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, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm, Respondents.

APPELLANT'S FINAL COMBINED REPLY BRIEF

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Standard of Review

In an action at law, the trial court's factual findings will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial court's findings. *Townes,* 266 S.C. at 86, 221 S.E.2d at 775. 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. *See Wilder Corp. v. Wilke,* 324 S.C. 570, 577, 479 S.E.2d 510, 513 (Ct.App.1996) (citing *Townes,* 266 S.C. at 86, 221 S.E.2d at 775) (holding that because the master-in-equity heard the action, which was equitable in nature, without appeal to the circuit court, the appellate court could find the facts on appeal in accordance with its own view of the preponderance of the evidence).

Arguments

I. The trial court's dismissal of Appellant's causes of action and grant of summary judgment was improper and should be reversed in regards to Respondent David Collins

Without restating all the facts and arguments which have been thoroughly set forth in its opening brief, Appellant Morphew (herein "Appellant") offers the following statements of the case and facts with arguments for clarification, *correction or defense in regards to this case and the Respondent David Collins's (herein "Collins") Brief.

Statements of the Case

Appellant served and filed its complaint and summons on August 24, 2016 (*[1]not September 8, 2016). Appellant's case is not frivolous nor is any of its filings, and Appellant did not lose the original case in November 2014 (*contrary to Collins' statement). In fact, Appellant was also granted Specific Performance under the same South Carolina and Federal guidelines, rules, maxims, laws, statutes or precedents. On September 20, 2016 Collins filed a skeleton 12(b) motion to dismiss (R. pg. 466-468). On January 31, 2017, the trial court dismissed several of the causes of actions, leaving several remaining, one of which was Fraud and/or Fraud on the Court (*not [just] 'extrinsic fraud'). Collins failed to file an Answer to the complaint. Collins did not appeal.

[1] ***Errors appearing in Collins' Statement of the Case or Statement of the Facts as outlined in his initial brief.**

On November 27, 2017, after receiving the Scheduling Order, Appellant filed a combined motion for default and a motion for default judgment against Collins. On December 19, 2017 Collins signed and filed an Answer and Return to Motion, which the Clerk deemed invalid for lack of counsel signature (R. pg. 931);(R. pg. 926-930, 933-934). Notice was given. The failure was never remedied. No valid Answer or motion to be relieved of default was ever filed (*contrary to Collins' Statement).

In January 2018, Appellant served a Motion to Strike Collins' Answer and Response [to Appellant's Motion for Default and Motion for Default Judgment] (R. pg. 389-411). On January 24, 2018, after Appellant refused to allow Collins to personally question her and without his attorney present at her deposition, Collins' counsel of record submitted a motion to be relieved of counsel. An order granting such relief was issued January 26, 2018 (R. 1305).

On Feb 23, 2018 the trial court issued an Order denying only Appellant's motion for *Default Judgment*, leaving open its' motion for entry of default (*contrary to Collins' statement of fact, pg. 9 para. 2). On March 4, 2018, to err on the side of caution, Appellant filed a 2nd [combined] Motion for Entry of Default and Motion for Default Judgment.

After extensive discovery and many filings, all which the Collins took *no* part in whatsoever (*contrary to Collins' statement), a hearing was held on October 1, 2018 to hear the pending motions, including discovery motions. Some of which the judge did not hear, but would review de novo. At no time prior to this hearing did the judge give notice it was going to convert any motion to dismiss[2] to a motion for summary judgment ("SJ") (*contrary to Collins' statement of the case) nor did she give notice she was going to consider any evidence outside the scope of the complaint. The first time Appellant heard of this is in the Order of November 15, 2018. *Collins falsely presents to this court that the Appellant "*continuously threaten to criminally prosecute the Respondents unless they settle the dispute by paying her some sum of money*". This is not an issue raised on appeal nor is the document relevant to this appeal, therefore should be disregarded by this Court. The document is required to be removed from Collins' Designation of Matter. Regardless, nowhere is there any threats --let alone *continuous* threats/attempts-- to collect money to settle any

[2] Collins presents untrue assertions to this court, 1) that he had a pending MTD before the court and, 2) *during the hearing* the judge converted his [alleged] MTD to a motion for SJ.

disputes with the Respondents. Such is perjury and misrepresentations in its filings with this court and should be noted. On November 13, 2018 (*not November 13, 2017 as stated by Collins), the trial court denied Appellant's 2nd Motion for Default, specifically, because the "*Respondent filed a timely motion to dismiss,*" rendering moot its 1st motion for default and its 2nd motion for default judgment. No findings of fact, standard of review or law analysis was included in the Order to support its ruling. On November 15, 2018 the trial court issued an Order granting SJ to Collins on its remaining causes of action by "converting a motion to dismiss to summary judgment "[3].

Overall, the trial court dismissed Appellant's entire case by granting SJ to all remaining causes of action as to all Respondents. No sanctions against any litigant was issued. Appellant appealed, including 10 orders equaling 100 pages, 10 Respondents and 43 rulings. No Respondent has appealed.

Statement of Facts

The statement of facts presented here are in chronological order based on the evidence discovered *after* trial and *on appeal* during the original action in which this case arises. It presents the facts and evidence that has not been considered and/or specifically ruled on by this Court.

Appellant discovered after trial and on appeal, that Collins' clients and co-respondents, Stephen Dudek and Doreen Cross (herein "Dudeks"), had no legal claim or right to the property in question after November 30, 2012. In essence, the Dudeks lender refused their application for financing because their time is of the essence sales contract was not valid and negotiable...it had expired. Such failure was never remedied[4]. It was also discovered a*ll* Respondents had full and complete knowledge of the Dudeks' lack of legal claim or right to obtain the property prior to the filing of the unlawful and frivolous complaint for specific performance (**R. pg. 975**);(**R. pg. 997**). These facts are undisputed. The discovery of the evidence after trial led to this compliant for

[3] In its Order of November 15, 2018 the trial court states it "converted a Joint Motion to Dismiss in regards to David Collins to SJ". The record fails to show a MTD, let alone a joint motion, in which Collins is party to or that the trial court could convert. In fact, the only filings or valid filings the Respondent filed during the course of the case was a MTD in September 2016 [ruled on in Jan. 2017].

[4] This Court should be aware that since this complaint was issued, the Dudeks have obtained the property with the assistance of co-respondent Williams and First Federal (now South State Bank) using the same expired sales contract that was refused in 2012. First Federal had complete knowledge of the Appellants claim against the property, this complaint, and the fact they themselves deemed the sales contract invalid and non-negotiable in December 2012 and closed the Dudek's file. To except a new application using the expired sales contract is continued fraud, as alleged in the complaint and in Appellant's motion to compel discovery of the financial documents.

fraud/fraud on the court and many other causes of action. These actions by the Respondents led to unlawfully obtained property and prevent Appellant from closing on her property. That discovery also revealed that during the course of the separate and prior case for Specific Performance, Collins, the Dudeks and/or their witnesses gave only perjured or false testimony, suborned perjury, false promises or forged financial documents in its filings or at trial. Such actions were to hide the truth, cover up their critical failures and convince the court the equitable remedy of specific performance was available to the Dudeks, when in fact it was not. Due to this fact, the lower court had not the discretionary power to order specific performance in their favor, therefore lost jurisdiction to move forward an order the remedy and allow them to obtain the property.

Appellant also discovered during the appeal the Master had knowledge of this BEFORE his ruling. (FP6). Appellant not served (*see* certificate of service). The evidence contradicted all material evidence and testimony given by the Respondents, and that such critical and material evidence and facts would deny the Dudeks the legal ability to specific performance and remove the Court's jurisdiction or ability to order specific performance in their favor. The record shows the Master intentionally ignored a *pro se party's* (Defendants/sellers Ferro) closing statements and newly discovered evidence, taking only the statements of the attorneys. Ignoring the laws, guidelines and the rules which granted him its discretionary power to order the strict remedy of specific performance, he granted the Dudeks the equitable remedy-- despite their *critical* failures. **(R. pg. 976-979).** The discovered facts and evidence was presented to this Court on appeal of the prior case. Based on South Carolina and Federal rules, laws, statutes, precedents and maxims of equity, the Record wholly supports the fact the trial court had no discretion or jurisdiction to order the strict remedy of specific performance *in their favor*, especially when they had no contract or legal right/claim to the property after November 30, 2012. Consequently, the Order of November 6, 2014 is in-part VOID and has no legal effect whatsoever. It should also be noted specifically the Dudeks fail the maxims of equity, "He Who Seeks Equity Must Do Equity," and "He Who Comes Into Equity Must Come With Clean Hands," in which the former is not a moral persuasion but an *enforceable* RULE OF LAW. Further, the maxims of equity are based on 'Equal Equities', which it was discovered the Dudeks are unquestionably not equal as they intentionally, and at their own hand, failed to meet even the basic lawful requirements and maxims in order to compel specific

performance, making their prior case not only frivolous but unlawful and unfair, causing a severe injustice to the Appellant[5], sellers, public policy, the judicial process and the courts.

Due to the extent of these failures and unlawful actions or non-actions, and despite that as soon as this was discovered it was raised to the Appellate court in the prior action, Appellant filed its subsequent complaint for Fraud and Fraud on the Court, among several other causes of action against Collins and his clients (the Dudeks); [their lender and loan officer; their' closing attorney representing their 'alleged[6] mortgage transaction and his paralegal; their Real Estate agency, sales agent and chief counsel (herein "Respondents")] during the prior action appeal on August 24, 2016.

The following year, this Court affirmed the decision of the Master, but the affirmation was not based on the record or the valid evidence presented , instead it based its affirmation on a standard of review that does not require them to *disregard the findings at trial or to ignore the fact the master was in a better position to assess the credibility of the witnesses*", therefore this Court affirmed the lower court ruling without considering or reviewing the record or the evidence presented to them.

The "litigious" debacle the Respondent(s) claim is *not* because of the Appellant, but because of Collins and co-respondents. As argued here and in its initial brief, it all started at Collins and the Dudeks' unlawful and frivolous complaint for specific performance. It continued with perjured and misrepresented filings, forged financial documents, lender's perjured response to the several subpoenas issued in discovery and its perjured testimony at trial/lack of disclosure or critically material facts and evidence; and Collins' failure to disclose substantial material evidence[7] before or even during trial, including but not limited to, the critically material lending refusal/denial letters. If the denial letters and the reason for them had been disclosed or presented by the Collins we wouldn't be here today in this domino effect litigation. Collins had a legal duty to disclose this

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[5] The Respondents' unlawful actions (including fraud perjury, forgery, misrepresentations, or suborning of perjury) have unjustifiably prevented Appellant from her property. At all times material, the Dudeks did not have any legal right to the property and are not bona fide purchasers as they obtained the property by fraud.

[6] Since at all times material to the prior case and the filing of this instant case, the Dudeks had no valid and negotiable sales contract or no mortgage transaction was in effect, co-respondents Wooddy Law Firm and Carrie Boyer had no legal standing to demand actions from the sellers, including repairs, inspections or a closing.

[7] In the Appellant's deposition, her testimony clearly states she has no idea what was presented to her attorney before trial, but the denial letters were absolutely not there for if they were she stated she was more than sure her attorney would have presented it for she would have most surely won based on the merits of the case. And if Appellant knew of the denial letters at trial, she *without a doubt* would have presented them. (**R. pg. 1315-1321** [pg. 124 lines 6-10; pg. 105 line11 through pg. 106 line 7; Pg. 47 line 15 through Pg. 48 Line 5]) Regardless, the Respondent had them in his possession the whole time, as his clients were issued them in January 2013.

information at trial... as the court's ability or *discretion* to order a contract specifically performed is *critically* based on a *valid legal claim* (valid and negotiable sales contract) AND their *ability to obtain financing* per their sales contract. At all times material, the Dudeks had neither. Neither did Collins' clients at any time material have a legal claim or right to the property after November 30.212 nor was there ever a valid/legal mortgage transaction in effect in order for any Respondents to act in their professional capacity or with legal standing. Now, because of the Respondents, the Order of Nov. 6, 2014 in-part granting specific performance to the Dudeks fails completely in law, equity and substance. It has no grounds for support. Further, the very principles and guidelines in which it was allowed and constructed upon have been violated and fail. The Order is VOID in-part. The only valid and lawful part of that order is the part granting Appellant specific performance.

Appellant's arguments contained in its initial brief in regards to Collins are referenced and contained herein.

1. **Appellant was denied its right to be fully heard in its Initial Brief**

Appellant contends it was denied its motions to exceed the 50-page limit of its initial brief, therefore denying its right to fully argue or defend fully and completely in its brief, the 100 pages of orders, 40+ rulings, 18 causes of action and 10 Respondents with varying levels of legal position. There are many issues Appellant was unable to argue or fully argue, being restricted, and without reason, to 50 pages to defend 100 pages of orders/rulings, therefore any alleged 'abandonment' or less than appropriate presentation of issues is due its denial of due process to be fully heard. (R. pg. 137-370).

2. **The trial court abused its discretion ruling Respondent Collins was not in default**

Collins fails to argue or provide any facts or justification why the lower court's ruling in the order of November 13 that "filing a timely motion to dismiss" could or did relieve him of any default. Instead he makes only a passing assertion in its brief he filed a motion to dismiss pursuant 12(b)(6), and then leads this court on a merry goose chase pointing to issues and defenses he failed to raise or was not litigated in the lower court, not preserved for appellate review, or to filings that

are deemed invalid by the lower court[8] (A60)(RTM61), and to orders that have nothing to do with relieving Collins of his default or the entry of (O12[9]). Collins completely failed to participate in this action by failing to participate in discovery and/or made no filing after his one and only filing of its Motion to Dismiss in September 2016, and that was a skeleton motion. Collins should be barred from a second bite at the apple in now deciding to be a participant in this case. (R. pg. 389-465).

Collins makes several false statements in its brief, and at the same time fails in its brief to disclose material facts this court requires in order to properly review the issue at hand. Collins neither filed an Answer or valid Answer nor properly sought relief of his default nor participated in discovery. Even IF relief was properly sought, Collins was required to meet the good cause standard for granting relief from an entry of default under Rule 55(c). (R. pg. 389-411) (R. pg. 412-438). More so, as argued herein, the lower court's abuse of discretion and violation of the rules of the court contribute considerably to the failing of its Order(s), or that the Order(s) fail on their face or has no grounds in which to support.

Collins failed to seek relief of his default. Though he filed a 'Return to Motion' after receiving Appellant's motion for entry of default and motion for default judgment, the clerk deemed the Return an invalid filing for failure to be signed by his attorney of record, and violates Rule 11 by failing to strike the filings from the record. (R. pg. 931-932). The failure was not remedied after notice, therefore was required to be struck from the record even without Appellant's motion requesting same, and sanctions against Collins allowed. Rule 11(a). Even *IF* the filing was deemed valid or had been remedied, which it wasn't, the Return was not a motion or pursuant Rule 55(c), it was never before the court as a motion for relief, nor litigated or ruled on by the lower court. Consequently, Collins's arguments and reasons for its failure to Answer as presented in its brief are not preserved for appeal.

Regardless, the standard also *requires* a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default

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[8] Therefore, cannot be considered by this court

[9] Order of Feb. 23, which only denied Appellants 1st motion for default judgment and did not specifically relieve Respondent of his default or the entry of.

entry *would serve the interests of justice*. No reasons why vacation of the default entry would serve the interests of justice was given. The trial court is also required to consider three (3) specific factors. Once a party has put forth a satisfactory explanation for the default, the trial court *must* also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App. 1989). The trial court did not consider each factor because no motion for relief or the defense of 'timely filing a motion to dismiss was before the court (MTS11)(MDJ13). Consequently, the lower court abused its discretion and power by filing an order that lacks ground for support and totally fails on its face. Such Order is void. Finally, the trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). In turn, *a trial court must make specific findings of fact for each factor if good cause* is found. The order of November 13, 2018 was a one-sentence ruling, failing to substantially comply with Rule 52(a) and failing to adequately state the basis for the result it reaches. As such, the order fails and should be vacated by this Court. Under South Carolina Rule of Civil Procedure 52 (a), "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." This Court has previously determined this requirement to be directory and that noncompliance would not form the basis for invalidating a judgment. *May v. Cavender*, 29 S.C. 488, 7 S.E. 489 (1888) (interpreting Section 291 Code of Laws of South Carolina); *see also Borg Warner Acceptance Corp. v. Darby*, 296 S.C. 275, 372 S.E. (2d) 99 (Ct. App. 1988). Rather, where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding. *See Pawleys Island Civic Ass'n. v. Johnson*, 292 S.C. 208, 355 S.E. (2d) 541 (Ct. App. 1986) (interpreting Section 15-35-110 Code of Laws of South Carolina 1976).

