked personal jurisdiction over the Defendant Morphew, for failure to be properly served a Rule to Show Cause (Contempt), therefore the Order for Contempt/Eviction/Attorney Fees and Costs should be rendered void and dissolved. "A judgment is void if a court acts without personal jurisdiction." *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006).

The court has an obligation to make sure all parties come to its court with clean hands or in good faith and fair dealings, and have followed the judicial rules, guidelines and statutes, especially those applicable to the remedy being requested. Morphew contends when a court fails to address those issues when presented, that failure may be considered an abuse of discretion.

The Appellant argues there was no reasonable factual support in the initial decision reached by the Lower Court rewarding Specific Performance to the Dudeks, as the material or pertinent facts presented by the Dudeks and its attorney at trial were later discovered as false or severely misrepresented. Morphew contends the mandate or law of case should be flexible in this instance, particularly in the interests of justice. For these reasons stated herein, this court should reverse the Lower Court's Orders.

III. This Court should not uphold the orders being appealed for any ground appearing in the record.

The Dudeks request this court affirm the Lower Court's orders for any ground appearing

in the Record [on Appeal], but fail to specify what Record on Appeal or what grounds appearing in that record the appellate court should use to affirm the Lower Court's ruling. Further, they fail to specify or indicate what 'ruling' their defense applies. Morphew argues this court should declare this defense as overbroad or ambiguous, therefore unattainable in its use for its ruling.

Even if the Dudeks declaration specified its defense, Morphew argues Fraud/fraud on the court are very serious charges, even rising to the level of criminal charges, and should not be ignored. She further argues rulings based on fraud on the court are not valid [therefore never final], and should be addressed on this appeal. Particularly as the Dudeks [initial] attorney in this case and also a defendant in Morphew's separate action for damages based on fraud/fraud on the court/conspiracy to commit fraud is on interim suspension by the Supreme Court per Rule 17b – a danger to the judicial system and the general public. He pleaded guilty and was charged with 'intent to defraud' in a separate case, a fact Morphew also raised to the Lower Court. Morphew claims the Lower Court erred or abused its discretion throughout the litigation of this case, and based on this reason and the reasons above or herein Morphew asks this court to reverse the Lower Court's Order of November 6, 2014, and any subsequent orders following, specifically its Closing Order, Rule 59(e) Order and Contempt/Ejectment/Attorney fees Order.

CONCLUSION

Plaintiff contends the court abused its discretion and/or processes as it had a duty, in fairness to all the parties and to protect the judicial system, to demand further consideration of the matters in this case due to the alleged fraud, but [as it had intentionally chose to ignore the material documentation supporting the legal failures of Dudek/Cross' complaint and trial testimony], it again chose to turn a blind eye to the possibility of fraud on its own court, which has severely prejudiced Morphew and prevented justice from being served. Therefore, the Appellant is asking the Order of November 6, 2014 should be rendered void and reversed, or as an alternate, void and vacated with this case remanded back for re-trial.

As to the June 14, 2017 Order for Contempt/Ejectment/Attorney Fees and cost, and the May 17, 2017 Order for Closing, Morphew did not intentionally disobey the court order, as she contended the Order was ambiguous, there was inconsistency of the parties and the court regarding the Vacating agreement, and she never refused to vacate, she just didn't want to waive her rights or an injustice be done. Moreover, the court did not have personal jurisdiction, and orders issued when a court does not have personal jurisdiction are void. Therefore Morphew is asking this court to void and vacate said Order(s), or in part, along with vacating any fees or damages awarded to Dudek/Cross. If any part of the Orders remain, Morphew is asking those parts be reconsidered based on the fraud presented, and overturned.

In addition, Morphew is asking this court to award costs to defend herself in these improper or unlawful actions, including but not limited to, loss of work, travel, cost of Ejectment, and any other damages this court may find acceptable.

Respectfully submitted,

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July 25, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

Stephen Dudek, Doreen Cross — Respondents,

v.

Thomas Ferro M. Ferro and Lorraine B. Ferro — Respondents,

And

Molly M. Morphew, — Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro — Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that its Amended Final Brief(s)s comply with Rule 211(b) as to the Content are identical to its brief(s) previously served under Rule 208, except the initial briefs have been revised to indicate where the material appears in the Record on Appeal, and only to correct obvious typographical errors and misspellings which were contained in the initial briefs.

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July 26, 2018

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2017-001393

Stephen Dudek, Doreen Cross

Respondents,

v.

Thomas Ferro M. Ferro and Lorraine B. Ferro

Respondents,

And

Molly M. Morphew,

Appellant,

v.

Stephen Dudek, Doreen Cross,
Thomas Ferro and Lorraine Ferro

Respondents.

CERTIFICATE OF SERVICE

I, Molly M. Morphew, Appellant [and pro se] for said case, hereby certify that I have, on this date indicated below, served counsel below with an Appellant's Amended Final Brief(s) by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

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July 30, 2018

Cc: Thomas and Lorraine Ferro, pro se (who are not parties to this appeal)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2018-000507

Molly M. Morphew — Appellant

v.

Stephen Dudek and Doreen Cross — Respondents

APPELLANT'S REPLY BRIEF

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2018-000507

Molly M. Morphew — Appellant

v.

Stephen Dudek and Doreen Cross — Respondents

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ISSUES ON APPEAL

1) The lower court err in awarding Respondents Motion to Dismiss based on Rule 12(b)(6) and res judicata.
2) The lower court err in awarding Respondents Motion to Dismiss based on Rule 12(b)(8).

FACTS

Without restating all the facts and arguments which have been thoroughly set forth in its opening brief, the Appellant offers the following facts with arguments for clarification or defense in regards to this case and the Respondents' Brief.

STATEMENTS OF THE CASE

Appellant ("Morphew"), proceeding *pro se*, filed the above-captioned action against Stephen Dudek and Doreen Cross (collectively, "Dudeks") on or about June 12, 2017, seeking the remedy of Constructive Trust due to Respondents' unlawful purchase of property located at 788 E. Butternut Rd., Summerville, SC 29483 ("property"). Morphew claims the Dudeks acquired or purchased said property by means of an unlawful ruling for Specific Performance, making the Order for Specific Performance, thus the Order for closing, void. Morphew further claims the Dudeks are not bona fide purchasers, they had intentionally taken the property from its rightful claimant, Morphew, and are required to transfer such property to Morphew who, with the Dudeks having complete knowledge of such, has had a claim on said property since December 16, 2012.

In 2012, the Dudeks had a contract to purchase said property from the owners/ sellers, Thomas and Lorraine Ferro (collectively, "Ferros") (**R. 376- 384**). On December 16, 2012, over 2 weeks after their sales contract expired, and after the Dudeks were issued a termination request for failure to close on or before said Contract expired (November 30, 2012), Morphew ratified a sales contract with the Ferros, allowing Morphew an 'out' contingency if the Dudeks failed to sign the termination request (**R. pg. 385-398**).

Almost a month later and upon knowledge the Sellers Ferro had a backup buyer, the Dudeks filed a lis pendens to prevent such sale (**R. 400**)(**R. 399**). Four days later they filed a complaint for specific performance (**R. pg. 74-84**). 2 weeks later, Morphew files its complaint for specific performance against the Ferros with a separate cause of action against the Dudeks for tortuous interference with contractual relations. In Morphew's complaint she claimed the Dudeks had failed to apply and secure lending per their sales contract (i.e., on or before November 30, 2012), therefore had breached their contract and were legally liable to sign the termination request. (**R. 85-114**). Through discovery, attorney meetings and numerous subpoenas and requests to the Dudeks and their lending bank for proof of financing per their Specific Performance claim, Morphew and the sellers were told/provided the "Dudeks had financing but could not close due to the sellers failure to obtain a CL-100 or cleared CL-100", or "they have no information".

Both the Dudeks' case and Morphew case were combined into Case No. 2013-CP-18-00183 in September 2013. The two cases were heard separately in front of the Honorable James E. Chellis, Master- In-Equity for Dorchester County on June 11 and 12, 2014, at which the Respondents, their attorney and their witnesses (sales agent and loan officer) all testified or supported that the Dudeks, ultimately, were 'ready, able and willing' to close escrow but could not because of the Ferros.

In September 2014, the Ferros discovered evidence that completely contradicted the Respondents and its privies' testimony or evidence at trial, and that the Respondents clearly had such evidence in their possession or had knowledge of before filing its complaint for Specific Performance. This evidence clearly proved beyond a reasonable doubt that the Dudeks, AT THEIR OWN HAND, were never ready or able to close escrow in order to lawfully compel such an extreme remedy of Specific Performance. Maybe more important, the new evidence specifically contradicts the lower Courts findings that the sellers Ferro were at fault for the

Dudeks' breach or failure to close escrow, and/or contradicts the Dudeks met the special rules and laws of equity in order to compel Specific Performance. The Ferros provided the discovered material and documented evidence to the Master by submitting a Petition to the lower court to review the documented material evidence and testimony discovered before making its ruling. (**R. pg. 115-132**). Instead of taking notice, the Master informed the Ferros that he will not consider the new evidence [or facts], but only the attorney's statements in its ruling (**R. pg. 401**). The Ferros were representing themselves, pro se.

The Master filed its Order two months later on November 6, 2014. No ruling was made on the petition or its evidence provided in its Order (**R. pg. 1-20**). In its Order of November 6, 2014, the Master stated it was guided by [specific] principals of law and equity, including good faith and fair dealings, excusing one breach due to another party's breach, and that the discretion of the court to grant 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. It stated it found the Dudeks acted with good faith and fair dealing, and were at all times ready, able and willing to close escrow, but that the Ferros with unclean hands prevented the Dudeks from closing per their sales contract. The discovered evidence clearly reveals the Dudeks acted with bad faith and unfair dealings, had filed a frivolous and/or unlawful complaint for Specific Performance, could not be forgiven for their breach per the specific principals of law and equity, and that the lower court could not grant Specific Performance as a matter of justice or judicial discretion as the Dudeks neither met the special rules and laws of equity nor should have been granted on the facts and circumstances of the case. If the Master had considered the new evidence discovered in its ruling, the prior case would have had a completely different outcome.

The Ferros and Morphew appealed, and within its appeal, again raised the issues stated in the Ferros' September 2014 Petition.

On August 24, 2016, Morphew filed an independent action against the Respondents, but also included its attorney, loan officer and sales agent, and several others for Fraud/Fraud on the Court and conspiracy to commit fraud/fraud on the court seeking the remedy of damages. This action is currently pending.

On January 11, 2017 this Court filed its Opinion affirming to the lower court's ruling on the overall authority, "As to whether the master properly ordered specific performance of the Contract: *Campbell v. Carr,* 361 S.C. 258, 262, 603 S.E.2d 625, 627 (Ct. App. 2004) ("An action for specific performance is one in equity."); *Fesmire v. Digh,* 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009) ("In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence."); id. ("However, this broad scope of review does not require this [c]ourt to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses." It did not review or rule on the fraudulent issues or evidence presented, but instead chose to affirm the lower courts Order on the above authority (**R. pg. 21-24**). Morphew filed a motion for a rehearing but withdrew its motion. The Ferros were in dire economic distress; therefore Morphew withdrew its request to prevent any further injustice to the Ferros. Further, Morphew had an independent action for fraud/fraud on the court pending. On February 15, 2017, this Court remitted the matter back to the lower court, "The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed." (**R. pg. 25-27**).

On March 27, 2017 a hearing was held on the Respondents Motion for Closing and attorney's fees and costs against the Ferros. At said hearing, the Court was informed of the independent action for fraud/fraud on the Court against the Dudeks, with the Master stating that has no bearing on this case. Additionally, because the Ferros objected to the attorney fees and costs and that they were never presented with the fees and costs before the hearing, and that the

Respondents were attempting to change the price of the house within its sales contract, the Master allowed an Answer to be filed to review before making his ruling.

Instead, on April 3, 2017 the Court prematurely filed its Order therefore had to convert the Ferro/Morphew Answer filed on April 6, 2017, to a Rule 59(e) Motion and scheduled a hearing for said Motion on May 12, 2017 (**R. 236-259**). In its April 6th 59(e)Motion/Answer and at the May 12th hearing, the Ferros and/or Morphew once again objected to compelling specific performance and a closing, presented evidence that the Respondents failed to meet Specific Performance, at all times material had no valid sales contract, had been denied lending by their own hand, were required to inform the court at any time of their inability to secure financing, were fraudulent [committed fraud on the court] and its award may be unlawful, Morphew and the Ferros' Constitutional right or due process was violated (were prevented from fully presenting their case(s))and that this case requires further review by the lower court to support or uphold the judicial machinery of the court, stating the court can only be effective, fair and 'just' if is allowed to function as the laws proscribe.

On May 17, 2017, the lower court issued its Order, stating all items [regarding the fraudulent or unlawful actions of the Respondents or their complete failure to meet Specific Performance requirements] has no merit (**R. pg. 48-59, specifically pg. 57 #12**) Morphew has appealed the Order of May 17, 2017.[1]

On June 2, Respondents acquired/closed on the property. Upon the Dudeks closing on the property at issue, Morphew filed its Constructive Trust complaint on June 12, 2017, in which this appeal arises from. The Respondents filed a Motion to Dismiss pursuant Rule 12(b)(6) SCRCP based on the fact the Plaintiff has failed to state facts sufficient to constitute a cause of action against the Defendants on June 27, 2017 (**R. pg. 286-288**), and a separate Motion to Dismiss

[1] The Order of May 17, 2017 and the Order of June 12th, 2017 have been combined into one appeal.

pursuant Rule 12(b)(8) SCRCP based on the fact that an action has been adjudicated between the same parties for the same claim (**R. pg. 289-291**), in which the Plaintiff recently filed an appeal on both Motions.

Based on the actions of the Dudeks, Morphew alleges in this instant complaint that she is the equitable owner of the Property and claims right to the property. Morphew seeks restitution to recover the property and obtain legal title by constructive trust, or as the alternate, damages equivalent to the loss of the property and any costs associated with this claim (**R. pg. 260-285**)

STANDARD OF REVIEW

1. An action for specific performance is one in equity. *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 170 n. 2, 568 S.E.2d 361, 362 n. 2 (2002); *Wright v. Trask,* 329 S.C. 170, 176, 495 S.E.2d 222, 225 (Ct.App.1997). In an action in equity, tried by the judge alone, without a reference, on appeal the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. *Townes Assocs., Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

2. "It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases when the appellant satisfies this court that the finding is against the preponderance of the evidence." *Crowder v. Crowder,* 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965).

3. An action to declare a constructive trust is in equity, *Bank of Williston v. Alderman*, 91 S.E.2d 296 (1917), and this Court finds facts in accordance with its own view of the evidence. *Gray v. South Carolina Pub. Serv. Auth.*, 284 S.C. 397, 325 S.E. (2d) 547 (1985); *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E. (2d) 773 (1976). In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal. *Whitmire v. Adam*s, 273 S.C. 453, 257 S.E.2d 160 (1979); *Ramantanin v. Poulos*, 240 S.C. 13, 124 S.E. (2d) 611 (1962).

4. While the Appellate Court utilizes the same standard of review as the circuit court in scrutinizing the application of Rule 12(b)(8), each of the components of the rule are determined as a matter of

law and thus it applies a de novo standard of review to the grant or denial of this motion. See *Miami Sand & Gravel, LLC v. Nance, 849 N.E.2d 671, 676 (Ind.Ct.App.2006)*. In other words, the Appellate Court may determine whether there is another action involving the same parties, claims (or subject matter), and remedies as a matter of law.

5. "The question of subject matter jurisdiction is a question of law." *Porter v. Labor Depot*, 372 S.C. 560, 567, 643 S.E.2d 96, 100 (Ct.App.2007) (citations omitted). "The issue of interpretation of a statute is a question of law for the court." *Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 438, 633 S.E.2d 143, 146 (2006) (citation omitted). An appellate court may decide questions of law with no particular deference to the trial court. In re *Campbell*, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008) (citation omitted).

ARGUMENTS

I. APPELLANT DISAGREES WITH THE REPSONDENTS CLAIM THAT THE LOWER COURT DID NOT ERR IN DISMISSING THIS ACTION BASED ON RES JUDICATA AND BASED ON RULE 12(B)(8), SCRCP.

It appears the sole question to be decided here is whether the prior unsuccessful action of appellant for specific performance now precludes, on the ground of res judicata and Rule 12(b)(8), SCRCP, the maintenance of the present action to declare the Respondents a Constructive Trust to Appellant and/or to set aside the Respondents Order of Specific Performance on the ground of fraud.

First, this court has held that a final order based on fraud may be vacated or set aside because of fraud in the procurement of the judgment, and that 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).

Second, res judicata is an affirmative defense and in order to raise the affirmative defense of res judicata in a motion to dismiss, it must be plead under Rule 12(b)(6). As stated in its Initial Brief, Morphew contends the Dudeks did not plead res judicata in their Motion(s) to Dismiss Rule,

specifically in its Rule 12(b)(6) Motion. Instead, its Motion states only, "*Plaintiff has failed to state facts sufficient to constitute a cause of action against the Defendants*". Additionally, when a Motion to Dismiss is filed, information supporting the grounds for dismissal must be included in the motion (**R. pg. 367-375**). No affidavit, memorandum or information [supporting the grounds for dismissal pursuant Rule 12(b)(6)] was included in Dudek motion (**R. pg. 286-288**) nor presented at the hearing. The Dudeks have failed to meet the requirement to raise res judicata in a motion to dismiss and therefore waived their right to raise res judicata in its defense on appeal.

Even if res judicata was properly asserted in its Motion and an Answer was filed that specifically plead the affirmative defense of res judicata, or if res judicata was found properly asserted and pleaded, Morphew contends dismissal based on res judicata should not have been awarded. The lower court Order on this appeal ruled res judicata also bars this instant action for Constructive Trust because "*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*" and that "*Morphew has more than had her day in court on the issue of ownership of the Property*" (**R. pg. 36, para. 2**).

Morphew disagrees that 'a claim for Constructive Trust against the Dudeks could have been brought in the original action, as the Dudeks were not the property owners in the original action.

> *Constructive Trust*: A relationship by which a person who has obtained title to property has an equitable duty to transfer it to another, to whom it rightfully belongs, on the basis that the acquisition or retention of it is wrongful and would unjustly enrich the person if he or she were allowed to retain it.[2]
>
> *Equitable Owner*: Beneficiary of a property being held in a trust;
>
> *Equitable ownership*: where the relevant interest arises under a trust.

[2] https://legal-dictionary.thefreedictionary.com/constructive+trust

A Constructive Trust action can only be claimed against a party who holds title, and only a title holder can hold property in a trust for an Equitable Owner, which the relevant interest arises under a trust (in this case, Constructive Trust). Moreover, only a legal title holder has the ability to transfer said property to another, therefore Morphew could not have brought this Constructive Trust action/remedy or its claim as equitable owner against the Dudeks in the original action as they did not hold legal title until June 2017. A constructive trust only applies when the defendant owns the property at issue.

Also, the actual purchase of the property and ejectment of Morphew from such changed the legal position of the parties, therefore it complaint cannot be barred by res judicata.

ln 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). "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.*

The prior action between the parties involved only the rights of appellant Morphew and Respondents Dudeks to specific performance of their sales contracts [or damages as an alternate]; while present action seeks to set establish a constructive trust based on the Dudeks' unlawful obtainer of the property on the ground of fraud. The two actions were not based upon the same cause of action and, if the present action is barred, it must be upon the ground that the identical issue now presented was determined in the prior action. Constructive Trust, fraud and abuse of process are the issues now presented differing greatly from the original action[3]. This court should

[3] Note: Morphew's original action for specific performance and breach of contract was against Defendants Thomas and Lorraine Ferro, who are not parties to this current action.

recognize that the two actions involved different causes of action. The question then is whether the precise issue, now presented in this action, was determined in the prior action. If it was, appellant is estopped to maintain the present action; if not, this action can be maintained and dismissal should not have been granted.

Additionally, the lower court ruled in the original action that Morphew had equitable interest in the said property, as she had a valid pending sales contract. Nowhere or at any time was ownership an issue, litigated or ruled on. In this instant action, Morphew is claiming she was the only party that, at all times material, had a legal claim to the property, and that the Dudeks had knowingly and unlawfully purchased said property with notice of an adverse claim [outstanding fraud claim] or interest in the property by Morphew. Hence, were not bona fide purchasers.[4] This was not an issue or claim that could have been raised in the original action or in the second action as the Dudeks did not purchase the property until June 2017, therefore Morphew's complaint should not have been dismissed.

Also, in the Order on this appeal, the lower court stated, "*After losing at the trial court level, Morphew appealed, and the Court of Appeals affirmed the order awarding the Dudeks specific performance*," that "*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 agrees the Court of Appeals affirmed the lower court's decision, but only affirmed it based on 'faith in the lower courts better ability to evaluate the testimony at trial', not on the newly discovered evidence presented by Morphew and the Ferros on appeal; otherwise it would have surely found the lower court findings of fact were not or could not be supported by any evidence or that specific

[4] One who acts without coven, fraud, or collusion; one who, in the commission of or connivance at no fraud, pays full price for the property, and in good faith, honestly, and in fair dealing buys and goes into possession. *Sanders v. McAffee*, 42 Ga. 250. A bona fide purchaser is one who buys property of another without notice that some third person has a right to, or interest in, such property, and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claim or interest of such other in the property. *Spicer v. Waters*, 05 Barb. (N. Y.) 231. Black's Law Dictionary 2nd Ed.

performance was not a remedy available to the Dudeks.

> "While this court in equity matters has jurisdiction to find facts based on its own view of the preponderance of the evidence, we are not required to disregard the findings of the trial judge who saw and heard the witnesses and who is in a better position to evaluate the testimony." *Hartley v. Hartley,* 292 S.C. 245, 355 S.E. (2d) 869 (Ct. App. 1987).
>
> As to all other issues: *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

(R. pg. 21-24)

In its Order, the lower court stated that Morphew filed its second action for Fraud on the Court and this instant action for Constructive Trust against Dudek and Cross because she was "not happy with the Court of Appeals decision" (**R. pg. 30-38**). Morphew objects to these allegations asserted by the Defendants or this Court as it is speculative or subjective, and without evidentiary support. In fact such an assumption would be technically impossible since Morphew filed her second action for Fraud/Fraud on the Court months before the Appellate Court had even placed the original action on their calendar for review or made their decision.

Further, Morphew filed this instant action for Constructive Trust against the Dudeks only after they had filed and were awarded a motion for closing [5] even though the lower court was again presented with fraud on the court by the Dudeks and their witnesses and attorney, and after they had purchased the property (**R. pg. 236-259; R. 115-131**). Again, the Lower Court ignored the evidence stating it was not relevant to the case (**R. pg. 57, para. 12**). Filing the second action and this action was not because the Appellant was unhappy with the Appellate Court's decision, but instead it was because the Dudeks and its privies committed fraud/fraud on the court, has cost her undue stress, time and money, fraudulently took or stole property they had no legal right to,

[5] Even though they and the lower court had full knowledge of the Respondents' fraud and/or complete and utter failure to meet the specific performance rules, laws or statues required in order for the remedy of specific performance to be available and/or for the lower court to lawfully compel such an extreme remedy.

especially with notice of her claim to the property and/or pending fraud complaint against them, and unlawfully ejected her and her family from their home. Morphew has only filed its additional two complaints in order to correct an injustice and protect her rights against fraud and/or due process, the first for the fraud on the court and the second for having her home unlawfully or fraudulently taken away, all accomplished by the Respondents and their privies' unlawful or fraudulent behavior and the lower courts abuse of discretion in the original action.

Morphew contends this court should also be alarmed at the prior and/or continuing perjury and fraud/fraud on the court or unlawful acts of the Respondents and the Lower Court's alleged abuse of discretion in its failure to review the evidence presented, and that the Respondents had come to court with unclean hands and unlawfully sought Specific Performance. At the minimum, the court had a duty to consider that the Dudeks failed to meet the minimum requirements to compel Specific Performance and the Respondents unclean hands and fraudulent actions or non-actions before making its ruling or awarding a closing order. Morphew contends there is a jurisdictional failing appearing on the face of the record, that the prior Order is void, subject to vacation with damages, and can never be time barred.

The South Carolina courts rely on the equity maxim: "He who seeks equity must do equity." *Norton v. Matthews,* 249 S.C. 71, 152 S.E.2d 680 (1967). S Schwartz, 'The Case for Specific Performance' (1979) 89 Yale Law Journal 271. In the original specific performance case, equity did not favor the granting of specific performance as a matter of sound judicial discretion. 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. (*Universal Oil Prods. Co. v. Root Refining Co.*, 328 U.S. 575 (1946). 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 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE, 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). "There is no time limitation which would bar a civil court from granting relief from a final judgment upon ground of fraud upon the court under rule providing for relief from judgment and court could, at any time, set aside judgment for after-discovered fraud upon the court." Federal Rules Civil Procedure Rule 60(b). 28 U.S.CA. Therefore, the lower court should have considered the fraud and facts presented before issuing the Order of November 6, 2014 or awarding a closing on said property or attempting to 'close' or 'end' this case.

Maybe even more critical, the Master had stressed—"in the name of justice"-- the importance of parties to follow court orders and the affects when not strictly followed, particularly on the administration of justice.

> **COURT**: *The jail sentence will be for purposes of my -- the inherent power that I have and must exercise when parties fail to obey the Court's orders. It's imperative that our -- that parties to lawsuits abide by orders of the Court. And the failure to do so affects the administration of justice in ways that you cannot imagine right now, Ms. Morphew. But if I make an order and a party*

doesn't abide by it, then what's the next party going to do if not abide by the next order? **(R. pg. 426 lines 8-19)**

But what about a party's effect on the administration of justice when they fail to abide by the rules and laws in its filings or actions in the litigation in the first place? There are laws and rules against acting in bad faith and unfair dealings, knowingly filing frivolous claims, failing or intentionally failing to provide initial discovery, providing false answers or documents in discovery, unlawfully continuing to litigate a frivolous claim, an attorney knowingly making false statements at hearings or trials, an attorney suborning its clients or witnesses to falsely testify or misrepresent pertinent material facts to the case, forgered material evidence, and extensive misrepresentation/false testimony from the parties and all their witness about the very core of its and Morphew's case or issues – which also directly violates the oath taken in court "to tell the truth, the whole truth and nothing but the truth". All this was alleged and presented to the lower court in the original action, but did not seem to be a relevant issue. The only issue imperative to the Master was closing its case. Should a party's unlawful behavior be continuously overlooked at the prejudice of another party? Should a case be dismissed or closed just "to be done with it"?

The original case raises an extraordinarily important question, the constitutionality of ignoring evidence, especially documented material evidence that substantially contradicts or contradicts all the testimony of the Dudeks and its privies at trial and beyond, or the lower court's findings of fact in its Order. The Lower Court in this instant action acknowledged Morphew and the Sellers Ferro had discovered the evidence after the trial and presented the evidence to the Master in Equity before his ruling, which he refused to consider. Instead, in its ruling the lower court found, by the laws and statutes of equity, that granting specific performance to the Dudeks was proper. Even though she and the sellers appealed the Order and presented the same evidence to this court, it was again not considered. Morphew had, in several subsequent actions, presented

the allegations and evidence to the lower court, but it was considered irrelevant or with no significance to the case and ignored. Morphew claims she was unfairly and severely prejudiced in the original action because the evidence does not substantially support the lower court's ruling, instead the Dudeks were awarded for their bad faith/unfair dealings, or unlawful or fraudulent behavior.

The lower court in this instant action stated, "*Morphew has more than had her day in court on the issue of ownership of the Property.*" Morphew disagrees. There was never any issue of ownership in the prior case(s), only now in this instant action. A Specific Performance case in real property decides if a party to a contract has a right to compel the performance of that contract, not ownership.

Further, the lower court in its action stated Morphew had legal mechanisms to bring the alleged fraud and abuse of process to the court's attention. It specifically suggested Rule 60, SCRCP, stating neither Morphew nor the Ferros, despite knowing of the alleged fraud by the Dudeks, filed a motion pursuant to Rule 60, SCRCP. Morphew argues nowhere during the hearing for Constructive Trust did the lower court determine Morphew was required to file a Rule 60(b) in the prior case in order to bring the fraud or abuse of process to the court's attention. Moreover, the lower court stated that if any fraud was committed on the court that it doesn't mean it cannot be brought in the other cases rather some sort of collateral attack, or the fraud claim should be brought in the case where the fraud on the court occurred (**R. pg. 464 lines 3-11**). Morphew argues neither she nor the Ferros were required to file a Rule 60(b) Motion, as the rule clearly states, "*This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.*" Rule 60(b) SCRCP

Morphew contends fraud was properly presented to the Court of Equity and this Court in the

original action but was neither heard nor ruled on but should have been, particularly in the court in which the fraud was committed **(R. 401; R. 115-132) (R. pg. 1-20) (R. pg. 21-24)**. Res judicata can only bar an action that was litigated and adjudicated. Even though the issue was presented to the Court(s), it was not ruled on, therefore fraud cannot be barred by res judicata in this action.

Additionally, the lower court stated Morphew brought the same claims in the second action she filed against the Dudeks, Case No. 2016-CP- 18-1706, and that 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. Morphew disagrees. Again, as argued above and repeated herein, Morphew contends the Respondents have waived their right to apply the doctrine of Res Judicata in this action or to Morphew's complaint as they have not asserted or properly asserted it in its Motion(s) and/or pleaded said affirmative defense in an Answer, or properly asserted and pleaded res judicata. Therefore any claim within Morphew's Complaint, but specifically here for fraud and abuse of process, cannot be barred by res judicata.

Even if res judicata could be applied, the cause of action "Abuse of Process" against the Dudeks in this instant action was neither brought in the original action nor the second action, therefore the application of res judicata cannot bar Morphew's cause of action for abuse of process in this action, and its case should not have been dismissed.

Further, the Respondents claim Morphew is alleging the complete opposite of what the essential elements of abuse of process is, specifically an ulterior purpose. "An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process." *First Union Mortg. Corp. v. Thomas,* 317 S.C. 63, 74, 451 S.E.2d 907, 914 (Ct.App. 1994). "[T]here is no liability when the process has been carried to its authorized conclusion." *Id.* at 74-75, 451 S.E.2d at 914. Morphew contends her statement the Dudeks "utilized the legal process to

unlawfully or fraudulently obtain the [P]roperty" is exactly what ulterior purpose is defined as. Meaning, the remedy of specific performance was not available to them as they critically and legally failed to meet those strict requirements, therefore the Dudeks had no legitimate or legal right to use the legal process to compel specific performance. The process was legitimate, but their use of it was not, and should not have been authorized.

Further, Res judicata does not bar a separate suite based upon an existing final judgment rendered upon the merits with fraud or collusion. Res judicata is also defined as the principal that an existing final judgment rendered upon the merits without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction. BALLENTINE'S LAW DICTIONARY 1105 (3d ed. 1969). Black's Law Dictionary 1312 (7th ed. 1999).

Moreover, the cause of action for fraud/fraud on the court in the second action was fraud which induced a ruling for Specific Performance. In this instant action, Morphew asserts the Dudeks 'stole' or prevented her from purchasing the property by unlawfully or fraudulently purchasing the property and knowing of Morphew's claim to said property, therefore are liable under a constructive trust to transfer said property to Morphew.

Material documented evidence is provided in this instant action to this Court proving the Dudeks had complete knowledge they critically failed to meet the strict requirements, rules and guidelines of Specific Performance even before they filed their action Specific Performance in 2013, and/or their Motion for Closing in 2017. Meaning, the Dudeks were denied lending because their sales contract was invalid at application. It was never remedied, therefore the lending bank denied them lending and closed their file in January 2013. As a whole, and at all times material, the Dudeks sales contract was void due to their own hand as of December 1, 2012. Morphew

asserts in this action the Dudeks failed to have valid legal claim to the property as of December 1, 2012, knew of Morphew's claim by constructive notice or express notice, therefore unlawfully purchased or obtained said property.

Morphew argues as a matter of law or in an action to declare a constructive trust, the Court of Appeals can find facts in accordance with its view of the evidence.

> "It is now well settled that this court has jurisdiction in appeals in equity cases to find the facts in accord with our view of the preponderance or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases when the appellant satisfies this court that the finding is against the preponderance of the evidence." *Crowder v. Crowder*, 246 S.C. 299, 301, 143 S.E.2d 580, 581 (1965).

> "An action to declare a constructive trust is in equity, *Bank of Williston v. Alderman*, 106 S.C. 386, 91 S.E. 296 (1917), and this Court finds facts in accordance with its own view of the evidence." *Gray v. South Carolina Pub. Serv. Auth.*, 284 S.C. 397, 325 S.E. (2d) 547 (1985); *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E. (2d) 773 (1976). In order to establish a constructive trust, the evidence must be clear, definite, and unequivocal. *Whitmire v. Adams*, 273 S.C. 453, 257 S.E. (2d) 160 (1979; *Ramantanin v. Poulos*, 240 S.C. 13, 124 S.E. (2d) 611 (1962).

For the reasons stated above, the lower court should not have granted the Dudeks' Motion to Dismiss based on Rule 12(b)(6) and/or res judicata, therefore Morphew respectfully asks this Court to reverse the lower court Order to dismiss the Dudeks' Motion to Dismiss pursuant 12(b)(6) with prejudice.

Though Appellant agrees this lawsuit and the original lawsuit involves the same parties, it disagrees the subject matter is the same. Subject matter is the cause, the object, the thing in dispute; or the thing in controversy, or the matter spoken or written about. In the original case, the 'cause' or 'thing' in dispute was not the "property" itself as the Respondents claim, but instead the breach of the parties to the contract(s), thus leading to the remedies available in the two breach of

contract cases, as each case specifically asked for the sellers to specifically perform their contract. In the current case, the 'cause' or dispute is whether - under the circumstances- the Respondents obtained the property unlawfully [through unlawful acts and the unlawful use of a lawful process to obtain the property], therefore making it unfair or unjust for the Respondents to keep possession of it. A constructive trust ...arises entirely by operation of law without reference to any actual or supposed intention of creating a trust. It is resorted to by equity to vindicate right and justice or frustrate fraud. *All v. Prillaman*, 200 S.C. 279, 20 S.E. (2d) 741 (1942). Plaintiff in its case is merely maintaining or defending its claim the Respondents unlawfully prevented Morphew from performing her contract, took the property from its rightful claimant (Morphew), and obtained the property only by their extensive fraud, bad faith or violation of a fiduciary duty.

Respondents state in its Brief that Morphew claims the alleged fraud or fraud on the courts by the Dudeks was unknown to her until recently. Morphew is unsure of Dudek's definition of 'recently', but clarifies the facts. The Ferros in their pleading, and both the Ferros and Morphew on appeal of the original case, never specifically stated or claimed "fraud" because they had not known the actions as 'fraud'[6]. It is an indisputable fact that if Morphew had known of the 'fraud' she would have specifically claimed such. Also, there is no law that states a party has to file a Motion 60(b) when discovering such fraud, but instead the Rule clearly states, "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court," which Morphew did in its independent action for Fraud/Fraud on the Court filed August 24, 2016. Res judicata cannot bar this action as the alleged fraud was not heard and ruled on in the original case. Though Judge Chellis was presented with newly discovered material and documented evidence two (2) months

[6] The lower Court in this current action ruled the evidence produced in 2014 and on appeal in 2015 alleged 'fraud' (see Order, Constructive Trust, Case No. 2017-CP-18-987, pg. 2, para. 2). Neither in the original case nor on appeal was the alleged 'fraud' heard and/or ruled on.

before his ruling unequivocally proving the Dudeks critically breached their contract at their own hands, had actually been denied lending due to their failure to apply for financing before their sales contract expired (rendering the sales contract invalid and non-negotiable), and they had never been 'ready or able' to close escrow, therefore the extreme remedy of specific performance was not legally available to the Dudeks, he ignored the very pertinent, critical and material evidence and ordered the Ferros to specifically perform the sales contract with the Dudeks first, and if they fail, to specifically perform the sales contract with Morphew[7] . It also proved without a doubt that the Dudeks, their lawyer, the loan officer whose testimony the Order was substantially based on, and their sales agent all had complete knowledge of the Dudeks failures but all falsely testified to material facts to the case(s). Further, they presented forgered documents as proof of application for mortgage credit per the sales contract, when in fact they had not make initial application until 45 days later, and 5 days AFTER their contract had expired. Clearly, the Dudeks and their lawyer had in its possession such information but filed a frivolous and unlawful complaint, continued to litigate and suborned perjury in order to cover up its own unlawful acts in hopes to prevent Morphew from closing and eventually obtain the property for themselves. In effect, such evidence proves the fraud perpetrated by the Dudeks and their parties to obtain a ruling in their favor AND that the court of equity could not legally order specific performance in favor of the Dudeks since that remedy was not legally available to them. Instead, the lower court abused its discretion and ignored such controversial and fraudulent evidence, and failed to take into consideration the statement of a pro se party.

Therefore this court should render the prior judgment of November 6, 2012 void based on loss of subject matter jurisdiction, abuse of discretion and/or fraud.

[7] Such evidence proves the court of equity could not legally order specific performance in favor of the Dudeks if that remedy was not available to them, therefore . Instead, the lower court abused its discretion and ignored such controversial and fraudulent evidence, and failed to take into consideration the statement of a pro se party.

In its Order, the lower court dismissed Morphew's complaint because "*another action is pending between the same parties for the same or substantially the same claim. Specifically, 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)*".

Morphew contends the lower court erred in ruling its complaint dismissed pursuant to Rule 12(b)(8). First, the Dudeks' Motion to Dismiss pursuant 12(b)(8) "*is based on the fact that an action has been adjudicated between the same parties for the same claim in which the Plaintiff recently filed an appeal (see Stephen Dudek...v... Thomas Ferro...and Molly Morphew v. Stephen Dudek....Case No. 2013-CP-074 consolidated with Case No. 2013-CP-183.*" Nowhere does it mention Case No 2016-CP-18-1706 as claimed in its Brief. No affidavit, memorandum or information [supporting the grounds for dismissal pursuant Rule 12(b)(8)] was included in Dudek motion (**R. 289-291**) nor presented at the hearing. The Dudeks Motion pursuant 12(b)(8) fails or is improper as it is not based on a pending case, therefore is improper and the lower court erred in awarding its Motion to Dismiss pursuant 12(b)(8). Further, the Dudeks have failed to meet the requirement to raise res judicata in a motion to dismiss and therefore their Motion to Dismiss should be denied, and a constructive trust established based on the evidence provided.[]

Even if its Motion was proper, and as stated above, during the hearing the lower court did not rule on the effect of the pending second action (Case No. 2016-CP-18-1706) for Fraud/Fraud on the Court, but instead made a ruling that it found that a cause of action for Constructive Trust cannot survive under the current circumstances, the matters of Constructive Trust have been litigated, and specifically, none of the elements of constructive trust can be met or are met in this instance (**R. pg. 464, lines 1-21**), making a ruling based on a 'pending action' improper.

Also, Morphew argues the matters or claims raised in this action to declare a constructive

trust are that the Dudeks unlawfully acquired or purchased said property based on fraudulent acts or fraud on the court, are not bona fide purchasers, therefore stole the property from Morphew who had a legal claim or the only legal claim to it, therefore the Dudeks are lawfully required to transfer the property [being held in trust]. While Morphew respectfully recognizes that the pending Fraud claim may have some relationship or impact upon this circuit court action, Morphew would also respectfully ask this court to also recognize that the pending Fraud/Fraud on the Court action and this Constructive Trust action are fundamentally and structurally different from each other, and/or each action's subject matter and remedies are not precisely the same, or are not substantially the same, therefore the drastic remedy of dismissal was inappropriate under Rule 12(b)(8). South Carolina Appellate Court:

> "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).
>
> While we utilize the same standard of review as the circuit court in scrutinizing the application of Rule 12(b)(8), each of the components of the rule are determined as a matter of law and thus we apply a de novo standard of review to the grant or denial of this motion. See *Miami Sand & Gravel, LLC v. Nance*, 849 N.E.2d 671, 676 (Ind.Ct.App.2006).

In other words, this Court may determine whether there is another action involving the same parties, claims (or subject matter), and remedies as a matter of law.

II. APPELLANT DISAGREES WITH THE RESPONDENTS THAT THE LOWER COURT SHOULD AFFIRM THE ORDER OF THE LOWER COURT BASED ON ANY GROUND APPEARING IN THE RECORD

Morphew disagrees that the lower court should affirm the order of the lower court based on any ground appearing in the record due to the claims of fraud or fraud on the court, the amount of error in the Order of the lower court, and for all reasons stated above. Instead, Morphew asks this Court to reverse the Order of the Lower Court or based on any ground appearing in the record.

CONCLUSION

Morphew contends the Dudek's Motions pursuant Rule 12(b)(6) and/or 12(b)(8) ultimately fail or fail on its face, therefore Morphew's action for Constructive Trust should not have been dismissed. Even if their Motion(s) were proper, Morphew argues, based on the reasons stated herein, its complaint should not have been dismissed, and particularly the Constructive Trust, right of possession, right of property, and cause of action for "Abuse of Process" against the Dudeks as it was neither brought in the original action nor the second pending action, therefore the application of res judicata cannot bar Morphew's causes of action for right of possession/ right of property and abuse of process in this instant action. For this reason alone, Morphew's action for Constructive Trust should not have been dismissed.

Based on the reasons or defenses within this Brief, Morphew respectfully requests this Court to reverse the lower court's Order to dismiss Dudeks' Motions with prejudice, and either reverse and rule as a matter of law on the issue of constructive trust or remand this action back to the lower court for further proceedings as this Court finds applicable.

Respectfully submitted,

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

September 4, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2018-000507

Molly M. Morphew — Appellant

v.

Stephen Dudek and Doreen Cross — Respondents

CERTIFICATE

The undersigned hereby certifies that its Final Briefs comply with Rule 211(b) as to the Content are identical to its brief(s) previously served under Rule 208, except the initial briefs have been revised to indicate where the material appears in the Record on Appeal, and only to correct obvious typographical errors and misspellings which were contained in the initial briefs.

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

September 4, 2018

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

Appellate Case No. 2018-000507

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2020-UP-150
Submitted May 1, 2020 – Filed May 20, 2020

AFFIRMED

Molly M. Morphew, of Summerville, pro se.

Steven L. Smith and Samuel Melvil Wheeler, both of Smith Closser, of Charleston, for Respondents.

PER CURIAM: Molly Morphew appeals an order from the circuit court dismissing her complaint pursuant to Rule 12(b)(6) and (8), SCRCP, and res judicata. On appeal, Morphew argues the court erred by dismissing her case.

Morphew's complaint is barred under the doctrine of res judicata because the adjudication of those issues occurred in a prior suit involving the same parties and

same subject matter.[1] Accordingly, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Judy v. Judy*, 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App. 2009) ("When claims arising out of a particular transaction or occurrence are adjudicated, res judicata bars the parties to that suit from bringing subsequent actions on either the adjudicated issues or any issues that might have been raised in the first suit."); *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992) ("To establish res judicata, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit."); *id.* ("Res judicata also 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.").[2]

AFFIRMED.[3]

LOCKEMY, C.J., and GEATHERS, and HEWITT, JJ., concur.

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[1] Although Morphew argues on appeal that Stephen Dudek and Doreen Cross did not plead the doctrine of res judicata in their motions to dismiss, this issue was not raised to or ruled on by the circuit court, and thus is not preserved for appellate review. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [Master].").

[2] Although Morphew's claim for a constructive trust could not have been raised in the prior suit, because the basis of the claim was predicated on the allegations of fraud that were previously adjudicated, Morphew's constructive trust claim is barred by res judicata.

[3] We decide this case without oral argument pursuant to Rule 215, SCACR.

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

Molly M Morphew)
Plaintiff(s))

vs.)

Doreen Cross and Stephen Dudek)
Defendant(s))

CIVIL ACTION COVERSHEET

2017-CP - 18 - 987

Submitted By: Molly Morphew
Address: 788 E. Butternut Rd, Summerville, SC 29483

SC Bar #: N/A
Telephone #: 843-514-7299
Fax #:
Other:
E-mail: morphew926@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

FILED
2017 JUN 12 AM 11:43
CHARLESTON COUNTY
DORCHESTER COUNTY
CLERK OF COURT

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499) Constructive Trust and Quiet Title

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (688)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 6/12/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

17 JUN 12 AM 11:43
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Dorchester)
)
Molly M. Mayhew, pro se)
Plaintiff,) SUMMONS
)
vs.) FILE NO. 2017-CP-18-987
)
Doreen Cross & Stephen Dudek)
Defendant.)

TO THE DEFENDANT ABOVE-NAMED:

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 this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Summerville, SC, South Carolina

Dated: 6/12/17

Molly Mayhew pro se
Plaintiff/Attorney for Plaintiff

Address: 788 E Butternut Rd
Summerville, SC 29483

SCCA 401 (5/02)

FILED
2017 JUN 12 AM 11:43
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP-18-987
Molly M. Morphew,	)	
Plaintiff,	)	
v.	)	**COMPLAINT FOR CONSTRUCTIVE TRUST**
Stephen Dudek, and Doreen Cross,	)	
Defendants.	)	

INTRODUCTION

COMES NOW, Molly M Morphew, Plaintiff in the above entitled matter, and brings her cause of action for claim of right of possession and right of property [actual and legal], abuse of process, fraud, and unclean hands against, Defendants Dudek and Cross who allegedly and unlawfully acquired property (as hereinafter described), and by said actions intentionally prevented, and by same actions are still preventing, the Plaintiff from her legal right to acquire.

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

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

3. That the property as stated herein, is located in Dorchester County, South Carolina.

4. That the Defendants named above used the lawful judicial system and its processes to unlawfully obtain said property.
5. That the Defendants, at all times material, had no legal right to said property.
6. That the Defendants, at all times material, intentionally prevented, and are currently preventing, the Plaintiff from her legal right to said property.
7. That the Plaintiff has a legal and/or equitable claim, and is in possession of said property.
    a. Morphew ratified a sales contract on December 16th, 2012.
    b. Morphew secured financing on said sales contract had a closing scheduled January 31st, 2013.
    c. Morphew has had, and currently has, tenancy of said property since June 2013.
8. At all times material, the misleading or unlawful acts of the Defendant(s) violated the Plaintiff's Constitutional right by preventing the Plaintiff from presenting all of her case or deprived her of the opportunity to be heard fully.
9. That due to the Defendants unlawful acts or fraudulent misrepresentations, the Judge was influenced to make an uninformed ruling (thus where the impartial function of the court have been directly corrupted), the judicial machinery was prevented from performing, and the court itself was defiled.
10. Though the Judge in the prior proceedings itself may have been unknowingly "fooled" to make an unlawful or uninformed ruling, he was recently presented with recently found evidence of fraud on his court, but then chose to turn a blind eye at the expense of justice and violating the Due Process Clause of the U.S. Constitution, inferring partiality towards the Defendants by rewarding them for their unlawful actions.

VENUE AND JURISDICTION

11. That the Plaintiff hereby incorporates paragraphs one (1) through ten (10) above, the same as if set forth again verbatim.
12. Venue is proper pursuant to S.C. Code § 15-7-30, as Defendants Dudek and Cross reside in Dorchester County, and the actions set forth herein occurred in Dorchester County.
13. Venue is proper pursuant to S.C. Code § 15-7-10, as the property in dispute is located in Dorchester County.
14. 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.
15. The Plaintiff consents to the jurisdiction of this court since she is a resident of the County of Dorchester, State of South Carolina.
16. Morphew is currently, and was during the relevant period, a citizen and resident of South Carolina in Dorchester County.

Plaintiff complains and for causes of action alleges as follows:

FIRST CAUSE OF ACTION
(Right of possession; right of property)

17. That the Plaintiff Morphew argues she is the equitable owner of title to the property referenced herein, and claims right of possession and right of property [actual and legal],
18. Therefore, Plaintiff alleges she is under no legal obligation to vacate the said property, but instead seeks restitution to recover the property and obtain legal title by constructive trust, or as the alternate, damages equivalent to the loss of the property and any costs associated with this claim.

19. That the Plaintiff has had a legal binding, valid and enforceable sales contract since December 16th, 2012. (Sales Contract, **Attachment 1**)
20. That the Plaintiff had secured financing per said sales contract as of December 23rd, 2012.
21. That the Plaintiff had final approval as of January 3rd, 2013.
22. That the Plaintiff has had possession of said property since June 2013.
23. That the Plaintiff has a lease agreement, and still currently has, tenancy of said property.
24. That the Defendant, at any time material, had no legal or equitable claim to said property.
25. That the Defendant obtained said property unlawfully including, but not limited to, filing frivolous claims, fraudulent misrepresentations, and said acts on the court.

SECOND CAUSE OF ACTION
(Abuse of Process)

26. That the Plaintiff hereby incorporates paragraphs one (1) through twenty-five (25) above, the same as if set forth again verbatim.
27. The Plaintiff contends that the Defendants utilized the legal process to prevent the plaintiff from closing on the said property.
    a. Plaintiff contends Defendants filed a lis pendens the very day they became aware the sellers of the said property ratified a sales contract with Plaintiff Morphew to prevent its closing.
    b. Plaintiff contends Defendants, knowing full well they did not meet the lawful requirements or rules to compel specific performance, frivolously filed a complaint for Specific Performance against the sellers to prevent said sale to Morphew and/or to use the legal process to "blackmail" the sellers into selling to them.

28. The Plaintiff contends that the Defendants utilized the legal process to unlawfully or fraudulently obtain the property.

a. Plaintiff argues the Defendants unlawfully requested and litigated Specific Performance to obtain said property by:

1) The Defendants, at all times material, did not have a valid and enforceable contract.

2) Defendants did not complete a mortgage application per their sales contract.

3) The Defendants were denied lending.

4) The Defendants requested Specific Performance with full knowledge they had been denied lending.

5) The Defendants were never "ready, able and willing" to perform their sales contract.

6) The Defendants requested Specific Performance with full knowledge they never were "ready, able and willing" to perform their sales contract.

c. The Defendants participated, and continue to participate, in their unlawful behavior with full knowledge they never were "ready, able and willing" to perform their sales contract as required by law or rules to compel Specific Performance.

d. The Defendants falsely testified in filings, depositions and at trials and hearings as such (including, but not limited to):

1) Defendants falsely testified in filings, depositions and at trials and hearings they had approved financing per their sales contract.

2) Defendants falsely testified in filings, depositions and at trials and hearings they were ready, able and willing to close escrow per their sales contract.

3) Defendants falsely testified in filings, depositions and at trials and hearings they were ready, able and willing to close escrow but could not because of a seller breach.

29. The Defendants continue to utilize the legal process in order to unlawfully possess the property in which they have, at all times material, never had a legal or equitable claim to.

a. Plaintiff alleges that the Defendants, at all times material, did not have a legal or equitable claim on said property.

b. That all times material, the Defendants did not have valid enforceable sales contract.

e. The Defendants sales contract expired on November 30th, 2012.

f. The Defendants did not complete a mortgage application per their sales contract.

g. The Defendants had been denied lending at application and/or before filing for Specific Performance.

h. The Defendants did not have a valid and enforceable sales contract when they filed for Specific Performance.

i. The Defendants did not have a valid and enforceable sales contract during their depositions or at trial or at any time material.

j. Plaintiff alleges, that all times material, the Defendants did not have equitable ownership or right to said property.

k. Plaintiff alleges, that all times material, the Defendants did not have possession or right of possession to said property.

30. Plaintiff alleges the Defendants violated the Federal and State Constitutional Right to Due Process.

31. The Defendants or their agent acted, and is continuing to act, with Unclean Hands (i.e., unjustly in the very transaction of which he complained and still continues to act unjustly), as stated herein complaint.

THIRD CAUSE OF ACTION
(Fraud)

32. That the Plaintiff hereby incorporates paragraphs one (1) through thirty-two (31) above, the same as if set forth again verbatim.

33. The Defendants made false statements or misrepresentations as to material facts critical to the prior civil proceedings.

a. Defendants falsely stated or misrepresented in filings, depositions, at the trial and hearings, they had, included but not limited to, applied for financing per their sales contract, did not breach their sales contract, secured mortgage financing per their sales contract, were ready, able and willing to close escrow, and the sellers prevented them from closing.

34. The Defendants created false document(s) and was provided as evidence to support their false claims.

35. The Defendants or their agents misrepresented, concealed or failed to disclose the material fact(s) pertinent to the prior proceedings, even on direct questioning in filings, depositions, trials, hearings or subpoenas.

36. The Defendants and their attorney, real estate agent and its agent, loan officer and its agent, and closing attorney or its employee(s) committed conspired to commit fraud on the court by providing false documentation or testimony, including by not limited to, stating or inferring Cross and Dudek had applied for mortgage financing, secured mortgage credit, and were ready, able and willing to close escrow per their sales contract, or that the sellers were at fault for Cross and Dudek failing to close escrow.
37. The Defendants or their agents knew the statements or forgery were false.
38. Plaintiff contends the Defendants or their agents made the false statements or misrepresentations or forgery in order to persuade the Plaintiff to act or not act, and to fraudulently sway the court to make a ruling in their favor (i.e., make an uninformed ruling).
39. Plaintiff contends the misrepresentations is of such character that if it had not been misrepresented, obstructed, concealed or forged, there would have never been a trial or Specific Performance would not have been awarded.
40. The Defendants made the false statements or misrepresentations or forgery in order to unlawfully obtain said property.
41. The Plaintiff or the courts were ignorant of the representation's falsity.
42. The prior case continued and/or was adjudicated unlawfully because of these fraudulent actions or non-actions of the Defendants.
43. Plaintiff relied on the representations in order for her to present her case fully or be heard fully as due process allows.
44. Plaintiff's Question in Fact to her prior case was based solely on these representations.
45. The court relied solely on these representations to make an informed ruling.

46. The Courts made an unlawful and uniformed ruling because of the reliance on the representations.
47. In consequence, an injustice has been served.
48. The judicial machinery was intentionally disrupted by the Defendants.
49. The courts have spent an undue amount of time and resources litigating the Defendants complaint.
50. The Plaintiff has been unable to obtain rightful ownership of the property.
51. The Plaintiff has extended undue amounts of distress, money, and time in order to defend her right to the property and to due process.
52. The Plaintiff argues the said above property was therefore "stolen" from her by the Defendants.
53. As a proximate result of the Defendants Cross and Dudek's fraudulent misrepresentations and otherwise wrongful conduct as alleged herein, Plaintiff Morphew was or has been prevented from closing on or obtaining 788 E. Butternut Rd., Summerville, SC for over 4+ years, has spent an excessive amount of money to obtain said property, and respectfully asks the court for restitution by "returning" said property and for all costs associated to obtain said property. In lieu of, Plaintiff would ask the court for damages, specifically for the difference in her sales price and the current market value, plus all costs associated with the litigation of her prior case and this case.
54. By reason of the fraudulent and otherwise wrongful manner in which the Defendants Cross and Dudek, obtained their alleged right, claim or interest in and to the property, Defendants Cross and Dudek, have no legal or equitable right, claim or interest therein, but, instead, Defendants Cross and Dudek are involuntary trustees holding said property

and profits therefrom, if applicable, in constructive trust for Plaintiff Morphew with the duty to convey the same to Plaintiff Morphew forthwith.

WHEREFORE, Plaintiff Morphew pray judgment against Defendants Cross and Dudek and each of them, as follows:

<> For a declaration that Defendants Cross and Dudek hold the property [with the duty to convey] as constructive trustees for the benefit of the Plaintiff Morphew; or in lieu, damages as stated in #53 above;

<> For costs of suit incurred herein; and

<> For such other and further relief as the court may deem proper.

Molly M. Morphew, pro se

6/12/17
Dated

VERIFICATION

I, Molly M. Morphew, am a Plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Summerville, South Carolina.

DATED: 6/12/17 BY:

2017 JUN 12 AM 11:44
CLERK OF COURT
DORCHESTER COUNTY

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 # 126-00-00-090 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, Washer/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.

5. **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 hereby agree to the terms of this agreement. Earnest money paid by ☐Cash, ☐Check, ☐Other. Buyer does not guarantee payment of a check or draft. 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 shall be credited to the Buyer.~~

MM BUYER [____] BUYER [MF] SELLER [MF] SELLER HAVE READ THIS PAGE

The Group, LLC. 2060 Skyhawk Ct. Mt. Pleasant, SC 29466 Phone: 843-971-4002 Fax: 888-803-1570 788 E. Butternut
Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

A1 1686 (1)

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 occurrance 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

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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 continuent 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. Norphew	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: Lorraine 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. Buttom

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 _____

Rev. 1/13

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, decks or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure: Brick monolithic 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 (outlets, 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: ☑ city/county ☐ community system ☐ private well ☐ b. Water pipes are: copper ___ galvanized ___ PVC/CPVC ☑ poly/plastic ___	☐	☒	☐
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/stove, 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 ___ spa/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, tenancies, 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: 788 E Butternut Rd Summerville SC 29483

The property is currently: owner-occupied ✓ leased ___ in an estate ___ in foreclosure ___ vacant ___ (If vacant, how long? ___)

Owner's Name(s): I Am Foolo

Owner(s) acknowledge(s) having examined this addendum before signing and that all information is true and correct as of the date signed.

Owner Signature: [signature] Date: 12-16-12

Owner Signature: [signature] Date: 12/16/12

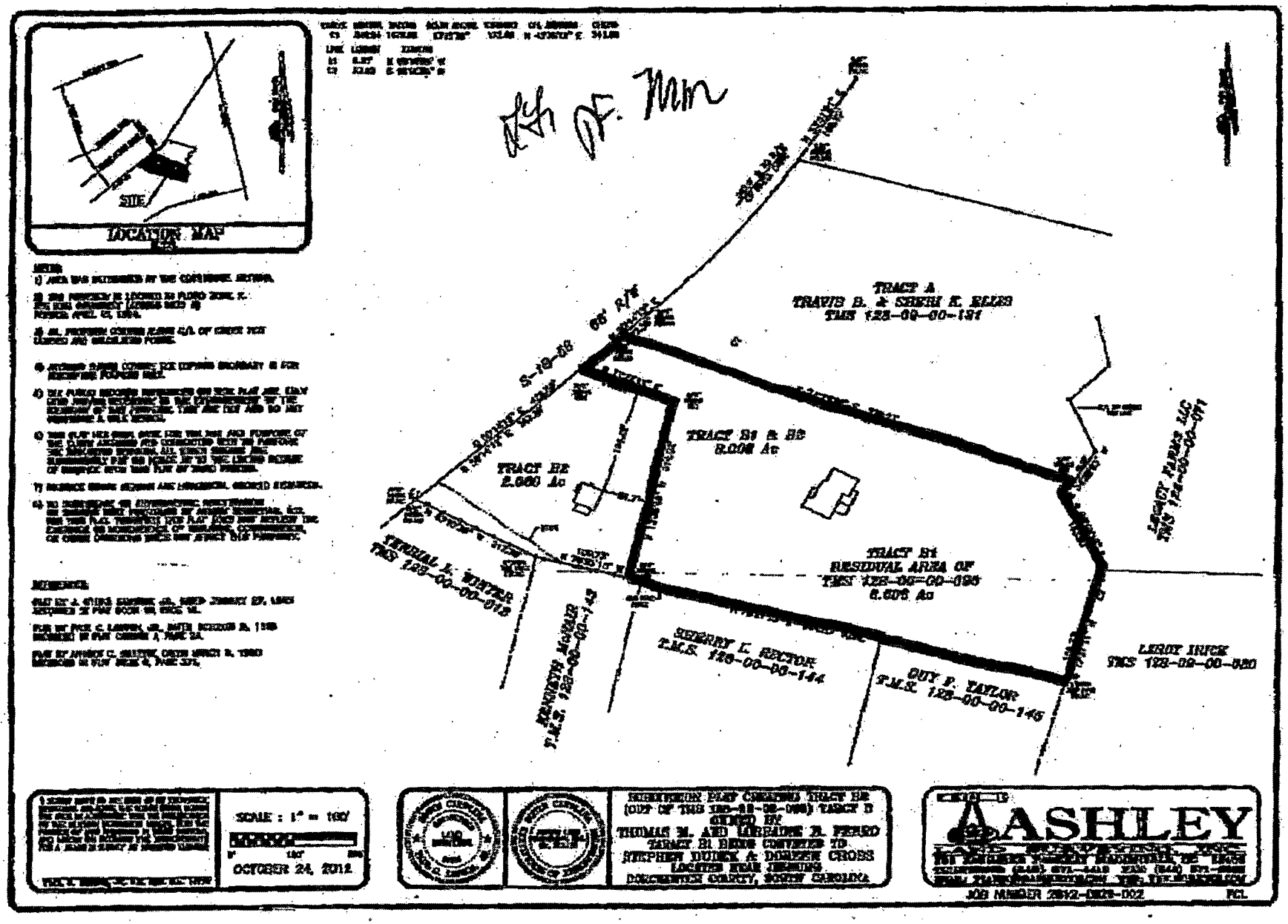
Purchaser(s) Acknowledgement

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: [signature] Date: 12/16/12

Purchaser Signature: ___ Date: ___

This form is approved by the South Carolina Real Estate Commission


LOCATION MAP
SITE
TRACT A
TRAVIS B. & SHERRI K. ELLIS
TMS 123-00-00-131
TRACT B1 & B2
8.008 Ac
TRACT B2
2.660 Ac
TRACT B1
RESIDUAL AREA OF
TMS 123-00-00-095
6.605 Ac
TERRIAL L. WINTER
TMS 123-00-00-012
KENNETH M. HOWARD
T.M.S. 123-00-00-143
SHERRY L. RECTOR
T.M.S. 123-00-00-144
GUY F. TAYLOR
T.M.S. 123-00-00-145
LEROY IRICK
TMS 123-09-00-020
SCALE : 1" = 100'
OCTOBER 24, 2012
SUBDIVISION PLAT CONSISTING TRACT B2
(OUT OF TMS 123-00-00-095) TRACT B
OWNED BY
THOMAS M. AND LORRAINE B. PEPPER
TRACT B1 BEING CONVEYED TO
STEPHEN DUDEK & DOREEN CROSS
LOCATED NEAR JEDBURG
DORCHESTER COUNTY, SOUTH CAROLINA
ASHLEY
JOB NUMBER 2012-0828-002
PG1

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2017-CP-18-987
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Stephen Dudek, and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

FILED FOR RECORD
2017 JUN 12 AM 11:44
CLERK OF COURT
DORCHESTER COUNTY

I certify that on this date a copy of the foregoing Complaint for Constructive Trust and Quiet Title, and Lis Pendens was served by mailing USPS, certified mail, restricted Delivery with signature confirmation on the following:

Doreen Cross
236 Cady Dr.
Summerville, SC 29483

Stephen Dudek
236 Cady Dr.
Summerville, SC 29483

Molly M. Morphew, pro se
788 E. Butternut Rd.
Summerville, SC 29483

Molly M. Morphew, pro se

June 12, 2017

FORM 4

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

FILED - RECORDED
2017 MAY 17 PM 2:16
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP1800183

Molly M Morphew	**Thomas Ferro** **Stephen Dudek**	**Lorraine Ferro** **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.

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: Cancel all Lis Pendens; See ¶4, page 9 & 10 & Waive cancellation fees

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)
Stephen Dudek and Doreen Cross	**Thomas M. Ferro a/k/a Thomas Ferro and Lorraine B. Ferro a/k/a Lorraine Ferro**	**$13,186.32**

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.

Larry S. Hall — 3078 — 5/17/2017

Master in Equity | **Judge Code** | **Date**

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

1699

5/17/17 **For Clerk of Court Office Use Only** 5/17/17

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

Molly M Morphew 788 E Butternut Rd Summerville, SC 29483

~~**David A. Collins** PO Box 40578 Charleston, SC 29423~~
Thomas Ferro 5501 Carson St Denver, CO 80239
Lorraine Ferro 5501 Carson St. Denver, CO 80239
Steven L. Smith PO Box 40578 Charleston, SC 29423-0578
Samuel Melvil Wheeler 7455 Cross County Rd., Suite 1 PO Box 40578 Charleston, SC 29423-0578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA **COUNTY OF DORCHESTER**	**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**

FILED - RECORDED
2017 MAY 17 PM 2:06
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This matter is before me pursuant to the Remittitur from the Court Of Appeals filed on February 17, 2017, affirming this Court's decision entered November 6, 2014. At question is this Court's Order Setting Closing Schedule & Awarding Attorneys Fees entered April 3, 2017 (the April 3, 2017 order) on the Dudek/Cross Motion for the same.

On April 6, 2017, Morphew/Ferros[1] filed a joint Answer to Dudek & Cross Notice of Motion and Motion to Set Closing Schedule and Award Attorneys Fee. The joint Answer is construed as a Rule 59(e) Motion to alter or Amend the April 3, 2017 order. The joint Answer has 13 points of contention. Paragraph 5 of the joint Answer, addressing the award of attorneys' fees, has merit. Paragraph 6, addressing the issue of the purchase price, has merit. Additionally, at the close of

[1] Morphew as used herein refers to Molly M. Morphew; Ferros as used herein refers to Thomas M. Ferro, a/k/a Thomas Ferro and Lorraine B. Ferro a/k/a Lorraine Ferro, jointly and severally. Dudek/Cross as used herein refers to Stephen Dudek and Doreen Cross, jointly and severally.

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the hearing, Mr. Smith requested the Court order cancellation of the Lis Pendens filed in this action. This too has merit. All remaining issues raised in the joint Answer have no merit.

Morphew and Ferros are *pro se*. Hence, this Court has given broad latitude to them, particularly, in matters of procedure. The Answer follows entry of an Order on a Motion heard in open court and on the record. Morphew appeared in person. Ferros attended by telephone with consent of all parties inasmuch as they live in Colorado. As to the present matter the hearing conducted May 12, 2017 at 10:00 A.M. the same appearances were made, Ms. Morphew *pro se* and in person and the Ferros via telephone[2]. All parties presented arguments. The Ferros were placed under oath as was Ms. Morphew.

Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339, 1991 WL 113654 (1991) This Court liberally construes pleadings to conform them to the rules of civil procedure in such a manner that promotes substantial justice between the parties. The primary aim being to give, especially with pro se litigants, is to assure them notice of proceedings and an opportunity to be heard, the fundamental of procedural due process[3].

Striking this balance is often at the detriment of represented parties by competent counsel. Nonetheless in this case, since a hearing on the record pursuant to adequate notice to all parties on the Dudek/Cross Notice of Motion and Motion to Set The Scheduling For Closing And Award Attorneys' Fees, and all parties were given liberal opportunity to speak to the motion, this Court deems the joint Answer as a Motion pursuant to Rule 59 (e) SCRCP to alter or amend the April 3, 2017 order. At the hearing on the Dudek/Cross Motion, Ferros asserted that the requests

[2] Since the Ferros attended this hearing by telephone, the Court will enter an order dismissing their motion to attend by telephone filed May 3, 2017 as moot.

[3] Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. *Mathews v. Eldridge,* 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350, 2007 WL 4698492 (2008)

for attorneys' fees had been waived because no motion for fees and costs had been timely filed, and they asserted the attorney's fees were too high.

The affirmed Order, dated January 17, 2017, remittitur entered February 17, 2017, provided the following finding of fact:

> "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." Page 10, paragraph 21.

As a conclusion of law, this Court stated:

> "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." Page 12, paragraph 8.

Dudek/Cross did not file an application for attorneys' fees within ten (10) days of the original trial order. Instead on November 19, 2014, counsel for Dudek/Cross sent the Court an email to which he attached an itemization of fees and costs[4]. In reply, the Court instructed Dudek/Cross' attorney to file a motion and affidavit in support of their attorney's fees so as to allow the Ferros an opportunity to be heard on the motion. No motion was filed. Thereafter, on December 5, 2014, Morphew's then counsel[5] served her Notice of Appeal, which was clocked time-stamped by the Clerk of Court and entered in CMS on December 8, 2014, followed by Ferros' Notice of

[4] All parties had a copy of the itemization. During the hearing the Court reviewed the itemization. See also footnote 8 *infra.*

[5] Mr. Massalon served and filed Notice of Withdrawal as Counsel on December 15, 2014 with the Court of Appeals.

Appeal, dated December 12, served December 11, 2014 (emphasis added) and time stamped by the Clerk of Court on December 15, 2014 but entered in CMS on December 16, 2014.[6]

In any event, the Dudek/Cross failure to timely file the appropriate motion supported by an affidavit of attorney's fees only affects the attorneys' fees through the trial of the case. The failure to file a motion supported by an affidavit of attorneys' fees does not preclude the award of attorneys' fees once the case was appealed and following the appeal. In this regard, as to attorneys fees incurred in responding to the appeal, and matters post remittitur, attorneys fees have not been waived and are appropriately before the Court. To this end, the Court turns its attention first.

Dudek/Cross affidavit of attorneys' fees requests $16,592.60 attorneys' fees for David A. Collins[7]. As stated above, he had previously submitted an itemization of his fees of $10,150.00 and costs of $2,683.79, totaling $12,833.79[8]. Thus, from the affidavit of attorneys' fees, Mr. Collin's fees for representing Dudek/Cross on appeal are $6,442.60. He incurred $1,533.72 in costs. The total fees and costs are $7,976.32.

After Mr. Collins' suspension, Steven L. Smith, Esquire, has appeared on behalf of Dudek/Cross. He claims on behalf of Dudek/Cross a right to recover attorney's fees of $3,107.05 and costs of 35.00 through the motion hearing resulting in the April 3, 2017 order. In addition he claims attorney's fees of $2,067.50 through the Rule 59 (e) motion hearing on the Ferros' joint Answer.

In *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238–39, 616 S.E.2d 431, 434, 2005 WL 1620266 (Ct. App. 2005), the Court of Appeals affirmed Charleston County's Master in Equity who awarded the prevailing party in a contract dispute, in which the contract allowed

[6] The Court of Appeals did not address the timeliness of the Ferro Notice of Appeal. " Pursuant to Rule 203(b)(1), SCACR, a party wishing to appeal an order from the court of common pleas must serve the notice of appeal on the respondents "within thirty ... days after receipt of written notice of entry of the order." *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 413 S.C. 642, 644, 776 S.E.2d 575, 576, 2015 WL 5028852 (Ct. App. 2015). See, also, SCRCP 69 (e) providing an additional five (5) days when served by mail.

[7] In the Matter of David A. Collins, Respondent, *Matter of Collins*, 417 S.C. 72, 789 S.E.2d 577,

[8] Provided to the Court in the May 12, 2017 hearing by Morphew.

for recovery of attorneys fee, attorneys fees and costs, including fees and costs incurred by the prevailing party during the proceedings on appeal (emphasis added). The Court of Appeals cites a plethora of cases to the following: "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees." Citations omitted. In addition, *Berger* sets out the factors a trial judge must consider, utilizing its sound discretion, in a determination of the award of attorneys' fee.

"There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." Id., pp 434-435.

As to Attorneys' Fees due to David A. Collins after the Notices of Appeal

1. Nature, Extent, and Difficulty of the legal services rendered:

Two very talented lawyers tried this case before me. The initial trial order speaks to the nature, extent and difficulty of the legal services. Responding to the appeal equally, if not more, draws into focus the the nature, extent and difficulty of the legal services required. Considering this factual issue, this Court finds the weight of this factual inquiry favors awarding attorneys' fees and costs to Dudek/Cross.

2. Time and Labor Devoted to the Case

Mr. Collins hourly rate according to his itemization of fees is merely $200.00. I find this rate extremely favorable if not, quite frankly, very low for a lawyer with Mr. Collins' experience. At that rate he devoted 32.2 hours to the appeal. I find this fact weighs extremely favorable in awarding attorneys' fees and costs to Dudek/Cross.

3. Professional Standing Of Counsel

The Court notes Mr. Collins is presently suspended from the practice of law in South Carolina. The reason for this is not a matter of record in this case. Prior to his suspension, this Court notes

that he was a member in good standing with the South Carolina Bar, and generally enjoyed a reputation of being fair, even-mined, and well qualified in matters pertaining to contractual disputes. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

4. Contingency of Compensation

Nothing in the record indicates the attorneys' fees were contingent on a successful outcome. This factor is, therefore, neutral between Ferros and Dudek/Cross.

5. Fee Customarily Charged in the Locality for Similar Services

A 10,000.00 plus fee for the trial of a complex real estate contract is extremely reasonable. Most fees for responding to an appeal exceed $6,442.60. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

6. Beneficial Results Obtained.

Mr. Collins successfully tried the case. All of the appellate work was completed by the time of his suspension and, since the decision was rendered without oral argument, he successfully responded to the appeal. This factor weighs in favor of awarding attorneys' fees and costs to Dudek/Cross.

As To Attorneys' Fees Due To Steven L. Smith From His Appearance Before The Court Of Appeals Through The Present.

7. This Court views each of the 6 factors set forth above with same results. Mr. Smith is a member in good standing with the South Carolina Bar. He is an excellent trial and appellate lawyer[9]. Mr. Smith submits he is entitled to $5,175.00 in fees and $35.00 in costs. His total fees and costs are $5,210.00. He has made 2 court appearances before me as well as undertaken the representation of Dudek/Cross in the appeal albeit primarily perfunctory. At the Court's request he drafted the April 3, 2017 order which the joint Answer addresses (the joint Answer refers to a draft Order although as discussed in the

[9] A Westlaw search reveals he has represented parties on appeal in 39 cases.

Dudek/Cross Motion hearing, the Court accepted Mr. Smith voluntary offer to submit a proposed Order setting forth the rulings from the Bench). He submitted in his presentation that he has shepherded Dudek/Cross through the scheduling process, and has dealt with issues relating to procuring a closing attorney[10]. Although he has failed to prevail on Mr. Collins' fees for the trial, he is blameless for the shortcoming of Mr. Collins' failure to meet the Court's deadline for filing a Motion and supporting affidavit for attorneys' fees and costs. A fair inference to draw from that failure was that Dudek/Cross would likely not have pressed for the attorneys' fees and costs were the case not appealed. However, defending the pursuit of the appeal by the Ferros cannot be ignored when the real estate contract in dispute permits the non-defaulting party to recover costs and attorneys fees.

For the foregoing reasons as to Ferros responsibility for payment of Dudek/Cross Fees and Cost

8. I find as follows: $7,976.32 in attorneys' fees and cost post the trial of the case is fair and reasonable. These are the fees and cost they incurred with Mr. Collins from the date of the first notice of appeal of the November 6, 2014 trial court order to the time of his suspension. And further,

9. I find Ferros are responsible for the payment of these fees; and as to Mr. Smith's Fees and Cost I find $5,210.00 in attorneys' fees and costs Dudek/Cross have incurred with Mr. Smith's representation from the beginning of his representation during the appeal and to the present against Ferros is fair and reasonable.

10. The total judgment against Ferros for attorneys' fees and cost iSection 18-n favor of Dudek/Cross is $13,186.32[11].

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[10] In a separate action, Morphew has sued lawyers and their staff who were to represent Dudek/Cross. With actual notice of pending litigation, the closing attorney declined to process the closing. Mr. Smith reports the closing attorney's title company would not remove an exception to the title commitment relating to the separate action.

[11] The Ferros stated under oath that they would give powers of attorney to an agent to close the real estate transaction with Dudek/Cross. The personal judgment against them will be a cloud on the title. The cloud can be satisfied at closing by deducting the judgment amount from Ferros proceeds and shown as a disbursement to the Dudek/Cross as a line itemt on the HUD-1 and disbursed at closing from the closing attorney's escrow and process of disbursement. Likewise, Mr. Smith can submit a satisfaction of the judgment to the closing attorney with

11. Ferros assert the contract price should not be changed. This Court agrees. The Contract price shall remain $303,000.00.
12. Each of the 11 remaining grounds Morphew and Ferros assert in the joint Answer have no merit. In short, all of the remaining terms of the April 3, 2017 order remain in full force.

13. Specifically, Morphew requested proof of financing from Dudek/Cross before she would be required to move from the Ferros property. At the hearing she demanded she receive 5 items: a Good Faith Estimate, Proof of Approved Financing, the HUD 1 closing statement, the Dudek/Cross loan application and the Contract. At the Dudek/Cross Motion hearing to set a closing schedule, proof of approved financing was a fair request though she did not have any legal right to this under the terms of the Ferros and Dudek/Cross contract. The April 3, 2017 order did specifically address granting a right to proof of approved financing, although the Court suggested from the Bench that some evidence of Dudek/Cross's approved financing should be given to her. Morphew's demand for 4 additional items, matters to which she has no right, 46 days after the April 3, 2017 order, when Dudek/Cross cancelled a closing because they had agreed not to close within 45 days to give her ample time to relocate, now raise the inference that she is an obstructionist, who seeks to de-rail the Ferros real estate sale to Dudek/Cross. She took the risk of moving into the property during pending litigation. She must now accept the risk that her contentions were misplaced.
14. Morphew/Ferros submitted no independent corroborating affidavits to support the 11 remaining claims. Neither did they proffer any other testimony in support of their contentions.
15. This matter is now concluded by this Court. To this end, this Court directs the Clerk of Court to mark all Lis Pendens associated with this consolidated case cancelled.

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instructions that it is to be delivered to the Ferros upon payment of the judgment amount to Dudek/Cross. Since the Ferros are pro se, and should choose to appeal this order, the Court suggests they review Rule 241 (b) (1) SCACR stating the exception that money judgments are not stayed by an appeal as provided in South Carolina Code Section 18-9-130.

Conclusions of Law

1. Dudek/Cross have judgment against Ferros in the amount of $13,186.32.

2. The purchase price of the Ferros and Dudek/crosss contract shall remain at $303,000.00.

3. All remaining claims of Morphew and Ferros for alteration or amendment of the April 3, 2017 Order are denied. Except as modified herein, the April 3, 2017 Order remains.

4. Each Lis Pendens is and shall be cancelled. The Clerk of Court for Dorchester County is directed to enter appropriate documentation in the record of this case that each and every Lis Pendens cancelled.

Each of the Court's Findings of Fact shall also be construed as Conclusions of Law. Each of the Court's Conclusions of Law shall are also be construed as Findings of Fact. NOW, THEREFORE, IT IS

1. ORDERED, ADJUDGED, AND DECREED that Dudek/Cross shall be granted judgment against Ferros in the amount of $13,186.32. AND IT IS
2. ORDERED, ADJUDGED, AND DECREED that the purchase price of the Ferros and Dudek/Cross contract shall remain at $303,000.00. AND IT IS
3. ORDERED, ADJUDGED, AND DECREED that this order ends the case on remittitur from Court of Appeal. AND IT IS
4. ORDERED, ADJUDGED, AND DECREED that all Lis Pendens in this action are and shall be cancelled. The Clerk of Court is directed to enter cancellation of lis pendens against each lis pendens filed in this action, including such lis pendens filed prior to consolidation of the cases. AND IT IS
5. ORDERED, ADJUDGED, AND DECREED that the Order Setting Closing Schedule & Awarding Attorneys Fees entered April 3, 2017 is altered and amended only as specifically set forth above. AND IT IS

6. ORDERED, ADJUDGED, AND DECREED that all remaining claims set out in the joint Answer to alter or amend the April 3, 2017, order are hereby denied.