A motion requesting relief from default or a motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalnaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994). But sound discretion is not a free pass, particularly when no such motion was before

the court. The rules and processes of the court *must* be followed. As argued in its initial brief, and maybe most importantly, no responsive pleading has been filed and a motion to dismiss is not a responsive pleading, especially in this case, therefore there are no grounds supporting its order. Based on the above, the order is void and must be set aside. At a minimum, the court abused its discretion relieving Collins of his default, and such Order must be reversed.

a. Collins claims improper Service of the Summons and Complaint: The defense was not raised, litigated or ruled on, therefore not preserved for appellate review. Even so, Collins has waived this issue as he did not raise this defense in its first filing, its Rule 12 MTD dated September 20, 2016. Rule 12(h) SCRCP.

b. Collins falsely states he engaged in extensive discovery. Collins participated in no discovery whatsoever[10].

c. Collins admits in his brief he filed his Answer to the Complaint in December 2017.

Notwithstanding that the Answer is invalid, the admission itself affirms a [timely] motion to dismiss[11]-- the *sole* grounds which the lower court chose to relieve him of his default -- is neither the responsive pleading nor grounds for relief. Further, Collins' Answer was due in February 2017 after his motion to dismiss was denied in-part, not 10 months later and after receiving Appellants motion for default.

Regardless, as argued in Appellant's brief, Collins' Answer and its Return to Motion are not valid filings, therefore cannot be considered by the courts. And if an alleged 12(b)(6) motion to dismiss was contained in the Answer, it would also be invalid, untimely and improper. Regardless, it would not toll the time file his Answer that was due 10 months earlier, therefore would fail to support the trial court's order relieving him of default. Rule 7 and 12 SCRCP. Sadly, Collins failed to inform this Court of this very critical and material fact. The trial court gave express notice via email to Collins' attorney and all parties that his Answer and Return to Motion were not valid as

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[10] The only discovery Respondent attempted was when he demanded Appellant answer his questions at her deposition without his counsel present, then threatened sanctions if she refused. Appellant refused and ended her deposition.

[11] The lower court in its Order of Nov. 13, 2018 fails to point to *any* motion to dismiss in the record which could or would support its ruling. Further, the *only* filing or valid filing by the Respondent is its blank Motion to Dismiss 12(b)(6) in September 2016 (MTD17), which Appellant responded (BIO20), and was ruled on in Jan. 2017. Respondent did not file its' Answer as required by Rule 7(a) & Rule 12 SCRCP, therefore to relieve Respondent of his default 21 months later severely prejudices Appellant and its right of due process. Resp. has not appealed any order.

they were not signed by his attorney of record. (R. pg. 931). This failure was never remedied; therefore, the filings are required to be struck from the record. SCRCP Rule 12(b). That the court has failed or intentionally failed to strike the filings violates Rule 11(a), and sanctions against the Collins are applicable. Their presence neither renders them valid nor is of consequence as the striking from the record is a ministerial task to be performed by the clerk and does not require an order from the court. Rule 11(a) SCRCP. Consequently, no valid responsive pleading or request to be relieved from default has been served. Therefore, Collins is in default and such default cannot be denied by this court, especially when the *sole* reason for relief from default was a general assertion, not supported by any facts or the record, that the Collins '*filed a timely motion to dismiss*'.

Appellant would also like to make note that the Collins was a seasoned attorney for 30+ years. Though suspended from practice in 2016 for admittingly committing fraud on a separate case, and charged so, he is *more than familiar* with the rules and processes of the courts, especially the very basic process of answering complaints and defaults. There is absolutely no good cause that would justify his blatant failures and critical violations of the court rules or his non-compliance. Moreover, his own past law partner, Mr. Steven Smith --who is counsel for co-respondents Dudek and Cross and has since taken over as counsel of record for 3 other co-defendants-- refused to represent the Collins when his prior counsel of record was granted its' motion for relief of his representation. Obviously, Collins' blatant fraud, dishonesty and disregard for the rules and processes of the South Carolina courts is well known.

Based on the above, Collins is in default and no motion for relief is before the court. Consequently, any relief from default granted the Collins has no grounds for support or is an error of law, or void, therefore improper and must be reversed or voided. Appellant would also petition this Court to direct the lower court to strike from the record Collins' invalid Answer and Return to Motion, and to find Respondent Collins in Default and to record such entry as applicable per Rule 55(a). If this Court finds the Chief Deputy Clerk failed to enter default as required, Appellant petitions this Court to Order entry of default was mandatory but not entered as required per Rule 55(a), and is no fault of the Appellant, but instead an error of the court. Further, Appellant requests said Order to state Respondent Collins has been found in Default and is hereby entered on November 27, 2017 and that default Judgment is to be entered accordingly and damages awarded as such.

Further, Appellant asks this court for sanctions as allowed by Rule 11(a) and any other relief this court deems proper.

3. The trial court erred in granting Respondent David Collins, et al's motion to dismiss in-part

As argued in regards to Respondent Collins in Appellant's initial Brief and referenced here.

For the sake of repetition, Appellant argues first and foremost that Collins is in default and therefore cannot defend in this action as argued above and repeated herein in each issue, and this court must disregard Collins' brief and arguments.

Even so, in regards to:

a) Appellant's Cause of Action for "Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive

The trial court order granted in-part Respondents David Collins' Motion to Dismiss in regards to Appellant's Cause of Action, Fraud - Untrue assertion of fact (or equivalent]; Assertion made with knowledge of falsity and intent to deceive because "*Plaintiff pleads a claim of perjury rather than fraud.*" (R. pg. 88-108). First, Collins is in default and cannot defend here.

Even so, the Collins basically repeats the trial court order, though he makes one additional comment, "*that there is no allegation contained in the complaint that this Respondent testified at all. In fact, this Respondent acted as trial attorney during the trial.*" Collins neither raised this defense nor was it litigated or adjudicated in the trial court, therefore it's not preserved for appellate review. (R. pg. 88-108). The lower court ruled the actions of perjury was intrinsic fraud, not extrinsic. Collins has not challenged or appealed that order. Any unappealed ruling is law of the case. *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997)(It is a fundamental rule of law that an appellate court will affirm a ruling by a trial court if the offended party does not challenge that ruling. Failure to challenge the ruling "is an abandonment of the issue and precludes consideration on appeal." The unchallenged ruling, "right or wrong is the law of the case and requires affirmance." (internal citation omitted).

Regardless, Collins suborned perjury, and as argued in Appellant's Initial Brief, the allegations rise above 'just perjury of the intrinsic kind', and his actions include an issue collateral to the prior issue and/or acts which would be considered extrinsic or rise to the level of such, and he had a duty to speak or a duty of care owed Appellant, Defendants Ferro and to the trial court and that those duties were breached resulting in a question of liability. Such presents a jury question(s). *Spence v. Wingate*, 385 S.C. 316, 684 S.E.2d 188 (Ct.App.2009) (Spence III); Accord *Smiley v. Woodmen of the World Life Ins.*, 249 S.C. 461, 154 S.E.2d 834 (1967) (jury question as to whether life insurance applicant misrepresented his health with intent to deceive insurer notwithstanding insured's answering "no" to numerous questions regarding hospital treatment and medications, when insured had in fact been hospitalized for six days the year prior to his application). Even so its actions were unlawful and directly affected the lower courts ability to order the remedy in his client's favor. Collins should be held liable for the unlawful or void order and the damages it has caused.

The record shows the Dudeks had no valid and negotiable sales contract after expiration, therefore no legal right or claim to the property at all times material. Consequently, they were refused financing and could not perform. A court cannot through its power make an expired sales contract valid nor validate a proceeding in which that court lacked discretionary or jurisdictional power to render the judgment. If Collins spoke or disclosed the truth in the first place, instead of committing perjury, suborning perjury, presenting forged financial documents and filing unlawful and frivolous lawsuits we wouldn't be here today with this court attempting to untangle the legal problems presented in the substantial litigation caused by Collins, and at *no* fault of the Appellant.

As argued in its initial brief and repeated here, *Perjury is fraud*, where "(the Supreme Court held that the charge of perjury or false swearing on the part of a party or his witnesses "is a species of... fraud," ...) *Corley v. Centennial Const. Co.*, 247 S.C. 179, 189, 146 S.E.2d 609, 614 (1966)(emphasis added). Perjury is fraud, especially when it is an act of deception carried out for the purpose of unfair, undeserved and/or unlawful gain, and such perjury was practiced in the very act of retaining the court's jurisdiction or discretionary power to move forward and award specific performance to the Dudeks. A judgment for specific performance was obtained when at all times material the Dudeks had no legal right or claim to the property. Further, their acts unjustifiably prevented

Appellant her due process, the right to her property and her right for a *fair* and *lawful* judgment. Overall, the courts have unjustifiably stolen Appellant's property and gave it to another who had no legal claim or right to obtain it AND who had committed acts criminal in nature to acquire the courts discretionary power or jurisdiction to award the equitable remedy. "A judgment obtained by fraud may, however, be void under some circumstances, and subject to collateral attack, as where such *fraud appears on the face of the record* or *goes to the method of acquiring jurisdiction*. Likewise, the judgment may be attacked collaterally *where fraud had been practiced in the very act of obtaining the judgment*, or on the party against whom the judgment was rendered, so as to prevent him from having a *fair* opportunity to present his case, * * *." (Emphasis added.) 49 C.J.S. Judgments § 434 Fraud, Collusion, or Perjury, p. 859.

Even so its actions affirm far more than just perjury. In fact, it includes conspiracy, forgery of financial documents, false promise(s) by the lender at trial and unlawful acts of concealment, suborned perjury, misrepresentations, and the continuation of said actions, in their filings and depositions, all with knowledge of the *material* falsities. More important, the perjury and concealment was *critically material* to the case at hand. Meaning, without the unlawful actions or non-actions, the Dudeks' had no ability to compel specific performance. As a consequence, the trial court did not have the discretionary power to order specific performance in their favor.

Appellant did not know what testimony the Respondents would offer at said trial, but neither she nor the courts had reason to anticipate fraudulent testimony or the suborning of, especially from the Collins, an officer of the court, who has taken an oath as an attorney to uphold the highest standards as such, including: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous"; A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false; In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

Further, the circumstances of the case(s) in this instant called for 'perfect good faith and full disclosure' from his clients and the witnesses. It wasn't until after trial and on appeal that Appellant discovered these critical failures by the Collins and the court's abuse of its discretion. Such material and critical evidence in the record renders practically all, if not all, of the material testimony or evidence introduced before and at trial of the aforesaid case false, perjured, fabricated and fraudulent, while Collins had complete knowledge of this fact during the whole litigation.

It's apparent that if the truth was told or the concealed facts and documents had been revealed during discovery and at trial, it would have produced a far different result. Either no trial or only Appellant would have succeeded on the merits of the case. Even so, an Order that fails on its face or was based on factual conclusions that are without evidentiary support is an abuse of discretion, improper or unlawful. "An Order that fails on its face or based solely on false evidence that is material and critical to the remedy, or based on factual conclusions that are without evidentiary support, is equal to an error of law, therefore is an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990) (An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support)."

There appears to be no valid or judicious reason why Collins would commit fraud (i.e., suborn perjury or conceal the material and critical facts of its clients' financial status or their ability to close escrow) over and over again, especially when full disclosure was critical to the trial court's discretionary power to order specific performance. Collins had a fiduciary duty to the courts or duty of care to the sellers and to third parties,' notwithstanding he and his clients and witnesses were under oath in their filings, discovery and at trial; a valid and negotiable sales contract and the Dudeks' ability to tender payment for the property was the crux of the [specific performance] case(s). Collins was specifically required at the trial to fairly or properly present its clients' case, provide to the court facts specific to the Dudeks' performance of their time is of the essence sales contract and their ability to close escrow. Further, Collins had a duty to speak and care under oath as an attorney, therefore the suborning of perjury and concealment or non-disclosure of the material facts or documents becomes fraudulent, especially where there is a duty to speak or care. (*See* Issue #3 herein Brief, pg. 22-25).

Specific Performance was awarded equally to both Appellant and the Dudeks[12]. The record confirms the court *equally* applied the same maxims, rules, statutes, guidelines and precedence(s) to both Appellant and Respondents Dudek in their ability to compel specific performance *and* in its jurisdiction or ability to act or award the remedy of specific performance to the litigants. **(O1).** But when new evidence was discovered and presented the courts abused their discretion, violated their own rules and guidelines, failed to protect the Appellant-- and instead punished her, who had the only legal and rightful claim to the property, was 'ready, able and willing', and neither committed fraud nor violated the rules and processes of the court. At the same time in the very same case, the courts protect and *reward* Respondents Dudek, who at all times material, had *no legal right* or claim to the property, who critically breached their time is of the essence sales contract, was refused financing, was not 'ready, able and willing', have violated the rules and abused the processes of the court AND committed substantial *fraudulent* or unlawful actions to obtain, or steal in this case, property belonging to Appellant. Not only is this unlawful and an abuse of the Court's discretion, but to allow such an unlawful judgment and void in-part Order stand is a grave injustice and a violation of Appellant's constitutional rights of due process, *which includes the right of a fair and lawful judgment.* (USC Fourteenth Amendment). Further, Appellants property was taken by the courts without legal right or justification, and all this allowed "just to end" a case. This case undoubtedly represents a situation where the finality of the prior case is trivial compared to unlawfulness and the injustice served, especially considering the issues presented have never been litigated or adjudicated.

As stated in *Bishop v. Tolbert*, "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. *Mobley v. Quattlebaum*, 101 S.C. 221, 85 S.E. 585; *Mitchum v. Mitchum*, 183 S.C. 75, 190 S.E. 104; *Flowers v. Roberts*, 220 S.C. 110, 66 S.E. (2d) 612. It has been said that "there is no branch of equity jurisdiction in which the Court is allowed the greater exercise of a sound and reasonable discretion, 'which governs itself, as far as it maybe, by general rules

[12] The only difference, the award gave the Dudeks *first* shot at performing because they contracted first.

and principles,' than that which relates to the specific performance of agreements. 'The question is not what the Court must do, but what it may do, under the circumstances'". *Lesesne v. White*, 5 S.C. 450.

Among the established principles by which the court is guided and governed in the exercise of the sound discretion is that laid down in the early case of *Cureton v. Gilmore*, 3 S.C. 46: "He, therefore, who demands the execution of an agreement, ought to show that there has been no default in him in performing all that was to be done on his part; for, if either he will not, or through his own negligence cannot perform the whole on his side, he has no title in equity to the performance of the other party, since such performance could not be mutual. And, upon this reasoning, it is that where a man has trifled or shown a backwardness in performing his part of the contract, equity will not decree a specific performance in his favor." And, as is said in *Thompson v. Dulles*, 5 Rich. Eq. 370, "The principle is sound and just, and demanded alike by morals and by policy, that he who has neglected to perform a duty which he might have performed, and ought to have performed, has no claim upon the court to compel the other party to perform his engagements. Whenever such negligent party comes into this Court, he *must* be told that he has neglected to do Equity, and has, therefore, deprived himself of the equity he claims." *Bishop v. Tolbert*, 249 S.C. 289, 299, 153 S.E.2d 912 (1967)(Emphasis added). Based on the established principles, and the arguments and evidence presented, the Order of November 6, 2014 in-part granting specific performance to the Dudeks is VOID and must be set-aside; and the Respondent is substantially liable for this legal mess.

b) Appellant's Cause of Action for Declaratory Judgement That No Contract Exists

Collins argues in its Brief, Appellant "*seeks a declaratory judgment that no legal contract ever existed between the original sellers and buyers of the property in question. This issue was the subject matter of the original trial. The trial judge found that a contract did exist and ordered specific performance of that contract and that this Court upheld that ruling*", therefore dismissal of this cause of action is appropriate. First, Collins is in default and has no defense.

Second, Appellant does not seek that a contract never existed, but specifically stresses, "*at all times material* no valid contract exists OR ever existed." Also, "*At all times material,*

Defendants(s) or its agent(s) had actual knowledge that they did not have a valid sales contract." (**COMP43**, pg. 62 #338). This fact is uncontested. Appellant seeks a judgment the contract did not exist after its expiration or November 30, 2012.

Third, and as argued in its Intial Brief, Appellant asserts that false promises by the lender at trial is collateral therefore extrinsic, and Collins' suborning of perjury is extrinsic fraud. Extrinsic fraud exists, or that the *critically material* intrinsic fraud here rises the level of extrinsic fraud and is a question for the jury, therefore res judicata cannot bar its collateral attack on the original action's judgment granting specific performance to the Dudeks, or this question has to be remanded for the jury. "*Unless extrinsic fraud exists, res judicata can be asserted to bar a collateral attack on a judgment.*" *Aaron v. Mahl*, 381 S.C. 381,593,674 S.E.2d 482,486 (2009). When the application of res judicata involves factual disputes, the jury must be the judicial actor to resolve these discrepancies. The fact-law distinction, which gives questions of fact to the jury and questions of law to the judge, has guided American courts for hundreds of years. From the time of the adoption of the Seventh Amendment until the end of the nineteenth century, courts have viewed res judicata disputes as factual determinations within the province of the jury. Further, regardless of intrinsic or extrinsic fraud, the Respondents are liable for the damages due to their unlawful actions which led to a VOID judgment, and a void judgment is not barred by res judicata.