AND, IT IS SO ORDERED!

James E. Chellis
Dorchester County Master-in-Equity

St. George, South Carolina
May 17, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	CASE NO. 2013-CP-18-~~00074~~ 183

STEPHEN DUDEK and DOREEN CROSS,

Plaintiffs,

v.

THOMAS M. FERRO and LORRAINE B. FERRO,

Defendants

MOLLY MORPHEW,

Plaintiff,

v.

STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO,

Defendants.

MOTION OF PLAINTIFFS/DEFENDANTS STEPHEN DUDEK AND DOREEN CROSS FOR SUPERSEDEAS BOND

On November 6, 2014, this Court entered an Order enforcing a contract between Plaintiffs/Defendants Stephen Dudek and Doreen Cross and Thomas and Lorraine Ferro for the sale of certain real property located in Dorchester County, South Carolina, and Ordering specific performance of that contract. Both the Ferros, acting *pro se*, and Molly Morphew, the contingent purchaser of the property and now the occupant of the house located thereon, have filed Notices

of Appeal.[1] Pursuant to Rule 241 of the South Carolina Rules of Appellate Procedure, Plaintiffs/ Defendants Dudek and Cross would respectfully request that this Court order the posting of a supersedeas bond in order to stay further proceedings in this action, including the sale and delivery of the real property at issue.

On October 23, 2012, Dudek and Cross, as purchasers, entered into a contract with the Ferros, as sellers, for the purchase of a parcel of real property located near Summerville. Despite the existence of that contract, the Ferros entered into a separate contract on December 16, 2012, purporting to sell the same property to Morphew. This consolidated action arises from the existence of those two contracts: Dudek and Cross sued for specific performance of their contract, and Morphew brought suit to enforce her contract or, in the alternative, for damages. This Court determined the Dudek/Cross contract to be valid and enforceable, and found that the Morphew contract was contingent upon the termination of that contract.

S.C.A.C.R. 241(b) identifies the exceptions to the general rule that orders of the trial courts are automatically stayed when a proper notice of appeal is filed and served. Among the exceptions, orders that are not affected by the service of a notice of appeal, are "judgments directing the sale or delivery of possession of real property..." S.C.A.C.R. 241(b)(4). Although there remain unsatisfied contingencies in the Dudek/Cross contract, the Order of this Court expressly states that the Court "will order specific performance" of the Dudek/Cross contract. That Order is, pursuant to the plain language of S.C.A.C.R. 241(b), not subject to stay pending appeal.

Because of the length of time between the original execution of the Dudek/Cross contract and the Court's Order of specific performance, Plaintiffs/Defendants were granted the right to

[1] During the initial phase of this case, and through the filing of her Notice of Appeal, Molly Morphew was represented by Counsel. Her attorney has now been granted leave to withdraw. Upon information and belief, Morphew intends to proceed *pro se* on appeal.

update their due diligence on the property. *See*, Order of November 4, Conclusions of Law, ¶ 9. In accordance with that ruling, Dudek and Cross properly informed the Ferros and Morphew that they intended to schedule appropriate and necessary home inspections during the week of January 19, 2015.

On January 10, 2015, Molly Morphew responded to the notice of the scheduling of those inspections with an email to counsel for Dudek and Cross. Her email, which is attached hereto as Exhibit 1, makes it clear that she will not permit any access to the property ordered to be conveyed to Plaintiffs/Defendants. There has been no response from the Ferros, a matter which is, at this juncture, immaterial, as Morphew is in physical possession of the property. Although the Court's Order expressly authorized Plaintiffs/Defendants to extend their due diligence period in order to fully inspect the property anew, Morphew has stated that she will not allow Plaintiffs/ Defendants to attempt to continue to comply with the Order.

In addition to S.C.A.C.R. 241, Section 18-9-170 of the South Carolina Code of Laws also plainly states that execution of a judgment ordering the sale or delivery of possession of real property is not to be stayed pending appeal. Furthermore, the statute provides that no stay shall be granted "unless a written undertaking be executed on the part of the appellant, with two sureties..." Although there is little case law expressly addressing the scope of the statute, it is apparent that it applies in any situation in which the appellant takes an appeal from an order involving the sale or disposition of real property. *Parker v. Shecut*, 349 S.C. 226, 562 S.E.2d 620 (2002). In the instant case, although the contract for the sale of the property to Plaintiffs/ Defendants is still contingent upon financing, the Order from which Morphew and the Ferros appeal specifically grants Plaintiffs/Defendants specific performance, and the sale of the property at issue, dependent only on their ability to obtain financing. Financing, in turn, is dependent

upon, *inter alia*, inspections and appraisals. In order to keep Plaintiffs/Defendants from proceeding with the inspections, and any other persons who are required to view the property so that Plaintiffs/Defendants might complete their duties under the contract, Appellants are required to post a bond, secured by two sureties. Until this bond is posted, Appellants cannot simply unilaterally declare that "Cross/Dudek, and any persons in connection to this case and/or any persons contract to perform duties pertaining to the Order" are denied access to the property.

Both the grant and the amount of a supersedeas bond rest, in the first instance, in the sound discretion of the trial court. In this case, Plaintiffs/Defendants would request that Morphew and the Ferros be required to post a bond in the amount of Three Hundred and Three Thousand ($303,000.00) Dollars, the amount of their purchase contract. Plaintiffs/Appellants believe that a substantial bond is required under the particular circumstances of this case, especially in light of the fact that Morphew and the Ferros have demonstrated since late 2012 that they have no intention of complying with their contractual duties or the duty of good faith and fair dealing implied in all contracts. Plaintiffs/Defendants would, therefore, respectfully request that the Court order the posting of a supersedeas bond, secured by two sureties, in order to ensure that no waste occurs to the real property, and to guarantee their right to recover the property in the event the Court of Appeals denies the appeals. In the alternative, should the Court decline to order the posting of a bond in accordance with S.C.A.C.R. 241 and S.C. Code § 18-9-170, Plaintiffs/Defendants would respectfully request that Appellant Morphew, in particular, be held in contempt for failure to permit access to the property, access that this Court clearly deemed a necessary component of the extended due diligence period, and that she be further ordered to pay all of the fees and costs incurred by Plaintiffs/Defendants in the filing of the instant motion.

LAW OFFICE OF DAVID A. COLLINS, LLC

David A. Collins (SC Bar # 0010294)
P. O. Box 40578
Charleston, SC 29423
(843) 760-0220
Attorney for Cross and Dudek

March 25, 2015
North Charleston, SC

----Original Message----
From: molly morphew <firegirl0926@yahoo.com>
To: davidacollins2 <davidacollins2@aol.com>
Cc: Lorraine Ferro <lbferro3200@gmail.com>
Sent: Sat, Jan 10, 2015 9:50 pm
Subject: Re: Civil Action No.: 2013CP1800074 consolidated in Civil Action No. 2013CP1800183; Appeal Notice

David,

Good evening :-)

As to your request for your clients wanting to scheduleinspections during the week of January 19th, I have no say so intheir right to do so.

As to your clients, or persons contracted by your clients,gaining access to the property during said week of scheduled inspections, Iwill say negative. I feel it would beunjust of me to allow your clients, Doreen Cross and Stephen Dudek to spendvaluable time and money to perform such items on a contract that is not at thistime enforceable (Order, paragraph 18 under Findings of Fact) and to a case that is now under appeal.

As I understand it, the filing of the appeal suspendsrendition of the trial courts Order until a signed, written order is entered,disposing of the motion (appeal), or until the motion is withdrawn or abandonedby the moving party. Hence, the Cross/Dudek Contract has not been reset until the Order has become the Lawof the Case (Order, paragraph 18 under Findings of Fact).

Per reasons stated above, Appellate Morphew, denies Cross/Dudek,and any persons in connection to this case and/or any persons contracted toperform duties pertaining to the Order, any access for any reason (unlessgranted permission from Appellate Morphew) to property 788 E Butternut,Summerville, SC.

As to answer your statement that I'm required to obtain asuperseadas bond, I understand that because I have an automatic stay per Rule62(a), I am not required to obtain a superseadas bond, since it is only subject to the exceptions [Injunctions,Receivership, and Accountings] (see Rule 62(a) and Rule 62(d)).

Also, since I am pro se, please include me in all motions,filings, etc.

Cordially yours,

Molly

Molly Morphew, pro se
Appellate Case No.

Cc: Thomas andLorraine Ferro, pro se, combinedAppellate

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	CASE NO. 2013-CP-18-~~00074~~ 183
STEPHEN DUDEK and DOREEN CROSS,)	
)	
Plaintiffs,)	
)	
v.)	
)	
THOMAS M. FERRO and LORRAINE B. FERRO,)	
)	
Defendants)	
MOLLY MORPHEW,)	CERTIFICATE OF SERVICE
)	
Plaintiff,)	
)	
v.)	
)	
STEPHEN DUDEK, DOREEN CROSS, THOMAS FERRO and LORRAINE FERRO,)	
)	
Defendants.)	

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

Molly Morphew
788 E. Butternut Rd.
Summerville, SC 29483

Thomas and Lorraine Ferro
5501 Carson Street
Denver, CO 80239

David A. Collins

Charleston, South Carolina

March 25, 2015

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2018-CP-181661
	)	
Molly M. Plaintiff,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**FIRST AMENDED COMPLAINT**
	)	**(JURY TRIAL DEMANDED)**
Stephen Dudek and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

FILED-RECORDED
2020 MAR 12 PM 4:28
CHERIL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff, Molly M. Morphew (hereafter "Plaintiff" or "Morphew") and pursuant Rule 15(a) SCRCP and Federal Rule 15(a)(1) and 15(c), hereby brings this AMENDED complaint for Trespass upon Easement and Trespass To Real Property against Stephen Dudek and Doreen Cross (hereafter "Defendants" or "Dudeks") for intentionally and unlawfully breaching the water easement to the Plaintiff's property, destroying her property, and preventing use and enjoyment of her property. Further Plaintiff argues the Defendants have breached their contract and are in contempt of a court order(s), and have harassed and continue to harass Plaintiff and her family in their actions and undue behavior. Additionally, Plaintiff alleges the Defendants are not bona fide purchasers, therefore are trespassers.

Due to the Defendants' intentional and unlawful behavior, Plaintiff has been harmed and asks this court to issue an order for damages and all undue costs to the Plaintiff as a result of their actions or non-actions. Plaintiff claims negligence in part of the Defendants' reckless behavior or lack of care as it created a nuisance in its actions. Therefore, Plaintiff is asking for damages to put the Plaintiff and her property in the position both would have been in had the injuries not occurred.

To: THE DEFENDANTS ABOVE NAMED:

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

1. That the Plaintiff, Molly M. Morphew, is a citizen and resident of the County of Dorchester, State of South Carolina.
2. That upon information and belief, Defendants Stephen Dudek and Doreen Cross are residents of Dorchester County, State of South Carolina.
3. The Defendant(s) or its agent(s)' named above have breached their contract, and have Trespassed upon Easement.
4. Defendants intentionally damaged Plaintiff's property and without permission of Plaintiff.
5. The Defendants have intentionally committed such acts in order to harass Plaintiff.
6. Plaintiff alleges the Defendants actions have been in retaliation of the pending Fraud, Constructive Trust and "Original" action(s) against them.
7. Additionally, the Defendant's actions have prevented Plaintiff from the normal care of her property, the living in or enjoyment of her home and property, and/or to inconvenience Plaintiff.
8. The Defendants are not bona fide purchasers, therefore are trespassers.
9. The Defendants have failed to or intentionally failed to act in good faith and fair dealings or in a decent manner.
10. Therefore, due to the Defendants' current actions, and their prior history of misrepresentations, perjury and deceit on the court and to Plaintiff in litigation as stated herein, Plaintiff feels the only way to resolve this issue is to bring it before this Court for review and resolution.

VENUE AND JURISDICTION

11. The Plaintiff re-alleges the claims contained in the preceding paragraphs as though fully restated herein.

12. 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.

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

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

FACTS

15. The Plaintiff re-alleges the claims contained in the preceding paragraphs as though fully restated herein.

16. On or about 1998, Thomas and Lorraine Ferro purchased an 8-acre tract of land and built on that land a house and a barn.

17. Since 1998, the water line beneath the Ferros' property (788 E. Butternut Rd, Summerville, SC) has been divided to serve both the main house and the barn.

18. On October 24th, 2012 the Defendants entered into a sales contract with the Ferros to purchase 6 acres and the main house only (herein known as the "main house"), leaving the remaining 2-acres and barn (See **Exhibit A**, Dudek/Cross sales contract, October 24, 2012).

19. At the time of said contract ratification, and at the demand of the Defendants, the 8-acre property was subdivided by the sellers into two parcels, - a 6-acre parcel with the main

house (788 E. Butternut Rd.) and a 2-acre parcel and the barn (786 E. Butternut Rd., Summerville, SC).

20. A survey was performed October 25, 2012. Subdivision recorded on November 20, 2012 (See **Exhibit B**, Recorded Survey, November 20, 2012)

21. The water line leading to the main house continued to serve both pieces of property.

22. Included in the Defendants' sales contract was a specific condition or agreement declaring "*Buyer shall grant water and sewer easement to adjacent two acres*" (See **Exhibit C**, Addendum B of Dudek/Cross sales contract, October 24, 2012).

23. On November 30, 2012, the Defendants' sales contract expired. No closing was scheduled, offered or had occurred.

24. On or about December 3, 2012 the Defendants allegedly claimed the 'no fault of either party' extension within their sales contract, extending the sales contract to December 15th, 2012.

25. The "no fault" extension clause expressly terminated the sales contract on December 15th, 2012.

26. On December 16, 2012, when the Defendants failed to schedule a closing or close, the Ferros sent a notice of cancellation/termination to the Defendants.

27. On the evening of December 16th, 2012 Plaintiff entered into contract for the 6-acre tract property (main house).

28. In January 2013, the barn on the 2-acre tract was converted to a separate residence (herein known as "little house") at which time the main house water line continued to serve both the main house and the little house.

29. After the barn was converted, the Ferros rented out the little house and 2-acres.

30. The water line leading to the main house continued to serve both pieces of property.

31. On or about January 11, 2013, and only after becoming aware of a subsequent and secured buyer, the Defendants filed a lis pendens to prevent that sale **(See Exhibit D,** Email, January 15, 2013/lis pendens January 11, 2013)

32. Then on January 15th the Defendants filed a second lis pendens and complaint for Specific Performance against the sellers Ferro to further prevent any sale (Case No. 2013-CP-18-0074).

33. On January 31, 2013 after receiving notice the Defendants refused to sign the termination notice from the Ferros, and after the eminent passing of her closing date of January 31, 2013, Plaintiff filed a complaint for Specific Performance.

34. On June 1, 2013, Plaintiff signed a month-to-month lease for the main house and 6-acres.

35. In January 2014, Plaintiff purchased the 2-acre tract and little house (herein known as the "dominant tenement").

36. At said time, an easement was created.

37. Plaintiff continued to lease and remain in the main house and 6-acre tract (herein known as the "servient tenement") after her purchase of the dominant tenement.

38. The water line leading to the main house continued to serve both pieces of property.

39. In June 2014, a two-day trial in the Court of Equity ensued.

40. After discovering new evidence after trial, but before the court Order of November 6th, 2014 attesting the Defendants had actually been denied lending due to making their initial [mortgage credit] application with an expired sales contract, the Ferros, pro se, filed a Petition to the courts on or about September 10, 2014.

41. Defendants were declined mortgage credit due to their failure to complete their application (i.e., provide a valid and negotiable sales contract).

42. The Petition contained validated and irrefutable proof the Defendants had critically breached their sales contract at their own hand and did not obtain financing, therefore neither the Defendants had a legal right to compel specific performance nor did the court have the ability to adjudicate specific performance in favor of the Defendants.

43. Also within that petition it provided:

    a. The Defendants' and its witnesses gave false or misrepresented material evidence or testimony before and/or during trial, and

    b. Proved explicitly or without a doubt that all times material:

        i. The Defendants did not have a valid and negotiable sales contract,

        ii. Had been denied lending through their own fault, and

        iii. Had never been ready and able to close escrow.

44. The Master declared he was neither going to consider the pro se's petition or closing statements nor their newly discovered evidence, but only the attorney's closing statements (see **Exhibit E**, email Ferro to Plaintiff, September 10, 2014).

45. On November 6, 2014 the Master issued his Order for Specific Performance first in favor of the Defendants, declaring or finding fact based on false evidence that the Defendants' sales contract was valid and negotiable, they had secured financing and that the Defendants were ready to close and able to tender payment to close escrow per their sales contract.

46. No written or documented evidence has been produced or is in existence that supports the Master's findings or the Defendants' and their witnesses' testimony and evidence.

47. Such proof has never been demanded by the court or provided by the Defendants, even after many requests and motions made by the Plaintiff.

48. Instead, Plaintiff's many requests for Defendants' 'proof of 2012 financing' and 'ability to tender payment in 2012' have been refused by the Defendants; or denied by the Master, stating Plaintiff has no right to it, or that their failure to meet Specific Performance has nothing to do with 'ready, able and willing' [to close on the contract in 2012]. (See **Exhibit F**, Transcript, 59(e) Motion hearing, May 12, 2017, pg. 34 lines 23 thru pg. 35 line 1 and line 19-21, Case No. 2013-CP-18-0183)

> THE COURT: "So why are you addressing in paragraph 1 the specific performance issue when that's already been decided..."
>
> THE COURT: "What does that have to do with ready, able and willing?..."

49. The Ferro Petition or its facts and allegations were not ruled on or addressed in the Master's Order of November 6th, 2014. (See **Exhibit G**, Order, November 6, 2014 Case No. 2013-CP-1800183).

50. Plaintiff appealed the Master's Order, followed by the Ferros appeal. Shortly after, both appeals were combined and again included the evidence of the Defendants' unlawful actions.

51. Pending appeal, on August 24, 2016 Plaintiff filed an independent action, including but not limited to, fraud/fraud on the court, conspiracy to commit fraud, intentional infliction of emotional distress, bad faith and unfair dealings, perjury, misrepresentation, forgery, obstruction of justice, and tortious interference with existing contractual relations (Appellate Case No. 2018-002185).

52. Just as important, in May of 2017 during a hearing for Defendants' motion for a closing order in the original case, Plaintiff raised issue with the Master as to the validity of its 2014 Order due to the extensive and false testimony of the Defendants (and its witnesses), the Defendants' actions or failures to meet the strict laws and special rules or maxims of equity, the extensive and contradicting facts and circumstances of the case, or due to their fraud/fraud on the court.

53. Though presented with validated and irrefutable proof the Defendants could not lawfully compel Specific Performance or that the court could not lawfully, or lacked the inherent power to order Specific Performance, the Master issued an Order and declared the allegations or issues raised by the Ferros or Plaintiff to have no merit [or are without proof].

54. Plaintiff appealed the closing order of May 17th, 2017 and said original case is currently pending appeal (Appellate Case No. 2017-001393).

55. The Master's Order led to the Defendants' obtaining the servient property.

56. The Defendants "purchased the subject property subject to the terms of the purchase contract. In so doing, Plaintiffs agreed via the contract to grant a "water and sewer easement." (**Exhibit C**) (Also, See *Stephen Dudek and Doreen Cross v. Commonwealth Title Company, LLC* et al, District Court Case No: 2:19-cv-03237-DCN) (**Exhibit H** Paragraph #45, Defendants' Answer to Complaint, District Court Case No: 2:19-cv-03237-DCN)

57. The water line leading to the main house continued to serve both pieces of property.

58. Shortly after the Defendants closed on the property, Plaintiff filed an action for Constructive Trust, alleging the Defendants obtained the property by fraudulent or unlawful means, and

they knew of their unlawful actions and of Plaintiff's claim to the property before purchase, therefore were not bona fide purchasers. (Appellate Case No. 2018-000507).

59. On or about February 10th of 2018, Plaintiff was attempting to repair the condition of her property in order to move her terminally ill mother in for care when the Defendants refused water easement.

60. Water easement or water to her home was disabled by a 'valve' the Defendants installed or had installed on the water line leading to the main house.

61. Plaintiff had no knowledge of the existence of the 'valve'.

62. It appears the Defendants thought Plaintiff hadn't had water to her home for months, and only realized after they saw her pressure washing that what efforts they had previously and unlawfully taken to prevent her from water easement hadn't worked.

63. Plaintiff and her friend, Bruce Brown, walked over and turned the water back on; Defendant Dudek proceeded to turn it back off. When Mr. Brown went to lean down to turn the water back on, Defendant Cross, who was in her SUV, lurched forward acting as if she was going to run him over. Mr. Brown moved quickly back.

64. Plaintiff immediately called the Sheriff's department due to Defendant Cross' intentional intent to harm Mr. Brown.

65. Plaintiff pointed out to the Defendants their 'easement agreement' contained within their sales contract.

66. Defendant Cross adamantly refused to turn the water back on.

67. The Dorchester County Deputy convinced Defendant Dudek that 'water was important for living and to turn off someone's water, especially without notice, was not a decent or proper thing to do'.

68. Defendant Cross was asked by the officers to leave the scene due to her aggressive behavior.

69. Defendant Dudek agreed to turn Plaintiff's water back on if Plaintiff agreed to not pressure wash her home. Plaintiff agreed, and Defendant Dudek turned the water back on.

70. Defendant Dudek also stated to Plaintiff "we can work this out next week." The Defendants never attempted to communicate or 'work things out' with Plaintiff.

71. Instead, shortly after and again without notice, the Defendants disabled or permanently disabled water easement to Plaintiff's property by destroying her water line.

72. Said action by the Defendants have prevented Plaintiff from living in her home or maintaining and repairing her home since on or about February 10, 2018.

73. With the Dudek's destruction and prevention of her easement, Plaintiff has had to obtain alternate living arrangements until this matter is heard and decided by the courts.

74. Plaintiff has had to support two (2) homes: 1) the mortgage on her property (dominant tenement) that the Defendants have made uninhabitable, and 2) rent on an apartment.

75. Further, whenever Plaintiff or her friends or family are at her home, the Defendants have harassed or caused extreme discomfort to Plaintiff and her family, driving slowly by and starring or incessantly watching anyone at the Plaintiff house when they are outside.

76. On November 29, 2017 at 10:10am, Defendant Cross was driving down her long driveway and was being so intrusive and intent on staring that she backed up to get a better look and ended up backing her SUV into the neighbor's yard and into their ditch. A tow truck had to be called to pull her out.

77. Their intentional breach of contract or unlawful actions, prior and current, and/or lack of decency or integrity on part of the Defendants have become extreme and have caused Plaintiff undue costs and distress.

78. The Defendants' actions are without legal or moral justification.

79. The Defendants' actions and harassment have been preventing her from the enjoyment and use of her own home.

80. The Defendants breach of contract/Trespass upon Easement or the lack of water to Plaintiff's home has forced Plaintiff and her family to secure additional living arrangements.

81. Being at her home, whether for an hour or overnight, has become excessively stressful for Plaintiff as their behavior has been unjustified and shows a lack of decency in general.

82. Moreover, the added concern of Plaintiff's underage daughter's distress and extreme discomfort worrying over the Defendants unpredictable behavior or being in the vicinity of the Defendants has become intolerable.

83. Plaintiff and her family will have to remain off her property at least until the water easement is corrected and secured, and a guarantee no further harassment will occur.

84. Although, Plaintiff cannot foresee the possibility of moving back into her house so long as the Defendants are neighbors for there is no way she or her family to enjoy their home with the unknown what the Defendants could or would do' to harass Plaintiff and her family, especially since Plaintiff works many days out of state and she cannot leave her daughter at her home with the fear of the Defendants causing further discomfort or issues.

85. Plaintiff respectfully requests of this court:

    a. For a declaration of the property or Plaintiff's water easement,

    b. An injunction prohibiting the Defendants from further interfering with the easement,

    c. An order for Trespass to Real Property,

    d. A separate injunction prohibiting the Defendants from any further harassment and/or indecent behavior towards her and her family,

e. Damages to restore Plaintiff both structurally and financially back to her position before they trespassed upon easement and/or Trespassed to Real Property,

f. Punitive damages,

g. Sanctions for the Defendants contempt,

h. For such other and further relief as the court may deem proper.

FOR A FIRST CAUSE OF ACTION
(Trespass Upon Easement)

86. The Plaintiff re-alleges the claims contained in the preceding paragraphs as though fully restated herein.

87. The Defendants specifically agreed to grant water and sewer easement to the adjacent 2-acre property (Plaintiff property or "dominant tenement") at purchase of the 6-acre tract ("servient tenement") (See **Exhibit C**)(See **Exhibit H**).

88. The easement is Appurtenant.

89. The easement in a CONTRACT AGREEMENT is an 'expressed' easement.

90. In 2012, the Ferro land was divided into two (2) smaller pieces that has a water line that serves both pieces of property.

91. In 2013, one of the pieces (2-acre tract and small house) was sold to Plaintiff (becoming the dominant tenement).

92. Plaintiff was granted water easement by the sellers in a verbal agreement, plus the easement required if purchasing the servient tenement; or if the Defendants purchased said property the easement granted and agreed to by the Defendants as written in their sales contract.

93. Said easement is an express easement.

94. Said easement is an implied easement.

95. The water line leading to the main house continued to serve both pieces of property.

96. The Ferros retained ownership of the 6-acres and main house (servient tenement) until June 2017.

97. The water line leading to the main house continued to serve both pieces of property.

98. The Ferros honored said easement until the sale of the servient property in June 2017.

99. In 2017, Thomas and Lorraine Ferro (owners) sold the 6-acres and main house or servient tenement to Dudek and Cross with the condition "*Buyer shall grant water and sewer easement to adjacent two acres*" (See **Exhibit C**) (See **Exhibit H**).

100. The Defendants were aware of the 'easement' at time of contract ratification in 2012, and actual easement at the time of sale in 2017.

101. From 1989 through approximately February 10, 2018 the main water line that runs under the property has served the entire 8 acres, including the main house and the little house, currently a 6-acre tract (servient tenement) and a 2-acre tract (dominant tenement).

102. All parties to this case have agreed to the water easement, whether by legal document or verbal agreement.

103. All parties to this case have honored said water easement for a substantial amount of time, therefore have waived any right to deny easement.

104. Therefore, an easement was also created by PRIOR USE.

105. The 'expressed', 'equitable', 'implied' and/or 'prior use' easement allows Plaintiff (owner of dominant tenement) uninhibited use of the water that runs from the main house water line to her property.

106. Instead, the Defendants intentionally and/or with intent to harm, denied easement or breached their sales contract by turning off or disabling the water supply to the [Plaintiff] property or dominant tenement.

107. Therefore, the Defendants have trespassed upon the easement.

108. The Defendants knew or should have known of the harm their actions would cause or create.

109. The Defendants' actions are unlawful.

110. The Defendants' actions are indecent.

111. The Defendants' actions are in bad faith and unfair dealings.

112. The Defendants' actions have prevented and are continuing to prevent her use of her property, specifically from living in, enjoyment of and/or maintaining her property.

113. The Defendants' actions have causing extensive and undue costs and emotional distress and/or stress.

114. The Plaintiff has had to secure alternate living arrangements due to the Defendants actions, including costs to secure and move.

115. The Plaintiff has had to support two (2) 'households' due to the Defendants' actions or non-actions.

116. The Defendants have a legal obligation to restore water easement to the dominant property.

117. The Defendants have a legal obligation to restore Plaintiff back to her position before they trespassed upon Plaintiff's easement, both structurally and financially.

118. The Defendants substantially and unreasonably interfered with the Plaintiff's use and enjoyment of her easement by acting or failing to act.

119. Therefore, the Plaintiff is entitled to an Order of this Court for a judgment in damages, including special damages (including but not limited to rental equipment and storage, and any maintenance required to bring the property back up to a reasonable level of consideration) for Plaintiff in the amount to be determined by this court or at trial.

120. The Plaintiff is entitled to an injunction to permanently enjoin the Defendants from interfering with Plaintiff's use of the easement.

121. The Plaintiff is also entitled to an injunction prohibiting the Defendants from any further harassment and/or indecent behavior towards her and her family.

FOR A SECOND CAUSE OF ACTION
(Intentional Interference with and Obstruction of an easement; bad faith and unfair dealings)

122. The Plaintiff re-alleges the claims contained in the preceding paragraphs as though fully restated herein.

123. The Defendants took action to disable, then to permanently disable, Plaintiff's easement.

124. The Defendants intentionally took action to interfere with and obstruct Plaintiff's easement.

125. The Defendants substantially and unreasonably interfered with the Plaintiff's use and enjoyment of her easement by acting or failing to act.

126. The Defendants have a legal obligation to restore Plaintiff back to her position before they trespassed upon Plaintiff's easement, both structurally and financially.

127. Therefore, the Plaintiff is entitled to an Order of this Court for a judgment in damages, including special damages (including but not limited to rental equipment and storage, and any maintenance required to bring the property back up to a reasonable level of consideration) for Plaintiff in the amount to be determined by this court or at trial.

128. Therefore, the Plaintiff is entitled to an Order of this Court for a judgment in damages for Plaintiff in the amount to be determined by this court or at trial.

129. The Plaintiff is entitled to an injunction to permanently enjoin the Defendants from interfering with Plaintiff's use of the easement.

FOR A THIRD CAUSE OF ACTION
(Nuisance)

130. The Plaintiff re-alleges the claims contained in the preceding paragraphs as though fully restated herein.

131. The Defendants trespassed on Plaintiff's right to the exclusive, peaceable possession of her property, and was hurt, inconvenienced and damaged.

132. Their acts and continuance of said acts constitutes a nuisance for an unreasonable period.

133. The Defendants action(s) or lack of action have substantially and essentially interfered with her and her family's enjoyment of life or property.

134. The Defendants action(s) or interference is unreasonable under the circumstances.

135. Due to the nuisance the Defendants have created, they have a legal obligation to restore Plaintiff back to her position before they trespassed upon Plaintiff's easement, both structurally and financially.

136. Therefore, the Plaintiff is entitled to an Order of this Court for a judgment in costs and damages, including special damages (including but not limited to rental equipment and storage, and any maintenance required to bring the property back up to a reasonable level of consideration) for Plaintiff in the amount to be determined by this court or at trial.

137. The Plaintiff is entitled to an injunction to permanently enjoin the Defendants from creating any further nuisance.

138. The Plaintiff is also entitled to an injunction prohibiting the Defendants from any further harassment and/or indecent behavior towards her and her family.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract; Contempt)

139. The Plaintiff re-alleges the claims contained in the preceding paragraphs as though fully restated herein.

140. The Defendants have breached their sales contract, specifically the water easement provided to the dominant tenement or Plaintiff property.

141. The Defendants obtained an Order on November 6, 2014 for Specific Performance on that very same sales contract.

142. The Defendants obtained an Order on May 17th, 2017 to close on said servient tenement per that very same sales contract.

143. The Defendants have failed to obey an Order(s) for all parties to specifically perform said contract.

144. The Defendants have failed to or intentionally failed to provide water easement to the 'adjacent 2-acre property' (dominant tenement) as specifically conditioned within their sales contract, and/or as ordered to be specifically performed.

145. The Defendants have intentionally failed to follow the court Order of November 6th, 2014 and/or the Order of May 17th, 2017 to specifically perform said contract, specifically "*Buyer shall grant water and sewer easement to the adjacent two acres.*"

146. Therefore, the Defendants are in contempt for their intentional failure to follow court order(s).

147. Defendants should be sanctioned for their intentional contempt.

148. Plaintiff owns the 'adjacent two-acre property' or dominant tenement.

149. The Defendants, owners of the servient property, have an agreement with Plaintiff, as the owner of the dominant property, to provide said water easement.

150. The Defendants have breached said agreement or contract agreement.

151. The Defendants breached the implied covenant of good faith and fair dealing contained in the easement's running covenant.

152. The Defendants' actions or non-action(s) are unlawful.

153. The Defendants' actions or non-action(s) are intentional.

154. The Defendants' actions or non-action(s) are indecent.

155. The Defendants' actions or non-action(s) were and/or are meant to harm the Plaintiff.

156. The Defendants should be sanctioned for their contempt and/or breach.

157. The Defendants' actions or non-action(s) have prevented or intentionally prevented her use of her property, specifically from living in, enjoyment of and/or maintaining her property.

158. The Defendants' actions or non-action(s) have caused extensive harm with undue costs and vast emotional distress and/or stress.

159. Therefore, the Plaintiff is entitled to an Order of this Court for a judgment in damages, including special damages (including but not limited to rental equipment and storage, and any maintenance required to bring the property back up to a reasonable level of consideration) for Plaintiff in the amount to be determined by this court or at trial.

FOR A FIFTH CAUSE OF ACTION
(Negligence and strict liability)

160. The Plaintiff re-alleges the claims contained in the preceding paragraphs as though fully restated herein.

161. The Defendants owed and still owe Plaintiff a duty of care.

162. The Defendants did not act according to the standard of care expected of the reasonable man or the reasonable professional.

163. The Defendants' negligence caused the Plaintiff's loss(es).

164. The Defendants are liable for the Plaintiff's loss(es).

165. The Plaintiff's loss was a foreseeable consequence of their breach of duty.

166. Therefore, the Defendants are liable to compensate the claimant by putting them in the position that they would have been had the negligence not taken place.

167. Therefore, the Plaintiff is entitled to an Order of this Court for a judgment in costs and damages, including any diminution of value of her property, deprivation of the use and enjoyment of the property, expenses incurred as a result of the Defendants' activities, and/or Plaintiff's consequential damages for Plaintiff in the amount to be determined by this court or at trial.

FOR A SIXTH CAUSE OF ACTION
(TRESPASS TO REAL PROPERTY)

168. The Plaintiff re-alleges the claims contained in the preceding paragraphs as though fully restated herein.

169. Defendants are not bona fide purchasers of 788 E Butternut Rd or the servient tenement.

170. Defendants had no legal right to the servient tenement.

171. Defendants had obtained the property unlawfully or fraudulently.

172. Defendants had express and constructive notice of Plaintiff's claim or legal claim to the servient tenement before the purchase date of June 2, 2017.

173. Defendants knowingly and maliciously interfered with the Plaintiff's possession or use of said property and have done so without consent of Plaintiff.

174. Further, as a trespasser, the Defendants unlawfully and intentionally destroyed Plaintiff's property and without permission

175. As a consequence, the Defendants are trespassers or criminal trespassers, and have continued their trespass, therefore is an ongoing invasion of possession of property.

176. The Defendants have a legal obligation to restore Plaintiff back to her position before they trespassed.

177. Plaintiff respectfully asks this court for an Order declaring Defendants trespassers.

178. Therefore, the Plaintiff is entitled to an Order of this Court for a judgment in costs and damages, including special damages (including but not limited to rental equipment and storage, and any maintenance required to bring the property back up to a reasonable level of consideration) for Plaintiff in the amount to be determined by this court or at trial.

179. The Plaintiff is entitled to an injunction to permanently enjoin the Defendants from trespassing.

CONCLUSION:

The Defendants trespassed or intentionally trespassed upon the easement to the Plaintiff's property, and therefore are liable to the Plaintiff's losses. The Defendants breached the expressed and/or equitable easement contained within their sales contract. The Defendants breached the implied covenant of good faith and fair dealing contained in the easement's running covenant. The Defendants failed to obey a court order or orders. The Defendants' continue to trespass and breach. The Defendants are not bona fide purchasers, therefore are trespassers. Due to the Defendants' actions or non-action(s), the Plaintiff has been unable to live or live properly in her house or on her property or maintain her property since February 2018, and has had to secure alternate living arrangements. Additionally, the Defendants unlawful obtainment of 788 E Butternut (or servient tenement) has brought the Defendants trespass upon easement and trespass to real property resulting

in the prevention of Plaintiff's lawful possession or ownership of said property, destruction of her property and harassment.

The Defendants have clearly demonstrated since closing on the neighboring property of Plaintiff that they again give no regard to the law or to any agreement or order, whether verbal or written, but instead do 'whatever they please' to whomever they please despite any legal obligations or possible ramifications, or harm it may cause.

The Defendants actions are intentional and/or were intended to harass and/or harm Plaintiff, or intended to harass and/or harm Plaintiff or to harm her for her pending civil actions against them, or to prevent Plaintiff from being a neighbor, though Plaintiff had purchased the dominant property several years before the Defendants purchased the servient tenement.

WHERE FORE, Plaintiff Plaintiff pray judgment against Defendants Cross and Dudek as follows:

<> A court Order demanding the Defendants to restore water easement to the adjacent two acres or dominant tenement (Plaintiff property) or monetary equivalent for an independent water line;

<> A declaration of the water easement;

<> An injunction prohibiting the Defendants from further interfering with the easement;

<> An injunction prohibiting the Defendants from any further harassment and/or indecent behavior towards her and her family;

<> Damages to restore Plaintiff both structurally and financially back to her position before they trespassed upon Plaintiff's easement;

<> An Order declaring Defendants not bona fide purchasers or trespassers to real property, therefore reversing the Defendants' purchase of the property;

<> Damages to restore Plaintiff both structurally and financially back to her position before they trespassed to real property;

<> Sanctions for their contempt and/or breach;

<> For costs of suit incurred herein; and

<> For such other and further relief as the court may deem proper.

Molly M. Plaintiff, Pro Se
45 Lullwater Dr. Unit #1416
Richmond Hill, GA 31324
(843) 514-7299

March 8, 2020

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2018-CP-181661
	)	
Molly M. Morphew,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Stephen Dudek and Doreen Cross,	)	
	)	
Defendants.	)	
	)	

FILED-RECORDED
2020 MAR 12 PM 4:28
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

I CERTIFY that on this date a copy of the foregoing First Amended Complaint was served on Defendants Stephen Dudek and Doreen Cross by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

Samuel M. Wheeler, Esquire
P.O. Box 40578
Charleston, SC 29423
Attorney for Defendants

Molly M. Morphew
45 Lullwater Dr. #1416
Richmond Hill, GA 31324

March 9, 2020

FILED-RECORDED

2020 MAR 12 PM 4:28

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT A

Exhibit

FILED-RECORDED

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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), Stephen Dudek, Doreen Crews (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 S Patterson 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 12/20/2012, 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.

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 $ ~~[illegible]~~ 203,000.00 Two 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

Carolina One Real Estate • Valley Road 1510 Old Trolley Road Summerville, SC 29485 Jason Mahaffey
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2013 JAN 15 PM 3:4
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 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:** The offer from Buyer shall be withdrawn at 5 o'clock p M. on October 29, 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 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 ~~November 30~~ December 7, 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 Lenders 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 wish until Closing

(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~~ December 7, 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

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that states that the infestation or damage noted in the report of 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

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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 I Isting 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 or 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

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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 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: Steph C Dal (Stephanie Dudek)	Date 21 OCT 2012	Time 1:45
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
BUYER: Dorothy Cross	Date 10 2012	Time 1:47
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48
SELLER: Thomas Ferris	Date 10/24/12	Time 11:45 AM
WITNESS: [illegible]	Date 10/24/12	Time 11:45 AM
SELLER: Kathleen Ferris	Date 10/24/12	Time 11:46 AM
WITNESS: Thomas 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

© 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 Hutchinson Rd.