Third, both doctrines of res judicata and issue preclusion require the *same* parties and the same facts. Collins was not a party to the original litigation and new evidence/new facts have been introduced that renders the judgment void, therefore res judicata fails as a defense.

Fourth, the cause of action 'Declaratory Judgement That No Contract Exists' was neither the same cause of action as in the former action nor was that an issue raised or specifically litigated and adjudicated in the former action. (**COMP43**);(**COMP24**);(**COMP42**). The actual validity of the sales contract was never raised or litigated and any findings expressed that a valid and negotiable sales contract existed was based *solely* on lies, misrepresentations, false promises and forgery. Regardless, the undisputed evidence shows the Dudeks had no valid or negotiable sales contract after it expired. Without that, the Dudeks were not properly before the court and the court had no jurisdiction, legal power or discretion to enter specific performance in their favor.

This Court's review is controlled by the principle that factual findings by the master and trial judge will not be disturbed on appeal unless they are without evidentiary support or are against the clear preponderance of the evidence. *Eargle v. Moak*, 257 S.C. 359, 185 S.E. (2d) 894. The record clearly demonstrates the prior ruling or findings is unsupported and against the clear preponderance of the evidence.

Fourth, as argued herein and in its Initial brief and repeated here, the Order of November 6, 2014 VOID in part. A void order has no legal effect, therefore res judicata cannot bar Appellant's claim. "A Party Affected by VOID Judicial Action Need Not APPEAL." *State ex rel. Latty*, 907 S.W.2d at 486. "It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Spaulding*, 687 S.W.2d at 745 (Teague, J.,concurring). This cannot be ignored its fact recorded! Judgment is a void judgment if the court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 —*Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985). A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). *B & C Investments, INC. v. F & M Nat. Bank & Trust*, 903 P.2d 339 (Okla.App.Div 3, 1995). Void order may be attacked, either directly or collaterally, at any time. They are not "voidable", but simply "void"; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliot v. Piersol*, *supra*; Black's Law Dictionary, Sixth Edition, page 1574: Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092. The remedy of specific performance is an *equitable* remedy and can *only* be invoked or ordered IF the movant meets *all* the guidelines that gives the court its ability or inherent power to grant it. As with all equitable remedies, orders of specific performance

are discretionary, so their availability depends on its appropriateness in the circumstances. In this instance and under the circumstances, the lower court abused its discretion by awarding specific performance to the Dudeks, as it had no discretionary power to do so. Such order if Void.

c) Appellant's Cause of Action – Breach of Fiduciary Duty/Breach of Assumed Duty; Duty of Care; Duty of Full Disclosure; Duty to Act Fairly; and Duty of Good Faith and Fair Dealing; Tortious Conduct

Collins makes a generalized statement that Appellant's "*ramblings and incoherent allegations do not state facts sufficient to create liability on this Respondent's part for any breach of fiduciary duty.*" Assuming this is his defense, it is improper. Collins raises its argument for the first time on appeal, therefore is not preserved for this Court's review. Further, as argued in her Initial Brief and repeated here, its motion to dismiss was a skeleton motion[13] and failed the requirements of a 12(b) motion, therefore should have been denied. Collins failed to show that Appellant could prove no set of facts demonstrating that the conduct alleged in the complaint was insufficient to constitute a cause of action. SCRCP Rule 7(b). Collins' motion lacks merit for grounds of dismissal of any cause of action. Further, that Collins felt Appellant had a complaint he could not "respond" to would have had to been raised in his first [and only] filing, its Motion to Dismiss in Sept. 2016. Collins failed to raise this defense, therefore waived it. Rule 12 SCRCP.

Even if the motion was proper, and though Appellant was not a direct party to the Dudek contract, she was not required to be a party to their sales contract for a duty of care or fiduciary duty to speak the truth or disclose critical and material facts or documents to the sellers, the courts or herself[14]. (As argued in its Initial Brief and above repeated herein). Regardless, the South Carolina court(s) also agree, a fiduciary relationship that has not yet been defined can arise from circumstances of the parties. "Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary

[13] Was not particularized; contained no arguments or defenses. Only quoted Rule 12(b)6)

[14] The ability of Appellant to perform her sales contract was, at all times material, directly related to the ability of the Dudeks to tender payment/ perform their sales contract or compel specific performance, which in turn was directly related to the trial court's ability, inherent power or jurisdiction to order specific performance in favor of the Dudeks. Hence a fiduciary relationship clearly arose from the circumstances of the case or the parties.

relationship may spring." *Island Car Wash, Inc.*, 292 S.C. at 599, 358 S.E.2d at 152 (1987). A fiduciary relationship has been defined by the South Carolina Courts to be ["A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence"] *Island Car Wash, Inc. v. Norris*, 292 S.C. 595,599,358 S.E.2d 150, 152 (1987). No case example has been able to be located that is similar or even remotely similar to the extraordinary actions or circumstances of the original action in which this present action arose.

Collins was not a litigant in the case; he had a duty of care or a duty to speak as an attorney, under attorney rules, and **especially in a court proceeding under oath and at trial**. Both the sellers Ferro (*who were part of both the Dudek and Appellant contract*) and Appellant trusted and relied on Collins' disclosure all known facts or information that was significant and critically material in regards to the transaction which in turn that reliance directly affected a sellers' breach of Appellant's sales contract and the outcome of her complaint. At trial, the disclosure all known information significant and material is required, and in this instance especially critical to the court's discretionary power to order the equitable remedy of specific performance to both the Appellant and Dudeks. Under such circumstances, a fiduciary relationship arose and Collins' 'silence' or non-disclosure is fraud that went to the very jurisdiction or discretionary power of the court to order the equitable remedy. "Non-disclosure is fraudulent when there is a duty to speak." *Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct.App.1993). "Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens S. Natl. Bank of S.C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972). "We have held that nondisclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other. The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) *where one party expressly reposes a trust and confidence in the other* with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, *such a trust and confidence in the particular case is necessarily implied*; (3) *where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full*

disclosure without regard to any particular intention of the parties. Warr v. Carolina Power & Light Co., 237 S.C. 121, 115 S.E. (2d) 799; (Emphasis added)

Collins had a duty of care to his clients, opposing litigants *and* the courts to prevent any fraud, which includes material perjury. He also was in a superior position to know the facts of his clients' transaction and the Dudeks' financial status in regards to the case. (The duty of care is not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty to exercise that care a reasonable man would take in the circumstances.)" *AMA Management Corp. v. Strasburger, 309 S.C. 223, 420 S.E.2d 874 (1992)*. In this circumstance, a reasonable person would agree that the Collins had a duty of care to speak. All expressly reposed a trust and confidence in Collins to present the case and speak the truth, or persuade its clients and its witnesses, to the facts in their sworn testimony at trial. The position of trust and confidence in Collins, as an officer of the court was exploited. It was clear the opposing parties and the trial court relied on the testimony of his clients and would not consider Collins would suborn their perjury, or conceal or misrepresent under oath, therefore there was no question at the time that those statements would be anything but true, and reliance on such testimony was justified; And such trust and reliance on the representations by Collins' witnesses (buyers' lender and sales agent) induced the sellers, Appellant and the court(s) to refrain from discovering the true facts which were discovered after trial. If Collins had disclosed the truth in discovery and/or at trial, a trial would never had happened or a *full* and *fair* trial would have taken place, and most likely a fair and *lawful* ruling would now be in place. What is full and fair presentation when it is discovered that all opposing party evidence/testimony is false? What is lawful and fair about a judgment *obtained only* because of their complete failure to disclose the truth, and due their perjure, forgery, misrepresentations, and conspiracy?

"Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud." *Ellie v. Miccichi*, 358 S.C. 78, 100, 594 S.E.2d 485, 497 (quoting *Anthony v. Padmar, Inc.*, 320 S.C. 436, 449, 465 S.E.2d 745, 752 (Ct.App.1995)); Here, Respondent Collins had superior knowledge of its clients' lack of legal right or claim to the property and/or its lack of ability to tender payment in 2012, therefore he knew he was litigating a frivolous and unlawful complaint filed against the sellers, and defending the Appellant's separate complaint filed against his clients.

Further, Collins, as an officer of the court, was under oath during the court proceeding and so 'accepted or induced the confidence place in him' by the judge *and* all parties, thus creating a fiduciary duty and a duty to speak in a legal proceeding --that included the Appellant as a plaintiff against his clients in the same transaction seeking the same equitable remedy controlled by very strict principles of law and equity.

Collins' frivolous and unlawful filings, silence and suborning of perjury provoked an unfair and unlawful order in-part; an order that fails the judgment roll, fails on its face, and is totally unsupported by the valid evidence in the record, and an order in which the trial judge had no discretion or ability to order. The judgment is VOID. Even so, the Dudeks' performance of their time is of the essence sales contract or transaction with the co-respondent(s), whether it failed or not, was specific and necessary and called for 'perfect good faith and full disclosure' from Collins. Collins and co-respondents' *absolute* disclosure went to the very core of the original case(s) and the trial court's jurisdiction or power to adjudicate. Their actions or non-actions committed with the intent to deceive and perpetuate a fraud upon the Court, goes beyond inexcusable, and is, or rises to the level of, extrinsic fraud, and such is a question for the jury.

If Collins did not have a duty to speak or a duty of care to tell the truth or disclose material facts or documents critical to the trial courts ability to adjudicate specific performance in the civil action, and if Collins cannot be held liable for such unlawful behavior and acts, then what purpose does the rules of professional conduct or his oath as an attorney and officer of the court in a court proceeding serve? And what level of fraudulent actions, such as perjury in its filings, suborning of perjury, concealment, misrepresentation and forgery, must be accomplished before a party can be held accountable for such blatant disregard for the court rules and judicial system and its processes? At what point does a court find proper to allow a litigant to repose a trust and confidence in an officer of the court that has a duty to provide the truth of the matter which they have ultimate knowledge of with reference to the particular transaction in question which critically affects the court's discretionary power to order a remedy? And why is Appellant being punished for an opposing party, its lawyer and its witnesses' unlawful acts when she is not at fault for their actions or non-actions and did everything in her power to discover the facts before trial, and then reposed a trust-- the very *same* trust the judge relied on when making his ruling-- in the testimony and evidence

while under oath? Not only that, but Appellant discovered *on appeal* of the prior case evidence that the Master had knowledge *before* his ruling that the Dudeks had no legal claim to the property at all times material/were consequently denied financing for this failure and therefore he had no discretion, jurisdiction or ability to order specific performance to the Dudeks, but did so anyways, and apparently to just 'end the case'. Appellant immediately provided the evidence to this Court, but again, the evidence was ignored, and again to the Master at the hearing for a closing order, and again on appeal of the closing order. The lower court and this court chose again to ignore it.

Just as important, why must a judgment that was obtained by such reprehensible conduct of many, that is a gross injustice and void, that that steals property away from an innocent [and only] contract holder and gives to those who at all times material had no legal claim or right to possess or obtain that property, who failed the principles of law and equity, failed the critical maxims of equity[15] and performed criminal acts in a court proceeding to obtain jurisdiction to compel the equitable remedy, in good conscience be allowed to stand? This Court has the power to right this injustice, remove a void judgment, correct the violations of rules, principles, guidelines and precedents, and address a repeated abuse of power and discretion. This is not just about winning or losing, but about the failure of the justice system and what it stands for and the faith the public is supposed to have in it and its protection of its rights. For the courts to turn a blind eye to fraud and allow void judgments to stand is fraud in itself and violates public policy. Though this case may be insignificant to the Courts, it's significant to the litigants and is a vast example of the system's breakdown and a violation of public policy.

Additionally, Collins was not a party to the case but had a pecuniary interest in the false statements and promises, and had superior knowledge its clients' transaction(s). "If the Defendant has a pecuniary interest in making the statement and he possesses expertise or special knowledge that would ordinarily make it reasonable for another to rely on his judgment or ability to make careful inquiry, the law places on him a duty of care with respect to representations made to plaintiff." *AMA Management Corp. v. Strasburger*, 309 S.C. 223, 420 S.E.2d 874. (The duty of care is not a duty to take every possible care, still less is it a duty to be right; it is the familiar duty

[15] "He who seeks equity must do equity" and "he who comes into equity must come with clean hands"

to exercise that care"). Collins took advantage of his superior position knowing the Master would repose its trust and confidence in that position, and if not for the extreme dishonesty, lack of respect for the rules and processes, and exploitation by Collins we wouldn't be here today. Further, if not for the ruling obtained by the deceit, exploitation and dishonesty, the Dudeks would not have obtained the property in question in 2017, and there would not be three (3) *subsequent* actions resulting.

For the reasons above, Appellant contends a fiduciary relationship was formed, and Respondent Collins owed a duty of care and a duty to disclose and such silence is fraudulent. Appellant asks this court to reverse the trial court's order granting Collins' MTD in-part to Tenth Cause of Action, and remand back to the trial court for further proceedings.

4. The trial court improperly granted summary judgment to Respondent Collins as to the remaining causes of action

Collins only states, but does not argue in his brief, that he "*clearly demonstrated that he was entitled to summary judgment as matter of law and that there was no issue of material fact with regard to any of the claims of the Appellant.*"

a) Collins is in default, therefore SJ is improper. A defaulting party admits liability, therefore, SJ is inappropriate. By defaulting, a defendant forfeits his "right to answer or otherwise plead to the complaint." *Morgan's Inc. v. Surinam Lumber Corp*, 251 S.C. 66, 160 S.E.2d 193. In essence, the defaulting defendant has conceded liability, therefore cannot be relieved of such.

b) The remaining causes of action were already heard and ruled on. (*see* argument thoroughly set forth in its opening brief repeated here). Collins had provided no further action in this case[16] as did not move to reconsider, amend or appeal the prior Order, nor did he file an Answer to the complaint. It is contended that "a circuit judge cannot grant relief which has not been requested or has been previously sought from another circuit judge in the same case and denied by him". Rule 60, Rules of Practice for the Circuit Courts of South Carolina. (**MTD17**); (R. pg. 88-108)[17]

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[16] After its initial MTD in Sept 2016, Collins has not participated further in this case. Meaning, he has not submitted a valid responsive pleading or Answer, no motions nor appeal, and he has not participated in any discovery.

[17] The cases applying Rule 60 are distinguishable, for they involve submission of the same issue based on the same facts to a second judge after the first judge had ruled. See, e.g., *Dukes & Dukes, Inc. v. Hygrade Food Products Corp.*, 236 S.C. 69, 113 S.E.2d 254 (1960); *Andrick Development Corp. v. Maccaro*, 280 S.C. 103, 311 S.E.2d 95 (1984).

c) Collins failed in the lower court to address or present any material facts and/or prove they were of no issue, therefore SJ was improper. Further, in his brief, Collins has pointed to no filing or presentation that would support "*he clearly demonstrated he was entitled to summary judgment as matter of law and that there was no issue of material fact with regard to any of the claims of the Appellant.*" Consequently, his argument fails.

d) Most importantly, the trial court unlawfully or improperly granted SJ as to all remaining causesof action by an improper Rule 12(b)(6) conversion to SJ, therefore must be reversed. In its Order of November 15, 2018 the trial court states it "*converted a Joint motion to dismiss in regards to David Collins to summary judgment* " In its Order was the first time Appellant was given notice by the court of such conversion. No findings of fact, standard of review or law analysis was included in the Order to support its ruling, nor did the judge point to any Joint MTD. Appellant was unable to locate in the record a valid 12(b)(6) MTD, let alone a *joint* motion, in which Collins is party to that presented matters outside the scope of the complaint or that the trial court could convert. In fact, the only valid filing Collins filed during the course of the case was a MTD in September 2016 (ruled on in Jan. 2017). Indubitably, Collins made no claim for relief as to the remaining causes of action, therefore cannot be relieved of such. Additionally, the court completely failed to give notice prior to the hearing or any notice at all of any matters outside the scope of the complaint that were being considered or have been considered, therefore is a critical violation of this court's rules. SCRCP Rule 56 and Rule 12(b). *Baird v. Charleston County*, 333 S.C. 519, 511 SE 2d 69 (1999) (Where providing notice prior to the hearing is essential under Rule 56(c)). In fact, Appellant only received notice of the [emergency] hearing itself on a Saturday, leaving only 1 ½ days to prepare for 15 motions. Such time would not have allowed Appellant the appropriate time to respond even if notice had been given. Rule 56(c) SCRCP.

The general rule is that a trial judge cannot vacate an order by another judge in the same case; even if the change is based on a correct assessment that first judge erred. Otherwise, the second judge would be acting "in the role of a one-judge appellate court". It's true that one trial judge cannot overrule an order entered by another judge either on a legal question or, in the absence of substantial changed circumstances, on a discretionary matter. In other words, a party cannot effectively seek "appeal" of a ruling at the trial level. As our Supreme Court has put it: "[I]t is well established in our jurisprudence that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action." *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501 (1972). (The rule applies to district court as well).