Tax Map # 128-00-0-00 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 2.00. 2. Seller to make home 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 2260 sf house, storage bldg and 2 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

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

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

BUYER: Stephen Dodd	Date 21 OCT 2012	Time 1:45 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
BUYER: Deepika Gross	Date 10.20.12	Time 1:47 pm
WITNESS: Susan Nicholson	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Ivens	Date 10/24/12	Time 11:48
WITNESS: Kelly J Ivens	Date 10/24/12	Time 11:48
SELLER: Virginia Ivens	Date 10/24/12	Time 11:49
WITNESS: Kelly J Ivens	Date 10/24/12	Time 11:49

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Phone: 8434191015 Fax: 8432023169 Susan Nicholson

145 Revised
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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 N Buttercup Rd.

Tax Map # 128-00-00-000 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

The undersigned Parties hereby agree as follows:

Plus, 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 verify Septic system due to not locating of what is currently on the plat. 9. Seller to locate current 3 ea. Fencing markers where as 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 8 acres +/-

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. Dell (Stephen Dudek)	Date 20 OCT 2012	Time 1:45 pm
WITNESS: Susan Dudeloar	Date 10.20.12	Time 1:48 pm
BUYER: Deloris Green	Date 10.20.12	Time 1:47 pm
WITNESS: Susan Dudeloar	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Rene	Date 10/24/12	Time 11:48
WITNESS: Lily T Tyson	Date 10/24/12	Time 11:48
SELLER: Marguerite Rene	Date 10/24/12	Time 11:49
WITNESS: Lily T Tyson	Date 10/24/12	Time 11:49

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT B

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2012 NOV 20 PM 12:53
MARY A. CRAWLEY
DORCHESTER COUNTY, SC
L-195

FILED RECORDED
2012 MAR 12 PM 4:28
BARBARA SIMMONS-BOWERS
CLERK OF COURT
DORCHESTER COUNTY, SC
BOOK 0075 PAGE 0228

1752

CURVE	LENGTH	RADIUS	DELTA ANGLE	TANGENT	CH. BEARING	CHORD
C1	342.64	1479.83	13°15'38"	172.08	N 43°38'12" E	341.86

LINE	LENGTH	BEARING
L1	9.51'	N 83°10'38" W
L2	53.92'	S 10°35'59" W

LOCATION MAP

NOTES:

1) AREA AS DETERMINED BY THE COORDINATE METHOD.

2) THIS PROPERTY IS LOCATED IN FLOOD ZONE X.
SEE FIRM COMMUNITY (450058 0230 B)
REVISED: APRIL 15, 1994.

3) ALL PROPERTY CORNER ALONG C/L OF CREEK NOT LABELED ARE CALCULATED POINTS.

4) ANYTHING SHOWN OUTSIDE THE DEFINED BOUNDARY IS FOR DESCRIPTIVE PURPOSE ONLY.

5) THE PUBLIC RECORDS REFERENCED ON THIS PLAT ARE ONLY USED AND/OR NECESSARY TO THE ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY. THEY ARE NOT AND DO NOT CONSTITUTE A TITLE SEARCH.

6) THIS PLAT HAS BEEN DONE FOR THE USE AND PURPOSE OF THE CLIENT ASCRIBED AND CONTRACTED WITH TO PERFORM THE REQUESTED SERVICES. ALL OTHER PARTIES ARE SUBSEQUENTLY PUT ON NOTICE AS TO THE LIMITED DEGREE OF RELIANCE UPON THIS PLAT BY THIRD PARTIES.

7) DISTANCE SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES.

8) NO SUBSURFACE OR ENVIRONMENTAL INVESTIGATION OR SURVEYS WERE PERFORMED BY ASHLEY SURVEYING, INC. FOR THIS PLAT. THEREFORE THIS PLAT DOES NOT REFLECT THE EXISTENCE OR NONEXISTENCE OF WETLANDS, CONTAMINATION, OR OTHER CONDITIONS WHICH MAY AFFECT THIS PROPERTY.

REFERENCES:

PLAT BY J. O'HEAR SANDERS, JR., DATED JANUARY 27, 1965
RECORDED IN PLAT BOOK 15, PAGE 16.

PLAT BY PAUL C. LAWSON, JR., DATED OCTOBER 9, 1993
RECORDED IN PLAT CABINET I, SLIDE 81

PLAT BY ANDREW C. DILLETTE, DATED MARCH 8, 1990
RECORDED IN PLAT BOOK Q, PAGE 371.

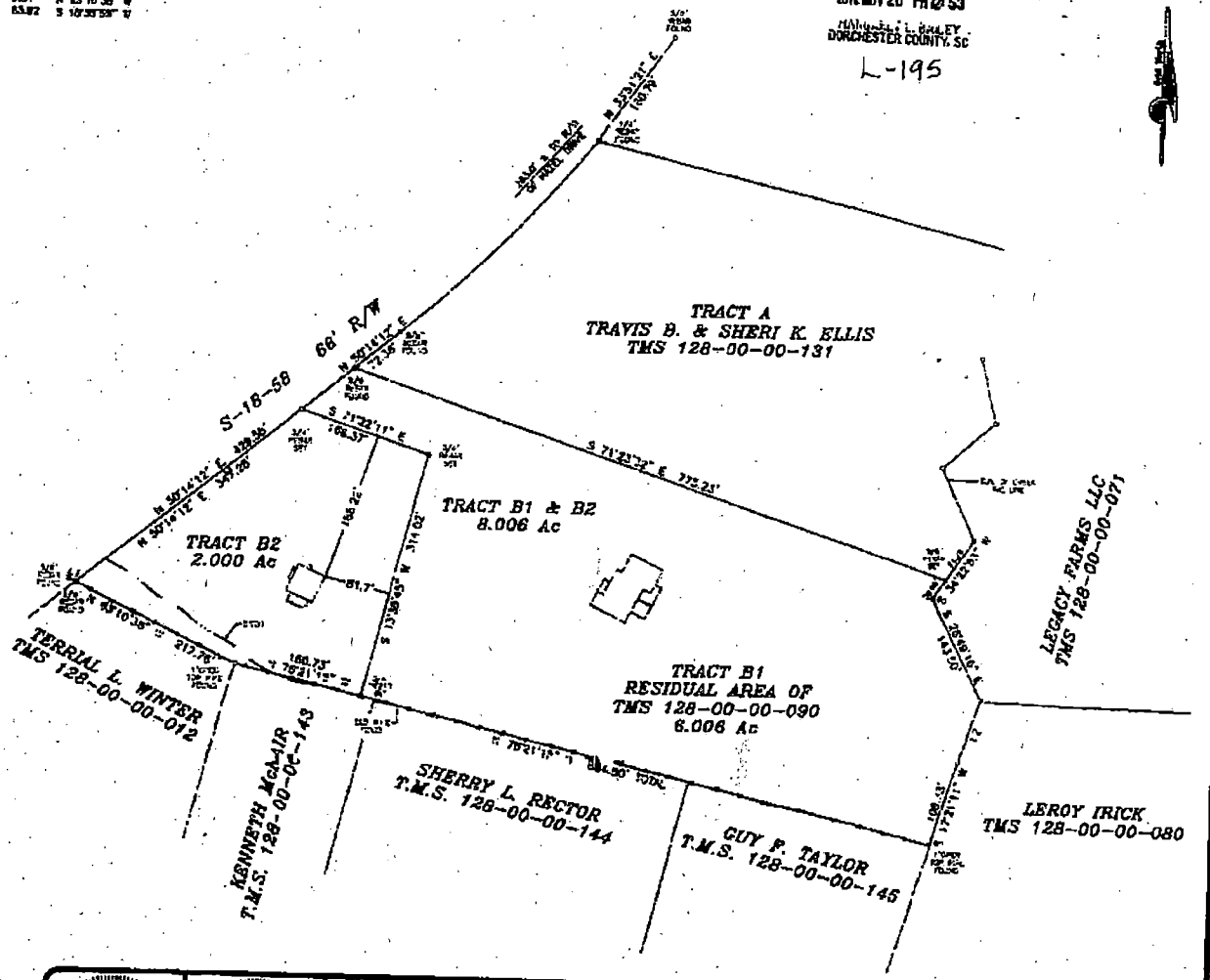
DORCHESTER COUNTY PLANNING COMMISSION

[redacted] Action Pursuant to ARTICLE

[illegible]

Date 11/19/2012

Minor Subdivision



I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARD MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN.

Paul C. Lawson

PAUL C. LAWSON, JR. S.C. REG. NO. 14181

SCALE : 1" = 100'

0' 100' 200'

OCTOBER 24, 2012

SOUTH CAROLINA REGISTERED LAND SURVEYOR PAUL C. LAWSON

ASHLEY LAND SURVEYING, INC. CERTIFICATE OF AUTHORIZATION

SUBDIVISION PLAT CREATING TRACT B2
(OUT OF TMS 128-00-00-090) TARCT B
OWNED BY
THOMAS M. AND LORRAINE B. FERRO
TARACT B1 BEING CONVEYED TO
STEPHEN DUDEK & DOREEN CROSS
LOCATED NEAR JEDBURG
DORCHESTER COUNTY, SOUTH CAROLINA

ASHLEY
LAND SURVEYING, INC.
306 SANCARRE PARKWAY SUMMERVILLE, SC 29485
TELEPHONE: (843) 871-4416 FAX: (843) 871-9558
EMAIL: PLATS@ASHLEYLS.COM WEB: WWW.ASHLEYLS.COM

JOB NUMBER 2012-0826-002 PCL

ADDENDUM B

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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 E Butternut Rd.

Tax Map # 138-00-00-000 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 60 Gallons Discolumno dye to not terible of what is currently on the mbr. 9. Seller to leave current 3 sm. Fencing section 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 8 acres

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. Dodd (Stephen Dodd)	Date 20 OCT 2012	Time 1:45 pm
WITNESS: Susan Buckalew	Date 10.20.12	Time 1:48 pm
BUYER: Karen Dodd (Karen Dodd)	Date 10.20.12	Time 1:47 pm
WITNESS: Susan Buckalew	Date 10.20.12	Time 1:48 pm
SELLER: Thomas Flinn	Date 10/24/12	Time 11:48
WITNESS: Ashley T Flinn	Date 10/24/12	Time 11:48
SELLER: Marguerite Flinn	Date 10/24/12	Time 11:49
WITNESS: Ashley T Flinn	Date 10/24/12	Time 11:49

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT D

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Joseph K. Qualey

On Tue, Jan 15, 2013 at 9:09 AM, Joseph K. Qualey <joequaley@qlawfirm.com> wrote:

Mr Ferro we discussed this matter on thursday and you indicated you were moving forward to secure another Contract and that you did not

intend to sell to the present Buyers.

I told you that their atty may file a Lis Pendens to attempt to stop any such sale

Pls see attached Lis Pendens which was in fact filed.

Sincerely,

Joe Qualey

Joseph K. Qualey
23 Broad Street

Charleston, SC 29401
O: 843-577-3434
F: 843-577-2241
C: 843-693-3434
joequaley@qlawfirm.com

1/18/2013

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	)	

CE I F ED COPY
3 JAN 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

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2020 MAR 12 PM 4:29

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT E

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

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2020 MAR 12 PM 4:29
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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2020 MAR 12 PM 4:29

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT F

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2008 MAR 12 PM 2:09
CHERYL ADAMS
CLERK OF COURT
MONROE COUNTY

MS. FERRO: Over the phone. We -- you know, Tom, myself and Molly being that we were going to submit a joint Answer.

THE COURT: What was your input into that filing? What did you suggest?

MS. FERRO: Well, it was a combination, know, it was a combination.

THE COURT: No, I don't know, Ms. Ferro. That's why I'm asking you. Tell me what your specific input into that Answer was. What was your -- what did you ask to be included?

MS. FERRO: Well, attorney's fees, you know, were at the top of my list.

THE COURT: Okay. We've covered that. Next?

MS. FERRO: Contract -- the contract being -- the amount being changed. Just in general, the -- you know, the Answer in general. Specifically, Attorney Collins, you know, and I believe I mentioned it earlier, that he -- it's all of the timing. Let's see. The purchase price, the financing, proof of financing.

THE COURT: Let me ask you a question about that. Why is that a particular --

if the -- there's something in the Answer about proof of -- let me read it.

Where did this concept of a draft order come from? What is that about?

MS. FERRO: What do you mean, draft order?

THE COURT: Well, in your Answer you said, to save time and redundancy, this Answer response references the draft order only. What draft order?

MS. FERRO: I believe it was for the original hearing that we had.

THE COURT: You don't really know?

MS. FERRO: Well, that's my understanding as far as the draft order. It was for a response to the original hearing from March 25th. And I believe that the draft order would be for your filing from April 5th.

THE COURT: So you thought that was a draft order?

MS. FERRO: Yes. But due to our not coming in to --

THE COURT: So why are you addressing in paragraph 1 the specific performance issue when that's already been

decided by the Court of Appeals?

MS. FERRO: Well, we never agreed -- I guess we never came to agreement on that.

THE COURT: Well, you don't need to. The Court of Appeals made that decision for you by affirming my decision that the contract was to be specifically performed by you and the property sold to Mr. Dudek and Ms. Cross. So why are you revisiting that issue?

MS. FERRO: Well, because we -- the mortgage credit, the financing, was never actually finalized, per the contract. We're still stating that we don't agree that the bank ever had a contract -- a sales contract actually from the Realtor. They said the contract they had was illegible and they needed us to sign another contract and --

THE COURT: What does that have to do with ready, able and willing? What does that mean? I mean --

MS. FERRO: Ready, able and willing. They needed to have it approved by the bank -- is my understanding, approved by the bank an accepted contract by the bank, which they

asked us to redo the contract.

THE COURT: Well, you make this allegation in the Answer: Dudek and Cross may not be entitled to specific performance as it now seems that at no time they were -- were they ready, willing and able to close on the contract and --

MS. FERRO: Well --

THE COURT: Wait a minute -- and currently are not ready, able and willing. What is your factual basis for that statement?

MS. FERRO: Well, if the bank was still asking for documents from them, even after our contract expired, towards the end of November, it was --

THE COURT: Do you have any documents to support that allegation?

MS. FERRO: I don't have it on me, but I believe that we do have documents from the bank asking in an e-mail for their W-2s and payroll information. And this was the end of December. So I don't believe that they were actually ever -- it was never finalized in the bank.

That also with the contract that they

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT G

001

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2014 NOV -5 PM 12:58

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

PLAINTIFF(S)	DEFENDANT(S)
Molly M Morphew	Thomas Ferro Stephen 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.**

Master in Equity

3078
Judge Code

11/6/2014
Date

CPHORM4Cm
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

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** **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**	**IN THE COURT OF COMMON PLEAS** **FIRST JUDICIAL CIRCUIT** **EQUITY DIVISION** **Civil Action No.: 2013CP1800074** **consolidated with Civil Action No.** **2013CP1800183** **ORDER**

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Presiding Judge: James E. Chellis
Master in Equity

June 11, 2014 and Thursday, June 12, 2014

Appearances:

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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.

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 03~~, 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.

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 HAV

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.

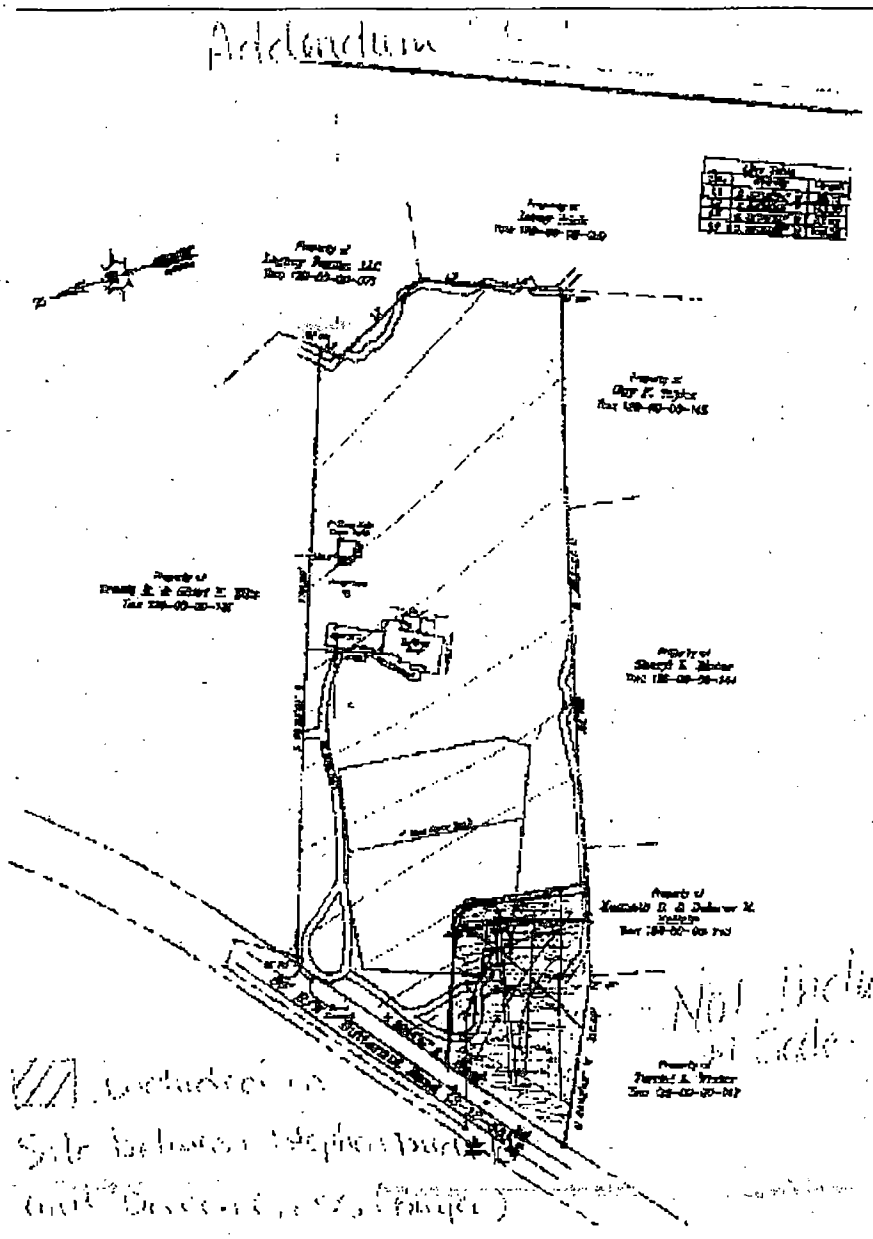
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

29. **CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See attached addendum #13 - 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 3140 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 1 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.


Addendum
Not Included
Included in
Sale

[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); *Sutterwhite'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)

FILED-RECORDED
LLB
3-12-20
Cheryl Graham
Clerk of Court
Dorchester County

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

FILED-RECORDED
RIB
3-12-20
Cheryl Graham
Clerk of Court
Dorchester County

Stephen Dudek and Doreen Cross,

Plaintiffs,

vs.

Commonwealth Land Title Company, LLC; Commonwealth Land Title Insurance Company; Fidelity National Title Company, LLC; and Fidelity National Title Group,

Defendants.

Case No.: 2:19-cv-03237-DCN

COMMONWEALTH LAND TITLE COMPANY, LLC; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIDELITY NATIONAL TITLE COMPANY, LLC; AND FIDELITY NATIONAL TITLE GROUP'S ANSWER TO PLAINTIFFS' COMPLAINT

Defendants Commonwealth Land Title Company, LLC; Commonwealth Land Title Insurance Company; Fidelity National Title Company, LLC; and Fidelity National Title Group (collectively, "Defendants") answer the allegations of the Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants deny all allegations of the Complaint unless otherwise admitted, qualified, or explained.

2. As to the allegations of paragraph 1 of the Complaint, Defendants admit Plaintiffs own the described property and admit the property is in Dorchester County, South Carolina. Defendants deny the remaining allegations of paragraph 1.

3. As to the allegations of paragraph 2 of the Complaint, Defendants admit they are part of a group of companies in which some of the group's companies write title insurance policies; admit each Defendant is incorporated in a state other than South Carolina; admit Commonwealth Land Title Company, LLC and Fidelity National Title Company, LLC are registered as foreign entities in South Carolina; and admit that Defendants conduct business and/or provide title

insurance in Dorchester County, South Carolina. Defendants deny the remaining allegations of paragraph 2. Defendants would further allege Commonwealth Land Title Insurance Company is the only proper defendant in this case and the other named defendants have no role in this matter and are improperly named as defendants herein.

4. As to the allegations of paragraph 3 of the Complaint, Defendants admit Plaintiffs are domiciled in South Carolina; Defendant Commonwealth Land Title Insurance Company has purposefully availed itself to the laws of South Carolina by issuing a title insurance policy regarding property in South Carolina; and some of the actions took place in Dorchester County, South Carolina. Defendants admit this Court has jurisdiction over the parties, this Court has subject matter jurisdiction, and venue is proper in this Court. Defendants deny the remaining allegations of paragraph 3.

5. Defendants admit the allegations of paragraph 4 of the Complaint.

6. As to the allegations of paragraph 5 of the Complaint, Defendants admit Commonwealth Land Title Insurance Company's issuing agent issued a title insurance policy numbered 814514040-211360712 ("the Policy") to Plaintiffs. Defendants deny the remaining allegations of paragraph 5 of the Complaint.

7. As to the allegations of paragraph 6 of the Complaint, Defendants admit Plaintiffs paid the premium for the Policy and crave reference to the Policy for the specific terms and import of the Policy. To the extent any allegations of paragraph 6 are inconsistent with the specific terms and import of the Policy, Defendants deny the same. Defendants deny the remaining allegations of paragraph 6.

8. As to the allegations of paragraph 7 of the Complaint, Defendants crave reference to the Policy for the specific terms and import of the Policy. To the extent any allegations of

paragraph 7 are inconsistent with the specific terms and import of the Policy, Defendants deny the same.

9. Defendants admit the allegations of paragraphs 8 and 9 of the Complaint.

10. As to the allegations of paragraph 10 of the Complaint, Defendants admit Plaintiffs requested that Commonwealth Land Title Insurance Company provide a defense in the two lawsuits and deny the remaining allegations of paragraph 10 of the Complaint.

11. As to the allegations of paragraph 11 of the Complaint, Defendants admit Commonwealth Land Title Insurance Company evaluated Plaintiffs' claim. As to the remaining allegations of paragraph 11, Defendants crave reference to the applicable public records and, to the extent the allegations of paragraph 11 are inconsistent with those public records, Defendants deny the same.

12. Defendants admit the allegations of paragraph 12 of the Complaint to the extent they are alleged against Commonwealth Land Title Insurance Company and deny the allegations as to the other Defendants.

13. As to the allegations of paragraph 13 of the Complaint, Defendants admit the Plaintiffs sent letters to and made demands upon Commonwealth Land Title Insurance Company. Defendants deny all remaining allegations in paragraph 13 of the Complaint.

14. Defendants deny the allegations of paragraph 14 of the Complaint.

15. As to the allegations of paragraph 15 of the Complaint, Defendants admit Commonwealth Land Title Insurance Company requested additional information and denied Plaintiffs' title insurance claim. Defendants deny the remaining allegations of paragraph 15.

16. Defendants deny the allegations of paragraphs 16, 17, and 18 of the Complaint.

17. As to the allegations of paragraph 19 of the Complaint, Defendants admit Commonwealth Land Title Insurance Company issued an endorsement removing exception 5 from the Policy. Defendants deny the remaining allegations of paragraph 19.

18. As to the allegations of paragraph 20 of the Complaint, Defendants admit Plaintiffs asked Commonwealth Land Title Insurance Company to reconsider its coverage opinion and that Commonwealth Land Title Insurance Company maintained its decision to deny coverage. Defendants deny the remaining allegations of paragraph 20.

19. Defendants deny the allegations of paragraph 21 of the Complaint.

20. As to the reiterated allegations of paragraph 22 of the Complaint, Defendants repeat and re-allege each of the preceding paragraphs as if set forth verbatim herein.

21. Defendants admit the allegations of paragraph 23 of the Complaint to the extent they are alleged against Commonwealth Land Title Insurance Company and deny the allegations as to the other Defendants.

22. Defendants deny the allegations of paragraphs 24, 25 (including all subparts), and 26 of the Complaint.

23. As to the reiterated allegations of paragraph 27 of the Complaint, Defendants repeat and re-allege each of the preceding paragraphs as if set forth verbatim herein.

24. Defendants admit the allegations of paragraphs 28 of the Complaint to the extent they are alleged against Commonwealth Land Title Insurance Company and deny the allegations to the extent they apply as to the other Defendants.

25. Paragraph 29 of the Complaint contains legal conclusions to which no response is required.

26. Defendants deny the allegations of paragraphs 30, 31 (including all subparts), 32, and 33 of the Complaint.

FOR A SECOND DEFENSE
(Rule 12(b)(6))

27. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

28. Plaintiffs' Complaint fails to state a claim on which relief can be granted and should be dismissed.

FOR A THIRD DEFENSE
(No Privity)

29. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

30. There is no privity or relationship between Plaintiffs and Defendants Commonwealth Land Title Company, LLC, Fidelity National Title Company, LLC, and Fidelity National Title Group.

FOR A FOURTH DEFENSE
(Terms, Conditions, Exceptions, Exclusions, and Limitations of the Policy)

31. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

32. Plaintiffs' Complaint is barred by the terms, conditions, exceptions, exclusions, and limitations in the Policy and the principles of law applicable thereto.

FOR A FIFTH DEFENSE
(Terms of the Policy)

33. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

34. The Policy contains various covered risks.

35. None of the allegations contained within the two lawsuits filed against Plaintiffs fall within any of the covered risks of the Policy.

FOR A SIXTH DEFENSE
(Policy Exception)

36. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

37. The Policy Exceptions provide in part:

> **EXCEPTIONS FROM COVERAGE**
>
> **. . . You are not insured against loss, costs, attorneys' fees, and expenses resulting from:**
>
> . . .
>
> **4. Easements or claims of easements not shown by the public records.**
>
> . . .
>
> ***

38. The claims against Plaintiffs in the underlying lawsuits concern an alleged water line easement described in an addendum to Plaintiffs' purchase contract but not recorded in the public records. The alleged water line easement, therefore, constitutes an easement or claim of easement not in the public records, and is excepted from coverage by Exception 4.

39. Accordingly, there is no coverage under the Policy.

FOR A SEVENTH DEFENSE
(Policy Exclusion)

40. Each allegation, denial, objection, and/or defense asserted in this Answer is re-alleged as if repeated verbatim herein.

41. The Policy Exclusions provide in part:

EXCLUSIONS

> **In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:**
>
> . . .
>
> **4. Risks:**
>
> **a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records[.]**
>
> ***

42. The claims against Plaintiffs in the underlying lawsuits concern an alleged water line easement described in an addendum to the Plaintiffs' purchase contract but not recorded in the public records.

43. Plaintiffs purchased the subject property subject to the terms of the purchase contract. In so doing, Plaintiffs agreed via the contract to grant a "water and sewer easement."

44. One or more of the lawsuits at issue concern the scope of that easement.

45. Because Plaintiffs agreed to the easement via the contract, that easement is expressly removed from coverage by Exclusion 4.

46. Accordingly, there is no coverage under Policy.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants Commonwealth Land Title Company, LLC; Commonwealth Land Title Insurance Company; Fidelity National Title Company, LLC; and Fidelity National Title Group request the Court issue an Order:

A. Dismissing Plaintiffs' Complaint;

B. Awarding Defendants attorney fees and the costs of this action (to the extent allowable); and

C. Awarding any such further relief as the Court deems just and proper.

CALLISON TIGHE & ROBINSON, LLC

s/ Demetri K. Koutrakos
Demetri K. Koutrakos, Fed. Id. No. 6989
Louis H. Lang, Fed. Id. No. 240
Harry A. Dixon, Fed. Id. No. 12870
1812 Lincoln Street, Suite #200
P.O. Box 1390
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Facsimile: 803-404-6902
Email: jimkoutrakos@callisontighe.com
Email: louislang@callisontighe.com
Email: harrydixon@callisontighe.com

ATTORNEYS FOR DEFENDANTS COMMONWEALTH LAND TITLE COMPANY, LLC; COMMONWEALTH LAND TITLE INSURANCE COMPANY; FIDELITY NATIONAL TITLE COMPANY, LLC; AND FIDELITY NATIONAL TITLE GROUP

November 21, 2019

The South Carolina Court of Appeals

Stephen Dudek, Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Appellants.

And

Molly M. Morphew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro, Defendants,

Of whom Stephen Dudek and Doreen Cross are Respondents.

Appellate Case No. 2014-002633

The Honorable James E. Chellis
Dorchester County
Trial Court Case No. 2013CP1800074, 2013CP1800183

FILED - RECORD
2017 FEB 17 AM 11:47
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

ORDER

Appellant Molly Morphew filed a petition for rehearing that was received January 24, 2017. Ms. Morphew now files a motion to dismiss her petition. The appellant's motion to dismiss the petition is granted.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED
February 15, 2017

cc:
Molly M. Morphew
Thomas Ferro
Lorraine Ferro
Samuel Melvil Wheeler, Esquire
Steven L. Smith, Esquire

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

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FAX: (803) 734-1839
www.sccourts.org

February 15, 2017

FILED - RECORD
2017 FEB 17 AM 11:46
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

The Honorable Cheryl L. Graham
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

Re: Stephen Dudek v. Thomas Ferro (Morphew)
Lower Court Case No. ~~2013CP1800074~~, 2013CP1800183
Appellate Case No. 2014-002633

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,
V. Claire Allen, Deputy

CLERK

Enclosure

cc: Molly M. Morphew
Thomas Ferro
Lorraine Ferro
Samuel Melvil Wheeler, Esquire
Steven L. Smith, Esquire

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP1800987

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: _____

FILED-RECORDED
2-21-2018
Cheryl Graham
Clerk of Court
Dorchester County

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Diane S. Goodstein	**2112**	2/21/2018
Circuit Court Judge	**Judge Code**	**Date**

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

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~~ labyrinthine string of litigation. DSG. 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

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Stephen Dudek and Doreen Cross, Respondents,

v.

Thomas M. Ferro and Lorraine B. Ferro, Respondents,

And

Molly M. Morphew, Appellant,

v.

Stephen Dudek, Doreen Cross, Thomas Ferro and Lorraine Ferro, Respondents.

Appellate Case No. 2017-001393

Appeal From Dorchester County
James E. Chellis, Master-in-Equity

Unpublished Opinion No. 2020-UP-151
Submitted May 1, 2020 – Filed May 20, 2020

AFFIRMED

Molly M. Morphew, of Summerville, pro se.

Steven L. Smith and Samuel Melvil Wheeler, both of Smith Closser, of Charleston, for Respondents Stephen Dudek and Doreen Cross.

Thomas Ferro and Lorraine Ferro, both of Denver, CO, pro se.

PER CURIAM: Molly M. Morphew appeals two orders from a master-in-equity. These orders stem from two competing contracts to purchase a parcel of property from Thomas and Lorraine Ferro (the Sellers)—one contract between Stephen Dudek and Doreen Cross (the Buyers) and the Sellers, and one contract between Morphew and the Sellers. Both the Buyers and Morphew moved for specific performance of their respective contracts, and in November 2014, the master granted the Buyers' motion for specific performance. Morphew and the Sellers appealed the November 2014 order to this court, and this court affirmed in an unpublished opinion. *See Dudek v. Ferro*, Op. No. 2017-UP-019 (S.C. Ct. App. filed Jan. 11, 2017). After that case was remitted to the master, the master filed an order setting a closing schedule on April 3, 2017; on May 17, 2017, the master filed an amended order. Although these orders largely addressed issues between the Buyers and the Sellers, they also pertained to Morphew, who was living on the property. After the Buyers and the Sellers closed on the property, the master, in an order filed in June 2017, found Morphew in contempt of court for failing to vacate the property. In this appeal, Morphew appeals the order setting a closing schedule and the order of contempt. She argues the master erred by (1) "demanding a closing and/or scheduling closing terms, . . . especially without first considering fraud on [the] court;" (2) "ignoring, or deeming 'moot' or 'irrelevant[,'] evidence and testimony that [the Buyers] may have unlawfully procured a judgement for [s]pecific [p]erformance by fraud;" (3) "not allowing or demanding [the Buyers] to provide [Morphew] documented proof of compliance and/or the ability to perform per their [s]pecific [p]erformance complaint, and especially with knowledge Morphew has a pending complaint against [the Buyers] for allegedly procuring their [s]pecific [p]erformance judgment by fraud and fraud on [the] court;" (4) "demanding [Morphew] vacate the property at issue, and be held in [c]ontempt, without first considering [the Buyers'] alleged fraud on [the] court;" (5) "ordering, sua sponte, [a r]ule to [s]how [c]ause (Contempt), and/or issuing an [o]rder for [c]ontempt." We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to issues one, two, and three, Morphew is precluded from relitigating any matters relating to the master's November 2014 order granting the Buyers' motion for specific performance, which this court affirmed on appeal, under the law of the case doctrine.[1] *See Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571, 776 S.E.2d 397, 403 (Ct. App. 2015) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." (quoting *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009))); *id.* at 572, 776 S.E.2d at 403 ("The law of the case applies both to those issues explicitly decided and to those issues [that] were necessarily decided in the former [appeal]." (quoting *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997))).

2. As to issues four and five, the master did not err by finding Morphew in contempt of court.[2] *See Lollis v. Dutton*, 421 S.C. 467, 477-78, 807 S.E.2d 723, 728 (Ct. App. 2017) ("On appeal from an action in equity, [the appellate court] may find facts in accordance with its view of the preponderance of the evidence." (quoting *Walker v. Brooks*, 414 S.C. 343, 347, 778 S.E.2d 477, 479 (2015)));

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[1] To the extent Morphew argues the master erred by not ordering the Buyers to provide her with proof of their financing to purchase the property, Morphew failed to point to any legal basis entitling her to proof of the Buyers' financing.

[2] The master had subject matter jurisdiction over this case based on the consent order for reference. *See Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169, 485 S.E.2d 371, 372 (1997) ("Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceedings in question belong."); Rule 53, SCRCP ("In an action where the parties consent, . . . some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court."). Further, Morphew waived any defense of lack of personal jurisdiction by not raising the issue to the master when he sua sponte raised the issue of contempt at the June 12, 2017 hearing. *Ex parte Cannon*, 385 S.C. 643, 658, 685 S.E.2d 814, 822 (Ct. App. 2009) ("A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." (quoting *State v. Dudley*, 354 S.C. 514, 542, 581 S.E.2d 171, 186 (Ct. App. 2003))); *id.* ("This failure to object resulting in waiver of personal jurisdiction applies equally in constructive contempt cases."); *id.* at 659, 685 S.E.2d at 823 (finding the circuit court had personal jurisdiction over the appellant because he had notice of the proceedings and waived any defects that might have occurred by not raising the issue of improper service of process).

Widman v. Widman, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001) ("The power to punish for contempt is inherent in all courts and is essential to preservation of order in judicial proceedings." (quoting *In re Brown*, 333 S.C. 414, 420, 511 S.E.2d 351, 355 (1998))); *id.* ("Contempt results from the willful disobedience of a court order, and before a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct."). In the April 3, 2017 order, the master ordered, "Morphew, as the current tenant of the [p]roperty is ordered to vacate the [p]roperty on or before the closing date, which will be provided to her by the parties or their counsel." In the master's subsequent amended order filed on May 17, 2017, the master clarified Morphew was not entitled to proof of the Buyers' financing and otherwise adhered to its April 3, 2017 order. At the contempt hearing on June 12, 2017, the Buyers testified Morphew was still in possession of the property after the June 2, 2017 closing date. Because Morphew remained in possession of the property following the June 2 closing, we find she violated the April 3, 2017 order. Accordingly, we find the master did not err by finding Morphew in contempt.[3]

AFFIRMED.[4]

LOCKEMY, C.J., and GEATHERS, and HEWITT, JJ., concur.

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[3] As to any arguments related to the master's treatment of Morphew during the June 12, 2017 hearing, these arguments are not preserved for appellate review because they were raised for the first time on appeal. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [master].").

[4] We decide this case without oral argument pursuant to Rule 215, SCACR.

TRANSCRIPTS

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

Molly M. Morphew,)
PLAINTIFF)
VS.) TRANSCRIPT OF RECORD
) CASE 2016-CP-18-1706
Stephen Dudek, Doreen Cross,)
David Collins, Allison)
Williams, First Federal,)
Michael Scarafile, Susan)
Nicholson, Carolina One Real)
Estate, Carrie Boyer, Wooddy)
Law Firm,)
DEFENDANTS.)

May 29, 2018

St. George, South Carolina

B E F O R E:

THE HONORABLE EDGAR W. DICKSON, JUDGE.

A P P E A R A N C E S:

SAMUEL M. WHEELER, ESQ.
ATTORNEY FOR THE DEFENDANTS DUDEK, CROSS, NICHOLSON & CAROLINA ONE REAL ESTATE

JORDAN M. CRAPPS, ESQ.
ATTORNEY FOR THE DEFENDANTS WILLIAMS & FIRST FEDERAL

DAVID M. COLLINS, ESQ.
PRO SE DEFENDANT

AMY L. NEUSCHAFER, ESQ.
ATTORNEY FOR THE DEFENDANTS BOYER & WOODDY LAW FIRM

WENDY WISE DERRICK
OFFICIAL COURT REPORTER

I N D E X

Colloquy	3-21
Certificate of Reporter	22

E X H I B I T S

No exhibits were presented.

THE CLERK: We have a motion for entry of default against David Collins filed by Mrs. Morphew. Mrs. Morphew filed a motion to compel discovery responses. She also filed a motion to strike defendant Collins' answer. She filed a motion to deem admissions admitted. She -- also asking -- she's also asking to have to strike attorney fees and sanctions.

THE COURT: Okay.

THE CLERK: The Wooddy Law Firm filed a motion to deem request admissions admitted. The defendant Dudek filed a motion for summary judgment. Mrs. Morphew filed motions to deem admissions admitted again. Wooddy Law Firm has a motion to compel. And First Federal has a motion for sanctions. Defendant Allison Williams filed a motion for summary judgment. Wooddy Law Firm has a motion for summary judgment. Mrs. Morphew filed a second motion for entry default against David Collins.

THE COURT: All right. Okay. And are you -- are y'all aware that Mrs. Morphew has sent an email to the clerk's office reading: With all my apologies, but I will be unable 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. It's dated today at 6:43 a.m. It looks like y'all were copied with that.

Is everybody received that?

MR. COLLINS: Yes, sir.

MS. NEUSCHAFER: Yes, Your Honor.

MR. WHEELER: Yes, Your Honor.

MR. CRAPPS: Yes, Your Honor.

THE COURT: Okay. All right. Now how many times has her motions been scheduled or is this the first time?

I'm sorry.

MR. WHEELER: I think this is the first on these round of motions. There is a motion to amend her complaint which is trouble getting scheduled. She ultimately withdrew that motion. That was probably a year at least ago.

THE COURT: Okay.

MR. WHEELER: This string of motions. I believe this is the first time they had been scheduled.

THE COURT: So that is correct?

MR. WHEELER: I believe so, Your Honor. Yes.

THE COURT: Okay.

THE CLERK: She did try to get a continuance a

few weeks ago though.

THE COURT: Yeah. That's what makes me somewhat concerned is I was aware that she tried to get it continued. So I don't know where we are with this. And I don't like the fact that y'all are all here. And if it's a true emergency, that's one thing. If it's not, that's another thing.

THE CLERK: Judge, I did reply to her email and asked her to show proof but haven't heard anything back.

THE COURT: Okay. Okay.

Yes, sir?

MR. WHEELER: If I might, Your Honor. With all due respect, I learned pretty early that you don't question people's sickness or family's sickness. Unfortunately, this is the situation where my clients are here, Mr. Dudek and Mrs. Cross. They are involved in three cases, two of which have been appealed by her. She's somewhat a recidivist in this. She files litigation or if she encounters an unfavorable ruling. I have no problem with a continuance in theory, but I guess I would ask that it be conditioned on her showing some sort of definitive proof of an emergency room admittance with sensitive information redacted, you know,

social security number, date of births. But if she can't supply that within a few days, then I think I'd ask for my motions that I have at least to be granted and hers against my client to be dismissed. That would be my request. Obviously, I would defer to Your Honor on that request.

THE COURT: No, I mean, I think that's a -- I think that's a reasonable request.

And does anybody else want to have any comment?

Mr. Crapps?

MR. CRAPPS: Obviously, Your Honor, we're here prepared to argue the motion. If you would prefer we wait until she's here, then obviously we echo Mr. Wheeler's thoughts. And just that if she can't supply that proof, we ask that these motions be granted as unopposed.

MS. NEUSCHAFER: I would agree with that as well, Your Honor, with the proposal.

THE COURT: Okay.

MR. COLLINS: Judge, my situation is a little different because she's trying to hold me in default. I saw a form order come through which I got a copy of. It was just a form four order. Ruling on the issue of my default apparently. So one thing I would like to know is exactly

What my status is as far as default. I filed a responsive pleadings upon getting served with these notices of default. I need to know sort of what we've got on the Court's file as far as my status. If she is still seeking to hold me in default, obviously those are not depositive motions to this case --

THE COURT: Right.

MR. COLLINS: -- and I want a ruling on that if I can get it. I think you signed an order.

THE COURT: Judge Murphy did I believe. Isn't that correct?

THE CLERK: Judge Murphy signed a form four denying her motion for entry of default judgment and indicated that it needed to be heard.

THE COURT: Okay. Okay.

THE CLERK: And obviously the clerk's office couldn't enter default because Mr. Collins did, in fact, file an answer.

MR. COLLINS: And I'm engaged in discovery. So you know it's a good cause showing I think. And I think the motion I filed -- I actually filed a motion to be relieved from default kind of as a suspenders-and-belt kind of thing to make sure I was properly before the Court. But I would like to have

at least that issue resolved really since it's not depositive of any of the issues. But it gives me peace of mind.

THE COURT: All right. You're not in default.

MR. COLLINS: Thank you.

THE COURT: If you'll do me the appropriate order, I'll take care of that.

MR. COLLINS: I'll be glad to. Thank you.

THE COURT: Yes, sir.

MR. WHEELER: If I may, Your Honor. There's a couple of other issues, one is this case is I believe on the trial docket for June 25th.

THE COURT: That should be entertaining.

MR. WHEELER: I think that's the general consensus. I guess if she does provide proof and it has to be rescheduled, then I would assume that the Court can continue the roster, put it on a subsequent trial docket.

THE COURT: Okay. Would y'all prefer me to just move it off the June 25th docket? Or y'all tell me what you want me to do.

MR. WHEELER: I think there's -- we can maybe confer about it. I think there's a desire to have a two-year-old case that be heard, but at the same time I don't think anyone wants this string of

motions heard on the day of trial for fear that there might be an inclination that the case is just allowed to go to trial when everybody up here feels that they have -- their motions have merit and really should end this case a little early.

THE COURT: Okay.

MR. WHEELER: My other issue is in another one of the cases I referenced we actually have a judgment against her that resulted from her being held in contempt. And we've been really diligently trying to schedule a supplemental proceedings. And in her deposition she provided an address at which we were trying to serve her notice of these supplementals which we now have had to reschedule at least once. And I have the notice with me. I was prepared to give to her. Obviously, the scheduled supplementals are going to be heard before these motions are probably heard. If she does, in fact, provide proof of this emergency room admittance, I also ask hopefully the Court can tell her to provide us a current address where we can serve her personally with notices because she's currently avoiding service. It's as if she wants to participate when in this string of litigation when it's convenient to her but not when it's convenient

to us.

THE COURT: All right. And again, Mr. Wheeler --

MR. WHEELER: Yes, sir.

THE COURT: -- what I will do is you had made a suggestion about how to do an order with in the conditions that she provide stuff. You can add into that order she has to provide an address where she can receive service on these cases. Okay?

MR. WHEELER: Thank you Your Honor.

THE COURT: Okay.

MR. WHEELER: What timeframe would you like to make her provide?

THE COURT:Same time that she provides the stuff with the medical information.

MR. WHEELER: Okay. Within a certain amount of time or just -- I guess, how long does she have to provide proof that her daughter's been admitted?

THE COURT: Two weeks.

MR. WHEELER: Two weeks?

THE COURT: I think that should be more than enough time. Don't you think?

MR. WHEELER: I thought my --

THE COURT: You can say ten days.

MR. WHEELER: Okay.

Anything else?
MS. NEUSCHAFER: Your Honor, what -- just so I'm clear -- my clients are going to ask me are we going to have trial on June 25th or not?
THE COURT: Probably not. I'm going to let y'all talk about it.
MS. NEUSCHAFER: Okay.
THE COURT: If y'all want to send me an order after we've had this today, y'all can wait ten days if you want to --
MS. NEUSCHAFER: Okay.
THE COURT: -- if y'all just want to talk after you finish up, y'all go out in the hall and talk, y'all can come back here and tell me. I'll take it off the docket or leave it on. Whatever y'all want to do.
MS. NEUSCHAFER: It may help us -- Mrs. Stephens, is there a -- I believe the next motions -- the next scheduled motions is not until August; is that correct?
THE CLERK: Right. That's with you.
THE COURT: That's with me, too. Cool.
(WHEREUPON, there was laughter.)
THE COURT: All right. So I can't escape this no matter what I do.

MR. COLLINS: Neither can we.
MS. NEUSCHAFER: I guess my question would be -- and I understand if the answer is no -- is there any hope of getting these 13, 11 motions heard before August?
THE COURT: I don't mind -- who's admin judge?
THE CLERK: Judge Murphy.
THE COURT: Y'all -- I'm -- welcome to let y'all talk with Judge Murphy to see if y'all can schedule it, you know, sooner.
MS. NEUSCHAFER: Okay.
THE COURT: As far as, you know, I just assume get this -- this case just needs to get on the road.
MS. NEUSCHAFER: Yes, sir.
THE COURT: So I either want to get it on the road or off the road.
MS. NEUSCHAFER: We agree.
THE COURT: And I understand where y'all are. But what's the first common pleas after August? Just so we'll -- just so I can have an idea.
THE CLERK: I've got C P. and J. with you the week of August 6th. I have jury term August 20th.
THE COURT: Okay.
THE CLERK: But that's with Judge --
THE COURT: So the nonjury is August when?

THE CLERK: The week of August 6th.
THE COURT: So we've got a jury term August 20th?
THE CLERK: Correct. I have to double check. Judge Goodstein may be recused on this case.
MS. NEUSCHAFER: That is correct.
THE CLERK: Yeah, I thought so.
MR. WHEELER: One of her orders dismissing this case is currently on appeal, so I assume she would probably step out.
THE COURT: Okay. So who's going to be here? That's Judge Goodstein on the 20th?
THE CLERK: On the 20th. Yes, sir.
THE COURT: Okay. And then after that we go to September?
THE CLERK: And I've got Judge Goodstein again September 3rd. I've got Judge Murphy September 24th.
THE COURT: Okay. So it be September 24th be the first time it could go to trial.
MR. COLLINS: What's that date?
THE COURT: September 24th.
MR. COLLINS: Can we talk? Have some time to talk about that?
THE COURT: Yeah.

MR. COLLINS: That's so far off.
THE COURT: Yeah. Listen, y'all discuss it.
MR. COLLINS: All I did is win the case two or three years ago and now we're still fighting over it. Okay.
THE COURT: Okay. Y'all can talk in here. And I'll leave.
MR. COLLINS: I don't mind. We don't mind if you're here.
THE COURT: Okay. Okay.
(WHEREUPON, a short break was taken.)
THE COURT: I think we're back on the record in Mrs. Morphew's case. I want to see if the four attorneys can agree to anything. That's the question that we have. Okay.
MR. CRAPPS: Your Honor, I think we've kind of agreed that if proof of the admittance to the emergency room is provided and to the satisfaction of the Court that that proof is provided and that she was otherwise be able to attend this hearing, then we would agree to moving this to the August 6th motion's roster and then push trial to that September 24th term. If proof is not provided, we'd request that depositive motions be granted. And we'd also like to add a clause indicating

there's no amendment to the scheduling order that's in place in this case.

I believe Mr. Collins would like to include some information on his default.

THE COURT: Which we've established he's not in default.

MR. CRAPPS: Correct.

MR. COLLINS: Yes, sir.

The only thing I would add, Your Honor, with regard to the discovery order, we had taken Mrs. Morphew's deposition several months ago I guess. And I was the last one in the questioning line. And at that time she believed me to be in default and still to be represented by Mr. Scarafile which was clearly not the case. I had already submitted an answer to the Court. And she refused to answer my questions. So I left the deposition open -- transcript open with the court reporter. So as an exception to the general proposition that the discovery order, you know, discovery period be closed, if this case goes on, I want the opportunity to conduct my own deposition of Mrs. Morphew which I think is pretty reasonable.

THE COURT: Who's going to be in charge of the initial drafting?

MR. CRAPPS: I'll draft it, circulate it to counsel, and hopefully have it to you this afternoon.

THE COURT: If you don't mind, cover your bases and make me sound judicial.

MR. CRAPPS: Of course.

MS. NEUSCHAFER: Will do.

MR. WHEELER: There was one other thing. We got A.D.R. requirement. Initially she moved to have this case exempt from A.D.R. And if you read the transcript, the judge -- I can't remember who it was -- said --

MS. NEUSCHAFER: It was Judge Dickson.

MR. WHEELER: Oh, I'm sorry, Your Honor. Said, I'll exempt the case if you want to exempt the case. And she said, well wait a minute. I don't know if I want to do that. So she filed the motion and then backtracked the day that the motion was heard. It's currently listed as A.D.R. deferred. To be quite honest with you, Your Honor, I don't know exactly what that means. I tried to look it up.

THE COURT: I think it means you can go to trial without having to go through mediation.

THE CLERK: Is there a scheduling order in place now?

MR. WHEELER: Yes, ma'am.

THE CLERK: So that's a -- it's a court process I have to do with the scheduling order to push out the A.D.R. deadline.

THE COURT: Okay.

THE CLERK: So that's why it says deferred because it's deferred to a different date now.

THE COURT: Okay. Does that mean they still are to go through mediation?

THE CLERK: Under the rules you're supposed to.

MR. COLLINS: Unless you tell us we don't.

THE COURT: Well, I mean, sometimes I think it's helpful but y'all tell me. If y'all have any reason to think mediation will be helpful?

MR. WHEELER: I can say with 100% certainty that these two defendants will be paying nothing at mediation because they have been named in three different lawsuits.

MR. COLLINS: I would second that on my behalf, too.

MR. WHEELER: There was a general conversation -- I don't want to get into settlement discussions because it wasn't even settlement discussions -- I talked to Mrs. Morphew on the phone and said; what if I could get a certain pool of

money for you between the defendants that are companies that might have incentive to pay a little money to have this thing done and, you know, avoid an appeal which is probably imminent and she --

THE COURT: Even from the motion?

MS. NEUSCHAFER: Correct.

MR. COLLINS: Undoubtedly.

MR. WHEELER: -- or trial. I mean, I'm on two different appeals currently. So -- but -- and I said, it wouldn't be anything substantial. I think it be a fair amount of money. She said that doesn't even cover my time into this. So I don't have any interest in that. So I think that none of our defendants that might have been inclined to pay anything are going to pay the amount that she probably wants. But I realize it's also a requirement. So I would again defer to Your Honor on that.

THE COURT: Well I'm trying to find out if y'all need to tell me if it will -- Ms. Neuschafer?

MS. NEUSCHAFER: Neuschafer, yes, Your Honor. I think I can probably -- assuming my clients are willing to make some kind of offer, I imagine we can just extend that offer without mediation.

THE COURT: Okay. Yeah, I mean, you know, you

don't have to settle a case through mediation.

MS. NEUSCHAFER: Correct.

THE COURT: Y'all can settle it before mediation, after mediation --

MS. NEUSCHAFER: Yes, sir.

THE COURT: -- before trial, during trial, after trial. You know --

MS. NEUSCHAFER: Just based on what Mr. Wheeler -- this is the conversation he relayed to me -- kind of the amounts that he had suggested to her that were -- that she turned down, I'm not sure that mediation would be beneficial.

THE COURT: And she's supposed to contribute to the cost of mediation.

MS. NEUSCHAFER: Yes, sir. Yes, sir.

THE COURT: Okay.

MR. CRAPPS: Based on discussions we've had and Mr. Wheeler's had with Mrs. Morphew, I don't think mediation will be productive to be honest.

THE CLERK: Judge, I just need an order to close out that part.

THE COURT: We'll close it out. That'll be another thing Mr. Crapps will do.

THE CLERK: And, Judge, just to bring to your attention, Judge Murphy did sign an order denying a

revised or amended scheduling order in this case not too long ago. So you're aware.

THE COURT: Well, I'll have -- Judge Murphy can complain to me. I don't know anything else I can do at this point.

THE CLERK: I understand. I just want you to be aware.

THE COURT: Okay. Okay.

MR. WHEELER: The mediation component -- I'm not trying to drag this hearing out any longer.

THE COURT: You can take as long as you want.

MR. WHEELER: Thank you.

THE COURT: They pay me the same amount of money regardless.

MR. WHEELER: We -- there is just a extreme hesitancy on our side to do anything that's going to generate an appeal because, like I said, we're currently involved in two pending appeals. If this gives her even the door is cracked this much, then it'll be appealed. And I'll do an hour mediation on the phone. I know many mediators will do it. And I'll, you know, would cost an hour of the mediator's time and knock it out and satisfy the Court.I'd almost be inclined to do that as opposed to have the Court issue an order without her being here because

that's just going to generate a possibility or avenue for her to file an appeal.

THE COURT: I'm fine to work with y'all. If y'all want to do the hour mediation over the phone, we can schedule that.

MR. CRAPPS: We'll discuss that but --

THE COURT: Okay.

MR. CRAPPS: -- be an order or not be an order.

THE COURT: Yeah. Y'all can just surprise me. Okay.

MR. WHEELER: Thank you, Your Honor.

MR. CRAPPS: Thank you.

THE COURT: Okay. Anything else?

(WHEREUPON, there was no response.)

THE COURT: All right. Good luck, y'all. I see y'all have gotten something that you get to work with for a long time.

MR. COLLINS: Thank you, Judge.

MR. WHEELER: Thank you.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

I, Wendy Wise Derrick, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, Court of Common Pleas for Dorchester County, South Carolina, on the 29th day of May, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

_____Wendy Wise Derrick_____
Wendy Wise Derrick, Court Reporter
My Commission Expires: 12-30-2024

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
Molly M. Morphew,	)	CASE NO. 2016-CP-18-01706
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Stephen Dudek, et al.,	)	
	)	
DEFENDANTS.	)	

October 1, 2018

St. George, South Carolina

B E F O R E:

The Honorable Maite' Murphy

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I N D E X

HEARING - Motions -- 03

EXHIBITS

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CERTIFICATION OF TRANSCRIPT -- 106

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THE COURT: So I am told here that we have 15 different motions. If there are any that overlap, if there is going to be the same argument on whatever motion, just let me know and that way we don't have to reinvent the wheel every time we have a motion. So we will just take them one at a time. Then, again, let me know if there is something that overlaps so that we can kind of cross them off as we go.

So the first motion ---

THE CLERK: I believe I have them in the order they were filed, Judge. The first one is plaintiff's motion for entry of default against David Collins only.

THE COURT: Yes, ma'am.

MS. MORPHEW: Hi, Your Honor. Yes, we are here for a motion for a default against David Collins only, the first one. But I also have -- can you hear me okay?

THE COURT: If you can speak up a little bit that would be helpful. Is your microphone turned on?

MS. MORPHEW: (Tap on mic.) Yes.

THE COURT: There you go.

MS. MORPHEW: Okay. I will try to speak up.

But first of all I would like to address the court that under the circumstances today for this hearing it is very stressful due to the fact that I just received notice of this hearing on Saturday, written notice on

Saturday. And I know it is an emergency hearing, but it just seemed -- it feels inappropriate that it was just given me less than two days, especially on a weekend to defend -- to review all of these plus defend a new motion to dismiss in defense.

The -- I know there was supposed to be good cause shown why there is no emergency hearing. And I can argue that at the end. But in my argument I feel like it wasn't good defense is -- the only defense that the defendants put down that was -- should be an emergency hearing is that I am at fault for the pending motions being so old and that the trial being outstanding for so long.

But that to me is very misrepresented, as I have not failed -- I only failed once to attend a hearing; and that was for my daughter's emergency room visit which this court excused on evidence. And that was the only time. And the rest of it has been like scheduling. Not -- nothing to do with me.

Then they also stated because of their last motion, the new motion to dismiss, was important because of the allegations. And I still don't find that is just good cause just to do an emergency hearing for something like that even though the case does need to get heard eventually.

But I feel like it prejudiced me to have to come in here and under stressful circumstances in just a short notice and try to defend myself properly. Because even a seasoned attorney it would be difficult to give them a day and a half to do this.

But the biggest thing here is that -- so if you will excuse me; I am extremely stressed. This whole week my daughter even though she was in an emergency visit may -- has been continuing on in her condition for several months now. And this week she has been on medical and medicine treatment and which has entailed several doctor's visits, urgent care. And she -- we were in the hospital most of the night last night.

She is at home right now two hours away in bed rest and on medication. And if she crashes again I have no idea. But she is being watched and then with instructions. I had to set this all up so that if she goes to the hospital -- I have no idea.

But I am here because, Ms. Murphy -- I'm sorry. I am here because if I had said anything that this was going on -- again the defendants seem to try to want me -- to paint me in picture that I am trying to stop this and that I am unlawful or that I am doing anything to harm. And I am really really not.

And I just feel like e-mails and filings are not --

just don't justify a person, only a face-to-face or during a hearing. So I made every effort to be here to defend myself and to present my motions that I do have appropriately.

But my concentration is a little bit off. But if -- so I am just objecting to that. And if this court feels like it overrules any of these objections based on, you know, the emergency hearing and anything then I just want to say that I just don't want to waive -- I am not waiving my right to object to those things because I am here. I am just here because I find it very very important to present myself, and if I can these cases.

THE COURT: Well's let's tackle each of those things at the time. As far as the notice is concerned it is my understanding that the clerk sent proper notice via e-mail as required through the e-filing system.

I understand that you came to the court and you changed your address. It is up to you to update the court with your current address so that you receive proper notification. So that is on you. You should have notified the court of your correct address so that you do receive proper notification.

This is a 2016 case. And the case is going to be heard I understand next month. So we need to go ahead and take care of these pretrial motions.

I am sympathetic to your daughter's conditions. But you are telling me you already have someone to watch her today. If there is an emergency certainly they can contact the clerk's office and we can address that at that juncture.

But we can go ahead and take care of these matters here today. So we are now ready to proceed. Please tell me what the first motion is.

MS. MORPHEW: Yes, Your Honor, the change of address. I did have a correct address on file with the court for mailing. It has like all of this -- all of the whole time. The new address is based on having to secure alternate residence. I mean basically a current and temporary securing of an alternate residents due to the fact that my house here in Summerville I cannot live in.

The defendants, Dudek and Cross, have cut my water line so I can't live in my house. But that is a separate matter. But I am just saying that I did I came into the court when I actually established that residence. And it is a mailing address. It is not the physical address. Which is strange in this area. But it is a new mailing address. And I did come into the clerk on Thursday to file that with them. Personally. So I mean I am getting mail. And I did get the notice. And the notice was sent out on Tuesday. And I did get the notice. But it -- you

know, on Saturday. So that is all I'm saying. It is not that they didn't send the notice. It is just I am contesting that this even though the trial is outstanding and it is long under the circumstances, you know, if I don't object I don't ---

THE COURT: I understand, ma'am. And so we are ready to proceed. First motion, please.

MS. MORPHEW: Okay. The first motion is for default for Collins only. It may be -- I think it is one of those motions that we would have to combine or at least see Motion Number 3 first. That is the motion to strike Defendant Collin's answer in response to this -- to my -- to the motion.

THE COURT: All right, ma'am. You may proceed.

MR. COLLINS: Okay. Is that okay if I start with that one?

THE COURT: Go ahead.

MR. COLLINS: In my motion to strike Mr. Collins -- I filed my complaint back on August 24th of 2016. He appeared in the case through his counsel of record, Mr. Scarafile and in a motion to dismiss. And but that was heard and then an order was ruled on.

Mr. Collis has never filed an answer to my complaint. And we -- so in November 27th I filed a motion for entry of default. I served that motion upon

his counsel on December 9th. And December 19th Mr. Collins who was representing himself pro se in his filings he -- well, he submitted an answer -- he filed an answer and a response to the motion.

The clerk of -- the clerk sent notice that -- that the filing may be, you know, invalid because a pro se cannot file his own papers. And especially -- he is represented by counsel of record. That was never corrected or there was never an answer by his counsel. So I know under the rules that it should be stricken. So.

And even if under the rules -- if find that this court finds that it is okay, his pleadings are quite deficient in his -- in his response to my motion. It was a response -- not an actual motion.

I understand the rules says in order to be relieved of default you had to file a motion with affidavits or an affidavit with that statement.

Mr. Collins didn't file a motion or provide any really just cause to why he -- he had three claims. One stating that he -- he had no access to his files because he was on interim suspension. But only 22 days before I filed my complaint to him he has sent out a notice to all of his -- I guess his clients and anybody who is like co-parties to his claims. And I got a notice and it said

that he was on interim suspension and that all of his files and everything -- he had a record --- I think they call it a record keeper, and gave his name, Mr. Peyre Lumpkin.

And then he also said if there's any questions or concerns or if you need any information you could contact his attorney which was Harvey Watson.

So the fact that -- and then the fact that he had an attorney already representing him who could get those files seemed very -- it was -- it seemed very irrelevant or mute.

And Mr. Collins is an attorney himself and knows that filing an answer to the complaint is like one of the first things that you would do. And for him to just use that as an excuse is to me seems like irrelevant as he was represented and he was an attorney. So not filing an answer was just blatantly intentional.

Then he also put down in his defense that he was improperly served. But that is mute because it shows that he was -- appeared by -- as counsel. So service of process even though it was validated by the clerk that it was proper in the original filing with the return receipt, restricted delivery, he still appeared. So that was moot.

Then he further stated that he didn't receive the

order to dismiss when they filed the motion to dismiss and therefore it is improper. But his counsel received that order and answered. And his counsel actually answered that order. But intentionally or unintentionally left off Mr. Collins - I'm not sure - from the answer. Because he had a couple of other defendants including himself.

So therefore this is defi- -- it wasn't even a motion. And he did not provide any proper defense of why he did not file his answer, you know, over 322 days after the motion to dismiss came out.

He has had plenty of time, plenty of time with discovery. And if this really -- you know, if he is relieved -- I mean if it was me or any other party I could imagine that this court would be -- would rule -- rule against that -- you know, dismissing that default. The entry of default was on November 27th.

THE COURT: Thank you ma'am.

Response?

MR. COLLINS: Good afternoon, Your Honor. David Collins appearing pro se today. I was a lawyer in good standing and practiced in this -- before this court for many years. My law license was suspended several years ago. This case came up and was filed and is pending during the suspension. My license is still suspended.

I did have Michael Scarafile file a responsive pleading on my behalf. He filed a 12(b)(6) motion to dismiss. It wasn't until later that the court heard this motion.

Once I received that order I filed a responsive pleading. Mr. Scarafile has filed - and I believe it has already been entered - is an order of substitution of counsel. As soon as I found out about the default situation I filed a responsive pleading and a motion to be relieved from fault -- default.

I have not -- there is no order out there that I know of that is actually finding me in default. So we are under a good cause scenario here.

I have participated in discovery in this case. I have attended depositions. So there is no prejudice to anyone with regard to this.

Now the issue of whether or not I was properly served is still really an issue with this court. I really have never been properly served with anything in this case, including the original summons and the complaint.

The original summons and complaint were served upon a clerk at the law firm of Smith and Closser. Actually no relation to my law practice at all.

But I really don't think this court needs to get

there. All you have to do I believe is find good cause to accept my response pleading. And obviously the reasons for that are as I have outlined in my response to the motion and what I have told you today.

THE COURT: Thank you, Mr. Collins.

MR. COLLINS: Yes, ma'am.

THE COURT: And just so we are all on the same page, we obviously have quite a few motions to go through here so just as has been done so far I will ask the parties -- whatever is actually in your filings, in your memorandum, you don't need to repeat all of that because I am going to read that. So basically just give me your legal argument for each motion. And that should save us all a little bit of time so that we can properly proceed.

All right. So the next motion.

??? MR. COLLINS: Your Honor, in that -- in that regard trying to save some time, in my responsive pleading I filed a 12(b)(6) motion to dismiss this case.

You are going to hear a bunch of stuff about why summary judgment should be granted to all of the defendants. I did not file a separate summary judgment motion, but I think the law is pretty clear in that we can take that 12(b)(6) motion and if you take matters outside of the original pleadings that can be converted to a summary judgment motion. So I just wanted to alert

the court to that.

I won't be arguing on behalf of the summary judgment, but it will tag along with everyone else's.

THE COURT: Yes, sir.

MR. COLLINS: Yes, ma'am.

MS. MORPHEW: Your Honor.

THE COURT: Yes, ma'am.

MS. MORPHEW: Just one more thing. I just want to make sure -- on the record --

MR. COLLINS: That is the last -- I'm sorry, Judge -- that is the last thing. We had this hearing before. But there was an order entered. The order was entered, right? By Judge Dixon allowing me out of default. So this -- I think this might be at least the second time I have argued this.

THE COURT: Okay.

MS. MORPHEW: In response to the order entered, I filed a 59(e) motion which is to be heard today too on that order to -- and I also filed a second motion for entry of default.

But in that -- just in case. In that time Mr. Collins has still not filed an appropriate answer or response.

But what I want to make note that regardless that it -- the rule says that if it wasn't signed promptly

after -- if it wasn't -- okay, let me just read this out. If the filing was not signed promptly or if it is signed, Mr. Scarafile, then it is required by Rule 11(a) it to be stricken. It -- like it shall be stricken.

It says in the rule if a pleading, a motion, or other paper is not signed or does not comply with the rule, it shall be stricken unless it was signed promptly after the omission is called to the attention of the pleader or movant.

The clerk called the attention to Mr. Collins and Mr. Scafile's counsel on record that it was -- had failed. And no -- Mr. Scarafile, his counsel, did not respond to that at all. Necessarily just saying, yes, I can file a motion I mean the proper documentation to relieve myself as counsel. Which hadn't been done back until February of 2018. So in -- the whole time there has never been an answer. The pleadings it says shall be stricken.

THE COURT: Again, Ms. Morphew, if you want to cite a rule I can read the rule. You don't need to read it into the record.

MS. MORPHEW: Okay.

THE COURT: If it is something that is in a filing I will have the entire court record before me to review. So you don't need to tell me what they filed or they

didn't file. Just tell me your legal argument, all right?

MS. MORPHEW: Okay.

THE COURT: All right. Next motion. What is the next motion?

MS. MORPHEW: This is a motion to compel discovery responses from defendant Doreen Cross.

THE COURT: Okay.

MS. MORPHEW: Okay. On November 30th I served defendant Doreen Cross a request for interrogatories, request for admissions, and request for products and documents.

They did not -- when I filed this motion they did not respond. They had not responded by that time. The motion was filed on January 30th, 2018.

But on January 3rd I actually served notice to defendant, their attorney of record, saying that they are past due and that they had ten days to answer the request for admissions and documents.

But the admissions were not answered, so therefore they are deemed admitted per the rule. So I have requested it and I hadn't received it. Well, I did receive the protection for documents. But that was way past -- I am not going to argue those right now even though I don't find them very complete or anything. But

the admissions definitely have not been served.

THE COURT: Counsel.

MR. WHEELER: Yes, Your Honor, Sam Wheeler on behalf of Stephen Dudek, Doreen Cross, Michael Scarafile, Susan Nicholson, and Carolina One Real Estate. We are with Smith Closser. I am with Smith and Closser.

We have answered discovery. So that doesn't seem to be an issue right now. As to the requests for admission that were served on us to Doreen Cross, we have answered them. She served separate requests for admission to both Stephen Dudek and Doreen Cross somewhat staggered.

I actually gave her personally at her deposition the response for Stephen Dudek. They are one in the same. The requests for the admission are exactly the same. We have answered them exactly the same.

When we served the responses from Ms. Cross they went to an address that was her previous address. There's obviously been several address changes in this case. I don't think anyone is prejudiced. We served them on her. She has them. They're exactly the same as Stephen Dudek's.

If they are different, if hers are admitted and his aren't, then we have two parties with the exact same interest saying two different things.

The issue was when we served them we served them at

a prior address. Her address has changed several times throughout this litigation. When we noticed the error when she filed her motion we immediately corrected and said, well, we are sorry, they went to another address, here they are, here are the responses. This has been months and months and months.

I don't think there's really any prejudice. They have been answered. They have been answered kind of in conjunction with Mr. Dudek's request for admission. They are exactly the same.

So having two out there that they are saying different things is going to be troublesome if one -- if the motion goes her way on this while having Stephen Dudek's answer saying the other thing.

So what we have is -- and I am -- you know, I am here. I will take the blame. They went to the wrong address. It is a function of her address changing multiple times and our clerk and our paralegal catching up with the address.

And I will stand here and willfully say, hey, they went to the prior address. But that has been corrected and it has been corrected for months. And there doesn't seem to be any issue with the current answers to the request for admission. Thank you, Your Honor.

THE COURT: Ms. Morphew, how would you be prejudiced

by that?

MS. MORPHEW: I still haven't received -- the defendants say that they have served the admissions. I still haven't received them or even know exactly what they are talking about, what address. They haven't presenting any evidence what address they sent them to or any proof.

I did have -- I was at one address and then immediately had to find some temporary address due to a court proceeding. And until I can find somewhere -- I mean I thought this would be over with. But my address on November 30th, 2017, when I sent that, had been -- was a valid address that I had everything coming to me. And it didn't change. So I don't understand what other -- what new address that it changed to.

Now I have to say that I did get some mailings that were improperly served to my original address which was 788 East Butternut. That is -- after June 12th that is the address of their clients. And I have received a couple of mailings, specifically a mailing where they received it and opened the mail, gave it to their attorney and then he sent it to me.

So if it was sent to that 788 address -- because whatever the court has on the system, whether they sent it improperly or not is not -- should not be -- prejudice

me. But there has been a couple filings where it went to the original address I had for years. And I have got proof that there have been a couple of ones where it went there and it was intercepted.

And so I don't really have a lot of faith that if anything went there -- to that address, since they are opposing client, opposing parties, that it would be really -- it would be on me if I didn't receive them.

But I have been really good about answering and timing and filing and trying to stay on top of it. And historically it shows that if I had gotten it I wouldn't -- if they had said anything. But their filings, regardless, I sent a notice in and it was two -- January, November, December, January -- I mean it was -- it was over a month and something that I actually told them that they were past due. Those interrogatories didn't get to me until February; or even March, Mr. Dudek. So he is saying that he sent Mr. Dudek's and -- and I did get a couple of items at the deposition which were -- which were for Dudek. And that was fine because his wasn't past due.

But Ms. Cross she is a separate defendant. Regardless if they are going to try to combine them as whole. In the case they are separate defendants therefore -- and I did file separate request form.

And they weren't exactly the same at all. There's some similar ones which they could have answered at -- they have already answered them. But it is -- they are separate defendants. So they joining them into one and saying that -- that just because they sent one should mean that the other one should be answered. That just kind of seems a little bit like unlawful. Especially since I specifically separated it.

So I have not yet received those admissions. And I can attest that I have not received those admissions at all, regardless of what address they sent it to. So I am asking for those to be.

THE COURT: Mr. Wheeler, do you have a certificate of service on file with the court?

MR. WHEELER: I can -- I can represent to you that the day we receive this motion I went -- walked to the clerk -- or the paralegal - excuse me - and said we don't mess around with a request for admission we basically answer them the day we get them.

I looked at the certificate of service. It did in fact say 788. I will represent to you that that was her prior address. I am not trying to misrepresent anything to you. What I am saying to you is that day we sent it to 786. I said I think somebody transposed the number incorrectly and it is supposed to 786, she has moved from

788 to 786.

There was a P.O. Box somewhere in there. There was an address in Georgia. And now there's a second address in Georgia.

But that aside, I sent them right away. And I would be happy to provide this court with a certificate of service when I get back to the office today.

We sent it right away. I can also represent to you that our office has received kickbacks from the 786 address. We are getting mail back. The Court of Appeals, the South Carolina Court of Appeals, is also getting mail back from 786.

And you can look on the Seatrack system and see that they are actually posting on their system we are getting mail back from 786. This has been a very big challenge for us to get her served, in a variety of filings.

And, again, I am here taking the blame for the request for admission. I am telling you they have been served. And I don't think there is any prejudice that has occurred because of her not getting them.

And if she hasn't got them I will go back to the office and I will give them to her again. They say the exact same thing as Mr. Dudek's, denying almost everything with the exception of a couple of things that we are willing to admit.

If she wanted to take their deposition she could take them and present those things. She has done none of that. So there has been no prejudice that has occurred at this point. And again I will gladly gladly file a certificate of service with the court when I get back.

MS. MORPHEW: Your Honor ---

THE COURT: Next motion. Next motion. I have heard enough on this motion. Let's move on to the next motion.

MS. MORPHEW: Well, he -- he brought up a new issue.

THE COURT: No, ma'am, we are going through these issues. You have put your argument on the record. He put his response. Next motion. What is your next motion?

MS. MORPHEW: The next question is was the -- it was a motion to strike defendant's answers, but I would like to go back to ---

THE COURT: No, ma'am, we are not going back. You can go to the next motion or if you have motions that combine that have not been heard we can do that. We are not going to go backwards. We are going forward.

MS. MORPHEW: All right. The next motion is ---

MR. WHEELER: I believe mine is Number 5 if that is where we are.

MS. MORPHEW: No, we are on Number 4.

MR. WHEELER: Okay.

MS MORPHEW: Number 4 is my motion to deem an issue admitted. And the affidavit -- and this is against defendant's First Federal and Allison Williams.

THE COURT: Okay.

MS. MORPHEW: This one I served the -- this is just for the admissions. I served admissions on 12/14/17. On 1/12 Mr. Wheeler asked for -- I mean not Mr. Wheeler. Mr. Jordan Crapps asked for an extension.

This was on Friday 1/12 that he said that he will be out of the office due to the flu and he has been out -- will be out, and asked for an extension on all those until the 1st of February.

And I replied back saying that the admissions -- I'm not going to allow for the admissions due to the strict requirements into adhering to that for the admissions, but the other two that I will grant the extension for the production of documents and interrogatories.

So the question is here is that Mr. Crapps stated that he served their admissions on 1/20. Now the admissions were due actually 30 days -- to be served -- not due. But to be served 30 days after the service of my request.

My request was served on 12/14. And it is required on 1/13 for those to be served. So even at 1/20 they are considered late to me.

I saw him at the deposition on Tuesday. On Friday he asked for an extension. Said he was sick. And I saw him at my deposition on Tuesday. And he again asked for an extension on those admissions. And I said, you know, no, I am going to stand on my previous and they are still due.

And so the question is to whether -- I asked for the admissions. And to do -- with so many defendants on the case and so many motions that if I -- to keep track of these is -- it is expensive.

So this is very -- admissions are very strict, so I understand that you have to answer these. Which I would do. And I really do follow the rules. I really do. I try as best I can to do everything on time. Everything that I served now it has tracking on it just to make sure there's no question.

Now he says that they were proper, that they were served on 1/20. But they were due to be served on 1/13, not 1/20. I gave him the time -- the extension to do the other two requests.

He was at the deposition on Tuesday. And there appeared to be no like sickness or anything. And he is not the primary counsel. There was another counsel, Ms. Amy Hill, who is on record too. So if -- they have already had these requests for over 25 days. And there

is more than one attorney on record to attend to these admissions. And it is very strict. I don't see how that this -- that failing to provide these to me, you know, was an issue especially since I did say no they are not, they are not going to be extended. So they weren't -- they were not filed and served properly.

THE COURT: Thank you, ma'am.

Counsel.

MR. CRAPPS: Thank, Your Honor. A little bit of timeline here. These requests for admission were dated December 14th. We received them and they were due January 18th.

I e-mailed Ms. Morphew on the 12th. Said our discovery responses are due Thursday, January 18th, I have been diagnosed with the flu, can I have an extension. She grants be a -- my extension for the other two, the request for production and interrogatories, but not for the request for admission.

A few days later at her deposition on the 16th I again ask for an extension. She declines it again. So on January 18th we mailed them, my secretary e-mails them to all counsel. She actually doesn't e-mail it to Molly. I noticed this. It is on January 18th. I e-mailed them myself, forwarded them all to Molly: Molly, I do not see where my assistant included you on this email. These

were mailed this afternoon.

So we have a certificate of service attached to our motion in the case, January 18th. I e-mailed Ms. Morphew on the 18th when they were due, attaching those answers again.

Your Honor, we responded to them on time. And so that is why in coordination with our response to this motion we would ask for sanctions. We feel this is a very frivolous request.

She failed to consult with us before filing the motion. She sent a Rule 11 letter by mail. That later is dated the 13th. We didn't receive it until February 20th. February 16th she had already filed this motion.

The date I received her letter I respond by e-mail. I sent the answers to her request for admission again. I asked her to withdraw the motion, and she didn't. Her only response to my e-mail at that time was that she was more or less unavailable for personal reasons.

So, Your Honor, I think my argument here today is that we answered them on time, the 18th as was required per the rule. So not only do we ask you to deny this motion, we ask you for an award of sanctions for having to defendant this motion and appear here now twice to argue it. So.

THE COURT: And certainly the record will speak for

itself as far as the time limits are concerned.

Ms. Morphew, what is your position as to the sanctions?

MS. MORPHEW: Your Honor, I don't see where sanctions should be awarded. I mean I did -- I am following the rules and the time thing. And I did give him proper notice. Even on January 3rd there was an e-mail and a letter sent, not just a letter, saying that if they don't provide that within ten days. And they said they received the letter. But they did serve -- you know, they served it in an e-mail. But they did serve it.

I feel like they got plenty of notice and that they -- that these are very very important -- the rules are very important. And it says admissions are -- they are very strict on the time requirements.

But for sanctions for me I don't -- I am just doing what the rules are saying. And so I don't waive any kind of rights and deem admitted. And they are saying that have sent this and sent that to my address. And I have really been giving them -- I gave them heads-up notice and just like I am supposed to.

But electronic -- there's a question about electronic notice to a pro se party. I had actually submitted an e-mail to them personally and actually all

of the defendants when I was provided some discovery documents initially. And I actually -- there's an e-mail that I stated and said, look, if everybody would agree that electronic service would be proper in order to do that then I will be happy to do that but, you know, to please respond. Nobody responded to that. So I assumed since I am a pro se party that e-mail was not in this case was not appropriate to be served. So I served everything written.

And anything coming to me it should be either written or agreed upon. But I did specifically ask if it would be okay with all the parties if we do service by e-mail. And I said but they would have to respond in agreement first. They did not do that. Not one answer to that. So my assumption is is that proper e-mail -- electronic service upon me was not proper.

THE COURT: All right.

MS. MORPHEW: Even though I was going to allow it.

THE COURT: All right. Next motion.