Also, the Order does not contain any argument or defense raised or litigated by the Collins. Lastly, *specific* reasons for dismissal must be in the first document Collins filed with the court, otherwise that issue is considered waived. The first (*and only*) valid document Collins filed with the court was his blank/skeleton MTD pursuant SCRCP Rule 12(b)(6) and 12(b)(8) on September 20, 2016. Collins' 2016 motion failed to specify any reasons or specify with particularity any reasons for dismissal, therefore has waived any issues. (R. pg. 466-469). Because his first document failed to provide any explanation as to the nature of the motion and the reasons therefor, it fails the rules and is not valid, and any issue in which the trial court now grants Collins is also waived, notwithstanding the fact Collins had no pending or valid MTD presenting matters outside the scope of the complaint before the court to support a Rule 12(b)(6) conversion. (R. pg. 10-18). Such is an abuse of discretion and a violation of court rules. "It is an error of law for a court to decide a case on a ground not before it." *Friedberg v. Goudeau*, 279 S.C. 561, 562, 309 S.E.2d 758, 759 (1983) (reversing the grant of summary judgment because the ground for summary judgment was not properly before the trial court). A reversal is required when the trial court's ruling exceeds the limits and scope of the particular motion before it. *Skinner v. Skinner*, 257 S.C. 544, 550, 186 S.E.2d 523, 526 (1972). A court cannot convert a MTD to SJ if there is no MTD to convert, and a court cannot create a defense when none was presented; and the Collins is in default and/or was not properly before the court, it is error of law or an abuse of discretion and SJ *must* be reversed.

e) It appears and as argued here and in its Initial Brief, due-- but not limited to-- the failure of the SJ order and that it fails on its face, a Void order, violation(s) of court rules and processes, improper conversion, abuse of discretion, the Collins was not properly before the court, a skeleton motion to dismiss and/or that the Collins is in default, Appellant need not argue here Collins' defense for each cause of action under the trial court's Analysis for SJ.

Instead, the trial court erred or abused its discretion or process deciding a case on a ground not before it, when Collins was not properly before it and/or because Collins is in default. Maybe more importantly, the Collins is in pari delicto and is in no position to request relief when he caused or could have prevented the issues upon this court today, therefore due to the reasons above and argued in its Initial Brief, summary judgement as to the remaining causes of action must be reversed or set aside.

Conclusion

Due to the reasons above or argued in its Initial Brief, the Orders granting Respondent Collins relief from Default, granting in part its motion to dismiss and granting SJ as to the remaining causes of action must be set aside or reversed. Further, Collins' filings of December 19, 2017 must be struck from the record and Collins found in Default; Default entered as required by the rules and Default Judgement entered. Appellant further requests judicial notice or declaratory judgement that no Dudek contract existed after its expiration on November 30, 2012, and declare the November 6, 2014 order in part granting the Dudeks specific performance void, and sanctions as allowed by Rule 11(a) and any other relief this court deems proper.

II. The trial court's dismissal of Appellant's causes of action and grant of summary judgment was improper and should be reversed in regards to Respondents First Federal and Allison Williams

Statement of the Facts and Case

Without restating all the facts and arguments which have been thoroughly set forth in its opening brief and incorporated herein reply brief, Appellant Morphew ("Appellant") offers the following statement of the facts, correction or defense in regards to this case and the Respondents' First Federal and Allison Williams (herein "Bank Respondents") Brief. The facts and evidence discovered after trial and during the appeal has not been considered and/or specifically ruled on by this Court.

This particular action is based upon the unlawful order in-part or the judgment for specific performance in favor of Respondents Stephen Dudek and Doreen Cross ("Dudeks") (Civil Action No. 2013-CP-18-00074) (herein "Original Action"). In the original action, the Dudeks were served a termination notice by the sellers ("Ferros") due their failure to tender payment and provide proof of obtaining mortgage credit or 'ready, able and willing' to tender payment pursuant their time is of the essence sales contract (Termination notice). The Ferros entered into contract with Appellant. The Dudeks sued for breach of contract for specific performance. Shortly after, Appellant filed the same. Appellant ensued in intensive discovery, which resulted in the Dudeks or their lender producing 'nothing conclusive.' A trial ensued in which the Dudeks, their sales agent and their loan

officer (representing the bank) testified and produced financial documents supporting the Dudeks had performed their sales contract, were ready, able and willing to tender payment per their sales contract, but that the Ferros solely prevented them from closing. The testimony and documentation gave the Master its discretion to award the equitable remedy to the Dudeks first because they contracted first, and second to Morphew if they failed or their contract was terminated.

On appeal in the Original Action, Appellant discovered adverse and denial letters to the Dudeks, documents which were not disclosed in discovery or at trial, and which Appellant was not aware until the appeal had been taken and Appellant proceeded pro se (R. pg. 1315-1321 [pg. 52-56; pg. 124]). The undisclosed documents prove the Dudeks abandoned their sales contract and that they had no legal claim to the property ("Property") after its expiration on November 30, 2012, and consequently were denied lending (R. pg. 975, 976, 1311), facts Bank Respondents had superior knowledge of at all times material to the Original Action and this instant action, but failed to disclose in the subpoenas before trail, at trial, or after trial in the original action.

Contrary to Bank Respondents' statement of fact, Appellant contends the allegations in her complaint here are neither incredible nor just allegations but instead materially critical, credible *facts supported by evidence in the record*; validated facts and evidence that changed the legal position of the Dudeks, all respondents, and the trial court's jurisdiction and/or discretion to award the Dudeks specific performance in the original action. Further, Bank Respondents had no legal standing in the Original Action to represent as "the lenders" in a mortgage transaction and testify the Dudeks were ready, able and willing to tender payment when no legal or valid mortgage transaction was ever in place. The record shows Bank Respondents had full knowledge they had actually refused the Dudeks mortgage credit for failure to have a legal claim to the property in question. The Dudeks had no valid and negotiable sales contract after it had expired on November 30, 2012, it was never remedied, therefore a valid or legal mortgage transaction was never, and could never have been, in place. Just as important, the Dudek proceeding in the Original Action *and* the judgment awarding the Dudeks specific performance is invalid or void. Consequently, any order arising from the invalid or void judgment is also void.

The judgment in favor of the Dudeks in the Original Action is unlawful, fails on its face/fails the four corners, void, and/or was without the trial court's jurisdiction or discretion to

award the equitable remedy in their favor. The judgment was obtained by fraud on the court, including but not limited to, suborning of perjury, Bank Respondents' false promises they were extending mortgage credit, their intentional non-disclosure, perjury, misrepresentation and conspiracy of critically material facts that went to the very core of the proceeding and the legal position or standing of the Dudeks and its co-respondents. Meaning, the court's jurisdiction was retained and its discretion was obtained *only* by their intentional fraud or unlawful actions/non-actions or non-disclosure. With that being said, their fraudulent actions are extrinsic fraud or rises to the level of extrinsic fraud as it went to the very core of obtaining that judgment.

Regardless, no matter how the judgment was obtained, when the evidence was discovered, or whether the trial court issues orders and this court affirms, the Original Action or proceeding is not valid. A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. *Old Wayne Mut. L. Assoc. V. Mcdonough*, 204 U. S. 8, 27 S. Ct. 236 (1907).

Finally, contrary to Respondents' statement of fact, Morphew did file motions to compel directed at Bank respondents. (R. pg. 475-491) (R. pg 492-495) (R. pg. 496-511)[18]. It is obvious there should no need for further discovery-- such as depositions-- which would only expel more costs and time to all, as the discovery requested above should be enough. Notwithstanding the facts and evidence already in the record supporting Appellant's case, combined with the *lack of documented evidence* from [any of] the respondents that would contradict the fact the Dudeks had abandoned their sales contract, had no legal claim to the property after November 30, 2012, were denied financing at their own hand, and were never "ready, able and willing" to tender payment as *required* under the principles and laws of equity.

Their fraud has been allowed to continue and now Appellant has lost her neighboring home due the unlawful order of November 6, 2014 and the subsequent orders arising from it.

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[18] Morphew's request for all Dudek account/lending files, documents, communications, etc. was issued to *both* the Bank respondents and the Dudeks. To prevent undue costs to all and to prevent redundancy, Morphew made a motion to compel the documents against the Dudeks, for they would not only have all material lending/banking docs and communications the bank respondents have, they would have all docs/communications including all co-respondents.

Appellant's arguments contained in its initial brief in regards to Wooddy Law Firm, Carrie Boyer, First Federal and Allison Williams are referenced and contained herein.

1. **Appellant was denied its right to be fully heard in its Initial Brief**

Appellant contends it was denied its motions to exceed the 50-page limit of its initial brief, therefore denying its right to fully argue or defend fully and completely in its brief, the 100 pages of orders, 40+ rulings, 18 causes of action and 10 respondents with varying levels of legal position. There are many issues Appellant was unable to argue or fully argue, being restricted, and without reason, to 50 pages to defend 100 pages of orders/rulings, therefore any alleged 'abandonment' or less than appropriate presentation of issues is due its denial of due process to be fully heard. (R. pg. 137-370).

2. **The Appellant's allegations are not fundamentally flawed and their dismissal is inappropriate**

Bank Respondents claim Appellant's complaint is "*just another attempt to re-litigate the issue decided by Judge Chellis in the Original Litigation – namely, were Buyer Respondents entitled to specific performance? Judge Chellis ruled that yes, they were, and on appeal of that matter to this Court, this Court said yes. (Appellate Case No. 2014-002633).*"

First, the Respondents' basic argument, "the courts(s) say so... so it is so," fails. Just because a judge or this court says, yes, the Dudeks were entitled to specific performance, it doesn't mean they were. Changes in the evidence after the trial in the Original Action clearly demonstrate that by the principles of law and equity, the Dudeks were not entitled to specific performance. In fact, the Dudeks' "entitlement to specific performance" was based *solely* on <u>false facts and evidence</u> (specifically, all critical and material testimony and evidence provided or presented by any of the respondents to this case was a lie or misrepresented, including engagement letters and instructions demanding repairs and CL-100 reports in order to close from the closing attorney. Both the master and this court relied on the 'credibility' of the witnesses (here, the loan officer/bank/sales agent/sales agency) and any testimony or evidence they presented. Both the master and this court have refused to consider the lawful facts and evidence. Regardless, no court order or affirmation can make an expired sales contract or legal proceeding valid nor change the fact the Dudeks were denied lending and had no ability to compel the remedy of specific

performance in 2012, or confer any court's jurisdiction or discretion to award or affirm the equitable remedy.

The validated evidence in the record, whether disclosed previously or not, changes the facts and legal positions of the respondents and the validity of the Order in-part: 1) the Dudeks had abandoned their sales contract and had no legal claim to the property at its *time is of the essence* sales contract expiration on November 30, 2012; 2) The Dudeks were refused/denied lending because they had no legal claim to the property (i.e., lack of a valid and negotiable sales contract); 3) The Dudeks and *all* respondents had no legal standing in the original action to demand a closing, repairs to the property or any action from the sellers, especially when there was no mortgage application completed or accepted (i.e., no mortgage transaction in affect), and had no legal standing to prevent Morphew from performing her time is of the essence sales contract; instead they had a duty to disclose the truth; 4) The Dudeks had no ability to compel specific performance; 5) the Dudeks had no ability to compel *any* remedy; 5) The Dudeks complaint is frivolous and/or unlawful; 6) Morphew has the only legal claim to the property; 7) the Order in-part awarding Specific performance to the Dudeks in the original action is void or void ab initio; 8) the Order in-part awarding Specific performance to Appellant is valid and legal; 9) the Dudeks are not bona fide purchasers.

Appellant does not believe the court was just misled by the Bank Respondents' testimony, but that that testimony is substantially liable for, if not all, to the unlawful retainer of the court's discretion to award specific performance in its clients' favor. In other words, without the bank respondents' false promises, conspiracy, perjury, forgery and misrepresentations, and non-disclosure of the Dudeks true financial status and why they were refused/denied lending, the Dudeks would not have been found 'entitled' to *any remedy*, especially to specific performance, where the master may not order the remedy unless the movants were 'ready, able and willing' to tender payment. These are facts in which the Bank Respondents had full and superior knowledge of and were required to disclose to the courts the Dudeks' legal claim to the property [or valid contract] and its' financial status in regards to obtaining mortgage credit as such disclosure was the *crux* of the original action. Contrary to the Bank Respondents argument, the fraud committed and non-disclosure is egregious on part of the Respondents when its' very actions *goes to the*

method of acquiring jurisdiction, the fraud appears on the face of the record or where fraud had been practiced in the very act of obtaining the judgment. The master clearly relied substantially if not solely on the bank respondents' testimony to establish a valid and negotiable sales contract existed, and that the Dudeks' status to tender payment was 'ready, able and willing' as required before the master had any discretion to award the equitable remedy. (R. pg. 1254-1273). Without it, Appellant's property would not have been taken from her [Morphew was also awarded specific performance], her due process would not have been violated, an unlawful judgment would not be awarded, public policy would not be violated, a grave injustice would not be required to be reversed, most likely fraud would not be upon the court(s), the Dudeks would not have ultimately and unlawfully obtained the property, and Appellant would not have lost her neighboring home she owned for more than 3 years previous to the Dudeks purchase of the property in question (*See* Trespass Upon Easement, Civil Action Case No. 2018-CP-18-1661) (where due their assault and destruction of the only waterline to Appellant's property, thus trespassing upon easement as contained in their sales contract, they left Appellant in a position where she was forced to sell her home at a loss in order to avoid the foreclosure process in affect in 2019). Further, the mass undue costs and stress on all parties would not have incurred. Ultimately, if even one respondent chose to tell the truth or disclose the Dudeks' denial of mortgage credit and why they were denied to the master in the original action, we wouldn't be in this position today and with several subsequent actions.

First and foremost, the remedy of specific performance is an equitable remedy and can only be invoked or ordered *IF* the movant meets all the guidelines that gives the court its ability or inherent power to grant it. As with all equitable remedies, orders of specific performance are discretionary, so their availability depends on its appropriateness under the circumstances. *Bishop v. Tolbert*, 249 S.C. 289, 299, 153 S.E.2d 912 (1967). In order for justice to be done between parties, a party is *required* to do equity when asking the court to invoke the aid of equity. *See Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (declining to grant a plaintiff's request for specific performance where the plaintiff misled the defendants)and (where Ingram failed to demonstrate that he was ready and willing to perform his part of the contract (i.e. willing to tender the purchase price) on February 28, 1994, the date the lease expired, or on March 14, 1994, the date

he brought the action for specific performance[19]. The record indicates that Ingram was not in a position to pay Kasey's the purchase price for Remy's on either date). As in *Ingram*, the record also indicates the Dudeks here were not in a position to pay the Ferros on either the date their contract expired, November 30, 2012, or on the date they brought their action for specific performance, January 15, 2013. In this instance and under the facts and circumstances, the master had no discretionary power to do so. Such order is Void in-part and the trial court can only deny the Dudeks specific performance, and vacate its judgment in their favor and any subsequent order arising, while this court may only vacate same and award damages and/or any other relief to Appellant in which this court finds appropriate. Appellant points out and argues this issue herein below which is adopted by reference and repeated here.

Finally, the Bank Respondents claim even if Appellant's allegations could support a cause of action for fraud on the court, Appellant cannot recover damages caused by Bank Respondents' alleged fraud until the prior settlement is vacated, and because this court cannot disturb that settlement, Appellant cannot seek a remedy in the form of monetary damages. In its support Bank Respondents quote *George v. McClure*, 245 F.Supp. 2d 735, 740-41 (M.D.N.C. 2003) ("plaintiff cannot recover damages for fraud unless and until the judgment denying him the right to recover is vacated. ... Only if the prior settlement is vacated can Plaintiff recover damages caused by Defendant's alleged fraud. Because this court cannot disturb that settlement, Plaintiff cannot seek a remedy in the form of monetary damages."). First, Bank Respondents did not raise this issue nor was it litigated in the prior action. Therefore, not preserved for appeal.

If this courts finds their argument preserved or proper, *George* is substantially different than the issue here. In *George*, the appellant entered into a settlement agreement at mediation and chose to forego discovery. While mediation was mandatory, settlement was not. By agreeing to a settlement and foregoing discovery, appellant chose his own award. There, appellant had full opportunity to discover any false statements concerning the financial assets of the partnership and the nonexistence of the Brown & Williamson project or to present his case at trial but chose a settlement instead. Unlike *George*, the original action was not a settlement agreement, Appellant

[19] Ingram must be able to perform at the exact time he requested specific performance, not some "reasonable time" in the future.

went above and beyond its due diligence in the discovery process, and the issues presented here go beyond mere perjury or an agreement for an award [amount] based on a company's financial assets. Here, the Bank Respondents not only committed perjury at trial and in subpoenas, but misrepresented, forged financial documents and committed conspiracy, all unlawful actions that went to the very jurisdiction or discretion of the trial court and its lawful ability to award the remedy of specific performance. The discovered Bank Respondents' adverse and denial letters to the Dudeks, letters that were not disclosed prior to the trial, show a critical change in the legal position or standing of all respondents, that the Bank Respondents made false promises at trial and committed critical perjury and misrepresentation as to the financial position of the Dudeks, that the Dudeks abandoned their time is of the essence sales contract, the Dudeks' lack of legal claim to the property, the Dudeks' inability to legally compel specific performance, a void Order in-part, the lack of the master's jurisdiction or discretion to award specific performance in the Dudeks' favor, and the original action in-part was an invalid proceeding.

Based on these facts and the evidence in the record supporting these issues, this Court does indeed have the power to disturb the judgment in the original action awarding specific performance to the Dudeks. In fact, it may only vacate said judgment for a court cannot confer jurisdiction or discretion where none existed and cannot make a void proceeding valid. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. SCRCP Rule 60. *See Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or *lacking the inherent power to enter the particular order or judgment*, or *where the order was procured by fraud*, In re *Adoption of E.L.*, 733 N.E.2d 846, (Ill.App. 1 Dist. 2000). Void order may be attacked, either directly or collaterally, at any time. They are not "voidable", but simply "void"; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliot v. Piersol, 26 U.S. 328 (1828)*; Black's Law Dictionary, Sixth Edition, page 1574: Void judgment. One which has

no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092.

Such actions are unlawful and unconstitutional, prevent Appellant from her entitlement to specific performance of her contract, the right to her property, the right to due process, and prevent her from a fair and lawful judgment.

So, yes, the Bank Respondents, who had superior knowledge of the Dudeks' critical failures and breaches, including their lack of legal claim to the property in question, before and at trial but intentionally chose non-disclosure and instead to commit fraud and fraud on the court, are substantially liable for the undue damages, extensive costs, and stress to Appellant, including the loss of *both* the property in question and her neighboring home.

As a result, Appellant's allegations in its complaint are not fundamentally flawed as to the Bank Respondents therefore do not fail as a matter of law. Consequently, the trial court's rulings should be reversed.

3. The Trial Court's dismissal of Appellant's Twelfth causes of action for Fraud was improper and should be reversed

Here, the Bank Respondents claim because the trial court ruled "Plaintiff pleads a claim of perjury rather than fraud" and that perjury is not an action for damages in a civil suit, therefore its cause of action does not exist.

As argued above and in its initial brief and repeated here, the false testimony or perjury is not the sole moving factor in the cause of action. Bank Respondents made assertions and false promises with an intent to deceive[20], including the Dudeks were ready, able and willing to tender payment, and they were extending mortgage credit to the Dudeks, which is extrinsic fraud in itself, notwithstanding their intentional non-disclosure of critically material facts, conspiracy, misrepresentations, and concoctions of unreal loan approvals or forgery, all which rise to the level of extrinsic fraud or fraud on the court as those actions went to the very core of the court's jurisdiction or discretion to award specific performance. Consequently, Appellant pleads fraud. (R.

[20] "Assertion made with knowledge of falsity and intent to deceive" which is included in the twelfth cause of action.

pg. 555-619, para. 263, 93(a)-(k), 93(n), 93(w), 151-153, 204, 206, 230, 231, 234, 238, 265(a)-(b), 266(2), 266(7)-(8), 280, 281[21], 297, 299(all), 301(g)(i)(j), 302, 315). Second, their perjury was only part of the carrying out of a scheme to defraud Morphew out of her right to the property in which she was solely entitled and to commit fraud on the court to retain jurisdiction or obtain its discretion to award its clients specific performance, an award the Bank Respondents had a pecuniary interest in.

Just as important, the Respondents fail to present any case law which supports their argument, therefore it fails. In fact, the case they quote, *Frist v. Gallant*, 240 F.Supp. 827, 828 (D.S.C. 1965), supports Appellant. In *Frist*, "...*generally* a person who is damaged by perjured testimony in a civil suit does not have a cause of action for damages arising out of such perjured testimony. Regardless of the general rule as to perjured testimony, if, under the alleged circumstances of this case, plaintiff is able to establish all the necessary elements of fraud and deceit, the court feels strongly that she should have her day in court to seek redress for such alleged wrongful conduct, as her cause of action is based on more than the mere giving of perjured testimony." *Frist v. Gallant*, 240 F.Supp. 827, 828 (D.S.C. 1965) (quoting 41 Am.Jur. § 81 at page 45, "....it is apparently well settled that where the giving of false testimony is only a part of the carrying out of a scheme to defraud the plaintiff by means of the combination, fraud, and deceit of the defendants, an action will lie for damages.).

In this case, as in *Frist*, Appellant establishes fraud and deceit. Additionally, its complaint also accuses the Bank Respondents of "allegedly conspiring to give, and of giving, false and fraudulent testimony in that judicial proceeding, with a purposeful and preconceived intent to defraud plaintiff [of its entitlement to her property and a fair and lawful Order]. Under the circumstances here it would appear that the public policy considerations, which form the basis for denying causes of action based upon perjured testimony, are overshadowed by the public interest behind the right to civil redress of this [Appellant], who allegedly has been wronged by the successful execution of a conspiracy, even though the success of such alleged scheme was based primarily upon the use of false testimony." *Frist, supra.*

Based on the arguments in its initial brief and above, dismissal of this cause of action was

[21] Where the Dudeks' October 22, 2012 approval letter from Bank Respondents presented at the original trial is a forgery and used to obtain the property in 2017.

improper and should be reversed.

4. The Trial Court's dismissal of Appellant's Tenth cause of action for Breach of Fiduciary Duty was improper and should be reversed

Dismissal of Appellant's Tenth cause of action should be reversed as argued in its initial brief, which is adopted by reference here. (Brief, pg. 46-47).

Bank Respondents contend Appellant failed in its initial brief to counter the trial court's assertions 'that because Morphew was not a party to the loan or the mortgage transaction there could be no duty owed to her and no fiduciary relationship created between First Federal, its agents or employees and Morphew'. First, Appellant's brief did not only include itself as a duty owed but argued Bank Respondents also had a duty to disclose or a fiduciary duty to the courts to speak the truth and disclose the financial status of the Dudeks, as the financial status or ability to tender payment was the crux of the cases and directly affected the Dudeks' legal position and/or their ability to compel specific performance, the jurisdiction and discretion of the court to order the equitable remedy of specific performance in the Dudeks' favor, appellant's rights, due process, and public policy.

Due to the facts and circumstances, and that South Carolina does not particularly define instances of fiduciary relationships, as other or new cases might be excluded, Appellant contends a duty to disclose or a fiduciary relationship is applicable here as the courts, the Defendants/sellers Ferro and Appellant reposed a trust in the Bank Respondents to disclose the truth, as all litigants' legal positions and the trial court's discretion and jurisdiction was effected. As a result of the Bank Respondents' failure to disclose, combined with their misrepresentations, false statements and promises, forgery of financial documents and conspiracy, an unlawful judgment (i.e., void) was issued and the Dudeks eventually obtained the property unlawfully or fraudulently. In turn, Appellant, who has sole legal right to the property, was denied her property and that property was taken from her unlawfully. Notwithstanding the undue costs, time, effort and stress to defend her rights and property. As professionals and lender, and in the best position to know the Dudeks' financial position or Dudeks' ability to tender payment, puts the Bank Respondents in a superior position to the courts and litigants and such position allowed them to exercise substantial and critical influence over the trial judge and/or all litigants. It is obvious the Bank Respondents were not acting in the best interest of the courts, Appellant or Defendants Ferro, but instead for themselves. They

had a pecuniary interest in the transaction, therefore a ruling in their clients' favor was in their best interest. It's also obvious they thought they'd never get caught or called out in a legal proceeding, for why else would a federally insured bank, and not litigants, lie in multiple subpoenas (subpoenas/ responses (R. pg. 1217-1227) which they had a duty to disclose, and then commit perjury, forgery, misrepresentations, non-disclosure and conspiracy in a court of equity proceeding just so their clients would appear to have the ability to compel specific performance in order to obtain the court's discretion and jurisdiction to order the equitable remedy in its clients' favor. Once that order was retained, they obviously felt justified to ignore the fact that they themselves denied the same clients mortgage credit due the very same invalid and expired sales contract and proceed with a closing, feeling secure once its clients' closed it would be all over, therefore "no harm, no foul."

Further, Bank Respondents fail to present a case even remotely similar to this instant case that supports its argument, or that would expressly exclude a fiduciary relationship or prevent a new creation of one, or a duty to disclose.

Due to the above and arguments in Appellant's Initial Brief, dismissal of Appellant's Tenth cause of action should be reversed.

5. The Trial Court's dismissal of Appellant's Thirteenth cause of action for Declaratory Judgment was improper and should be reversed

Bank Respondents argue because they are not parties to the sales contract therefore are not a party necessary to the determination or declaration "*that all times material, no sales contract existed or exists between the Dudeks and Defendants Ferro (sellers)*", therefore dismissal of this cause of action should be upheld.

Bank Respondents did not raise nor did the trial court adjudicate this defense, therefore it is not preserved for appeal. Even so, again Bank Respondents fail to present a case to support or an argument that would make any sense why they should not be included, for in this case the Bank Respondents *specifically* refused them mortgage credit for the property in question *due to their failure to have a valid and negotiable sales contract* at initial application, a failure that was never remedied. (R. pg. 875-979, 1311, 1410, 1424, 1428). Since the Bank Respondents refused them lending for this very reason, they are in fact *the* party necessary to such a determination or declaration.

Bank Respondents also claim that res judicata and claim preclusion dismisses this action, and that the legitimacy of the sales contract has been litigated on numerous occasions. First, the legitimacy of the sales contract has not been litigated AND adjudicated at any time. Though the Respondents call out several cases, they point to no ruling or *valid* ruling by the trial court or this court that specifically considered the true facts and evidence in the record and specifically ruled on the legitimacy of the Dudek sales contract. More important, the Dudeks *were denied financing because they had no valid and negotiable sales contract* (R. pg. 875-979, 1311, 1410, 1424, 1428). Based on this reason alone, the invalidity of the sales contract at all times material cannot be denied.

Finally, as argued in Appellant's initial brief and repeated herein, even if this issue was litigated, and regardless of party identity, both res judicata and claim preclusion are not binding and preclusive to a judgment based on fraud or on fraud on the court, an abandoned/expired sales contract, a court's lack of discretion or jurisdiction, or void orders; and res judicata cannot affirm unlawful or void rulings.

Based on the above and the arguments in Appellant's initial brief, dismissal of Appellant's Thirteenth cause of action should be reversed.

6. The Trial Court's grant of summary judgment as to the Appellant's first cause of action for Fraud and Fraud on the court was improper and should be reversed

As argued in its initial brief and repeated herein, Appellant raises a void order in-part and the very legitimacy of the judgment granting specific performance to the Dudeks, which is fraud on the court. (Where the fraud perpetrated called into question the very legitimacy of the judgment) *Calderon v. Thompson, 523* U.S. 538, 118 S.Ct. 1489 (1998) (quoting *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238 (1944)). (*See* Appellant Brief, pg. 10-17).

Even so, that Morphew alleges attorney of suborning of perjury and concealing documents is enough for a claim for extrinsic fraud and the trial court's dismissal was improper and should be reversed. *Raby Const., LLP v. Orr*, 358 S.C.10, 594 S.E.2d 478 (2004): (We recognize that *Chewning* was not a Rule 60 matter, but instead was an independent action for fraud upon the court. In that case, we found that where the attorney allegedly suborned perjury and concealed documents, a claim for extrinsic fraud had been sufficiently stated).

Even so, without restating the arguments which have been thoroughly set forth in its initial brief, Appellant incorporates pages 25-29 herein, but also adds for clarification that neither Appellant nor its attorney was provided the critically material concealed documents prior to trial in the original action. In fact, he material facts and evidence the Dudeks were *denied mortgage credit for failure to have a legal claim to the property* was not provided to Appellant or co-appellants in the original action before trial or disclosed at trial. (R. pg. 1315-1321[pg. 52, -56; pg. 124]); (R. pg. 875-979, 1311, 1410, 1424, 1428). Further, Appellant has shown its failure to discover these facts and evidence before trial was not due to lack of due diligence on her part, as she went above and beyond due diligence in the discovery process, especially in its two (2) separate subpoenas and phone calls to the Dudeks' lender, and co-respondent, First Federal. In both subpoenas and the phone calls, they perjured and misrepresented. (R. pg. 1217-1227).

The Respondents also contend its false and/or misleading information in response to the subpoenas, and its false testimony and or misrepresentations is not egregarious. In this statement it admits it intentionally provided false and/or misleading information in response to the subpoenas, and false testimony and/or misrepresentations [at trial], but also fail to include forged financial documents, false promises and conspiracy. Regardless, as argued above and repeated herein (pg. 4-11), their fraud, unlawful actions and/or non-disclosure is particularly and substantially egregarious and constitutes fraud on the court.

Based on the above and Appellant's initial brief, the Trial Court's grant of summary judgment as to Fraud and Fraud on the court should be reversed.

7. The Trial Court's grant of summary judgment as to the Appellant's claim of conspiracy was improper and should be reversed

Bank Respondents only argument is that Appellant failed to show special damages, therefore, the trial court's judgment was proper. As argued in its initial brief pages 37-38 and repeated herein, all respondents' conspiracy to commit fraud has *further led* to the Dudeks unlawfully obtaining and possessing the property, trespassing, trespassing upon an easement contained within their sales contract used to purchase the property[22], and assault upon Appellant's

[22] Proving Trespass, See S.C. District Court Case No.: 2:19-cv-03237-DCN Stephen Dudek, et al v. Commonwealth Land Title Insurance Co.

neighboring property and home she purchased years before the Dudeks' purchase, and the loss of same, all with substantial costs, time and stress involved. These damages above are beyond the damages alleged in its complaint (R. pg. 469-474). Contrary to Bank Respondents' argument, these are not "a recital of the damages claimed in Appellant's complaint,"[23] but are special damages occurred as 'continuing fraud.'

Regardless, even where a plaintiff seeking recovery in an action for conspiracy fails to prove a conspiracy or concerted design, he may still recover damages against a defendant proven to be guilty of a tort alleged to be the object of the conspiracy; the allegations of the conspiracy are considered as mere surplusage. *Goble v. American Ry. Express Co.*, 124 S.C. 19, 115 S.E. 900 (1923). Based on the above, this court should reverse the granting of summary judgment as to the conspiracy claim.

8. The Trial Court's grant of summary judgment as to the Appellant's claim of Intentional Infliction of Emotional distress was improper and should be reversed

The Bank Respondents claim their conduct occurred within the four walls of the courtroom, therefore Appellant cannot make a claim for intentional infliction of emotional distress, basing their support on litigation privilege. Their argument fails as litigation privilege generally only extends to defamatory communications involving litigants or other participants in a trial authorized by law. 53 C.J.S Libel & Slander §72 at 132 (1987). The defamatory communications must be made during or prior to a judicial proceeding and have some connection or logical relation to that proceeding. Id. Litigation privilege extends to out-of-court communications between opposing counsel, between attorneys and their clients, and between attorneys representing different plaintiffs in lawsuits against the same defendant. In its brief, the respondents present two (2) cases, *Peterson v. Ballard* and *Pond Place Partners, Inc. v. Poole*, both which have no bearing to this case, as those cases are violation of LAD[24] and its alleged intentional infliction of emotional distress; and defamation and its alleged intentional infliction of emotional distress, respectively. In this instant case, litigation privilege does not apply as the Bank Respondents committed fraud, unlawful acts and failed to disclose critically material facts and documents regarding the financial/lending status of an opposing litigant compelling specific

[23] The complaint is dated August 24, 2016 while the new damages occurred from April 2018-March 2020.
[24] New Jersey Law that prohibits unlawful discrimination in employment, housing, places of public accommodation, credit and business contracts.

performance, thus resulting in an unlawful order in-part. Their actions resulted in inflicting emotional distress on Appellant due her efforts to protect her property and right the injustice. Also, see damages outlined above, pg. 16, which to any normal layperson leads to substantial emotional distress. Such is a question for the jury.

Contrary to Bank Respondents argument, and as presented above, Appellant has never suggested 'the Bank Respondents intentionally inflicted emotional distress *during* a court proceeding', therefore their argument fails.

Bank Respondents also attempt to diminish their fraudulent and unlawful actions and non-actions to be less than outrageous by arguing Appellant failed to allege or provide any evidence indicating outrageous conduct or emotional distress. Deciding whether their fraudulent conduct is outrageous, especially considering they were just a witness and not a litigant in the original action, or whether 7 years of litigation, most pro se, including appeals, loss of both her homes, and *substantial* undue costs, time and effort substantiates as emotional distress to the layman is for a jury to decide. As argued in Appellant's initial brief and repeated here, the unlawful procurement of the Order has subsequently caused Appellant, including but not limited to, the loss of both her homes, an unlawful ejectment, and *substantial* undue costs, time and effort to defend or right an injustice, including the sheer frustration with the courts' clear bias against Appellant (R. pg. 981, 10-18, 439-465) in their attempts to skirt the lawful facts and evidence and just 'end the case(s)'. Its' apparent it would be much easier to do so then to unravel the mess the Bank Respondents and co-respondents are completely responsible for. Such raises a genuine issue of material fact of liability for the jury to decide, plus as to whether its "emotional distress" is "sufficiently severe". Regardless, there are many material questions in fact that remain, and the Respondents are in pari delicto and are in no position to request relief when they caused or clearly could have prevented the issues upon this court today, therefore Summary Judgment is improper and must be reversed or vacated.