MR. WHEELER: Thank you, Your Honor. I have two that I think can be consolidated. Number 5 is a motion to strike attorney's fees. I also have a motion for summary judgment. That is to all defendant I represent.

I know Your Honor just wants the legal arguments. If I could provide a little background about the

litigation that has gone on. I will try to keep it short.

THE COURT: Sure.

MR. WHEELER: Everybody is here today about some real estate transactions that occurred in 2012. My client Stephen Dudek and Doreen Cross had a purchase agreement with Thomas and Lorraine Farrow, who are not defendants or any parties in this action, to purchase land in Dorchester County and a home as well.

Ms. Morphew had a separate purchase agreement with the Farrow's. It was a contingency agreement or a backup agreement, if you will.

Ultimately there was a dispute about who should get the land and the house. They both filed suit against the Farrow's. Stephen Dudek, Doreen Cross, filed against Justin Farrows. Ms. Morphew filed against the Farrow and Mr. Dudek and Ms. Cross.

Those cases were consolidated in 2003 under a 2003 caption. Ultimately they came to trial in June of 2014 in front of Judge Chellis. There's an agreement to have Judge Chellis to hear the case.

Two dates along the way that are important for the purposes of my motion, the day before trial -- well, at some point Ms. Morphew -- or Ms. Morphew was represented by John Massalon, excellent attorney. He actually took

the case to trial on behalf of Ms. Morphew. Previously in the litigation he sent a subpoena to Jordan's Clients, First Federal, for some documentation about Stephen Dudek and Doreen Cross' financial ability to buy this house.

I guess that subpoena sat around for a while. Ultimately First Federal responded to that subpoena the day before trial. So First Federal provides this whole packet of information the day before trial.

And some of those items in that packet are used at trial, some aren't. And then the case is tried over the course of two days, June 10th and 11th I believe, or 11th and 12th.

After trial before Judge Chellis issues an order and opinion, the Farrow's send what is called a pleading statement that -- it is listed as a pleading statement in the record, outlining all of these allegations of fraud and how the First Federal packet of information essentially indicates that Mr. Dudek and Ms. Cross were not ready, willing and able to purchase this property; in other words, they didn't meet the elements of specific performance.

So at two points in the litigation before an order is issued there is this conveyance of information from First Federal to Ms. Morphew's counsel at the time. And then the defendants, the owners at that time, filed this

pleading statement and said Your Honor needs to look at some of these items because I think some people were telling some inaccuracies at trial.

Ultimately Judge Chellis rules in favor of Mr. Dudek and Ms. Cross. Awards them specific performance. No motions are filed after that. No Rule 60 motion based on this new information or these allegations of fraud at trial.

Instead Ms. Morphew takes on an appeal along with Thomas Farrow and Lorraine Farrow they all appeal jointly to the South Carolina Court of Appeals. The South Carolina Court of Appeals renders a verdict and upholds the judgment that Judge Chellis issued indicating that Mr. Cross and Ms. -- or Mr. Dudek and Ms. Cross are to be awarded specific performance of the property.

The case comes back down, a remittitur. And Judge Chellis sets the case -- or sets the home for closing. My clients ultimately purchase the home from the Farrow's.

And I apologize. I am trying to get through it. There is a lot of litigation here. And sets a date for closing. Ms. Morphew is living in the house at the time.

While she is awaiting the South Carolina Court of Appeals decision she files this action. So we have one action; this is a second action.

Ultimately Judge Chellis says: You need to get out of the house, they had purchased the house, they had closed the house, and you are now in contempt of court for not getting out of the house.

That very day that he comes to that decision she files a third action for constructive trust over the property. So now we have three cases.

Judge Goodstein has dismissed that case. That is up on appeal. The order setting closing and the order setting -- getting sanctions to my client is also up on appeal. So we have two cases on appeal. And now this one pending in the lower court.

I try to give a little bit of background there because there's a lot of litigation going on at least between my clients and Ms. Morphew. These two (pointing) are somewhat newcomers to the party here.

So my motion is for summary judgment. And it's -- in the alternative to strike her request for attorney's fees. The request for attorney's fees she since trial since John Massalon represented her trial and he did not take the appeal on and since that case has come back down from the Court of Appeals she has never been represent by counsel. She has requested compensation for her time, travel, everything she has done in this case.

She is not entitled to it. She is not an attorney.

Even if she was representing herself I don't think she is entitled to it. The law is very clear. There's a couple cases out there that I have cited to in my memorandum that indicate that pro se litigants are not entitled to compensation for time in the form of attorney's fees.

A big majority of the damages that she listed in an Excel spreadsheet provided to us was for her time and expense in having to basically take herself away from work to litigate cases - that she brought, by the way. So that is my one motion.

And I think in the event that the court is not willing to award summary judgment at minimum I think the attorney's fees request should be stricken from the complaint.

As to the summary judgment motion currently Judge Jefferson she took up a 12(b)(6) motion from all of the defendants very early on in this litigation. She dismissed everything against Mr. Dudek and Ms. Cross with the exception of Ms. Morphew's 17th cause of action for intentional infliction of emotional distress against the Carolina One defendants, Michael Scarafile, Susan Nicholson, and the entity itself.

There's four causes of action remaining after the motions to dismiss. Orders were granted. Ms. Morphew's first cause of action for extrinsic fraud; her seventh

cause of action for, quote, bad faith and unfair dealings and/or accompanied by fraudulent action or conspiracy to defraud; her 17th cause of action again for intentional infliction of emotional distress; and her last cause of action for tortious interference with existing contractual relations.

In my memorandum I touch on the intentional infliction cause of action first because it is the only thing that remains against all of my clients.

And I apologize for doing this, but there has been exactly one deposition taken in this case. The defendants took Ms. Morphew's deposition. She hasn't taken any deposition. She hasn't -- outside of written discovery there has been no testimony taken of any of the defendants or any of the witnesses she think plays into this whole thing.

I have put into the record the entire transcript from her deposition. And I apologize for doing that. But I really think it is important that the court reads through it and sees the timing of how all of this played out in relation to primarily her extrinsic fraud cause of action.

In the deposition Steve Smith took the deposition from our firm and he asked her on Page 65 about emotional distress, emotional damages, whether she had seen a

doctor, whether she is on medication, whether she has any sort of physical manifestations of this distress.

And the answer is generally, no, I have done a lot of praying but I am not on any medication; I see a doctor as needed but I'm -- there's no records.

In other words, in response to our discovery request there's been no written records or any indication that she suffered for any distress. She is not seeing a psychiatrist. She is not seeing a doctor.

All she's alleging, which she alleges at ever hearing, is this is causing me an immense amount of stress and pressure in my daughter and everybody.

And I am not unsympathetic to that. But this -- this is her string of litigation that she has brought. And there's three cases, now soon to be a fourth. There's two appeals. In other words she is bringing this on herself. It is not as though we are lobbing bombs and we are, you know, we are bringing these -- this litigation. This is her litigation.

So the fact that it is causing her stress, it is stress that she is bringing on herself. Even if there is stress she hasn't showed us any indication that she is seeing a doctor or anyone for this stress.

So the record is just completely void of anything that would suggest that the intentional infliction of

emotional distress cause of action has any merit whatsoever. That is the argument on the IIED.

I think what this case is really about despite having 18 causes of action is this idea that all of the defendants at some point leading up to the original trial in 2014 or during trial committed fraud upon the court or fraud upon Ms. Morphew, basically duping Judge Chellis into ruling in favor of Mr. Dudek and Ms. Cross.

Because if you read her pleadings that is exactly what she is saying, he was unknowingly fooled into making a bad decision. Apparently that allegation also extends to the South Carolina Court of Appeals, because they went and looked at everything and came to the same conclusion that Judge Chellis came to.

But the important point about this extrinsic fraud cause of action - and I cite to the case law in my brief - is extrinsic fraud is fraud that the person upon whom the fraud is committed it is the type of fraud that you couldn't discover at trial. In other words it prevented you from actually having your case heard at trial.

Again, in her deposition - and again I put it all in the record - Mr. Smith goes through it time and time again and says: Okay, this First Federal file that this whole case is based upon your whole case is based on this information that you received the day before trial, your

attorney received the day before trial?

And the answer at every juncture is, yes, it is based on that.

And is there anything else; is there anything else that you are basing it on?

No, no, no, not at this time; not at this time.

In other words, she had the information -- or her attorney had the information that she is basing this case on prior to trial.

Now what he did with that information is not my concern. If she wasn't happy with how he approached it, again, that is not our concern. But that doesn't form the basis of an extrinsic fraud cause of action.

The other point in time is in September after the trial but before an order was issued the Farrow's come to the court and said, Your Honor, you need to look at all of these instances of fraud and all this new evidence that we have based on this First Federal packet of information.

He says to her -- or to the Farrow's, I am not going to consider anything but what was at trial. And that is the end of it. He makes his decision.

They have every right to file a full 60 motion at that point saying, hey, there is new evidence, there is fraud, you need to come back and look at this again.

Their response was we are going to file an appeal with the South Carolina Court of Appeals. Again, the South Carolina Court of Appeals has ruled in our favor. And she voluntarily dismissed her motion for reconsideration.

The issue of specific performance is done. There is nothing more for this court to consider on that issue. And this idea that this was fraud that she couldn't have known beforehand is just completely false. Because her attorney had the information beforehand. What he chose to do with it, that is his decision.

And the Farrow's had it. What they chose to do was file this mysterious pleading statement as opposed to a Rule 60 motion after an order was actually issued.

So I don't think there's anything else to talk about involving the actual sale of the property or this fraud that was supposedly committed upon the court. Because she had all that information. There was nothing there that she didn't have now going on four years ago.

And she wants to say I didn't -- I didn't have that information. She did. And her deposition testimony indicates that she did.

That is the motion on the extrinsic fraud cause of action.

The two remaining causes of action against -- these

are only against the Carolina One defendants individually. As I indicated the only cause of action against Mr. Dudek and Ms. Cross is the IIED.

We have this mysterious, quote, bad faith and unfair dealing and/or accompanied by fraudulent act, conspiracy to fraud. I think what Judge Jefferson was struggling with when she originally got this motion was there's 18 causes of action and they all seem to be overlapping to an extent.

Many of the titles indicate fraud. She alleged criminal stuff. She alleged violations of our South Carolina rules of professional responsibility.

Judge Jefferson had to go through and weed some of those out and say our rules of professional responsibility don't form causes of action and these criminal things don't belong in this court. So we whittled it down to these four things.

Again I cite in my memorandum this bad faith and unfair dealings and/or accompanied by fraudulent act. The case on that is pretty clear. Separate of a contract with the person who is claiming bad faith such as your own insurance company it is not a standalone cause of action. I can't bring a cause of action against somebody I don't have a contract with for bad faith.

At no point in time has she had a contract with any

of these defendants. She had a contract with the owners of the home, Thomas and Lorraine Farrow.

But seriously, they are not involved in this action because for whatever reason she likes them, she doesn't like us. We never had a contract with her. I don't think you can have a cause of action for bad faith if you don't actually have a contract with the person claiming bad faith.

Out of an abundance of caution I am reading this as perhaps a civil conspiracy cause of action because she alleges intent to -- or conspiracy to fraud.

A civil conspiracy cause of action, to the extent this court considers this cause of action as a civil conspiracy cause of action, requires special damages.

Again, she has alleged no special damages in her complaint nor does she do so at her deposition testimony, if you read through that.

Her damages are all the same therefore -- she wants the house. Which the Court of Appeals has already ruled on. And she has got these IIED damages or allegations. Those of the same. Those aren't special. She has alleged no special damages. I don't even know if it is a civil conspiracy cause of action. But if it is there is no special damages.

Excuse me, Your Honor. And then the last cause of

action against the Carolina One defendant is the 18th cause of action for tortious interference with existing contractual relations.

Again, I go through some analysis in my brief. And to be quite honest with you, I don't know if it is a res judicata issue or an estoppel issue, a collateral estoppel issue. But the first -- very first element you have to prove if you are going to prove a tortious interference cause of action is you have an existence of a valid contract.

I assume she's talking about her contract with the Farrow's. Again, that issue was decided by Judge Chellis and upheld by the Court of Appeals. And they indicated that Mr. Dudek and Ms. Cross is entitled to specific performance.

It was kicked back down to the lower court. Judge Chellis set it for closing. They did in fact close. All of those things merge into their current deed with the property. They are the legal owners of this property.

So I guess it is a moot issue. I guess it is a collateral estoppel issue. It's a lot of different things. But she doesn't have an existing contract with the Farrow's. That contract has been done away with by virtue of Mr. Dudek and Ms. Cross actually buying this house, pursuant to lower quote court order and Court of

Appeals order.

And I've already touched on my request to strike her attorney's fees.

I appreciate your indulgence, Your Honor. I'm sorry it was a little lengthier than I want it to be.

THE COURT: Ms. Morphew.

MS. MORPHEW: Yes, ma'am. In response to that, I filed a response in an appropriate time to their motion; but their motion didn't contain all of the affidavits and other contesting that they are claiming here. And the rule says that affidavit for motion for summary judgment those affidavits, you know, have to be -- that you can do amendments to those affidavits or memorandums but it has to be included.

They didn't include those in there. So I just am saying that this motion fails just in itself for summary judgment. But even if it doesn't, there's a lot of questions for liability and fraud, whether it is extrinsic or intrinsic fraud.

And whether -- Judge Jefferson, very kind judge -- there were some -- several items that she dismissed, yes, based -- it is not a civil action. Which I understand. And those aren't being contested in the civil case.

But whether fraud or -- in the motion to dismiss I did do a reply that -- do another 59(e) motion was --

several of the opposing party did to her order. And I understand that those aren't immediately appealable because they don't settle the case.

So the issue of whether Dudek and Cross can actually be -- the claim can go forward for fraud is still in contention. Because allegations of fraud or fraud on the court cannot be estopped by res judicata or laches. And that hasn't been decided yet whether fraud has been committed or fraud on the court or either what kind of type of fraud has been committed.

There's more allegations than just fraud, fraud on the court. It's the unlawful, you know, behavior, unlawful actions.

And right now the order for closing on that property, they claim that the -- that I have no valid contract anymore. But because I appealed that order for closing -- and I also raised in that order whether Judge Chellis' order of November 6th is void. Because they failed to meet any law of specific performance in equity when I went forward. And I did contest. And I said that the judge erred in his order based on the fact that evidence was given to him -- and he just sent an e-mail saying he is not going to consider that evidence. Which to me seems improper because he asked for the closing statements to be sent to him after the trial.

Thomas and Lorraine Farrow are pro se, so they submitted that statement in a pleading with the evidence attached, the evidence that they discovered after the trial. They were in -- they lived in Denver at the time.

Now there's a question whether First Federal -- they are stating that my attorney had that evidence at -- right at -- before trial. But just because it was dated that it was that time didn't mean that he had that evidence. Because there was a deny -- in my deposition I even stated that there were documents. I couldn't say whether that First Federal file was the actual thing he presented in trial. They at Page 55 on the deposition you will see where they say was there any other documents you discovered at. And I said, yes, the denial letter, that they were actually denied financing because they failed to apply for their financing within the contract date. It had expired.

So that just -- and so they would denied lending. That was at though own hand. And it took precedent over anything that anybody else did or the Farrow's did. And that was presented to the judge. He decided not to consider it.

That information was also given on appeal. But the appellate court's opinion, he didn't agree on everything the judge said necessarily; he just ruled that he -- that

they -- that they were not in position and that the lower court was in a better position so therefore he was just going to go that on the fact that -- specific -- that he found that it was -- you know, that they had secured financing, met the rules of specific performance, and then they had the lawful ability to compel it and that the Farrow's breached.

Well, they also stated in that opinion that they did not even review any evidence that was presented to them. And that is in the opinion. And because they felt that the ruling of the lower court judge was dispositive of anything else that I -- or that we or the Farrow's presented in appeal.

Those -- that information, the fraudulent actions, even though fraud wasn't called out originally to Mr. -- I mean to Judge Chellis or even to the appeal court -- you know, Judge Goodstein actually said when she read through it that they were -- that they could be considered allegations of fraud and that it was presented.

But it was not litigated or adjudicated whether it was fraud or not, so my fraud complaint is -- and even the appellate court judge. And, yes, I did withdraw my -- the request to review it again; but that was based on the Farrow's -- they specifically said that they were

in dire economic stress and they just couldn't go any further on this. And I wasn't going to harm them any further.

I have done a lot of due diligence on this. And I have got a lot of evidence. And I -- and proving that -- that there -- at trial regardless -- there's no question to whether they had secured financing. It was when they secured it.

And all of the evidence -- and I don't blame the lower court judge in his ruling at all. If I saw a loan officer, you know, comes in and testifies under oath, you know, a federally insured bank I would -- I didn't question much of her opinion at all. If she said that they had financing.

There was no proof. I had been asking for that ever since the trial and after -- after this evidence was discovered. I didn't have this evidence in my hand.

Whether my attorney had it, it's not complete. Because I can guarantee you that John Massalon is an excellent attorney and if he had had that denial letter and a lot of this information he would have surely have presented it in court.

And if you are saying that he had this and didn't present it then it makes me -- you know, that would make me question, you know, his integrity. But I -- he is a

very good attorney. And probably one of the most honest attorneys I have ever come across that in my opinion.

So and if I had had this evidence it would be clear -- if I had had this before trial or even a day after trial and I knew of it I would have presented it.

But the Farrow's they were in transit. Supposedly allegedly the First Federal it was dated June 10th. The trial started June 11th. The Farrow's were not copied on -- First Federal did not send those copies to everybody, as far as I know. Because the Farrow's said that they didn't receive it until months later.

And that -- and they didn't -- and there's no way they could have received it before trial because they weren't even at home. They were away -- they flew in on the 10th and were awaiting trial the next morning.

So when they discovered this evidence they did file a petition and presented it to the judge. And the judge -- there is an e-mail. And the judge specifically says he is not going to consider it.

Which to me, again, I brought up on appeal that it was, you know, an error by the judge because he asked for their statements and chose not to consider the pro se parties' final statements. It was going to only consider the attorney's statements. Which is -- is -- doesn't seem right at all. And probably unlawful.

So no matter how many times it has been presented it still hasn't been litigated or adjudicated on whether fraud was committed, what kind of fraud it was, and who is liable for it.

My fraud case definitely presents that. And there's more accusations than fraud on the court, or even fraud. There is unlawful. There is improper. There is a duty of care.

The cases were adjoined -- were combined. And even though I didn't have a contract specifically with Dudek and Cross or even with First Federal that their -- their ability to compel specific -- their lawful ability to compel specific performance and weighed heavily on whether the judge could -- had the actual jurisdiction to actually order specific performance.

Therefore -- and -- I'm sorry. I am very -- (pause for water). But because they were combined the judge found that I had a valid contract and I was to -- also, but because the -- Dudek was there first and he found that they did -- just by testimony alone, there was no evidence, no evidence that they had secured financing; just by testimony alone, mainly on Allison Williams who is the defendant in this case. And she is a loan officer for the bank. And basically a lot of that. Even though she wasn't an expert nor was she an underwriter. And she

admitted that at one part that she wasn't an underwriter.

But he weighed heavy evidence on that. And a lot of the faults or misrepresented testimony that she -- and so in combination of all of the testimony so you got all of these defendants say that, yes, they did. You've got a real estate agent. You have got a chief counsel of Carolina One, one of the biggest real estate agents in South Carolina. And you have got a loan officer who is representing a federally insured bank and who is probably most likely briefed before she went into trial. And because I know. I worked at a bank for 15 years doing this kind of stuff and I know that before you go to trial usually the legal department either briefs you. Because personal information is huge and you don't want to disclose any of that even at a trial. So I am sure that she had to have been briefed.

There is even evidence of e-mails where the -- everybody was asking for the proof of financing and where the seller's agent before it even went to trial or anything said, hey, can you provide us -- you know, they have got this complaint against us but can you provide us your, you know, proof that they secured financing.

And then there is an e-mail from the bank to the defendant, Dudek and Cross, saying, hey, the real estate agent is asking these questions, what do you want me to

do. And they are saying, ah, send it to the attorney.

There has never been anything to prove anything except for a cover-up. And so that of course makes me even more wondering for their unlawful behavior.

But just the evidence alone that has been presented numerous times shows that just by law, by law alone, that they had no right to compel specific performance and that the court if they -- if he had considered the evidence would not have been able to order that specific performance to -- or either the damages. And because the defendant Dudek and Cross' breach was precedent over anybody else's, especially the sellers or anybody else's conditions to perform.

Instead they said, yes, they were ready to close, ready and willing. And it was never that way.

So my fraud complaint isn't just fraud. It is blatant misuse of the court system and filing frivolous complaints. And all I have been getting back is that I am sitting here and harassing and, you know, filing frivolous things and making, you know, accusations and allegations that aren't true.

But I have got all the evidence in the world that it is true. And this court hasn't even heard this yet. So summary judgment isn't -- is -- isn't even proper. There's a lot of liability issues in question. And there

are allegations of, you know, who had what file when.

There has been no proof. They have not provided any discover, even at my request for paperwork or statements or something.

They are just saying that -- they are just -- even the lower court judge, Judge Chellis, said that I -- that I didn't deserve any of that information and it was irrelevant to specific performance. And he even said to the Farrow's what does -- what does -- does being able -- securing financing have anything to do with specific performance.

And it's like, well, everything to do with it. And then he still said it is moot.

So we have been going at this case after case. So I have got an appeal on the order for closing. And so really my contract that they say is actually mute or invalidated now because they closed, is still in question whether it's -- they've closed lawfully.

And my constructive trust I have it out that the defendants are not bona fide purchasers and that they unlawfully purchased. And it goes right back like a domino effect to this original case, and it is on appeal once again.

The specific performance may not be. But it is raising the question whether the order is void based on

law. Which as I understand could overrule that condition on that order.

And though a lot of -- the causes of action that he is arguing to, some of it, like I said, is thrown out. But there's some -- there's some very good allegations and contentions and issues that I have raised that summary judgment or even sanctions at this point would definitely be I would say like improper, not right at this time. Until the court actually -- and a lot of those questions are for the jury, as I understand. Whether it is liability or whether that Dudek and Cross could be held liable for fraud even though it was dismissed.

So based on that I would have to say that the defendant's motion for summary judgment is -- wouldn't be in the right case to be -- to dismiss the case. Especially fully -- and at the extent of the charges that are being allegated against them for fraud.

And, again, like I say, res judicata and collateral estoppel and laches there they are barred from -- from the defense if fraud is allegated. And until that is decided then ....

THE COURT: Thank you, ma'am. Next motion.

MR. WHEELER: I'm sorry, may I response to her just briefly, Your Honor? She wants another day in court. I

get it. She wants another day in court on this fraud.

If it is intrinsic fraud she doesn't get a day -- another day in court. If it is extrinsic fraud maybe she does. The problem is to meet the elements of extrinsic fraud you have to show that you were basically cut off from having a fair shake at the original trial, in other words she didn't have the information at the beginning.

And I will just read one thing from her deposition transcript, Pages 109 and 110; they are talking about her boxes of information in the First Federal file that I already talked about as basically the foundation for this entire case.

And the question is: All right, well, let me follow up on that. Is there anything you discovered after the trial that wasn't included in either the notebook or the First Federal file?

And she asks: After the trial?

And Steve Smith says: Yes, after the trial.

And she shakes her head.

And he says you are going to have to answer out loud.

And she says: No, sir.

In other words there is nothing that she didn't discover after the trial. So if she had all of this information at trial she does not have an extrinsic fraud

cause of action.

Thank you, Your Honor.

THE COURT: All right. Next motion.

MS. MORPHEW: Your Honor, that -- he raised the issue that -- I'm sorry, he raised the issue that I -- in that deposition. But that is not what it was meant to be. When he said is there any information, there is throughout the thing you will see where I say, yeah, the denial letter; there's a lot of things. And I couldn't answer that.

But the -- the -- after trial is when I went on appeal is when I discovered this. And this is when I got the file. And that was in December or January of the following year, months -- a few months after the order came out. That is when I saw this information.

And it even says in there that is when I received the information for Mr. Massalon. And I even say in there I cannot confirm what he had before trial regardless because I don't -- have no idea what he got. It was when I asked for it.

An so when he said after trial anything else, no, after trial nothing else after trial meant that everything was contained in that thing that I went for appeal.

THE COURT: All right. Thank you, ma'am.

Next motion.

MS. NEUSCHAFER: Good afternoon Your Honor. Amy Neuschafer for the defendants with the Woody Law Firm and their paralegal Carrie Boyer.

The next motion I think - I believe we are on Number 6 right now - is one of my discovery motions. It might make more sense for me to segue first into my client's motion for summary judgment since it overlaps some with what you just heard. Is that okay?

THE COURT: Sure.

MS. NEUSCHAFER: Okay. Just a little background here. My client, the Woody Law Firm and Carrie Boyer were retained by Mr. Dudek and Ms. Cross to conduct the real estate closing with regards to their original 2012 attempted purchase of this subject property. Of course they never were able to conduct that closing because this litigation ensued.

It is important to note that my clients are in the unique position of having no involvement in the prior litigation. They were not sent a subpoena for documents. They did not testify at deposition or trial. They had no attorney-client or other relationship with Ms. Morphew. In fact, they had never heard of Ms. Morphew until this instant litigation was commenced.

The remaining causes of action as to Woody Law Firm

and Ms. Boyer are similar to the causes of action that Mr. Wheeler has already gone into. So I will skip around where I can.

We have got the fraud, extrinsic fraud, fraud upon the court, bad faith, unfair dealings, and/or accompanied by a fraudulent action, conspiracy to defraud, intentional infliction of emotional distress, and tortuous interference with contract.

In Ms. Morphew's deposition there were a few undisputed facts that have been developed with regard to my two clients. Ms. Morphew has acknowledged on multiple points in her deposition that there are four pieces of evidence that she relies on underpinning the claims against my clients.

There is a November 27th, 2012, introductory letter sent from the Woody Law Firm to the sellers, Mr. and Mrs. Farrow. There was an 11/27/2012 e-mail from Carrie Boyer to Susan Williams -- I'm sorry to -- I believe that one was to Allison Williams. I got the names mixed up. Asking for company's title request.

There was a December 5th, 2012, e-mail from Ms. Boyer, the paralegal, to Susan Nicholson asking for proof of repairs to damage in the CL100. And there was a December 12th, 2012, e-mail from Ms. Boyer, Carrie Boyer, to Susan Nicholson following up on the previous request.

It is important to note that each and every one of what Ms. Morphew claims are her evidence with regard to my clients, each and every one of these correspondences was sent before Ms. Morphew signed her backup contracts with the Farrow's. That was done I believe on December 16th, 2012.

So none of these actions were taken by my clients with any knowledge that Ms. Morphew even existed, that any backup contract existed.

I have submitted a comprehensive memorandum along with an affidavit from Ms. Carrie Boyer that basically outlines her experience as a real estate closing paralegal and also sets for the court that each and every one of these correspondences was sent in the complete, total, normal course of a real estate closing.

She was simply trying to get the wheels moving on the closing that she had every belief was going to be consummated. She had no idea who Ms. Morphew was and had no idea that a backup contract existed. And in fact it didn't exist when these contracts were sent.

One of our defenses we have asserted is the statute of limitations. Ms. Morphew has acknowledged that each of these four documents was received by her in June of 2013 around the time of Doreen Cross' deposition in the underlying lawsuit. So she had all these documents in

June of 2013; yet she did not file the instant lawsuit until August 24th of 2016, which is past the three-year statute of limitations.

There's also no genuine issue of material fact on any of the remaining causes of action. As I have said, the only evidence in the record is that these correspondences were sent in the ordinary costs -- an ordinary course of a real estate closing. Ms. Morphew hasn't developed any evidence to the contrary.

I believe and take the position -- my clients take the position that to the extent Ms. Morphew alleges that they were abnormal in some way, she needs to get an expert pursuant to Rule 701 to explain that.

That is not something -- how -- the proper conduct of a real estate closing is not within the knowledgeable of a layperson.

Also none of the complained of acts could have been done with the intent to harm Ms. Morphew, which is a required element of each of these causes of action, because they were all sent before she had her backup contract with the sellers.

Mr. Wheeler has already discussed the broad extrinsic fraud, fraud upon the court, cause of action. I would incorporate and rely on any of the legal arguments he has made.

I think here again my clients have a distinct position in that they could not have committed fraud upon the court or fraud -- traditional fraud with regard to Ms. Morphew because they had no contact with her and made no representations. And even if they somehow did, she had no right to rely on them; they had no relationship.

They didn't give any testimony to the court or produce any documents. They weren't involved in that litigation. They certainly can't mislead the court if they are not involved in the litigation.

The relief she wants is to set aside that underlying judgment. And my clients can't give that to her. The house belongs now to Mr. Dudek and Ms. Cross.

With regards to what appears to be the civil conspiracy fraud, there is no evidence. And the -- the only evidence in the record is to the contrary, that Woody Law Firm and Carrie Boyer did not work with any other party to harm Ms. Morphew.

There has to be overt acts to injure Ms. Morphew, and there's no evidence of any of that nor is there any allegation of special damages. Ms. Morphew admitted in her deposition that -- even if the civil conspiracy claim was dismissed her damages would remain the same.

Intentional infliction of emotional distress. Again you have got these four instances of evidence. The

introductory letter and then three single-line e-mails that I think the case law that we have cited in our memo demonstrates that that is not the kind of conduct that rises to the level of extreme and outrageous. We have done a string cite that shows kind of when the courts have been willing to impose this tort. And again Your Honor is well aware that that is a question of law for the court whether it is so extreme and outrageous to exceed all bounds of decency.

Ms. Morphew admitted in her deposition - and we provided the pages - that these documents were sent before she had her backup contract and so they could not have been sent with the intent to harm her.

Tortious interference with contract. Again there was no contract remaining at this point running to Ms. Morphew by operation of the previous litigation. The introductory letter in the subsequent e-mails by Ms. Boyer were all sent without knowledge of Ms. Morphew's existence. My clients can't intentionally interfere with a contract that they didn't know existed.

And there is simply no other evidence in the record other than that all of these actions were done in the ordinary course of a real estate closing.

I think at its core and what you can probably glean from the presentations you have heard thus far is that

Ms. Morphew contests the proper ownership of this property. And what she has admitted in this deposition is that that is what she wants, she wants the property back. And that issue has been decided.

The documents that she claims give rise to her cause of -- her causes of action against my client existed at the time of that prior litigation. She had them all by June of 2013. She had a full and fair opportunity to litigate these issues in that lawsuit. She opted not to. We believe there is a collateral estoppel defense there as well.

I think, lastly, there is a proximate cause question here. All of Ms. Morphew's damages are premised on the theory that she would have prevailed in the underlying suit but for these defendant's conduct. Well, that is pure speculation. And clearly case law supports the proposition that you need more than that to get past summary judgment.

We also have included in our motion for summary judgment requesting summary judgment on the -- Ms. Morphew's claim for attorney's fees. And that has already been argued by Mr. Wheeler.

I think that is all my client's grounds. Thank you.

THE COURT: Thank you, ma'am.

Response, Ms. Murphy.

MS. MORPHEW: Yes, ma'am. I guess to clear the air about the attorney's fees, the only attorney's fees that I am asking for specifically are for Mr. Massalon, the prior litigation. Anything else is as to what they are kind of trying to construe as attorney's fees.

But in a position where I lose work hours because I -- you know, to defend. Even though it's -- as they said, it is my litigation; but it is litigation that is proper. And it is defend -- so I cannot reiterate enough that I am only trying to right an injustice and I am defending my right to present my case fully there and to prevent fraud on these courts.

There is still a question, again, for summary judgment of liability regardless of Woody Law Firm. But the attorney's fees are not attorney's fees. I specifically asked for attorney's fees but stated that it was Mr. Massalon in the prior litigation his fees. And anything else that is presumed as attorney's fees as like loss of work or time it takes -- I -- you know, to go to the courthouse and file. Because it is loss of work.

I work a 40-hour job plus I have a part-time job that I have not been able to work due to this. Which is -- it is after-hours. So my time is very constrained. But it is -- and it is just as important as an attorney's

time if they have to go out of their way to do anything to defend their rights. And that is my right. So whatever -- however this court decides is I understand. But I just wanted to clarify the attorney's fees.

Attorney Neuschafer has expressed that the property ownership was already decided in the past litigation and it was decided because Dudek and Cross had closed on the property. But property ownership was never an issue at the time because the Farrow's owned the property at that time.

Property ownership became an issue on June 2nd when the -- when the defendant's actually closed on the property. And then that is when I raised issue of property ownership and whether it is lawful or not.

Again, it is a domino effect, based on allegations that it was unlawful for them to purchase the property. They knew it. They had express notice. They had, you know, constructive notice that I had -- and I still had a stake, as they stated, for the property, that I am still claiming the property. But they still continued to close while these actions were pending. That is on them.

And again my contract is still pending, based on the appeals to see what the appellate court says, as a constructive trust is on appeal also.

Also I wanted to note that even though there was

only four pieces of evidence basically from Woody Law Firm, they are an attorney and they were a -- they were and continue to be a large piece of the puzzle.

They were relieved -- or they had withdrawn from closing on the property in 2017. They actually had a closing date set at Woody Law Firm after everything came forward. And then they withdrew because obviously they found -- first they found cloud on the title, which was not mine. It was a lis pendens. And then they withdrew based on the fraud case that is out there and allegations against em.

And that is what was presented. I am not sure -- don't quote me. Because that was what was presented at the trial and -- or the hearing.

And whether they withdrew for that reason or any reason, I am not sure. But it was presented that they withdrew because of the litigation against them. Not by -- by the parties. Not by -- by Woody themselves.

But because they -- even if a document isn't -- an action -- the actions that Ms. Boyer and Woody Law Firm did, not saying they -- I am not saying they -- I am not saying anywhere that they knew about me or intentionally set out to harm me or even fraud the courts. And maybe it is actions in normal processes for them to contact the buyer's agent or seller's agent or anybody else before an

application for financing on that property has even been applied for let alone before a bank -- because I know how that -- I know how the process works, working at a bank. And I have closed and I have bought houses. And I have never had a closing attorney contact me before the bank gave it clear to close.

There's two reasons for that. That why would they expend any expense and money and time before they even knew that the clients were even able to tender the payment. And second of all is it opens up to liability because once -- on November 27th Woody Law Firm engaged the sellers. And I know they have that has nothing to do with me. But it will, if you let me get -- I will get to it.

They engaged the sellers officially on a closing attorney, attorney relationship, even though they weren't representing the sellers in the case -- or in that transaction, they weren't -- being clients -- they still were representing them in -- for the closing.

Once they asked for their personal information and opened it up saying that they are representing them in my fraud I am alleging that they have now made themselves liable to inform all parties to the case, even the lender themselves, of any actions or non-actions or maybe that okay we are not going to close, there is a -- something

on the lis pendens that needed to be taken care of.

But if that was the case -- because there was a further e-mail from them saying that the -- a CL100 was required to be cleared. It was only sent to the buyer's agent. That was it. And it was slightly encrypted. And it -- before -- before -- well, at the day that they applied for financing. Now, again, when they sent that information that information is from an attorney who has already opened themselves up to the liability of all parties involved.

So that they did not send that requirement to everybody and it was encrypted saying as requested, it seemed like it was just -- because -- because at trial -- at trial they said they had secured -- all the defendants had claimed that Dudek and Cross had secured financing, ready to close by December 14th. Which also said then that their closing attorney was ready to close.

There was nothing in writing that there was a closing date scheduled, that they were ready to close, or anything. And there -- but in all the information should have been from the closing attorney Woody should have been -- on November 27th forward since they opened themselves up to that liability instead of allowing the bank to do all of that footwork which is usually what happens they -- that information was not passed along.

It was not subjected -- you know, put out there.

Well, the Farrow's would have had that information if they were kept informed -- as a duty -- I guess they call it a duty of care. They were supposed to be kept apprised of anything now because now they have been engaged that there may be a closing taking place soon.

And I present in my fraud that it alleges a façade. Which it did to me too that this evidence even though it was unlawful -- maybe it was unlawful. I don't think -- I don't know if it is even normal.

But taken under the circumstances, sending notices saying that a CL100 had to be cleared before -- you know, it be cleared before a closing. Well, what closing. I mean they hadn't even applied for financing yet and there was no guarantee. So why would you require sellers or anybody to spend time and effort and money to do something for a closing attorney or even for the buyers that is not required or even a condition yet.

So to me there's a liability question whether -- and then the case again was combined. Well, this evidence was basically presented that they were ready to close, that they were requiring all this information. And it was presented by Mr. Nicholson and Ms. Williams at the trial. And so their information, though not intentional, and not intend to harm anybody, specifically me -- I'm not

saying they did - became part of this presentation that was -- this information was used to present a misrepresentation during the trial.

And therefore -- and I know that the courts have found even South Carolina have found that even if you are not intentionally trying to unlawfully do something or conspiracy for fraud or fraud that that information if it is used you can be held accountable.

Again the liability and whether that should be held accountable -- or whether now raises the issue. We have an affidavit that was presented. And she actually stated that, you know -- that I sought -- and I sought -- that they sought to defraud me, conspired. But I didn't say me. I said they sought to -- I didn't even say they sought to defraud. It was just an action that happened and that the whole fraud action was defraud the court and defraud the whole party.

Because if you go into a courtroom and you fraud the judge you are frauding everybody around, not just the judge. This is a, you know, a whole participation.

And I just know that it is -- this information if -- there had been the honesty and presentation of discovery or even this evidence, because the evidence that appeared after trial to the judge was evidence that the defendants had in their possession before they even filed or even

knew -- they knew of it before they even filed for specific performance.

There is no way that they didn't know this information because of all the dates. And it is probably about 300 pages long, the information.

And for Woody Law Firm to say that they are not liable because they -- we didn't intend to do anything or we didn't mean to, doesn't mean that it wasn't appropriate.

Because they -- I raise issue that she says this is a normal process for them. Basically by her statement that approaching at a -- the closing attorney approaching any opposing party or parties to the closing before a financing is applied for and before the banking engages the closing attorney themselves is probably not normal.

And I know discovery is closed, but her contention that this is normal and it could be weighed heavily by this court whether you know it is a normal process and therefore shouldn't be held accountable, to me I would like to ask this court that if you compel -- that they would provide information showing, you know, they prepared versus closings how many closings did they perform in which they engaged any opposing party before those instances and then how many of those closings did they actually have the bank engage them and then

communicate that way.

I understand that it is normal for a closing attorney to approach maybe a buyer and say, hey, I have got a little issue, let's see if we can get it taken care of. But that is usually after they are engaged that they have retained financing.

Because it is not a closing attorney's duty to say, oh, well, they needed a CL100 when they don't even have the contract and they -- they are not -- they just open themselves up to liability by stating that, yeah, we look at this and we will contact them and then required all of these documents when there is no contract presented to them.

And it is not to them to decide that contract. The closing attorney is only to decide whether -- what is required for closing and what -- and if something fails. And then you are required to communicate with all parties. So that something like this does not happen if -- if all of these little notices and e-mails had gone to all parties that may have been a different situation.

THE COURT: Let me ask you just one question.

MS. MORPHEW: Yes, ma'am.

THE COURT: Were you a party?

MS. MORPHEW: To the trial, yes.

THE COURT: No, ---

MS. MORPHEW: This information ---

THE COURT: --- to that contract. No. All right. So let's move on. Let's wrap up your response because you're kind of going outside of the bounds of what they argued.

MS. MORPHEW: Oh, I'm sorry.

THE COURT: So you can stick to those responses. And let's move on.

MS. MORPHEW: Okay. Party to the contract. Not specific to the contract. But because the judge -- I -- my case wasn't -- I wasn't ruled against. We were both ruled for. It is just they were ruled for first. If they failed to close then I would close.