9. The Trial Court's grant of summary judgment as to the Appellant's claim of Tortious Interference with Contractual Relations was improper and should be reversed

For fact, and as argued in its initial brief pg. 34-35 and repeated herein, at all times material, Appellant had then, and has now, the *sole* legal claim to the property in question. The Dudeks sales

contract had expired on November 30, 2012, consequently at all times material, they had no legal claim to the property. The Dudeks were denied/refused lending because they had no legal claim to the property (i.e., no valid and negotiable sales contract) and could not complete their application (R. 975-971). These facts are uncontested.

Whether or not Appellant's contract was a "backup contract" is moot. Due the Dudeks' abandonment/expiration of their *time is of the essence* sales contract, their lack of legal standing to compel specific performance (or any remedy), lack of 'ready, able and willing', that no legal mortgage transaction was in existence, and the master's lack of discretion or jurisdiction to order the equitable remedy in favor of the Dudeks (hence a void order in-part), the Dudeks proceeding in the original action is void/invalid, and no court or court order can confer jurisdiction where none existed and cannot make a void proceeding valid. Appellant points out this issue in its reply brief (Respondent Collins), which is adopted by reference (Appellant Reply Brief Collins, pg. 17).

The Bank Respondents, and its co-respondents, had full and complete knowledge of these facts, as evidenced in the record. The Bank Respondents intentional fraud, perjury, misrepresentations, non-disclosure, false promises, forgery and conspiracy prevented Appellant and the Defendant/sellers Ferro from performing the Morphew sales contract, therefore its breach.

The Bank Respondents, with a surprising amount of gall, attempt to convince this court that their actions or non-actions during a court proceeding (i.e., false statements, perjury, false promises, misrepresentations, forgery, conspiracy, non-disclosure of critically material facts in regards to the legal position of themselves, their client and Appellant, notwithstanding the jurisdiction or discretion of the trial court) "*did not extend beyond ordinary business practices*". Just the fact the Bank Respondents denied them mortgage credit for the very reason no valid sales contract existed, then came to court and testified to the contrary and presenting forged financial documents defeats their argument. Let alone the fact there was no contractual rights to pursue. Even so, that is a question for the jury, whether such fraud and deceit would be considered 'ordinary business practices.' Appellant, who was a bank employee for over 15 years, including account services and loan packaging, knows for a fact any type of fraud or deceit, especially during a court proceeding, is not ordinary banking practices.

The Bank Respondents had a duty to disclose and speak the truth and nothing but the truth in its testimony, as all witnesses are required to do. Anything less is perjury. These Bank Respondents should be held accountable, as their perjury and non-disclosure was critically material and went to the very core of the case and to the legal position of all litigants and the court(s), resulting in an order in-part being clearly erroneous and unlawful. Consequently, the unlawful judgment they took part in obtaining with their fraud unjustifiably took property away from the sole legal claimant and *knowingly* gave it those who had *no legal claim* or remedy available to obtain the property. The unlawful or void judgment violates Appellant's constitutional rights and due process of law (which includes a lawful order). The Bank Respondents intentionally and tortuously interfered with the Morphew/Ferro sales contract.

Appellant's contract is the only and primary contract. It's award of specific performance in 2014 is valid and is the *only* valid judgment in the Order of November 6, 2014. Consequently, all subsequent orders or judgments that arise from the void or unlawful judgment awarding specific performance to the Dudeks is also void and must be reversed.

For all these reasons, the trial court's award of summary judgment as to the cause of action for Tortious Interference with Contractual Relations should or must be reversed.

10. The Trial Court's grant of summary judgment while discovery was pending, and declaring Appellant's motions to compel discovery as moot, was improper and should be reversed

Overall, Respondents present that any additional discovery, as in Appellant's many motions to compel discovery, would be moot or would not develop her case any further; therefore, the court standard to deny summary judgment until discovery is completed is irrelevant.

> Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, *answers to interrogatories, and admissions on file*, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Appellant has raised many disputed and material questions, several critical to this action and the original action, but the trial court ignored its arguments. (R. pg. 757-812).

One critical material question of fact raised in its response[25] and in the requests for discovery that is clearly disputed and that affects the outcome of the original action and this action, is the question of the validity of the Dudek time is of the essence sales contract or if at all times material the same contract was invalid and non-negotiable therefore rendering the original action in part to the Dudek proceeding invalid or void. Further, that material question of fact changes the validity of the order in-part of November 6, 2012 and the validity of the proceeding in-part in which that order was rendered, the legal position: 1) of the courts, including this court, and what it may do under the circumstances; 2) the Appellant and its sales contract [rendering Appellant the sole legal claimant to the property and its sales contract primary]; 3) the legal position of all respondents, a) Dudeks, (no legal claim to property and are not bona fide purchaser but trespassers[26], mortgage fraud, criminal actions for perjury, misrepresentation, conspiracy and forgery b) Bank Respondents (legal standing, mortgage fraud, criminal actions for perjury, misrepresentation, conspiracy and forgery), c) Wooddy-Boyer (legal standing, actions to the ABA [Disciplinary Enforcement] Rule 10, criminal action for conspiracy), d) David Collins (Lawyer Disciplinary Enforcement, fraud on the court, criminal actions for perjury, misrepresentation, conspiracy and forgery), e) Carolina One-Nicholson-Scarafile (legal standing, mortgage fraud, criminal actions for perjury, misrepresentation, and conspiracy).

Another question, but a question for the jury, is whether the prior ruling of the trial court that the perjury committed by the Respondents is only intrinsic, or if it rises to the level of extrinsic fraud, especially considering forgery of mortgage/financial documents, non-disclosure of *critically* material facts and documents, the suborning of perjury and non-disclosure of *critically* material facts and documents. (R. pg. 757-812 [pg. 10, para. 4] (R. 555-619, para. 263, 93(a)-(k), 93(n), 93(w), 151-153, 204, 206, 230, 231, 234, 238, 265(a)-(b), 266(2), 266(7)-(8), 280, 281[27], 297, 299(all), 301(g)(i)(j), 302, 315).

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[25] R. pg. 757-812 [pg. 7, para. 2]

[26] Which adds additional torts or actions to Morphew's subsequent action for Trespass Upon Easement (Civil Case No. 2018-CP-1661 Morphew v. Dudeks), additional remedies in this case and/or a subsequent action or criminal action.

[27] Where the Dudeks' October 22, 2012 approval letter from Respondents Bank presented at the original trial is a forgery and used to obtain the property in 2017.

Respondents attempt to present that a clip from Appellant's deposition in an attempt to show Appellant admitted she had the material evidence of the fraud before trial. Morphew clearly testifies she does not know what or if any financial documents were delivered before trial, but that the denial letters making clear the Respondent's sales contract was not valid and negotiable when it expired on November 30, 2012 was not provided. (R. pg. 757-812 [pg. 34, para. 4])(R. pg. 1315-1321[pg. 52-56; pg. 124]).

Regardless, due the evidence in the record, the fact a void order in –part was issued and that the courts(s)' lacked jurisdiction or discretion to render or affirm the order of specific performance in favor of the Dudeks, renders the granting of summary judgment improper.

Additionally, and as argued in its initial brief and reply brief referenced herein, the trial Court in this case, in error, decided a few of the motions presented were dispositive for summary judgment, therefore all other pending motions, including Appellant's three (3) motions to compel discovery [issued before discovery ended pursuant scheduling order] were moot. Due pending requests for admissions, combined with the Bank Respondents failure to present admissible evidence in support of *each undisputed material fact* necessary to entity them to judgment (or adjudication of the issue) in their favor, Appellant was denied its right to set issues to rest of things that cannot reasonably be controverted, thus denying its due process. Second, neither the trial court nor the Bank Respondents can determine if the discovery compelled would be irrelevant or moot, especially when the discovery would substantiate extrinsic fraud and continuing fraud, such as mortgage fraud, or reveal the identity of expert witnesses the opposing party expects to call at trial. By declaring the discovery motions moot, and not compelling the pending discovery first, the trial court failed to give Appellant its full opportunity to pursue or complete merits discovery. Additionally, the court's refusal to allow discovery as compelled only violates Appellant's due process to present her case fully and prevents her from developing potential remedies for recovery pending discovery may reveal.

Given that, (1) the trial court erred when it assumed that pending merits discovery was 'moot', (2) Morphew was not at fault in the respondents failure to provide discovery on the merits; and (3) the outstanding admissions and document requests were sufficient to inform the trial court that further discovery was needed, and in the absence of a waiver, summary judgment is appropriate

only after Appellant has had a full opportunity to conduct discovery, it was premature for the trial court to dismiss the case against the Appellant without first permitting discovery on the merits.

Conclusion

Based on the above, and arguments in Appellant's initial brief and other Appellant reply briefs in this appeal, the trial court can only deny the Dudeks specific performance and vacate its judgment in their favor and any subsequent order arising from. In turn, the Appellate Court was required to vacate or reverse in-part the trial court's order of November 6, 2014 granting specific performance to the Respondents in the 1st appeal; and in the 2nd appeal in the original action, and now the Appellate Court may only vacate the Order in-part of November 6, 2014 and any subsequent order in the Respondents' favor that arise from the original case, and award damages and/or any other relief to Appellant in which this court finds appropriate. Further, for all the reasons set forth herein, the grant of Bank Respondents' motions to dismiss, and the granting of summary judgment as a matter of law in this case to the Respondents, is improper and should be reversed.

III. The trial court's dismissal of Appellant's causes of action and grant of summary judgment was improper and should be reversed in regards to Respondents Stephen Dudek, Doreen Cross, Carolina One Real Estate, Susan Nicholson and Michael Scarafile

Statements and Facts of the Case

Without restating all the facts and arguments which have been thoroughly set forth in its opening brief, Appellant Morphew ("Morphew") offers the following statements of the case and facts with arguments for clarification and to correct the errors in the Respondents' statements, which will be listed separately following the statement of the case. The facts and evidence discovered after trial and during the appeal has not been considered and/or specifically ruled on by this Court.

On October 24, 2012, Respondents Stephen Dudek and Doreen Cross (buyers and plaintiff in original action)("Dudeks") ratified their TIME IS OF THE ESSENCE[28] sales contract. On December 16, 2012, the Dudeks were sent a termination notice for failing to schedule a closing,

[28] All buyer conditions, including initial application and obtaining of buyer financing approval, and giving said notice to sellers, were "time is of the essence" and expressly stated so.

present proof of buyer approval for mortgage credit or tender payment as per their time is of the essence sales contract. (R. pg. 950-952). Afterwards, Morphew entered into a sales contract for the same property.

On January 11, 2013, after discovering the Sellers Ferro had secured another buyer, they filed a lis pendens against the Property to prevent that sale (R. pg. 997), then filed their action for breach of contract compelling specific performance to purchase the Property.

After Morphew's extensive due diligence, including verification by an Attorney and Sellers' sales agent that the Dudeks' sales contract, being time is of the essence, is null and void on its expiration, Letter Qualey to Dudeks, January 11, 2013, Morphew filed its claim for specific performance. Interrogatories, request for documents, subpoenas and phone calls to Dudeks' lender, depositions of both the Dudeks, and several communications between the attorneys only led to more confusion, as the lender's subpoena responses said they had no records, loan or people. (R. pg. 1217-1227). When confronted with this conundrum, the Dudeks' attorney, David Collins, insisted his clients had secured financing and were ready to close. Collins produced an alleged financial document [email/approval letter] to support their position.[29] Morphew submitted another subpoena months later to the lender, this time with the loan number given by the Dudeks. Again, the response to the subpoena stated they had no records, or loan. Morphew's attorney called the bank directly with the alleged loan number. They could would not or could not provide any information. Morphew's attorney contacted Dudeks' attorney, but he stated his clients had performed their sales contract, were ready able and willing to tender payment but were unable to schedule a closing due the Sellers' failure to obtain the CL-100 [report]. In the Dudek sales contract (and note the *time is of the essence* sales contract was the Dudeks – not the sellers' or produced by the sellers), the Dudeks requested the report to be *obtained by the sellers* on or before November 30, 2012. The report was obtained (R. pg. 1237-1238). The sellers complied with the terms of the Dudeks' contract but also delivered the report on November 30, 2012 to the Dudeks via the closing attorney the Dudeks' sales agent provided to the sellers. The Ferros provided this report even though no closing date was offered or had been set[30].

[29] Which was discovered months *after* trial to be forged by the Dudeks and their attorney. (R. pg. 975-979, 311)

[30] At no time material to the original action and this action, did the Dudeks offer a closing date or set a closing date. It's apparent this failure was due to their lack of legal claim to the property after November 30, 2012.

A trial ensued on June 11-12, 2014. During the trial, the master heard testimony from all litigants, but the main focus here in this case is the testimony and evidence from the Dudeks and their witnesses, as it is uncontested that Morphew was properly awarded specific performance. Morphew's position at the original trial was based on the fact the Dudeks had not applied or secured financing in time or as required per their TIME IS OF THE ESSENCE sales contract, therefore breached and were legally required to sign the termination notice so Morphew could perform its contract.

It further actioned, due their refusal to sign the termination notice, they were preventing Morphew and sellers from performing as required. That action was withdrawn before being heard due the testimony from the lender, testifying the Dudeks had been approved and mortgage credit was being extended.

Loan officer, Allison Williams, and representing First Federal, the Dudek's bank, testified at trial that the Dudeks had complied with their requirements to obtain financing and were approved, as she approved them herself, and were ready to close. The Dudeks and their sales agent, Susan Nicholson, also representing Carolina One, testified they and the bank were ready to close on or after December 14, 2012.[31] At the conclusion of the trial, the master stressed he had to resolve the case and do what is *fair* to both parties (R. pg. 1310 [pg. 308 l.1-3]).

On November 6, 2014, the trial court issued its Order, and in it stressed equity demands fairness, and emphasized the principles of law and equity which grants it its discretion to award specific performance (R. pg. 1254-1273 [pg. 5-6). It granted specific performance to *both* Morphew and the Dudeks, but giving the Dudeks first bite, and *only* because they contracted first. Morphew and sellers appealed.

On appeal, Morphew proceeded 'pro se' due to lack of funds, and during that time discovered the facts and evidence which gave rise to the issues presented in the 2nd appeal of the original case (currently with the Supreme Court of South Carolina), and in this case for fraud and/or fraud on the court, including several other causes of action.

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[31] There is nothing in the record supporting their testimony, and all have refused to provide any documentation in Morphew's discovery requests in the original action or this action, or in its motions to compel in this instant case, that the Dudeks were ready, able and willing to tender payment as required to compel the equitable remedy or that would give the master its discretion or jurisdiction to award that remedy. It is clear today the lower court relied on testimony alone.

Immediately upon discovery, Morphew presented the new facts and evidence to the Appellate court in the original action and 1st appeal but they refused to review it, instead affirming the master's ruling on their standard of review "that they are not required 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," therefore rendering any other issues raised as moot because its standard of review was dispositive of those issues. (R. pg. 1274-1277).

In the meantime, during the appeal and months prior to the above Appellate court decision, Morphew filed this instant and independent action for fraud and for fraud on the court, again presenting the facts and evidence, asserting fraud, fraud on the court, a void order, an invalid and non-negotiable sales contract, non-disclosure, forgery of financial documents, false promises from the lender, abuse of discretion, jurisdictional failures, etc. against the Respondents; their attorney, David Collins, who was suspended from practice in 2016 for *committing fraud* in a separate case, admitted and charged in the federal court in Charleston SC, and is still under suspension; their sales agent, Susan Nicholson and its agency, Carolina Real Estate; the agency's lead counsel and owner's son, Michael Scarafile; lender, First Federal; and loan officer, Allison Williams; and closing attorney, Wooddy Law Firm and its paralegal, Carrie Boyer. Again, the trial court refused to consider the facts and evidence, relying on res judicata, that their perjury is intrinsic fraud not extrinsic, that perjury and forgery are criminal actions and not a cause for action in a civil proceeding, or that there's no material question of fact. Morphew appealed this case. (App. Case No. 2018-002185).

Corrections/Clarification of Respondents' statement of the case:

1. The Respondents state, "*Despite receiving the First Federal file immediately before trial, continuance was not requested by either party, and trial in the Original Action went forward as scheduled. And at no point after the issuance of the Specific Performance Order did either the Ferros or Morphew file a motion under Rule 60, SCRCP, to set aside the Specific Performance Order based on the First Federal file.*"

"Continuance" was not raised or adjudicated in the trial court, therefore cannot be considered by this court.