By adjoining that the information -- the information and the -- the information that was used to -- for their contract became substantial for me in my defense because, you see, if they failed to meet those requirements and they failed -- if anybody was working, you know, out of their processes or in bad faith or ---

THE COURT: Well, Ms. Morphew, how do you even have standing to challenge a contract that you are not a party to?

MS. MORPHEW: I am challenging the specific performance because in my contract I said that they specifically, Dudek and Cross, were legally liable to

sign the termination request because they failed specific performance.

Their contract whether they met those conditions was the basis of whether their -- they were liable to sign, you know, that termination request so that I could close.

The judge finding, using all of this evidence and misrepresentation and false information in order to find that they could close, yes, it was very very important to my contract. And even though I wasn't a part of their contract their contract was precedent on whether I could close or not.

So though I wasn't a party to that contract legally, in the court proceeding I became a party to the whole contract because my contract was precedent on whether they could perform it or not or whether they did perform it and they could close.

THE COURT: Next motion.

MS. MORPHEW: Yes, ma'am.

MR. CRAPPS: Your Honor, I don't know whether you want to hear my summary judgment motion at this time or if you want to go through the list. I know Amy is up next. I will defer to her but.

THE COURT: Whatever is easier for y'all.

MS. NEUSCHAFER: This is probably easier.

MR. CRAPPS: Okay. Continuity of theme here. I am

going to try to incorporate Amy's and Sam's argument here just because I don't want to touch on the specific elements of each cause of action again. But you will see in my motion and memo of support I touch on those as well. And of course incorporate what they have already argued here today.

Your Honor, I represent Allison Williams and First Federal Bank. First Federal Bank was the lender to Ms Dudek -- or Dudek and Cross in this case. Allison Williams was the mortgage loan officer associated with that file.

That is my client's only involvement in this. They had zero involvement with the sellers of this property. They have had zero involvement with the plaintiff. They have no contract, no communication. And as you have heard, Ms. Williams did testify at the previous trial. So that is about the extent of our client's knowledge or involvement with Ms. Morphew.

And like I said, I am not going to get in the weeds of all of the elements and causes of action. But there's really two overarching themes that I want to touch on here especially as it relates to the bank defendants.

Ms. Morphew's case is entirely premised on this allegation of perjury, that Ms. Williams did not tell the truth at the previous trial.

That allegation cannot support any cause of action. And I cite a lot of case law in there to that point. And also entirely this whole issue is collaterally estopped and is barred by issue of conclusion.

So as I stated earlier, Ms. Williams testified at the previous trial and Ms. Morphew's case here today is entirely premised on that testimony.

I will quote briefly from her deposition: Is it fair to say that the only thing -- Question: Is it fair to say that the only thing you are suing First Federal Bank and Allison Williams for is false testimony and misleading the court?

Answer: And, well, currently, yes.

Question: Currently, yes?

Yes.

And a little bit later I asked her if the conduct she complained of about occurred, quote, within the four walls of the courtroom. Ms. Morphew's was, yes.

And again no matter how this cause of action is captured, whether it is fraud, extrinsic fraud, intentional infliction of emotional distress, it is all premised on that conduct, Ms. William's testimony not being truthful. And that does not support any cause of action here.

As a general rule no civil action lies for damages

resulting from false statements under oath constituting perjury or from subordination of false testimony. 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. That is from the American jurisprudence.

I have other case law in my brief that I won't quote you again.

And on top of that there is the litigation privilege that is an absolute privilege that exists to any utterance arising out of a judicial proceeding.

And so to the extent again she is relying on this testimony in court, that is privileged testimony; and I have case law in my brief that says you can't support cause of action like intentional infliction of emotional distress named on that.

And lastly, Your Honor - Amy touched on this as well - there has been no proof or evidence submitted that the testimony is false to begin with.

You have heard some here already today and what I presume is going to be presented at trial, because there has been no other evidence submitted, is Ms. Morphew testifying to her understanding or belief of what a real estate closing or a mortgage lending file should be. That is not competent testimony on that point.

And, Your Honor, that is the only thing that has been submitted. And it hasn't been submitted, it has just presented at motions hearings like today.

Collateral estoppel and issue of conclusion, kind of proving my point. The plaintiff included a statement in her response to our motion for summary judgment. So her response to the motion we are arguing right now she says, quote, Morphew has stated to the courts or to the opposing party over and over again through the past years that if defendants or banking defendants would produce verified material documentation that supports Dudek and Cross' claims that they were ready and able to close escrow in 2012 or at the time they compelled specific performance on January 15th, 2013, that she would withdraw all of its claims.

Your Honor, I don't know what my client has to do with that statement; I am not trying to prove specific performance at all. But that is exactly her point that she makes right there is exactly what Judge Chellis found back in 2014. Paragraph 15 of his order: The court finds defendants Dudek and Cross are willing, able and ready purchasers of the real property.

I don't want to go down this rabbit hole because it is tangential to the point I'm making, but all of this stuff about, you know, whether it was perfectly ready to

close or not is moot. Judge Chellis found -- he actually took judicial notice of the fact that a loan approval without conditions is impossible. I think everybody understands that.

As of January 2013 the only condition was to the loan application was the receipt of a sales contract extension signed by all parties. Judge Chellis found that the failure to have that contract extension was the fault of the sellers, not the buyers. And it certainly wasn't our fault.

So, Your Honor, the last point on this, that there is no new information that the plaintiff is relying on. There is no doubt that Massalon had that First Federal file. And it has been referred to several times here.

Documents from it were submitted into the record. Allison Williams appeared at trial. Testified. Anything they could have found in that file they could have asked her directly. Ms. Morphew testified at her deposition that she got the First Federal file from her attorney.

And regardless that is really a discovery issue whether he sent a subpoena and didn't move to enforce it or didn't raise it in court is a discovery issue. That should be there. And it is certainly not the basis for a separate cause of action.

So, Your Honor, I am not going to get into the

specific elements of the case again; but those are the two overarching themes I think support our motion for summary judgment.

Again, our remission and memo lays out additional reasons specific to those causes of action. But those are the two themes that I think doom Ms. Morphew's case here. Thank you.

THE COURT: Response.

MS. MORPHEW: Yes, ma'am. First I would like to address that it was stated that there was no proof that they had committed any kind of perjury or anything like that. But when you see the denial letter and the evidence that is produced, which they actually have had for quite a while, and saying that there has been no evidence provided or anything to substantiate my allegations; but they have all of that. But in order to say that there was no proof of perjury is not -- I guess not necessarily for this court at this time to decide since it is a criminal action. But the amount of prove that I do have is substantial.

And just in the denial letter alone saying that they were denied lending because they had an invalid sales contract and they never provided say a contract extension addendum, right there states that their contract expired on November 30th at the time that their contract expired

and therefore they did not have a valid contract; they didn't -- were not ready to tender payment.

And South Carolina laws are very strict in equity. And I am not going to reiterate all of that in here -- from in there. That in order to do equity you must -- you know -- to compel equity you must do equity. Well, I presented to the court to Judge Chellis that everything that I had was valid and I had the proof of financing, closing documents -- yeah, I even had a closing documents. The defendant's never had a closing date. There was -- has been no proof.

And again, I did ask for if they could -- if they would provide me with the proof of financing they they could -- were lawfully able to compel specific performance I would drop everything. And basically the answer was I will never -- that I wasn't going to get it.

I don't see where it would prejudice them to provide that for me if they have got it. So my only choice is to keep proceeding with my allegations because I have all of the proof at hand and not once -- or not anything has been provided to me to substantiate their defenses except for collateral -- res judicata, laches, anything that they can to technically but not on the merits get off from their actions.

Again, it is for summary judgment -- summary

judgment it just wouldn't really be proper. Because there's so many questions of their liability. And even though -- they say that I just claim that Allison Williams just perjured herself. But there's more to it. Under oath, you know, she is also banking officer to tell the truth. And, yes, that perjury is because she had complete knowledge and actually a higher knowledge than either the court and the judge or myself whether what she was saying was true or not or the specifics of their financing condition, which was the basis for to compel specific performance. She had that knowledge. She failed to disclose it. She actually misrepresented and perjured and to the opposite.

And the -- when Ms. -- when it was presented that the loan -- that the contract and at the -- financing condition was -- by Judge Chellis was impossible and they raised issue with that; if it was impossible, if he found that contract a condition of a contract was impossible and therefore it would be unfair it fails equity right there in itself because to compel specific performance you had to find that there was a valid, fair, and negotiable contract.

Saying that their financing condition which they wrote; not the sellers, and that they agreed to was impossible, was not on anybody else, myself or anybody.

So again it comes back down to if that really was impossibility then there should be no -- that is not a valid, negotiable, and fair contract and therefore specific performance by law cannot be compelled. Maybe damages, but not specific performance.

But you can't go back all over -- specific performance, yes, was ruled on by the judge. But it was ruled on using substantially falsified misrepresented evidence. And it wasn't because of my failure for due process or trying to obtain this information. I had two separate subpoenas, one in March and one in August, separate time, separate people, to First Federal themselves. And the response back was false. Didn't know it at the time. It was presented from my attorney to their attorney saying -- we asked for this, but they say there is no such people or no such loan at their bank. So you are saying you have secured financing, but they are saying something different, what -- so -- thing.

The only answer back was we have secured financing and we didn't get a CL100, that's why we couldn't close, the whole time until we got to trial. And then that is when more testimony stated the fact.

It was -- it wasn't -- if I had had this information from the very get-go when I asked for this information from, you know -- and I know that in discovery that

Dudek and Cross were supposed to provide anything they had, which they did at deposition which was nothing in that First Federal file that was -- it was their own information that they provided at deposition which was a -- which is what I am alleging is a forged document. It was falsified. If you look at the dates - and that is what's -- should be at trial - if you look at the dates it was from Alison Williams to Doreen Cross stating that she had basically given a preapproval. Now this was 44 days before they even applied for their loan.

So again there's proof and its presentation -- that document was presented at trial. And it was also raised, the question, are you sure this is valid because this date on this is next year's date; the approval documents were dated only just ten days after I filed my complaint. And I really feel like it was to defend my allegations that they hadn't applied a secured financing within the sales contract. That was the only evidence that they produced.

And I claim in my complaint that -- or I allege in my complaint that it is false or forged and that it was presented by Ms. Williams and it was presented in court as an exhibit.

So it is not just perjury. It is presenting to the judge false information. Mr. Collins, Defendant Collins,

was the attorney for Dudek and Cross, and I feel very strongly also that he had this evidence and it wasn't disclosed. When they were making these facts and presenting this evidence he was right along with there. So right there that would be considered extrinsic fraud. When an attorney just adorns it, allows it, doesn't prevent it, and actually knows the truth but doesn't do something about it, whether it is behind the scenes going up, you know, the lines or even to the judge saying look or even to the ABA saying look this is not right or this may not be right. But he continued to litigate it and take it to trial and support every misrepresentation or false statement that was at court and before. And it has been -- they have made it impossible for me to actually get this information.

Now again there is no -- the defendants here keep presenting that Mr. Massalon had all of this information that I say that I had when I went on appeal, which was again in January. I took over the appeal.

I asked him for a file that he -- or not a file but information that he had. And I said I don't know, it's a court -- it's a court book or whatever you have got. And he provided me with this information. Whether it was ---

THE COURT: Ms. Morphew, let me interrupt you just for one second.

MS. MORPHEW: Yes, ma'am.
THE COURT: What evidence other than your allegations in your complaint -- do you have any affidavits, do you have anything in a deposition, that has anything that shows any perjury?
MS. MORPHEW: Yes, ma'am. Besides trial, got depositions by Doreen Cross and Stephen Dudek.
THE COURT: You have submitted that?
MS. MORPHEW: They have that. I told them that that was evidence I was going to present.
THE COURT: All right. Let's move on then.
MS. MORPHEW: Okay. So all of the denial is, everything is evidence with -- in an e-mail that says this -- they wanted everything that I am going to present or could present at trial; and I provided that to them. Which is all of this information I am telling you.
So, again, there is just the -- whether or not I had the contract, my con- -- my case and contract was heavily -- heavily relied on the testimony, the presentation, the evidence, and everything whether I would close on this property or not.
I also would like to clear up for the court that there wasn't -- it wasn't necessarily considered -- it wasn't a backup contract, because they had -- they had been submitted the termination request before my contract

was signed. It was only -- I only had to wait -- what I was waiting for was them to sign the termination request. It was only contingent on them signing the termination request. And it wasn't saying -- that wasn't -- in the purchase the property they didn't sign. But because it was waiting on them it became part of the case in the trial where -- whether they have a legal liability to sign that termination request.
And, again, that is what I am presenting here that they did. Because they failed and it was discovered that they failed all rules and laws of equity and especially specific performance and -- from the get-go. And that they had this information and that First Federal knew this information. And like I said, they were in a higher position to know of the financial status of their client. And they in two subpoenas and a phone call from my attorney never, you know, stated -- said, no, we don't have anything. And so then when we went to trial she testifies that, yes, they did have financing.
So there is -- there is a question of -- I mean that is perjury in itself because even though I had to prove which one is right or wrong it is still perjury because it is two contesting subpoenas and depositions and trial testimony are in the perjury. And I have vast evidence to that.

I actually have a spreadsheet going over all of the perjury and where it is located and what was true and what wasn't true and all of the evidence to support it. But since that is a criminal action that is for something else.
THE COURT: Thank you, ma'am. Next motion.
MS. NEUSCHAFER: Your Honor, Amy Neuschafer again. I have two what I would call very minor discovery motions I want to circle back around to. Obviously these would be moot depending on Your Honor's ruling on the dispositive motions.
One is Number 6 on the motion's roster which concerns the sufficiency of Ms. Morphew's responses to my client's request to admit, specifically request to admit Number 5 in which I asked her to admit that the defendant's took no action to intentionally cause a breach of her alleged contract with the Farrow's.
Ms. Morphew simply stated she couldn't admit or deny because she lacked information and belief. Our position is that doesn't comply with Rule 36. That is in the motion. Let Your Honor consider that.
The other motion is a motion to compel that is Number 9 on the roster. That concerns discovery requests we served on Ms. Morphew back in September of 2017.
Ms. Morphew's response to request to produce Number

6 was incomplete. She stated she would supplement it within 60 days of November 6th, 2017. I followed up with her several times. I have attached all of that. She has never produced the responsive documents.
Also there were some document she had apparently produced in response to Defendant Carolina One's request for production. She was ordered to produce these by January 5th. My understanding is she did send them to at least some of the defendants. But my clients have never received them. Again, I asked her to send them. Never got them. So I was forced to file the motion to formally ask that she be required to produce those. And that's it.
THE COURT: Ms. Morphew, do you have those documents?
MS. MORPHEW: Yes, ma'am, the motion to compel that -- those items were presented as -- and sent to all of the attorneys.
She said she didn't get them. I actually copied most -- some of those items in e-mail. But during my deposition those items were there in forum. And Ms. Neuschafer was aware they were there because she asked -- saw them, asked about them.
And it is expensive. It is very very expensive and very costly to produce. Which -- and it is basically

these bank statements. And they are -- basically they are looking to see at -- you know, in your defense of what kind of -- this is what I was told, that it is relevant for cost and defense. And I said, well, it is right here.

These attorneys are always talking to each other. They are always -- you know, they -- some of them -- some of them got them. She said she didn't get them. But it was provided. And I just said it would prejudice me to have to re-provide these again when they are already.

THE COURT: Do you have proof that you provided them pursuant to the Rules of Civil Procedure?

MS. MORPHEW: I would have to go back and look. Because I have been starting to send everything tracking. But I am not sure if I sent ---

THE COURT: Well, if you don't please do so within ten days.

MS. MORPHEW: Ten days. Yes, ma'am. If -- if I don't have that would -- are you requiring me just to go ahead and provide those to her within ten days if I don't have that?

THE COURT: Yes, ma'am.

MS. MORPHEW: Yes, ma'am. Will do.

THE COURT: Anything further?

MR. WHEELER: We have one more motion. I think it

is a joint motion that Mr. Crapps originally filed. We got it out -- we were trying to get it out very quickly. I was trying to get a hold of Mr. Collins. He texted me right afterwards and said I will join the motion. He didn't -- his name didn't appear on it, but I think he joins the joint motion here today.

It was somewhat of a rush. It is a -- defendant's joint motion to dismiss and for sanctions. It was filed on August 29th. I think the memo that Mr. Crapps put together is pretty self-explanatory. I did want to raise it today briefly.

All of the parties and defendants on Monday, August 27th, received a pretty long e-mail. Actually we received an e-mail earlier in the month, August 2nd, indicating from Ms. Morphew that she had an urgent matter she needed to discuss with us this week. I responded back that day a couple of hours later and said odds are of getting everybody on a conference call that quickly is not going to happen, if you have got something you need to say probably put it in an e-mail and we will all respond individually.

Three or four weeks later she puts together this e-mail indicating that she is on the brink of filing criminal charges against all of the defendants for a variety of federal crimes unless we, quote, consult with

our clients and let me know how you wish to proceed. And what she wants us to discuss with our clients is the ramifications of this criminal action and, quote, a possible out-of-court settlement.

So effectively what she is doing is threatening criminal prosecution of all the defendants unless we talk to our clients and say do you want to settle this case. There is no figure -- settlement figure. Generally if you are going to make a demand you put a figure in there that you are trying to get. She is basically saying, hey, I am going to file criminal charges unless you talk to your clients and come to me with something. I don't know what.

Within two days we filed our joint motion to dismiss and for sanctions. This is the type of behavior that despite how she comes off at trial and at hearings and everything this is the type of behavior we are dealing with. This is what my clients have lived with for now five years. This is what we have lived with for two years. David was in the trial before this.

I don't know what to say about this other than if this type of e-mail were written by a licensed attorney I probably wouldn't have a license. Or I probably would be sanctioned or at least suspended. Because that is in clear violation of the rules of professional

responsibility.

I get it she is not an attorney, she is not -- doesn't have to abide by those rules. But as Mr. Crapps points out in his memorandum in between Rule 11 and Rule 41 in the very case law on how pro se litigants are treated, they are given some leeway; but not this type of leeway.

We are asking for a dismissal for improper conduct, which is found in Rule 41(b) and somewhat in Rule 11 as well. And at minimum we are asking for sanctions to have to file this motion.

Honestly, we discussed it. We didn't know what to do with this type of e-mail other than put it before the court and inform the court that this is the type of communication we are getting. It is highly improper.

I had to then go to my clients and say -- tell them this is what is going on, we see no basis for any sort of criminal allegations or crimes but I have to let you know that potentially she's going down to some Sheriff's Office I guess in Dorchester County and is potentially making a charge. And whether that -- they do anything with that, but still a claim that they are going to investigate I would think.

So we all had to go to our clients and tell them the next saga that is going on in this litigation. Again,

his memorandum speaks pretty clearly about what we are asking for in that regard. It is a dismissal of the case for improper conduct under Rule 41 and Rule 11 and at minimum sanctions under Rule 11 for this type of e-mail.

Thank you, Your Honor.

THE COURT: Ms. Morphew, I certainly understand that you are not an attorney and you are appearing pro se. However, you are still bound by the rules of ethics and the rules of professional basically as if you were an attorney to appear before the court to abide by the rules. It is a very serious allegation.

Did you make that -- did you send that e-mail threatening criminal activity and criminal charges if they didn't come to some settlement?

MS. MORPHEW: No, ma'am. I won't go over the whole thing in here. They specifically are saying that I threatened to present criminal or professional -- you know, charges solely to -- you know to -- in a civil proceeding. But, no, I didn't. The e-mail ---

THE COURT: Let's back up then. Let me -- can we please mark that as a Court's exhibit, please.

MR. WHEELER: Yes, Your Honor.

(WHEREUPON, Court's Exhibit Number 1, email from plaintiff, was marked for identification.)

THE COURT: Does somebody have a copy for Ms.

Morphew so she can have -- look at what we are looking at?

MR. WHEELER: I have another copy if you don't have it, Mr. Morphew. It is Exhibit A to the motion -- I don't know if you have that.

(WHEREUPON, document provided to Ms. Morphew.)

MR. WHEELER: I think it is pretty clear -- beginning all the -- communication is advise you of the action I am about to take and to discuss the ramifications and a possible out-of-court settlement.

She then goes through what she feels are actions that arise to criminal activity. And then at the end felt the need to reach out to you and see if we can come to an agreement in order to end this for all parties. Please consult with your clients. Let me know how you wish to proceed.

I don't know how to interpret that other than I am going to file criminal charges unless you talk to your clients about an out-of-court settlement.

THE COURT: Your email it pretty clear, Ms. Morphew. What do you have to say about it?

MS. MORPHEW: Well, that is not the -- was not the intention, first. And nowhere do I ask for a settlement in a civil -- in this case or any civil action. I am just talking about an out-of-court settlement.

I clearly stated that I was concerned -- and in their response to them and in this response that I was -- the criminal actions for perjury are separate. So I knew that. So as I am researching this and coming up with all of these things I realized that a criminal action in this thing -- case was a felony and that once it was submitted was out of my hands.

I know that the defendants don't know me or have no idea -- and I am not an attorney either, so my actions probably are a little bit outside or abnormal compared to what they are used to. But I really honestly -- and I can bring -- test of witnesses where when I discovered this. And it was really because my brother-in-law had accused somebody of picking up his wallet on the sidewalk and when he told me he said what happened was when the -- he was telling the police officer what was happening. He walked back and the man had been arrested. He said is this man arrested. And the police officer said, sir, it is not -- it is not your call anymore; it is not your business. And he said, well, I am the one who called you. And he said any time you file a criminal charge it is now out of your hands. And he said, well, I didn't want him arrested, I just wanted my wallet back.

Well, that made me, believe it or not, concerned. Because I want -- I want accountability and I want to

right an injustice. I really do. But when I started looking into what a felony can do to somebody, I wouldn't wish that even on them even though they caused this harm. To me it is not -- it is not worth that much. Because a felony could ruin their lives and their jobs and everything. Not just over ---

THE COURT: Tell me how you thought it was proper to threaten ---

MS. MORPHEW: No ---

THE COURT: --- criminal actions if they didn't come to a settlement.

MS. MORPHEW: I didn't do that. I -- no, no, ma'am. My -- I said if they -- I said -- what -- and I even clearly state in here; I said that I had come across this, I want to discuss the ramifications with them, because, you know, I am concerned. And then I even clearly state that -- if -- there's a statement right here. Let me just read this. Okay.

I didn't -- I didn't -- I just wanted to give them advance notice and that I wanted to discuss the criminal charges and a possible settlement to satisfy both of us in the criminal charges. Not in a civil action.

I did not -- I decided, well, I really don't want to go forward with this but I feel like there -- you know, accountability that needs to be done. And if they could

come to some type of agreement -- and there is not -- it doesn't even have to be a monetary agreement. Just so that -- so that I wouldn't have to submit this.

And I'm sorry but -- like I said, they don't know me. But my -- it -- my work ethics, my -- everything that I do if -- is -- I am not going to do something that's wrong. And I really don't want to cause someone harm. And I would do my due diligence. And I really really -- I did not threaten criminal charges. What I did say if they don't respond, each defense counsel with -- by this certain day I will go ahead and file them.

The reason I say that is because whenever I send out an e-mail -- that is why I wanted a telephone conference to talk to everybody. Usually Mr. Wheeler is the one that answers for everybody. And I already addressed that issue of one attorney answering, especially for a pro se party; because that makes it so that I am not quite sure where the scope and the liability for that attorney is in this action. So I already addressed that and said, you know, everybody answer. So I said each one.

And it wasn't if you don't settle I will file. It is if you don't answer me. Because I didn't want to be held up and sit there forever waiting and then there's an assumption that only one person had answered. So I clearly -- I made it clear that -- that they needed to,

each counsel needed to re- ---

THE COURT: How about this: Unless I hear back directly from each counsel representing their client's defendants by end of business Wednesday, August 29th, 2018, be advised a criminal complaint will be filed.

MS. MORPHEW: That wasn't to settle. That was if I don't hear back from them. And I did not ask for a settlement at all. I said possibly a settlement of criminal charges, not of a civil action. Never. Because a civil action I -- I wanted -- I want the civil actions to go forward on its merit. That is what I really would like. I really would like a full day in court and with all the evidence on the table and everything out there and honesty.

But the criminal charges -- I just feel really bad about. And but I -- it is in me -- perjury and everything is wrong. And it really is wrong to come in this courtroom and raise your hand. And there's rules against taking oaths and then swearing and then telling -- not telling the truth. There really is. And I do ---

THE COURT: You are absolutely right, Ms. Morphew.

MS. MORPHEW: And, Your Honor ---

THE COURT: Let me ask you this.

MS. MORPHEW: Yes.

THE COURT: Obviously this e-mail will speak for

itself as will the motion. Anything else you would like to present as far as this is concerned?

MS. MORPHEW: Well, I could -- is it -- you know, I could have a witness say that I honestly was only concerned about the felony and not asking for a settlement on civil action. How the law says that disciplinary actions are if it is only for -- it is for a civil settlement.

First, I wasn't even asking for a civil settlement. And I wasn't even asking for a settlement. I said that we could possibly settle this -- these criminal allegations before I even submit them.

Maybe that is unlawful to do that because maybe the court requires me to submit them when I know that a felony has taken place, you know.

But I really did feel bad. And I have a witness and I can bring in a bunch more. Because I have been -- before I -- before I even sent this e-mail and before I was even going to do anything I really really was weighing on heavily on what would happen to them.

THE COURT: Well, did you ever seek advice of counsel? You had a previous attorney. It appears that you have had some assistance, unless you have legal training in the drafting of all of your pleadings.

MS. MORPHEW: Well, in a civil case -- I mean I have

only been in the civil case, so really I am naive to the criminal part of it. But if I had thought that I was actually threatening something and wanting a settlement in a civil action or anything like that I ---

THE COURT: You are not answering my question.

MS. MORPHEW: I'm sorry.

THE COURT: Did you seek counsel in the drafting -- I mean you obviously -- it appears that you sought counsel and assistance with the drafting of your pleadings; is that correct?

MS. MORPHEW: No, ma'am. I have never -- once I became pro se I have never seeked counsel for the drafting or for any type of assistance in my pleadings at all, ever.

THE COURT: So if you -- obviously then you are very well versed in the law and the pleadings, and so certainly you would be aware of what kind of problems this could potentially cause you by sending this type of communication dealing with potential criminal actions. Because it is either one or the other, either that you are very well versed in the law or you are not.

MS. MORPHEW: Well, very -- the appearance of very well versed is only on each of these actions. Every time I get a motion or every time I, you know, do something I have to research everything.

No attorney knows every rule and law, especially when it comes to criminal. Unless you were -- I mean that is a specialty. I have only been doing civil. And I still not even -- to know every rule in the civil procedure and do everything properly to be put on me would be unfair because there are so many cases out there where there's attorneys who -- there ---

THE COURT: I understand that. By appearing pro se you are held to that same standard ---

MS. MORPHEW: Right.

THE COURT: --- as if you were an attorney.

MS. MORPHEW: Right.

THE COURT: So you understand that. There's no question about that.

MS. MORPHEW: Right. But even an attorney is not expected to know every single rule in law, especially in a criminal. And I -- if I had thought that this was unlawful I would never never have asked it. I would have just filed it. I mean why would I put myself in the position of if I knew this or if I even had any idea and I had been researching -- and I clearly researched felonies and everything. But never once did I come across this that -- this rule ---

THE COURT: That is a good question.

All right. I will take all the matter under

advisement and notify you of my opinion. Thank you.

MR. COLLINS: Your Honor, one last thing. I want to remind the court of my motion for summary judgment through my motion 12(b)(6). I don't need to go into the facts.

THE COURT: Okay.

MR. COLLINS: Thank you, ma'am.

THE COURT: Everyone have a good afternoon.

(WHEREUPON, Ms. Neuschafer provides paper documents to the court.)

MS. MORPHEW: On the Rule 59(e) motion and a second motion for Collins default, we heard the first -- the original one. But because there is some question about an order that was filed afterwards by a judge and then I filed a 59(e) motion and this first one was never disposed of or at least it was still on the court docket so -- is -- we didn't necessarily hear those, even though it was pretty much the same thing. Except for the 59(e) motion actually addresses the errors, you know, specifically. So do we need to hear that one also?

THE COURT: Did you file a written memorandum with your -- or written motion?

MS. MORPHEW: Yes.

THE COURT: Anything you would like to add to that what was considered in -- because I am going to look

through all of the written materials. I will look through the file and take all of those matters into consideration.

MS. MORPHEW: As long as Your Honor -- it basically -- if I -- stating -- if I don't state -- you know my -- everything in there and that you are -- it is going -- what you are saying is that everything I put in there is like it is presented right here; is that correct?

THE COURT: Yes, ma'am, it will be part of the record.

MS. MORPHEW: Nothing else. Thank you.

THE COURT: All right. Thank you.

MR. COLLINS: Thank you, Judge. Have a great day.

THE COURT: Y'all have a good afternoon.

MR. WHEELER: Your Honor, we have -- I am sorry to keep extending. We have one administrative thing.

We have never mediated this case. Very early on -- I am not suggesting that it would be productive, but very early on I think Ms. Morphew said she wanted to waive mediation and at that time Judge Dixon said I will waive it if you want me to waive it; and she said, oh, let me think about it.

It has been under this really weird thing on the docket that says it is suspended or it's -- I don't honestly know what it is. I just don't want to get in

trouble if this case goes to trial and say you guys never ---

THE COURT: Mediated.

MR. WHEELER: --- complied with your ADR requirements.

So no mediation?

MS. MORPHEW: If it -- is it the trial is scheduled?

THE COURT: The trial is scheduled for October 29th.

MS. MORPHEW: October 29th?

MR. WHEELER: I just don't -- I don't -- to be frank, there's not going to be any offers; but I don't want to be -- run afoul of the ADR spirit and requirement.

THE COURT: Certainly. And I think that might have been addressed with Judge Dixon. I am happy to continue that and not require mediation if all parties are on record as saying that they don't think it will be fruitful based upon past experiences of this case. But that would be up to all parties to say so.

MR. WHEELER: I think we have everybody here at least on the defense side and we don't think it would be fruitful. I just wanted to make sure that Ms. Morphew knew that that is what are were talking about when we are talking about ADR mediation.

MS. MORPHEW: May I have a couple of days to think

about this? Because there was -- you know, we discussed this at the hearing. And I would like to review this -- that information that I discussed.

THE COURT: Sure, you can have a couple of days. However please keep in mind that the case is scheduled for October 29th. So if you take a while and a mediator is not available to mediate the case then of course that causes some problems. It can be sometimes difficult to find a mediator within that period of time to schedule and have the matter heard and everybody be ready for mediation.

And of course the mediator will have to be paid by all parties ahead of time depending on how long you anticipate the mediation to be. So that is something for you to consider as well if cost is an issue.

But I will give you a couple of days to decide. If you will let us know -- it is Monday. By Wednesday if you can decide by Wednesday whether or not you wish to waive mediation or how we will proceed from there then I will make a decision.

MS. MORPHEW: Yes, ma'am. Thank you.

(WHEREUPON, the hearing adjourned.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.*)*

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on October 1, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Phyllis Norton

PHYLLIS NORTON, CVR

Date: February 7, 2019

Certified Transcript Provided For: Molly M. Morphew
Certification Reference #2019-0202 Original

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF DORCHESTER) Case No. 2016-CP-18-1706

MOLLY MORPHEW,

Plaintiff,

vs.) Transcript of Record

STEPHEN DUDEK, DOREEN CROSS, ALLISON WILLIAMS, FIRST FEDERAL, MICHAEL SCARAFILE, SUSAN NICHOLSON, CAROLINA ONE REAL ESTATE, CARRIE BOYER, WOODDY LAW FIRM,

Defendant.) DATE: November 7, 2016

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON

A P P E A R A N C E:

MOLLY MORPHEW, PRO SE PLAINTIFF

CLAUDE T. PREVOST, III
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Circuit Court Reporter

THE COURT: This is Molly Morphew vs. Stephen Dudek, Doreen Cross, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm, 2016-CP-18-1706.

Several motions to dismiss: One, the defendant Wooddy Law Firm's motion to dismiss filed 9/29; defendant Williams's motion to dismiss filed 9/26/16; defendant Dudek's motion to dismiss for sanctions, 9/21/16; and defendant Scarafile's motion to dismiss filed 9/20/16.

This case was initiated pro se, filed with the Court on August 24th of 2016.

Ms. Morphew, are you present?

MS. MORPHEW: Yes, ma'am.

THE COURT: And you are representing yourself, correct?

MS. MORPHEW: Yes, Your Honor.

THE COURT: Who is appearing on behalf of the Wooddy Law Firm?

MR. PREVOST: Claude Prevost, Your Honor. I'm with Collins & Lacy. And I'm standing in for Amy Neuschafer.

THE COURT: P-r-o-v-o --

MR. PREVOST: P-r-e-v-o-s-t.

THE COURT: Oh, sorry.

Okay. Who is appearing on behalf of the defendant Williams?

MR. CRAPPS: Jordan Crapps, C-r-a-p-p-s.

THE COURT: Thank you, sir.

MR. CRAPPS: I'm here on behalf of defendant Williams and First Federal Bank.

THE COURT: So that's Williams and First Federal's motion to dismiss?

MR. CRAPPS: Yes, Your Honor.

MR. PREVOST: Your Honor, I would add that I am also here on behalf of Carrie Boyer and the Wooddy Law Firm.

THE COURT: So it's Carrie Boyer and the Wooddy Law Firm's motion to dismiss?

MR. PREVOST: Yes, ma'am, that's correct.

THE COURT: Who is appearing on behalf of Dudek?

MR. SMITH: Your Honor, Steve Smith here for Dudek and Cross.

THE COURT: So it's Dudek and Doreen Cross?

MR. SMITH: That's correct, Your Honor. I'm also here for Michael Scarafile. He had filed a motion to dismiss on behalf of David Collins, himself, Susan Nicholson and Carolina One Real Estate. Michael was unable to come today to file -- argue on his behalf.

THE COURT: So you are appearing for Mr. Scarafile?

MR. SMITH: That's correct, Your Honor.

THE COURT: And he represents Nicholson, Carolina One, and who else?

MR. SMITH: David Collins and himself individually.

THE COURT: Okay. We will hear the motions in the order they were filed. So we will start with the defendant Scarafile's motion to dismiss, which will be argued by Mr. Smith. You may proceed when you are ready.

MR. SMITH: Thank you, Your Honor. May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. SMITH: I know you are very good about reading briefs. So I'm not going to reiterate what is in everyone's brief.

THE COURT: I understand that, basically, y'all are making a motion on the same basis, pretty much.

MR. SMITH: Pretty much. I think everybody is saying the same thing. This case originated with someone trying to get a house, because they had a contract. It got sold out from underneath them, specific performance. My clients prevailed. They are entitled to the house. That was the ruling of the judge.

The master in equity here is James Chellis. And he made a lot of findings in his order. It's a very lengthy order.

THE COURT: And that's on appeal, correct?

MR. SMITH: That's correct, Your Honor.

THE COURT: What was the date his order was issued? And what date was it appealed? And do you happen to know the briefing schedule, if at all, with the Court of Appeals?

MR. SMITH: His order was filed November 6th, 2014. And it was signed November 6th, 2014.

THE COURT: And then when was it appealed?

MR. SMITH: It was timely appealed. I've got the record here.

THE COURT: Have they had arguments or anything yet?

MR. SMITH: We have not. As a matter of fact, the court notified it's going to be determined on the briefs.

THE COURT: What date did they let you know that?

MR. SMITH: October 3rd, 2016.

THE COURT: Okay.

MR. SMITH: They advised us it would be determined on the record and the briefs without oral argument.

THE COURT: Okay. You may continue.

MR. SMITH: Thank you, Your Honor. The case was tried. The decision was issued. And, understandably so, the Morphews don't like the decision. We get that. However, the latest complaint just rehashes everything that was done.

As a matter of fact, you could take all of the facts that are attempting to be relitigated in the August 24th, 2016, complaint and split them up into two categories, factual issues that happened before the trial that gave rise

to the allegations in the complaint, and then things that happened during the trial, all the allegations of fraud and deceit on the courts and everything else. Everything that happened before the trial that gave rise to the original summonses and complaints, two consolidated actions, were concluded in that trial. They were raised. They were all decided.

As a matter of fact, the biggest issue that these people have, which is my clients won't qualify for the loan, was specifically addressed in Judge Chellis's order where he found that because of certain things that he puts in his order, the requirement of unconditional financing was excused. So they don't have to comply with that provision. That's a specific finding in the court's order.

But that is repeated ad nauseam in the latest filing from the Morphews. As a matter of fact, I think that's the basis they brought in the bank. And that's the basis that they brought in Wooddy also. That specific finding has been appealed. Everything that they allege in this new complaint has been appealed.

The second set of facts, things that happened during the trial, are really up for the trial judge to consider, not another judge to come in and say Judge Chellis --

THE COURT: Was a motion for reconsideration filed?

MR. SMITH: There was, prior to the appeal.

THE COURT: And he ruled on that?

MR. SMITH: It was denied. And then the appeal took place. Your Honor, actually, everything in this new complaint -- and I could go through -- I mapped it out. I could go through all 18 allegations, but they can all be lumped into either appellate issues or issues that would have been raised under the frivolous proceeding statute.

But to raise them under the frivolous proceedings statute -- they mention that several times. They even cite the section several times. It's also telling that they cite the original trial several times, considering facts in the first category that I talked about, which is the facts between the parties. But they cite the frivolous proceedings statute several times to give basis for what they are attempting to do now.

As you know, the frivolous proceedings statute is a post-trial motion, which according to the Holmes case, has to be made within -- has to be made at the conclusion of the trial or within 10 days of the trial. That was not done. The statute itself actually says, at the conclusion of the trial, upon motion of the prevailing party. This latest action was filed two years after the decision was reached by Judge Chellis. And it sure wasn't done by the prevailing party.

They cannot avail themselves, like I'm going to do

today, I hope, of the frivolous proceedings statute. They are not the prevailing party. They didn't do it at the conclusion of the trial. They didn't do it within 10 days. But not only that, I don't think we get that far. All of the allegations concerning financing and what people said and what people did and conclusionary decision that was reached about evidence, that was presented. And why wasn't additional evidence given and discovery abuses and those kind of things that happened pretrial are all within the purview of Judge Chellis. He was the trial judge.

And then everything that happened -- the next set of facts that they allege, everything that happened during the trial is within Judge Chellis's purview also, because he's the trial judge. He's the sole determiner of what happens in his courtroom during the trial. If they don't like what Judge Chellis says, then they take it to the appellate court.

The last set of things that they talk about is violation of ethical codes and ABA violations and those kinds of things. Those are purely within the purview of the Supreme Court. The Supreme Court guides lawyers as to how they are to act. They don't create causes of action. Violations of the ethics standards don't create causes of action. They can turn around and give all of this to the Supreme Court and file an ethics proceeding against whoever they think wronged them, but it's not a cause of action.

So that was the last little piece that needs to be struck also. If they've got problems with things, they can take it to the Supreme Court to the ethics people, but it's not a cause of action.

So just to reiterate, Your Honor, and I can go through, and we did it in our brief, and I know you don't want us to reiterate what's in our brief, 80 percent of what they claim in the new complaint are facts that arose before the trial. In other words, these are the facts which gave rise to the allegations in the original complaint, both of the complaints that were consolidated.

They want to relitigate those issues. They want to reargue those issues. They want to say, I don't know why the judge excused financing, they need to prove financing. As a matter of fact, they filed a motion in the Court of Appeals to get them to prove that they had financing. That was denied. The Court turned down that motion. They want to relitigate those issues. That's about 80 percent of the factual issues that are contained in this complaint now.

The other 20 percent are things, either discovery abuses or things that occurred at the trial where people lied about things, factual issues and those kinds of things. That's purely within Judge Chellis's purview to determine whether or not somebody committed fraud in his courtroom. It's not the subject of a complaint which is filed two years

later.

All of the items could be lumped together under the frivolous proceedings statute. 15-36-10 pretty much cites everything that they talk about, how attorneys abuse the process, discovery abuses, things that happened in the courtroom, filing of documents that should have been filed. Everything is contained in 15-36-10.

Our legislature tried to encompass one act to resolve all those issues about litigation and everything. So they came up with this statute. But to take advantage of that statute, you've got to follow the statute. Number one, you've got to prevail, which they didn't. Number two, you've got to file it as a post-trial motion. It's not an independent cause of action. I know a lot of people think it is, but it's not.

The section starts off with, it's a motion. It's a motion to be made as a post-trial motion. It's got to be made within 10 days. Where we are now is two years later. They file a complaint bringing up everything that possibly could have been encompassed under the statute except for the fact that they weren't the prevailing party.

For these reasons, Your Honor, for Dudek and Cross, we will let the Court of Appeals determine whether or not the allegations raised in the original trial are correct or not.

And then the other 20 percent that happened, if they

really have a problem with it, there are other ways to address that, not the filing of a separate complaint.

And the same thing goes with Scarafile, Nicholson, Carolina One Real Estate. If they did what they are alleged to have done, which is lied during the trial, that is something for Judge Chellis to address. If they did something that caused a problem with discovery, et cetera, that should have been addressed by Judge Chellis. Every bit of this should have been addressed by Judge Chellis, either during the original trial or by a post-trial motion.

Thank you, Your Honor.

THE COURT: You're welcome. Should I assume that -- well, Mr. Smith, I'm going to assume that you made the argument for Dudek, Cross, Scarafile, Nicholson, Carolina One and David Collins.

MR. SMITH: That's correct, Your Honor.

THE COURT: Should I assume, based on what I've read, that everyone else's argument mimics that of Mr. Smith? And I'm referring to Mr. Prevost and Mr. Crapps, or are your arguments dissimilar in any way?

MR. PREVOST: Your Honor, Claude Prevost. For the record, factually, we would agree with Mr. Smith to the exception of any of his comments could be construed to insinuate or impugn any wrongdoing by the Wooddy Law Firm.

THE COURT: I didn't interpret it that way. His

argument sounds in res judicata, collateral estoppel. And there's a pending action before the Court of Appeals. And by essence of that, this Court has no jurisdiction to hear anything, because every single issue that's been raised is currently on appeal. That's what I understood his argument to be, in a nutshell.

MR. PREVOST: Yes.

THE COURT: And as I read everyone's pleadings, that's to be their argument, because they are all based on 12(b)(6) and 12(b)(8) and 12(b)(1), about the same.

MR. PREVOST: Your Honor, I would add plaintiff's complaint on its face is deficient because it does fail to state facts and causes of action which can be supported, which are viable and supportable in South Carolina. And I'm happy to go into that if the Court --

THE COURT: It's up to you. Any arguments you feel you need to aid the Court in making a decision, you are welcome to make. I just didn't want to have you sort of reinvent the wheel. If there was something different you wanted to tell me other than what Mr. Smith already articulated for the record --

MR. PREVOST: Yes, ma'am. I will be very brief.

THE COURT: Take your time. You may proceed.

MR. PREVOST: Claude Prevost, Collins & Lacy, on behalf of the Wooddy Law Firm and Carrie Boyer. The Wooddy

Law Firm was the real estate closing firm for the underlying dispute. Carrie Boyer was a paralegal with the Wooddy Law Firm. Now, we would note for the Court that the underlying real estate transaction was never consummated. The plaintiffs only refer to the Wooddy Law Firm and Ms. Boyer in seven paragraphs through the 64-page complaint.

And the specific allegations as to the Wooddy Law Firm were, the Wooddy Law Firm mailed a letter to the sellers in the underlying action, which plaintiff was not a party to, introducing themselves as closing attorneys; and, number two, that Boyer requested the sellers provide proof of repairs for minor damages stated in the CL-100 letter. So these are letters not directed to the plaintiffs in this case, directed to other parties.

We believe plaintiff's complaints on its face fails to state facts or fails to plead correctly a claim for fraud. There's nothing directed towards the plaintiff. There's nothing the plaintiffs have relied on. And there's nothing that our clients did that was false.

THE COURT: Were your client parties to the first action?

MR. PREVOST: No, Your Honor, they were not. Plaintiff filed a perjury claim against the Wooddy Law Firm, Ms. Boyer. Perjury is a criminal --

THE COURT: The Court will take judicial notice

there's no such cause of action for perjury.

MR. PREVOST: We request also the Court take judicial notice there's no cause of action for violation of the ABA rules or the --

THE COURT: -- that could form, is that correct? I think that's a pleading issue, but I don't know it needs to be stricken. I think when you file an action against somebody for professional malpractice or breach of duty, that you can cite the rules as evidence of the breach of duty. It doesn't provide a separate cause of action. But, certainly, can be used as evidence of breach of duty. But they would have to establish that there was a duty to them.

MR. PREVOST: That's right, Your Honor. And we believe they have failed to plead the proper facts to even establish a duty. And we would contend there is no duty.

THE COURT: Would the remedy for that be to have them make their pleadings more clear as to establish what the duty is?

MR. PREVOST: That would be one remedy, Your Honor. But even if they have properly pled, or if read, their complaint reads most favorably in the light to them, they still have not satisfied statute 15-36-100 by filing a contemporaneous affidavit of a professional attorney for an alleged malpractice claim. Because they failed to file that affidavit, the complaint is deficient on its face and must be

dismissed.

Another cause of action, Your Honor, the plaintiffs have pled is an obstruction of justice or a violation of the South Carolina Rules of Professional Conduct. It's kind of hard to discern, Your Honor. But we would argue that there is no cause of action for obstruction of justice.

THE COURT: Only in the criminal code, but none in the civil?

MR. PREVOST: Yes, Your Honor. Thank you. Plaintiff also fails to state or plead sufficient facts for a claim of intentional infliction of emotional distress against Wooddy Law Firm or Ms. Boyer. Again, the Wooddy Law Firm mailed a letter introducing themselves. And then Ms. Boyer followed up requesting confirmation on whether repairs were made pursuant to a rule -- excuse me, CL-100 letter. There's nothing in those allegations by the plaintiff or in the actions of the Wooddy Law Firm or Ms. Boyer that rises to anything egregious or intentional or anything like that, that even rises to the level of status finding what they must do in the pleadings. Therefore, we ask that claim to be dismissed as well with prejudice.

The plaintiff again also fails to state claims for or fails to plead properly for a tortious interference with the contract relationship against the Wooddy Law Firm and Ms. Boyer. Again, the Wooddy Law Firm only mailed a letter.

And Ms. Boyer only followed up on issues regarding a CL-100 letter. Plaintiff has failed to explain how these two actions could have intentionally caused any breach of contract with the sellers in the underlying case.

We ask the entire complaint against the Wooddy firm and Ms. Boyer be dismissed with prejudice. Thank you, Your Honor.

THE COURT: You're welcome.

All right. Mr. Crapps.

MR. CRAPPS: Your Honor, I will attempt to make it brief because, as you've noted, our arguments do parallel each other. My clients, First Federal, now known as South State Bank, and Ms. Allison Williams, were not parties to the previous litigation. First Federal, South State Bank, was the potential lender to Dudek and Cross, who were the potential buyers in the underlying property. And so that's our only relationship to these matters. We don't have any relationship to the plaintiff in this case.

THE COURT: So they never applied to your bank for a loan?

MR. CRAPPS: As far as I'm aware.

THE COURT: They were the potential lenders to who?

MR. CRAPPS: For Dudek and Cross, the buyers whose contract was awarded priority in the previous litigation.

As you know, for a motion to dismiss, the complaint

must contain sufficient factual matter to state a claim to relief that is plausible on its face.

The plaintiff's complaint in this case, as it relates to our clients, is that our clients' testimony and discovery responses were in some general nature untrue. Although it's unclear to us what was really untrue about them, the court in the underlying matter found against them in the prior litigation. And now the plaintiff wants our client to be found liable for that.

We cited in our memos -- I don't want to rehash everything. But we just cited to Am Jur, which says, "As a general rule, no civil action lies in tort 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 judgment.

THE COURT: I've already taken judicial notice no such cause of action exists in South Carolina civilly.

MR. CRAPPS: Thank you, Your Honor.

THE COURT: For perjury.

MR. CRAPPS: That's the general basis for each and every claim of the plaintiff. Getting into those causes of action specifically, three of those -- she alleges 18 causes of action, 10 of which are applicable to our clients, three of those sounded fraud. That's the 1st, 12th and 7th.

As you are aware, I'm sure, fraud is subject to heightened pleading standard. And we would argue and have argued in our memo that this complaint fails to meet those heightened pleading standards. Specifically, the fraud that's alleged to have occurred is some kind of misrepresentation of testimony and discovery responses. And as we noted, that's not a claim, a recognizable claim for damages.

And, further, the underlying misrepresentations that she alleges, basically, are that our contract or relationship with Dudek and Cross was inappropriate or that the relationship didn't create the relationship we stated it was.

And our contention is that, you know, our contract or relationship with our client is really what us and our clients say it is. She cites some things we didn't follow through perfectly. I don't know if that's true or not, but we don't believe any misrepresentations were made. And if they were, that would not form the basis of the claim, Your Honor.

That first cause of action only includes one paragraph that doesn't go specifically to defendant Collins. And that's only to all defendants and reads, made false statements or misrepresentations or omitted information related to the previous litigation and committed perjury.

So we would argue that's a restatement of the

perjury cause of action, and that should be dismissed.

12th cause of action only provides testimony of our clients in the previous action. Again, we think that's a pre-statement of the perjury cause of action and should be dismissed.

The 7th cause of action, which is a breach of good faith and fair dealing, we would argue that we had no contract with the plaintiff here. And there's no reason to apply the standard to anything we've done.

As noted in 4, plaintiffs remaining causes of action, including those for intentional infliction of emotional distress and tortious interference with contractual relations, also fail as a matter of law. We argue nothing in the complaint alleges anything outrageous or beyond the -- anything atrocious or utterly intolerable in a civilized community. Again, we find nothing in the complaint to that level.

Potential interference with contract, there's nothing in the complaint about anything that alleges our clients interfered with the contract between the plaintiff here and the sellers. Our relationship was solely between Dudek and Cross and First Federal.

And as noted in 4, we would argue no cause of action exists for perjury, violation of federal procedure violation that is the Rules of Professional Conduct, obstruction of

justice.

And last one is, they allege we violated federal rules and regulations and banking rules and regulations, but no cite to specific statutes or anything of that sort.

So, Your Honor, we don't find a cause of action alleged against our clients which state a basis for relief. And, therefore, the complaint in full should be dismissed.

THE COURT: Would you like to respond, ma'am?

MS. MORPHEW: Yes, ma'am. Your Honor, first I would like to point out that the --

THE COURT: I need you to speak up. I can barely hear you.

MS. MORPHEW: I would like to first state that the prior civil action that's on appeal, that what was litigated was whether Dudek and Cross breached their contract and which would cause -- I had a backup contract. And it was based on whether they signed the termination request. They refused to, saying that they had secured lending and could close. But the sellers breached their contract and caused their breach. I put forth a complaint compelling specific performance against the sellers and breach of contract against Dudek and Cross for failing to obtain financing for the contract and, therefore, not closing escrow for the contract.

This case and what's on appeal is exactly that,

whether there was a breach of contract and it should have been excused. None of the fraud -- the fraud was discovered after November --

THE COURT: What are you alleging was fraudulent?

MS. MORPHEW: Who was I alleging was fraudulent? Dudek and Cross, defendant Allison Williams. Actually, everybody on this case I was alleging was fraud.

THE COURT: What are you specifically saying they did was fraudulent?

MS. MORPHEW: That they never had lending, because they actually applied for the lending after the contract expired and the First Federal --

THE COURT: That was already raised before the master, correct?

MS. MORPHEW: Well, we didn't know it had been.

THE COURT: But the law requires you to exercise due diligence to have found that out in the discovery process.

MS. MORPHEW: I did. I had two subpoenas and a phone call to First Federal. And they both answered the subpoenas. This is back in March of 2013, right at the get-go. All I needed to know was whether they had secured financing.

THE COURT: Did you ask that of First Federal?

MS. MORPHEW: Yes. And their response was, the contract is no longer valid, but you will have to contact

your lawyer.

THE COURT: Okay.

MS. MORPHEW: And First Federal's response to the subpoenas were, we had no such clients at our institution, there is no such loans and no such funding. My attorney went back to Dudek and Cross attorneys and discussed this and said, please provide proof of financing and she will drop my case. As long as they did everything that was supposed to, they were going to drop the case.

David Collins said that his clients did have financing. And when my attorney said that they had -- we have evidence that First Federal stated otherwise, that there was no such thing as a loan, and even their clients, that they would get together and talk. And David Collins, their attorney, said that they had secured financing for the contract. And the only thing -- reason they couldn't close is because they didn't get a CL-100 or clear CL-100. That was the only answer.

And there was two separate subpoenas, one in March and one in August of 2013, and then a phone call. My attorney made a phone call to First Federal and asked the same information once again saying, could you please verify whether there was financing or you had clients. And they said that they could not provide that information to them and would have to contact an attorney, their attorney.

THE COURT: Rightfully so. Under federal law, they don't have any duty to disclose that to you without a court order. So did you pursue that?

MS. MORPHEW: Yes.

THE COURT: And what answer did you get?

MS. MORPHEW: Same thing.

THE COURT: Same thing what? I'm confused.

MS. MORPHEW: There was no such client at their institution, which was false, because they had a loan that they refinanced their current house and they had -- to raise the downpayment, this is what I was told, the downpayment to -- for this actual purchase of this property, which was really confusing. Because if they said there was no clients, no such loan, then there was no contract or funding or financing, and they had breached their contract. Many, many times, that there was three meetings with my attorney, with the Dudek and Cross's attorney, asking the same information, saying, could you provide that. And the only thing that they provided or that they would provide was a December 12th pre-approval letter saying that the First Federal needed a clear and -- a clear, legible signed contract.

And they needed a contract, signed contract extension addendum. And we asked why was this being requested, why was a request extension addendum being requested, and why was there no legible signed contract.

Could not get any answers, same thing, just, contact the attorney.

That wasn't the same answer with David Collins. And I even have the e-mails to prove it, my clients had secured financing for the contract but could not close due to CL-100.

THE COURT: So why is that not the same issue that the judge has already ruled on? And why didn't you bring it to his attention in a motion for reconsideration?

MS. MORPHEW: The file was withheld, the financing file.

THE COURT: That's still not properly before the Court. Why didn't you file the motion for a new trial before him, citing newly discovered evidence?

MS. MORPHEW: We didn't discover this evidence until after the order.

THE COURT: That doesn't matter. Doesn't preclude from you filing a new motion.

MS. MORPHEW: My attorney at the time said we missed the date to file a motion for a new trial.

THE COURT: Was it more than a year after?

MS. MORPHEW: No, but I hadn't had the evidence yet either at that time. When the order came out, we decided to go on appeal. And it wasn't until probably a month or two months later that I took the file.

THE COURT: You had a year to file a motion for a

new trial after newly discovered evidence.

MS. MORPHEW: I did not know that. But I did discover, since it was fraud on the court, that I had three-year statute of limitations to file. And that is --

THE COURT: It's not a new cause of action. What you are saying is that there was a fraud perpetrated on this court that affected their decision-making. You should then bring that to the attention of the finder of fact. Doesn't formulate a new cause of action.

Who represented you previously?

MS. MORPHEW: It was on appeal for a specific performance and this is just for damages. I'm not asking for the order to be overturned or for specific performance.

THE COURT: It's still the same thing, because it could have inconsistent verdicts. Because if you are successful in your appeal, then you start from scratch. And you get to buy the house you say you wanted. Right? Why then would you ask for damages? You can't get both. You either get one or the other.

MS. MORPHEW: Specific performance was for the sellers. They were the other defendants. Damages were --

THE COURT: You don't get both. You can't get equitable and monetary relief under the facts of this case. You get one or the other. And you say specific performance, so if you are successful, you will get what you ask for or

you will get a new trial. But you can't get both, not on the same set of facts. Law doesn't work that way.

So my question again becomes, who represented you initially?

MS. MORPHEW: John Massalon.

THE COURT: And he is no longer representing you?

MS. MORPHEW: No, ma'am.

THE COURT: And I assume that's because y'all came to a -- y'all no longer had a meeting of the minds about the theory of the case?

MS. MORPHEW: Not at all. He doesn't do appeals. He just refuses to do appeals.

THE COURT: That's not correct.

MS. MORPHEW: I'm sorry. That's what he told me.

THE COURT: I've known him a long time. I suspect he didn't agree with your theory of the case and he wasn't going to proceed.

MS. MORPHEW: Well, he was counsel for me for a while and did provide information of what was appealable and provided that 65 percent of the case was appealable and those items --

THE COURT: Even if he wasn't going to do an appeal, he would have sent you to somebody who does, who specializes in it.

MS. MORPHEW: He did not give me that, but he did

say that I should contact someone in Columbia for that. But comes down to funds, Your Honor. It's difficult. I'm a single mom. And if you understand --

THE COURT: What exactly are you trying to accomplish, I guess comes just the basic question.

MS. MORPHEW: Can I also point out something?

THE COURT: Uh-huh.

MS. MORPHEW: It's a law item. Regardless of what we are arguing here today, that I have found that the motions to dismiss that were filed, I read there's a requirement under the South Carolina Civil Procedures 7 (B) that in order to survive a motion to dismiss, you have to state with particularity, and none of these motions provided any support or standards or any type of supporting memorandum to argue their points.

THE COURT: THe motions are very specific. I've read all of them. And they have their basis in them.

MS. MORPHEW: Well, if you don't mind, it's easier for me, because I'm nervous --

THE COURT: Certainly.

MS. MORPHEW: It says they are to call out the nature of the motion, but there was no explanation of the nature of the motion.

THE COURT: Were you served with the motions? Because they are all very lengthy and they are all very

specific.

MS. MORPHEW: Actually, as far as filed motions, one page, two pages total --

THE COURT: Did you all serve her with the memos?

MR. SMITH: Everybody served her with the memorandums, Your Honor.

MS. MORPHEW: Yes.

THE COURT: That's all they need to file. The motion doesn't have to be any more specific than the memo spells out their grounds. But I read this entire file. And several of the motions are very specific. And what they are moving for is, in the body of the motion, it's more specifically, as an example, the defendant Allison Williams and South State Bank, formerly known as SCBT, successor in interest, first filed motion to dismiss filed on 9/26/16. It is four pages and it's very specific as to what their grounds are. It's more than adequate pursuant to the rules.

MS. MORPHEW: All right. So may I go ahead and just --

THE COURT: Yeah. I need you to address the merits of each question. That's why I had them argue everything, so you don't have to respond to one.

MS. MORPHEW: Thank you.

THE COURT: You're welcome.

MS. MORPHEW: I would like to start with the

Scarafile and Nicholson. Besides what I had just stated, they quoted the South Carolina Rules of Civil Procedure 12(b)(8), and stating that this is another action between the same party, same claim, but this is not the same parties. So --

THE COURT: It doesn't have to be. Just can't be the same subject matter. Anything you could have brought at the time, anything that was arguably for the court, you don't get to file another action and basically allege the same facts, but have different parties and argue, because there's something we call res judicata, which means the issues have been ruled upon. You don't get to reargue it again. You don't get a second bite at the apple when on appeal, because the appellate court is considering it. And may be resolved in your favor. I don't know.

MS. MORPHEW: Is fraud on the court? This is the issue I'm raising.

THE COURT: You should have raised that before the master. You had a chance to do it. It's called newly discovered evidence in a motion for a new trial. And what you would do is bring to his attention that you feel fraud was perpetrated on him and he made a decision based on fraudulent information. And you give him the opportunity to then have determined whether, in fact, that would have made a difference in his decision or not. But another court doesn't

get to look at it and say somebody else perpetrated. I have no idea. I didn't hear the case. I don't know what the basis of his findings were.

He heard the witnesses. He made his findings of fact based on their credibility and believability. No other judge is going to substitute their judgment for his. That's why you file a motion for a new trial with him and you raise that issue before him. And then he can make a decision as to whether fraud was perpetrated upon him or not. But it doesn't rise to the level of a new cause of action against these parties. Because when you say somebody has perpetrated a fraud on the court, that's not the cause of action that the law anticipates. When you file a cause of action for fraud against someone, there are eight elements you have to say that they perpetrated against you, and facts that rise separate and apart from the case that's already been heard by the master.

And when I read your pleadings, that's not what you are saying. What you are saying is, they lied to the master and he made a decision based on that lie. Excuse me for putting it in layman's terms. I'm trying to keep it as basic as possible. And no other court is going to be able to rule on that except him, because he may decide that it was fraudulent. He may decide it wasn't. And he should have the opportunity to issue an additional order, if he feels it's

necessary, to clarify or say whether it would have made a difference to him or not.

But, basically, what you are now asking is for this Court to act as an appellate court over him and say, these parties committed fraud before him. And, procedurally, it doesn't work that way. Because what you are alleging is not a separate cause of action against them. You are saying that the court relied on something that wasn't truthful in making a decision. You are not saying that somebody perpetrated a fraud on you that resulted in damages.

MS. MORPHEW: No, I did say that too.

THE COURT: Yeah, but it doesn't -- the way you've written it, it doesn't meet the elements.

MS. MORPHEW: The elements being that they --

THE COURT: The crux of your argument is, they lied to the master. And he's the one that has to decide whether, in fact, they lied to him and whether, in fact, it would have altered his decision or not. Another judge can't go back and rehash that and make a decision about that. It wouldn't be proper. Because, basically, in essence, what you are then asking me to do is to act as an appellate court of Judge Chellis and say his findings of fact were wrong and that what he considered was colored by fraud, which I have no idea.

I don't know whether it would have made a difference to him or not. But he should have the opportunity to review

that and make that decision. And I don't know whether that's affected by the appeal or not. I would think, pursuant to the appellate rules, y'all probably have to get from the Court of Appeals to see if he can hear the motion or not. I'm not sure, probably would. And then I guess -- I don't know. It's an interesting issue. I've had it come up in the criminal context before, but not in the civil context, not in a very long time.

I know in the criminal context, we could still hear motion for new trial after newly discovered evidence, even if it's on appeal. But I am not certain what that answer is in the civil context. I do know procedurally, you should have brought it to his attention so he could make a decision about it.

MS. MORPHEW: So how about if the fraud is still continuing today by not disclosing that information?

THE COURT: Same suit, different ball.

MS. MORPHEW: If I filed it in the criminal context?

THE COURT: You can't file it in the criminal context. You don't have any authority to do that. Only the solicitor can decide. And the remedy wouldn't be to you. It would be to the State of South Carolina. So you can't get anything out of it. Perjury is a criminal charge. The solicitor or the AG would have to decide if, in fact, that took place and whether they want to take action. And the

remedy is jail time or a fine. But it's not a remedy to you. As well as obstruction of justice, and I doubt very seriously -- and I don't want to speak for the solicitor, but I doubt very seriously she would prosecute either one of these, or he would prosecute either one of them. They would say it's a civil issue that deals with the credibility of witnesses and the appropriate court should deal with it.

Somebody coming to court -- you know, it's a fine line about whether you are telling the truth or not telling the truth. That's all credibility. It's for a court to decide. And because you think somebody doesn't tell the truth doesn't mean it's perjury. So perjury is a pretty -- I have not, in all the years I've been on the bench, seen the solicitor get involved in a civil case where somebody said somebody didn't tell the truth. They are going to defer prosecuting it because there's no public interest in it. There's no public policy. They need to vindicate for the citizens of this county for that. They will just say it's a civil matter and y'all need to resolve it in civil court.

But there is no civil cause of action for obstruction of justice or perjury. No such action exists. Those are criminal charges. And a solicitor would have to look at the facts and decide if it was something they wanted to pursue. But it's unlikely they would pursue it.

I hope that gives you clarity on that point. Did

you have any other questions for the Court?

MS. MORPHEW: Yes, ma'am. On Rule 11, filing frivolous lawsuits, does that not --

THE COURT: You would have had to file that at the conclusion of the case with the master. And Mr. Smith is correct, you would have had to have been the prevailing party. And since you weren't the prevailing party, you would not have standing under the statute to file a civil proceedings act. They are entitled to file motion to dismiss. They are ethically required to. They can't be punished for doing that.

MS. MORPHEW: For filing a motion to dismiss?

THE COURT: Uh-huh.

MS. MORPHEW: Oh, not for this. I wasn't asking about this one. I was speaking from beforehand, actually filing a complaint knowing that that complaint doesn't meet --

THE COURT: What complaint did they file that they knew did not meet --

MS. MORPHEW: For specific performance, in order to compel specific performance, you have to have a valid contract and you have to have lending secure during the life of that contract. And neither -- they meet neither one of those.

THE COURT: You didn't win the case in the master

court in equity, correct?

MS. MORPHEW: I'm pending.

THE COURT: Were you the prevailing party?

MS. MORPHEW: They are the prevailing party. And if they are unable to secure financing, it wasn't stated on the order and --

THE COURT: Well, the statute requires that if you were the prevailing party in that other cause of action, then you had to follow the statute. But under the rules of the court, you were not the prevailing party. So you are sort of in a quandary. You can't now file that in this case because you are still not the prevailing party.

MS. MORPHEW: If I become the prevailing party --

THE COURT: I don't know. I can't give you legal advice. You have to talk to a lawyer and find out what -- the law is like a chess game. There are no black or white answers. It's all fact-driven. I have no clue. You would have to talk to a lawyer that can give you advice. I haven't practiced law in over 20 years. I wouldn't try to give you advice. I'm not an advocate. That's not my prerogative. And there can be 10 different answers to a factual scenario. Even if I could give you advice, I wouldn't because I haven't done it in a long time.

So, again, my question becomes, what is it exactly you are trying to accomplish with this litigation? I'm just

curious.

MS. MORPHEW: Well, I guess for not telling the truth -- I just felt like this was very untruthful. And that people should be held accountable for their lack of truth. Whether I get the house or not is not the issue anymore. That was a home. It's the principle. And I've always been for principle, especially when you are in a court or superior --

THE COURT: But you understand, if you prevail, you will be back at square one buying this house.

MS. MORPHEW: And I have. But even if I'm back to square one, because of the fraud, I lost four years of interest, of being --

THE COURT: You understand that's not the remedy. The remedy is for you to get to buy the house.

MS. MORPHEW: Well, in this case, in this case. And getting to buy the house is great, but it's still --

THE COURT: Basically, that's going to be your only remedy. And is that really what you want? Is that worth another, like, three years of your life, basically? Well, not -- well, you've already expended two and a half. I don't know how long it's going to take for them --

MS. MORPHEW: Four years.

THE COURT: They've already indicated they are going to hear the matter at the Court of Appeals without hearing

argument. That was in, let's see, in October, another six months to a year until they issue an opinion. And then you have to decide whether you are going to appeal it to the Court of Appeals -- I mean, the Supreme Court. That might take another year. They decide whether they are going to hear it or whether they are going to summarily deny it.

And I guess I'm just a real practical kind of -- there are lots of things in the law. There are lots of things morally that you may feel are wrong. But the law just does not provide a remedy. So the question becomes, do you really want to spend the next three years of your life on a principle and not come out on the back end? That's why I asked that question, what is it you want to accomplish? And I don't take a position one way or the other. I'm just curious.

MS. MORPHEW: I will be straight out. Yes, I have expended. And I will admit, I was very naive when this started. I have never been in a court or had to even look up rules and regulations. And as you stated, it was like a chess game. There's no black and white.

THE COURT: There is none.

MS. MORPHEW: Sometimes it's who has the best lawyer and who speaks the best.

THE COURT: No. It's the best -- judges don't have anyone to reward or punishment. As far as we are concerned,

nobody wins, because I can have a cordial conversation with everybody on this and still rule against them. Doesn't matter to me. Judges are loyal to one thing, the law. And we make a decision on what we perceive based on what we have.

Are we perfect? No. That's why the Court of Appeals has a plethora of business, and the Supreme Court. I mean, we are not perfect. That's why the system is designed that way, checks and balances to correct our mistakes, so to speak. But I'm sad to hear you perceive that, because I think most of the public believes that as well. But as judges, we are not loyal to anybody except the law. That's why nobody wins when they come to court. Nobody gets everything they want.

MS. MORPHEW: I honestly believe that at this point. And I really was naive and I was willing to expend a lot of time and money believing that it was a truth, what the truth was going to be. And my daughter says I'm truthful to a fault. It's almost ridiculous. I won't even take someone's pen without feeling guilty and driving back and giving it to them. I just don't believe in that. And it affects everything.

And then I figure I had already gone halfway through this, this has been four years, I have already been through my life savings, plus all the time and effort, and I'm also one not to let go of something when I believe in it. Really,

my two pet peeves are lying and bullies. And both of those are unacceptable in every aspect. And I believe that people should be accountable for it. And I, unfortunately, probably hold people to my standards when it comes to that.

THE COURT: Frankly, that should be everybody's standard to treat your neighbors how you want to be treated, which includes telling the truth and not bullying people. I think that should be everybody's standards.

MS. MORPHEW: I guess if we had that standard, we wouldn't have courts.

THE COURT: Well, no, people who tell the truth have -- they have honest disputes sometimes that the court needs to resolve. I mean, differing minds have differentiating opinions. Doesn't mean they are lying. Just means they have different opinions. May have a different opinion about a contract, what it meant when they signed it, and need somebody to resolve it. So I think most of the people I see every day really believe they are telling the truth. You know, it's about perception. But that's the reason I ask the question. What is it in terms of what is it you want? And I ask this more for you than for me, because I want you to really be clear about what it is you are trying to accomplish and whether it's really -- I would never discourage you. Please don't interpret it that way. Sometimes we get caught up in something. We forgot why we

got into it.

MS. MORPHEW: I just -- I had a lawful contract and it was the perfect house and I could afford it. For everything I wanted, I did not think it was going to be like this, honestly. And sometimes I look back, and that's the question I get, why are you doing this? And it's the same answer.

THE COURT: My question is a little different. My question was not why are you doing it. I believe people should avail themselves to the legal system. If you didn't, I wouldn't have a job. My question was, what was your bottom line? What were you trying to accomplish? And I wanted to make sure, because a lot of what I read in your pleadings, the law just doesn't provide a remedy.

Law is a funny thing. When I practiced law, I would listen to my clients and I would say, hum-um, but the law doesn't provide a remedy for that. I know you might be morally incensed, but there's no cause of action for that.

So I just want to make sure that you are clear about what it is you are pursuing and whether there is, in fact, a remedy for it, or whether the remedy you are seeking is more adequately addressed in this appeal that's currently pending.

MS. MORPHEW: I can't say, because the appellate court, how they will perceive it and how they will move forward --

THE COURT: They are not loyal to anybody but themselves. They are going to read the briefs and make a decision based on what's presented to them. They really don't care who the lawyers are. Nobody ever gets everything they want out of an appeal either. That's why they have the Supreme Court.

MS. MORPHEW: What you have discussed with me, I assume that whatever -- what's on appeal is specific performance and breach of contract.

THE COURT: I don't have that file up here. And I was going to ask the clerk to get it for me so I could read Judge Chellis's order to see what was addressed. And I will have to read that, because I don't know. Res judicata is a concept you can't argue anything that's in that old case, whether it's the subject matter or the parties. So it doesn't necessarily have to be the same parties. But if it is the same subject matter, then you are precluded from getting a second bite, so to speak, on what you already had heard.

MS. MORPHEW: In the subject matter, subject matter is fraud.

THE COURT: I have no idea. I would have to read his order and see.

MS. MORPHEW: In the order, states fraud, it's whether who breached and who caused that breach. And that

was whether the sellers or defendants Dudek and Cross did that and whether it could be forgiven to compel specific performance.

THE COURT: It can be safe to say everything covered in that order you can't relitigate. So anything that you cited in your pleadings that's a relitigation of that will be dismissed, because you can't relitigate that because it's already been litigated. A competent court made findings of conclusions of law. And it's on appeal and being reviewed.

As a practical matter, this Court would have no jurisdiction over any of that. I cannot make a decision, nor can any other judge, on what Court of Appeals is already hearing and Judge Chellis already ruled on. I don't know. I would have to read that order before I can make a competent decision about any of that.

MS. MORPHEW: Yes, ma'am.

THE COURT: Is there anything else you wanted to state in response to any of the motions to dismiss? We've already covered the obstruction, any obstruction cause of action or perjury.

You've made some references in your pleadings to the federal Rules of Civil Procedure. None of that would apply in this court. We have federal court and state court. They all have separate rules of procedure. Some of our rules mirror one another. Some of them actually say the same

thing, with some exceptions. That is why they have two separate courts. Federal court operates on a whole different system than we do. But even if they were the exact same rules, the rules of court, they don't make a cause of action. They are the rules by which we all play to make sure we all have a level playing field, to make sure that everyone is heard. So you can't sue somebody based on the rules of procedure. That's not the purpose.

MS. MORPHEW: Or the violations.

THE COURT: That's not their purpose. You need to have brought that before the judge that brought the case. And it's up to him to decide.

Violation of the rules is less about you and more about this court, as an officer of the court. So that's why it's so important that you bring it to the trial judge's attention, so that he can take or she can take any action they feel appropriate, whether it be striking testimony, whether it be considering the validity of an argument or testimony, whether it be compelling them to comply, which is usually what judges do.

Because then, let's just say -- this might not be the best example. But sometimes people will say, well, they violated the rules, they didn't provide us with the information that was necessary. The remedy is to provide you with that information within a certain amount of time. But

it doesn't create a separate cause of action. The rules of procedure and any sanctions that accompany the rules of procedure are more about an attorney's obligation and a layperson's obligation to comply with a court order. And it doesn't create a cause of action. That's more -- it's more like us making sure everybody obeys what they are supposed to do, and then providing the appropriate sanctions in the event that you don't. But that's more about a lawyer and his license or layperson and their ability to present an indication or whether they have testimony stricken or cause of action stricken or otherwise for failure to comply. Because the rules of procedure do not create a private cause of action against someone.

MS. MORPHEW: So in this complaint, even though it was listed under a cause of action --

THE COURT: Say that one more time.

MS. MORPHEW: In the complaint, even though it was listed under a cause of action --

THE COURT: You mean your complaint?

MS. MORPHEW: Yes, ma'am. If the lawyer for the defendant, which he is the co-defendant also, violated those rules of --

THE COURT: That's about him and me. This is about you and him. That's about me and him, because then the sanction deals with him. And it depends on the level of

violation and whether the Court deems there was a violation. And then we have measured ways we can deal with it.

MS. MORPHEW: In that complaint, I do call out sanctions.

THE COURT: That's not your call. And it's not a remedy for you. It's a remedy for us in dealing with lawyer's behavior. That's what sanctions --

MS. MORPHEW: How is that brought forward then?

THE COURT: Usually a lawyer will say to the court, or a layperson will say to the court at that time that a lawyer has violated a particular rule, these are the sanctions that we are requesting. But usually the Court uses the lowest level of sanctions, because they never want to be in a position where they effect how a case proceeds, because they never want to basically prejudice the rights of the litigant because of something their lawyer may have done and they may not be aware of. So it's always going to be the lowest level.

Sanctions can be the judge talking to a lawyer in chambers and basically giving him a real tough talking to. It can be civil contempt where they are required to pay a fine to the court to purge themselves. It could be striking a cause of action or striking testimony. But it's rare that that will ever happen. Because, again, we would not want to prejudice a litigant because of something their lawyer may

have done that they were not complicit in. So you aren't really going to do something that's going to impact the decision of the case.

The sanction rules are more about the judge and the lawyer or judge and layperson, in other words, about litigants necessarily. That's more about the rules of -- that's more about how you comport yourself with the court and your compliance with the rules. But it doesn't create a private cause of action.

And it's just like the statute. Statute doesn't create a private cause of action unless it says it does. Just because it's on there and says it's a violation, doesn't mean it creates a violation where somebody can sue somebody, unless it actually says you can do that. So a lot of what you've stated really aren't causes of action. So it's almost like you really have to go back through and read your pleadings and see.

Did you have someone help you draft these pleadings or did you just do them on your own?

MS. MORPHEW: It was a collusion. There was some assistance and a mailing.

THE COURT: Well, you might want to -- did you go back over them with who assisted you before you filed it?

MS. MORPHEW: Yes, ma'am.

THE COURT: And they were okay with it?

MS. MORPHEW: Yes, ma'am.

THE COURT: Okay. All right. Ma'am, is there anything you want to state for the record regarding the motions to dismiss?

MS. MORPHEW: No, ma'am.

THE COURT: I'm sorry?

MS. MORPHEW: No, ma'am.

THE COURT: Okay.

MS. MORPHEW: Thank you.

THE COURT: You're welcome.

Anything further, Mr. Smith?

MR. SMITH: Your Honor, on behalf of Dudek and Cross, we also filed a motion for sanctions for the filing of this action. The court -- or the legislature was very clear in their 15-36-10 frivolous lawsuit, says the prevailing party can make an action --

THE COURT: It's a little premature to make that motion.

MR. SMITH: It is, Your Honor. I was trying to save a trip.

THE COURT: You just got to do things the way they are, because I don't know. I haven't made a ruling yet. And I need to do a little studying before I do that.

MR. SMITH: Only two points I would like to make. A pro se litigant is held to the same standards as a reasonable

attorney in a filing of an action to determine whether or not it's warranted or not under 15-36-10(c)(1)(a). And, Your Honor, I would also like to hand up an affidavit of attorney's fees.

THE COURT: Well, I think that's all premature, because what I will have to do is, if you are, in fact, the prevailing party, you are going to move under that statute. And I'm going to have to have another hearing.

MR. SMITH: That's only for Dudek and Cross, Your Honor.

THE COURT: All right. Anything further? Mr. Prevost?

MR. PREVOST: No, Your Honor. Thank you.

THE COURT: You're welcome. Anything further, Mr. Crapps?

MR. CRAPPS: No, Your Honor.

THE COURT: I will take the matter under advisement. And if y'all could provide me with proposed order within 10 days on each of your motions citing any findings of fact and conclusion of law consistent with the record, needs to be sent to djeffersonsc@sccourts.org in Word format. Please copy Ms. Morphew on that so that -- Ms. Morphew, does everyone have your current e-mail address?

MS. MORPHEW:I assume so, Your Honor.

THE COURT: Do you all have her e-mail?

MR. SMITH: If she could give it to us.

THE COURT: Give it to them so when they send me their orders, you will get a copy of them at the same time.

MS. MORPHEW: Morphew@gmail.com.

THE COURT: When they send those orders to me, you will be copied on them. And then once an order is issued, copies will be sent to everyone involved.

MS. MORPHEW: Your Honor, I would like to make a correction. I'm sorry. This e-mail is just used for this case, and it's morphew0926@gmail.com. My apologies.

THE COURT: No problem. I didn't want you -- the rules provide whenever there's communication with the Court, that all parties have to be aware of that. So that's why we need your e-mail address, because when they submit anything to me, I need you to be aware that they submitted it and you are copied on the e-mail. Okay?

Thank you all very much. Have a great day.

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

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

Appellate Case No. 2018-002185

Molly M. Morphew — Appellant

v.

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

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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January 1, 2022