Even so, as argued in its initial brief and repeated here, Morphew was not sure what was

contained in the "June 10 financial documents," what it actually contained or when they were actually provided or received by her attorney, but regardless, the alleged 'file' did not contain very critical and material documents, specifically the denial letters proving the Respondents were denied lending for their failure to have a legal claim to the property in question (i.e., not having a valid and negotiable sales contract at initial application, therefore failed to complete their application, a *critical* failure which was never remedied by Respondents). Meaning, the Respondents abandoned their *time is of the essence* sales contract by intentionally allowing it to expire before making initial application. Their critical breach was not remedied and consequently the Dudeks could not obtain mortgage credit for property they had no legal claim to. Under the principles of law and equity, they waived their right to any remedy, *especially* the equitable remedy of specific performance. (R. pg. 1315-1321 [pg. 52 l.5-l.24; pg. 55 l.11-18; pg. 56 l. 2-5; pg. 52, l.15 through pg. 56 l.6'; pg. 124 l. 6-10). Due the missing documents, Morphew was neither aware of any fraud or fraud on the court being committed nor aware of any information at the time of trial that may require a continuance. Moreover, if the denial letters were revealed prior to or at trial, there is *no doubt* Morphew and/or attorney would have presented it, as those documents were the "winning hand."

Second, the Defendants Ferros, pro se, who also appealed the original action, did not receive nor could have received any lending documents or file before trial. The Ferros lived in Colorado. The date any of the Dudeks financial documents were allegedly sent, assuming here the date on the cover letter, June 10, 2014, the Ferros were traveling to South Carolina or were in South Carolina on that day. Further, if any documents were sent that day they were in response to a subpoena from [plaintiff] Morphew[32]. First Federal would not have sent the Defendants Ferro the documents. Even if they did, the Ferros were not in Colorado to receive anything so this information could not have been discovered by them prior to or at trial. As a consequence, the Ferros could not have asked for a continuance based on non-disclosed documents they had no idea existed.

Regardless, the Ferros discovered the new facts and evidence, and they had immediately presented the information to the master in a petition filed in the trial court, and as their closing

[32] The June 10, 2014 cover referenced a subpoena from almost a year and a half prior, March 4, 2013, a subpoena First Federal had already previously responded to on March 13, 2013, stating there was no loan or customers. **(March FF Sub._Response)**

statement.[33] The master in the original action, in what should be considered here as a severe violation of its rules and processes, discrimination and an abuse of discretion, blatantly refused to consider a pro se's closing statement and filed petition, and declared he was only taking *attorney's* closing statements (Email- Ferro, September 10, 2014). The master deprived a Defendant pro se party's right to be heard, ignored its duty to consider the new facts and evidence, and failed to schedule a subsequent hearing after the trial to give all parties which it affected due process as to the issues raised. *The issues raised critically affected the legal rights of all litigants, the court and the outcome of the case.* Its unlawful actions and abuse of its power is a clear indication of partiality, discrimination towards pro se parties, and leads one to believe the trial court may feel above the law or its own rules and processes, and has no care of the grave injustice and severe prejudice resulting.

Finally, based on the statements above, and the fact the master, two (2) months *before* issuing its Order, had full knowledge of the Dudeks' lack of legal claim to the property, their inability to compel specific performance and the court's *own lack of discretion or jurisdiction to award specific performance in their favor,* it's apparent it would have been moot to bring a motion under Rule 60 to the master's attention, as this information had already been brought to his attention in the Ferro petition in Dudek v. Ferro, Civil Case No. 2013-CP-18-74. Instead, the Ferros chose to appeal. A Rule 60 motion is not required.

Even so, *immediately* upon discovery of the facts and evidence by Morphew, she presented the new facts and evidence to the Appellate court in its briefing, confident they would take notice and consider. (*See* Appellate Case No. 2014-002633). Regardless, Morphew filed this independent action during the pendency of the appeal. Rule 60 SCRCP.

2. In their brief, Respondents state, "*In her deposition, Morphew admitted that* she simply *wants proof warranting the award of specific performance in the Original Action and, if provided, she would "back off and [be] done (i.e., she filed this action without proof of any fraud actually committed in the Original Action).*"

Though Morphew agrees if *any* of the Respondents had provided proof the Dudeks were 'ready, able and willing' to tender payment on or before their sales contract expired and at the time they filed

[33] 3 months after trial, the master asked for the parties' closing statements. Morphew was unaware of their petition as the petition was to their separate case and was not served on Morphew.

its complaint for specific performance[34] then she would drop all actions against them. The statement was offered to the all Respondents in this case to end the litigation(s), not to prove fraud was committed. The record speaks for itself and clearly shows fraud was committed to obtain the court(s)' discretion and jurisdiction and went to the very core of the judgment itself. It also clearly demonstrates *continuing* fraud, such as mortgage fraud, and that they fraudulently took or stole the property belonging to Morphew, plus causing the undue loss of Morphew's neighboring home and property.

Currently, the record shows without dispute that all Dudeks and its witnesses' material testimony and any financial approval documents was false, thus proving they, and most likely the master himself, had committed fraud and fraud on the court in the original action. Regardless, the Dudeks had abandoned their time is of the essence sales contract; had no legal claim to the property when they made initial application; therefore, had been denied lending at their own hand; thus, were not ready or able to tender payment as *required* to compel specific performance; and had filed unlawful and frivolous filings; committed intentional perjury (fraud) (*see* Order granting in part Motion to Dismiss-- Scarafile, et al., January 31, 2017), forgery of financial documents, misrepresentations and conspiracy to obtain the jurisdiction or discretion of the trial court (extrinsic fraud). Meaning, without the fraud or unlawful actions the master would not retain jurisdiction or have the discretion to order the equitable remedy in the Dudeks' favor.[35] Neither the lower court nor this court has the discretion or jurisdiction to award specific performance in favor of the Dudeks or affirm the judgment.

Morphew filed its complaint with validated and documented evidence that the Dudeks obtained the trial court's discretion or jurisdiction to order specific performance in their favor by committing fraud, and such fraud is fraud upon the court, therefore extrinsic. The evidence proving their fraud was provided to all respondents in this case, though it's obvious they already had the same information even prior to the original litigation, but intentionally hid or refused to disclose the critically material facts and evidence.

Morphew would like this court to take notice that the Dudeks had abandoned their *time is of the essence* sales contract, the Dudeks' *time is of the essence* sales contract had expired on November 30, 2012, the Dudeks were denied mortgage credit at their own hand, the Dudeks were not at all times

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[34] *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105-06, 531 S.E.2d 287, 291 (2000)
[35] *Id*

material, ready, able and willing to tender payment as required and recognized by this Court[36] to compel specific performance, had no legal claim to the property after November 30, 2012 therefore were refused/denied mortgage credit. The Respondents here failed to disclose this information to the seller or sellers' agent as required. She would also like this court to take notice that the Respondents here had full knowledge of these facts and had no legal standing to demand anything of the sellers, especially to make repairs or transfer the deed, and no legal standing to represent themselves as legal buyer or as a sales agent/agency to an invalid sales contract or a legal proceeding in which the litigant has no legal claim to the property. This court should further notice the Dudeks' attorney in the original action, co-respondent David Collins, knew and instituted an action knowing that there was complete defense to the action; had full knowledge of its clients' critical failures and lack of legal standing to compel or maintain an action for specific performance, but suborned perjury and conspired with witnesses, respondent Susan Nicholson and co-respondent Allison Williams, to present perjured testimony. It further intentionally concealed material documents, and fabricated or assisted in the fabrication of financial documents, all constituting fraud upon the court. See *Kupferman v. Consol. Research & Mfg. Corp.*, 459 F.2d 1072 (2d Cir.1972) (institution of action by attorney who knew that there was complete defense to action might be fraud upon the court); *Great Coastal Express, Inc., v. Int'l Brotherhood of Teamsters*, 675 F.2d 1349, 1357 (4th Cir.1982) ("[I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court."); *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir.1987) ("A verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony."); *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5th Cir.1978) (fabrication of evidence where attorney is implicated is fraud upon the court); *H.K. Porter Co. v. Goodyear Tire & Rubber*, 536 F.2d 1115, 1119 (6th Cir.1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."); *Synanon Found., Inc., v. Bernstein*, 503 A.2d 1254 (D.C.1986) (attorney subornation of perjury and false statements to trial court constitute fraud upon the court); *Porcelli v. Joseph Schlitz Brewing Co.*, 78 F.R.D. 499 (E.D.Wis.1978) (noting distinction between perjury involving officers of the court and witness or party); see 12 James Wm. Moore et al., Moore's Federal

[36] *Id*

Practice ¶ 60-21[4][b] (3d ed.2002).

All facts and arguments as stated above are repeated here. No issue is predicated on alleged fraud that was known to Morphew before trial in the Original Action as the material and critical documentation, specifically the denial letters, were not provided before trial to Morphew or the Defendants/sellers Ferro, therefor could not have been raised at trial. Further the fraudulent actions have not been "*ruled on this Court*". The record shows the appellate court has not specifically addressed and made a final ruling on any of the *specific allegations of fraud*, and the Respondents here do not point to any prior adjudication of the *specific allegations of fraud.*

Morphew's attorney did not, at the time of the original action's trial, have information proving fraud the day before trial. In fact, the denial letters, the ultimate proof of the fraud on the court, was not provided or disclosed before or at trial, for if they had been the master would have had no choice but to dismiss the Dudeks' complaint for they were not properly before the court (i.e., had no legal claim to the property) nor did the master have jurisdiction or discretion to adjudicate their frivolous complaint or award the equitable remedy.

1. **Appellant was denied its right to be fully heard in its Initial Brief**

Appellant contends it was denied its motions to exceed the 50-page limit of its initial brief, therefore, denying its right to fully argue or defend fully and completely in its brief, the 100 pages of orders, 40+ rulings, 18 causes of action and 10 Respondents with varying levels of legal position. There are many issues Appellant was unable to argue or fully argue, being restricted, and without reason, to 50 pages to defend 100 pages of orders/rulings, therefore any alleged 'abandonment' or less than appropriate presentation of issues is due its denial of due process to be fully heard. (*see* Appellant's Motion(s) to exceed page limit and Appellant's subsequent 59(e) motion).

2. **The lower court erred in granting the Respondents' motions to dismiss and for summary judgment, because the fraud that forms the basis of the Appellant's underlying complaint is extrinsic and their fraud has not been ruled on by this court or ruled on in multiple appeals**

Ultimately, the Respondents argue "without extrinsic fraud, Morphew's case and this appeal fail." It further argues only intrinsic fraud[37] exists, which they allege was discoverable in the original action, but in the same breath deny they committed the perjury, misrepresentations, forgery (fraud). They present the fraud is only intrinsic and does not rise above intrinsic, and that fraud has been ruled on by this court in multiple appeals, therefore this court should uphold the decision by the lower court.

As already argued in Morphew's initial brief and herein brief, and repeated here, the Respondents fraud went to the very core of the trial court's jurisdiction or its discretion to award the equitable remedy. This is not a situation of a ruling that is just "right" or "wrong," but a ruling that is unlawful. The Dudeks had no legal claim to the property after November 30, 2012. Period. That is an undisputed fact. Consequently, led to their inability to obtain financing. Based on lack of legal claim to the property at all times material, their denial of mortgage credit, and their lack of ability to compel specific performance, the Dudeks were not properly before the court, the master and court lacked jurisdiction or discretion to award the equitable remedy, and the judgment in their favor is unlawful and VOID. Combined with the lies, forgery, misrepresentations and conspiracy from all Respondents to convince the master otherwise and obtain an unlawful and void judgment, extrinsic fraud exists or their fraud rises above intrinsic. Regardless, the original proceeding is invalid, and no court can make it valid or use laches or doctrines to bar this complaint.

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

Jurisdiction is a matter that can be raised at any time, including for the first time on appeal. Because the trial court's jurisdiction or discretion to award specific performance is based on the

[37] The Respondents "Perjury" was ruled as intrinsic fraud. That ruling is here on appeal, where Morphew has argued in its briefs the perjury is extrinsic or rises to the level of such as it went to the very jurisdiction or discretion of the trial court and master.

statutes and the principles of law and equity and/or the movant's ability to compel specific performance, and all evidence presented here proves the Order in-part awarding the Respondents Dudek specific performance fails on its face, such order in-part is VOID and must be set aside. Void order or judgment is an issue which can be raised at any time in any court, even on appeal. Morphew points out these issues in its reply brief (Respondent Collins), which is adopted by reference (Appellant Reply Brief Collins, pgs. 11-17).

The material facts and evidence the Respondents were *denied mortgage credit for failure to have a legal claim to the property* was not provided to Morphew or co-appellants in the original action before or disclosed at trial. (R. pg. 1325-1321 [pg. 52, l.15 through pg. 56 l.5; pg. 124 l. 6-10]); (R. pg. 975-979, 1311). Further, Morphew has shown its failure to discover these facts and evidence before trial was not due to lack of due diligence on its part, as she went above and beyond due diligence in the discovery process, especially in its two (2) separate subpoenas and phone calls to the Dudeks' lender, and co-respondent, First Federal. In both subpoenas and the phone calls, they perjured and misrepresented. Though questioned several times before and during trial as to their financial status or ability to tender payment pursuant specific performance, the Dudeks and/or its co-respondents in this case lied, perjured, forged financial documents, presented evidence in which its maker had no legal standing, or made false or misleading statements. Even so, the Dudeks were required to disclose their financial status to the sellers and perform their contract in good faith and fair dealings (R. pg. 1254-1273 [pg. 4, para. 9]).

Morphew's prior attorney in the original action, John Massalon, is a well-respected and very knowledgeable attorney. The 10-day adverse and denial letters were not delivered to him before trial. If they had then there is no question he would have brought them up for they were *the* home-run hit for Morphew. Despite the Dudeks and their witness' testimony at the original trial that the Dudeks had secured lending and were ready, able and willing to tender payment, the letters show the Dudeks had no legal claim to the property after November 30, 2012 thus were denied lending AND *at their own hand.*

The fact is, after November 30, 2012, the Respondent had no legal claim to the property. They made initial application after their contract expired. In fact, they didn't *sign* or return the application and disclosures until December 10th, 2012 10 days AFTER their time is of the essence

sales contract expired. (R. pg. 1312-1314). As a consequence, there was never a mortgage transaction or legal mortgage transaction in place in the original action, as their application was never completed or accepted due their failure to have a legal claim to the property. The Dudeks and all co-respondents to this case had full knowledge of these facts and the fact they had no legal standing to demand *anything* from the sellers, Morphew or courts[38]. All co-respondents had full knowledge they had no legal standing to represent the Dudeks in the capacity in which they presented themselves[39], and should be considered fraud in itself.

As this court knows, one can, and usually does, make several applications at separate banks ("shopping"), but until an application is *complete*, initial application as required in their sales contract has not been complied with. In this case, Respondents never completed their initial application by failing to submit a valid and negotiable sales contract. Due these facts, 1) the Dudeks' sales contract was no longer valid or negotiable after November 30, 2012; 2) the Dudeks had no legal standing to demand anything from the sellers or the seller's property, especially specific performance or any remedy; 2) Susan Nicholson, Carolina One and Michael Scarafile had no legal standing in the original action, including but not limited to, representing as the sales agent/agency in a court proceeding when there was no sales contract and its clients had no legal claim to the property in question, demanding the sellers transfer the deed to their clients, or threaten legal action; 3) the trial court in the original action had no ability, jurisdiction or discretion to order the equitable remedy of specific performance to the Dudeks; in fact, based on the legal position of the Dudeks, it has no choice but to dismiss the Dudeks' complaint; 4) the Order of November 6, 2014 is VOID or fails on its face; 5) all Respondents to this case committed conspiracy, fraud and/or fraud on the court; 6) the Dudeks' prior action is void and cannot be made valid by the litigants or by any court; and 7) their current counsel, Stephen Smith, who use to be a prior partner with Respondent David

[38] Such as a closing or the deed to the property, or for a judgment ordering the sellers to specifically perform a time is of the essence sales contract in which the Dudeks abandoned in the first place.

[39] Such as the sales agency [Nicholson, Carolina One and Scarafile] demanding a closing and repairs, making false claims its clients are ready to close, and attempting to blackmail the sellers by making threats of long litigation if they don't transfer the deed to its clients, when it had full knowledge the contract had expired and was no longer in affect, and that its clients had no legal claim to the property. Such representation is fraudulent when they had no legal standing in regards to the specific contract or the specific property. The sales agent and company were representing outside their scope of normal business practices, with their scope being confined to representation of a legal and valid sales contract.

Collins before Collins himself was convicted of committing fraud in 2016 against his own clients in a separate case, has had full knowledge of the Dudeks' fraud and critical failures and now of their continuing fraud, they are not bona fide purchasers, their trespass upon easement and assault upon Morphew's own neighboring property in 2018. Morphew points out many of these issues in its reply brief (Respondent Collins), which is adopted by reference (Appellant Reply Brief Collins).

The unlawful or fraudulent actions or non-actions in the original action are critically material to the legal positions of the Dudeks and all co-respondents, *and* to the court's *ability* to award the equitable remedy, therefore the legal effect of the Order. If such fraud is not considered extrinsic, or at least rises to the level of, then such actions just encourage lawyers and their clients to file frivolous and unlawful complaints; lie, suborn perjury, misrepresent, conspire, fail to disclose critically material facts and evidence effecting their own legal position and the court's jurisdiction, and to take another's property if they so choose and with no legal claim to it. It also would appear the South Carolina courts support VOID judgments, and the Respondents' substantial unlawful actions, bad faith and unfair dealings, failures of the maxims of equity, violations of court rules, failure to honor a contract, specifically a *time is of the essence* sales contract, and their lack of respect for the courts and their processes.

Just as important, why must a judgment obtained by such reprehensible conduct of many, that is a gross injustice and void, at that by enforcing it steals property (i.e., enforces a criminal act[40]) from an innocent and *valid* contract holder who had the *only* legal claim to the property, and gives that property those who had abandoned their contract or waived their legal right to the property[41] (R. pg. 1254-1273 [pg.6 para. 8]), who failed the critical maxims of equity[42] and performed criminal acts to obtain jurisdiction to compel the equitable remedy (and ultimately unlawfully obtained the property), in good conscience be allowed to stand? This Court has the power to right this injustice, remove a void judgment, correct violations of the principles of law and equity, punish criminal

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[40] *Ward v. W. Oil Co.*, 387 S.C. 268, 274, 692 S.E.2d 516, 519 (2010). (...we "will not 'lend [our] assistance' to carry out the terms of a contract that violates statutory law or public policy.")

[41] *South Carolina Dept. of Transportation v Hood*, SC Supreme Court, Opinion 4486 (2009), quoting *City of Des Peres v. Persels P'ship*, 831 S.W.2d 778, 781 (Mo. Ct. App. 1992) (...stating "[a]n expired contract is effectively an unaccepted offer").

[42] "He who seeks equity must do equity" and "He who comes into equity must come with clean hands"

actions in a court proceeding, punish violations of rules and guidelines, and address a repeated abuse of power and discretion. The courts have refused to address the Dudeks and/or co-respondents' critical failures and/or critical change in their legal position in the original action, positions that no court can excuse or reverse. This is not about winning or losing, but about what is lawful or what the courts may do under the circumstances, and about the failure of the justice system, what it stands for, the faith the public is supposed to have in it and its protection of its rights. Though this Court may find these cases insignificant, it shouldn't. This is a vast example of the system's breakdown, severe prejudice, unlawful judgments, violation of public policy and a grave injustice.

Even so, law of the case does not make any ruling absolute, as this court has the power to revisit prior decisions of its own or of a coordinate court in *any* circumstance. Law of the case is not an inexorable command or rule of law to be strictly adhered by the courts, and this is not just recognized in the South Carolina courts but also in all states and the US Supreme Court. ("Law of the case . . . operates as a discretionary rule of practice and not one of law." (quotation marks omitted)); 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice & Procedure § 4478 (2d ed. 2002) ("So long as the same case remains alive, there is power to alter or revoke earlier rulings.") *Slowinski v. Valley Nat'l Bank*, 264 N.J.Super. 172, 624 A.2d 85, 89 (App.Div.1993). The application of the doctrine is within the court's discretion, and even in cases that meet the standards for law of the case, Appellate courts have discretion to depart from the doctrine. *Hill v. BASF Wyandotte Corp.*, 696 F.2d 287, 290 n.3 (4th Cir. 1982) (stating that court should not, in review, affirm a legally erroneous ruling because it was "compelled" by law of the case); *Barth v. Barth*, 293 S.C. 305, 308, 360 S.E.2d 309, 310 (1987) ("[t]he rule of the 'law of the case' means that what was decided on former appeal is, if evidence is the same on another trial, controlling on the trial court and an appellate court on another appeal, *unless on re- examination the appellate court is convinced that the first decision was wrong*.") American Standard, 603 F.2d at 248 (where a U.S. Supreme Court decision demonstrates that a ruling on which a judgment would depend is in error, no principle of law of the case warrants a failure to correct the ruling). Further, 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: JURISDICTION § 4234 (2d ed. 1988) 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). "The law-of-the-case doctrine "merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power." *Messenger v. Anderson*, 225 U. S. 436, 444 (1912) (Holmes, J.) (citations omitted). A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loath to do so in the absence of extraordinary circumstances such as where the initial decision was "*clearly erroneous* and would work a manifest injustice." *Arizona v. California*, supra, at 618, n. 8 (citation omitted). Most importantly, law of the case cannot bind this Court in reviewing decisions herein. Just as a district court's adherence to law of the case cannot insulate an issue from appellate review, a court of appeals' adherence to the law of the case cannot insulate an issue from this Court's review." See *Messenger, supra*, at 444; *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U. S. 251, 257-259 (1916). A petition for writ of certiorari can expose the entire case to review. *Panama R. Co. v. Napier Shipping Co.*, 166 U. S. 280, 283-284 (1897).

Also, law of the case does not preclude fraud on the court, in this case, "calling into question the very legitimacy of the judgment." (Where the fraud perpetrated called into question the very legitimacy of the judgment) *Calderon v. Thompson, 523* U.S. 538, 118 S.Ct. 1489 (1998) (quoting *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U. S. 238 (1944)). Morphew's instant case here was specifically framed to include this issue during the pendency of the original action, thus reviving the issue of re-examination in the case.

Regardless, and assuming any Appellant failures of the legal process exists, which is denied, they have no effect on an invalid proceeding, lack of jurisdiction, lack of discretionary powers based on principles of law and equity to order an equitable remedy, or judgments that are unlawful, fail on its face, fails the judgment roll, or are VOID. Notwithstanding the Dudeks' and co-respondents' own substantial legal failures and/or unlawful/fraudulent actions, such as lack of legal claim at all times material to the property at question, lack of legal standing, frivolous complaint for breach of contract, abuse of the court's processes, violations of Rule 11 SCRCP and/or committing criminal

actions (such as critical and material perjury), all which started almost 2 years prior to the original trial and are still occurring.

The Respondents' argue "*even if extrinsic fraud existed, then Morphew's relief would be a set-aside of the Specific Performance Order and a retrial of the Original Action, not independent damages against the Respondents. Rule 60, SCRCP.*" *(Respondents Dudek, et al. Initial Brief, pg. 10)*. They did not raise nor was this argument ruled on in the trial court, therefore cannot be considered by this court. Even so, *only part of the order*, specifically the award of specific performance in favor of the Dudeks, must be set aside, leaving Morphew's award of specific performance solely in effect, as such has been adjudicated and not appealed. Further, there can be no re-trial and/or it would be moot. Based on the facts and circumstances, and the [valid] evidence in the record, the Dudeks *time is of the essence*[43] sales contract had expired, they had no legal claim to the property[44] and they were *denied* mortgage credit [and at their own hand], therefore cannot compel specific performance. Meaning, the Dudeks have no ability to compel specific performance *or any remedy*, therefore the lower court may only dismiss their complaint, as it's clear it and this court have no jurisdiction or discretion to hear their case or award specific performance in their favor. Finally, Morphew's complaint is an independent action not a Rule 60 motion, therefore independent damages are appropriate.

The Respondents argue "*Morphew's case, and the above-referenced arguments, also fail under the law-of-the-case doctrine, precluding a party "'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.*" Respondents did not raise this argument in the trial court, therefore cannot be considered by this court. Even so, the issues here are not precluded by law of the case as the new facts and evidence was raised on appeal in the original action but not expressly rejected by the appellate court. Further, as argued above and repeated herein, law of the case is discretionary and not a rule of law, and where this court has the power to reopen its own or lower court decisions,

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[43] *Bishop v. Tolbert*, 249 S.C. 289, 153 S.E.2d 912 (1967)(Emphasis added) (...*time was of the essence of the contract* and because of the appellants failure to consummate the contract and tender the purchase price within the time specified, they were not entitled to specific performance of the contract.)

[44] Specifically, at initial application on December 5, 2012, they were required to present a signed contract extension addendum to make their expired time is of the essence sales contract valid.

especially if that decision fails by law, on its face, or results from an invalid proceeding. Further, law of the case does not preclude subject matter jurisdiction and cannot prevent this Court from its review. The lack of the trial court's discretion or jurisdictional power to enter the equitable judgment in favor of the Respondents under the facts and circumstances, the Dudeks abandonment of their sales contract/denial of mortgage credit and its legal effect on their sales contract and/or effect on Respondents legal positions, and a VOID order has not been litigated nor decided in the 1st appeal or this 2nd one, or in any subsequent case and deserves full consideration.

The jurisdiction of a court over the subject matter of a proceeding is fundamental. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." *Id.* It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this Court. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998); *State v. Funderburk*, 259 S.C. 256, 191 S.E.2d 520 (1972). (The issue of subject matter jurisdiction may be raised at any time including when raised for the first time to an appellate court.) *Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002). Furthermore, "[t]he acts of a court with respect to a matter as to which it has no jurisdiction are void." *Funderburk*, 259 S.C. at 261, 191 S.E.2d at 522. "Since subject matter jurisdiction is an issue which is fundamental and may be raised at any time, we decline to find that our review of this issue is precluded on procedural grounds." *Carter v. State, supra; Anderson v. Anderson, supra.*

Morphew has also raised a VOID order to this Court (Order, Nov. 6, 2014). Void order may be attacked, either directly or collaterally, at any time. They are not "voidable", but simply "void"; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliott v. Lessee of Piersol*, 26 U.S. 1 Pet. 328 328 (1828); Black's Law Dictionary, Sixth Edition, page 1574: Void judgment.

First and foremost, the remedy of specific performance is an *equitable* remedy and can *only* be invoked or ordered IF the movant meets *all* the guidelines that gives the court its ability or inherent power to grant it. As with all equitable remedies, orders of specific performance are

discretionary, so their availability depends on its appropriateness under the circumstances. In this instance and under the facts and circumstances, the lower court abused its discretion by awarding specific performance to the Dudeks, as it had no discretionary power to do so. Such order is Void.

As stated in *Bishop v. Tolbert,*

"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. *Mobley v. Quattlebaum,* 101 S.C. 221, 85 S.E. 585; *Mitchum v. Mitchum*, 183 S.C. 75, 190 S.E. 104; *Flowers v. Roberts*, 220 S.C. 110, 66 S.E. (2d) 612. It has been said that "there is no branch of equity jurisdiction in which the Court is allowed the greater exercise of a sound and reasonable discretion, 'which governs itself, as far as it maybe, by general rules and principles,' than that which relates to the specific performance of agreements. 'The question is not what the Court must do, but what it *may* do, under the circumstances'". *Lesesne v. White,* 5 S.C. 450. Among the established principles by which the court is guided and governed in the exercise of the sound discretion is that laid down in the early case of *Cureton v. Gilmore,* 3 S.C. 46: "He, therefore, who demands the execution of an agreement, ought to show that there has been no default in him in performing all that was to be done on his part; for, if either he will not, or through his own negligence cannot perform the whole on his side, he has no title in equity to the performance of the other party, since such performance could not be mutual. And, upon this reasoning, it is that where a man has trifled or shown a backwardness in performing his part of the contract, equity will not decree a specific performance in his favor." And, as is said in *Thompson v. Dulles*, 5 Rich. Eq. 370, "The principle is sound and just, and demanded alike by morals and by policy, that he who has neglected to perform a duty which he might have performed, and ought to have performed, has no claim upon the court to compel the other party to perform his engagements. Whenever such negligent party comes into this Court, he must be told that he has neglected to do Equity, and has, therefore, deprived himself of the equity he claims." *Bishop v. Tolbert*, 249 S.C. 289, 299, 153 S.E.2d 912 (1967)(Emphasis added).

Based on the above, the trial court can *only* deny the Respondents specific performance, and vacate its judgment in their favor and any subsequent order arising. The Appellate Court was required to vacate or reverse in-part the trial court's order of November 6, 2014 granting specific performance to the Respondents in the 1st appeal; and in this 2nd appeal, the Appellate Court *must* vacate in-part, and at a minimum reverse in-part, the Order of November 6, 2014 and any subsequent order in the Respondents' favor that arise from the original case, and award damages and/or any other relief to Morphew in which this court finds appropriate.

The courts concentrate on the alleged Appellant failures, but refuse to address the actual validated failures and unlawful actions of the Respondents that rendered a judgment void, unlawful or completely against the principles of law and equity. Though the record clearly demonstrates those unlawful actions and judgment, it appears more evidence is necessary for this court and the lower courts to take notice it has only the power to vacate the judgment for specific performance in favor of the Dudeks and any subsequent judgment in their or their co-respondents favor in this case.

3. This court should consider all arguments in its brief as those arguments are not barred or explicitly barred by this court

Morphew stands by this statement, and her arguments in this brief and in its initial brief, as repeated herein.

4. The lower court's decisions are not harmless and routine and amount to reversible error

The Respondents state summary judgment and motions to dismiss are different standards of review, therefore Morphew's issue with the fact one judge partially denied the Respondents' motions to dismiss, then another judge granted the Respondents' motion for summary judgment on the same causes is without merit. Respondents provide no argument nor point to no law or case that definitively supports this issue is without merit, or is a final (rule of law), therefore their argument fails. Even so, Respondents did not appeal the prior judge's order denying them dismissal of the several causes of action, as Morphew argued in its initial brief and repeated herein. As Respondents themselves argue, an unappealed order/judgment is law of the case. Moreover, the facts and

circumstances had not changed from the motion to dismiss to the motion for summary judgment. Meaning, there was no change in circumstances, and that the presentation of additional affidavits was pertinent only if they concerned new and different facts which were not before the first judge. As argued in its initial brief and not defended by Respondents, summary judgment is inappropriate as there are genuine disputes as to material facts and the moving party is not entitled to judgment as a matter of law. In this case, a reasonable jury viewing the evidence could only find in favor of Morphew.

Even so, the court of appeals should hold that although the motions to dismiss and for summary judgment involved different legal standards, the dispositive legal issue for both was the same and, therefore, that the second judge improperly overruled the first. To reach this result Morphew asks this court to look beyond the fact that the motions came under different rules with different legal tests and instead parse the complaint, motions, and orders to determine whether there was a common legal ruling. It might appear that a motion for summary judgment always involves a different legal ruling from that in a motion to dismiss, but this case says it is necessary to look beyond the titles of the motions and ascertain the actual dispositive legal ruling for each.

Morphew is not sure exactly the Respondents' defense regarding its' argument that summary judgment was inappropriate because discovery was pending. They present weak issues at best and statements unsupported by the record. The Respondents specifically argue only that Morphew had not taken a single deposition, a point irrelevant as depositions are not required, and in turn intentionally fail to present to this court that Morphew's motions to compel discovery and admissions were pending months prior to the summary judgment motions and the granting of. Morphew had pending motions to compel documents and motions for admissions to be admitted in which it presented at the same hearing 12 other various motions were also heard. Morphew's argument in its initial brief is repeated herein.

Further, Morphew's discovery was not needed to substantiate its case, but would confirm its case and prove the allegation(s) of their *continuing* fraud, and make clear without a doubt to the courts the severity of the case, a fact the lower courts appear to take lightly. As already argued above, Morphew's offer to drop all cases (minus the trespass upon easement action) if shown proof the Dudeks were entitled to the property or to maintain a specific performance action, was to give

the Respondents opportunity to mitigate the damages and end the vast litigation (they blame solely on Morphew and so continually complain about) once and for all. Instead, their intentional refusal and failure to provide such proof shows this court that no such proof exists, their complaints have no merit, and that again, without a doubt, the Dudeks had no legal claim to the property after the expiration of their sales contract, and all the testimony, false promises and evidence provided to and/or presented by any Respondent at the original trial were lies, that all Respondents knew it, and had conspired in order to preserve the court's jurisdiction to hear the equitable remedy and obtain the master's jurisdiction or discretion to order the contract specifically performed (i.e., fraud on the court). Consequently, the Respondents attempt to reference Morphew's deposition is not an admission by Morphew that "*no amount of discovery would have save Morphew's case,*" or that she "*has no "cards" to win the hand.*" On the contrary, Morphew has *all* the cards to win the hand. The court's refusal to allow discovery as compelled only violates Morphew's due process to present her case fully and prevents her from developing potential remedies for recovery.

Respondents Carolina One, Scarafile and Nicholson contend Morphew's issue 'that their motion to dismiss was unsupported by arguments, thus it did not comply with the rules', was a harmless error because Morphew wrote a 10-page response and the lower court held extensive oral arguments on their motion 12(b)(6) and 12(b)(8)." These Respondents do not present any case law, and do not point to any arguments in the transcript or in Morphew's response, that would support their brief. Further, Morphew's 10-pg. response is substantially standards of review/cases but, as argued in its initial brief and repeated herein, also explicitly states their motion 12(b)(6) lacks any argument, its motion is totally unsupported, and its motion to dismiss lacks merit for grounds of dismissal. As to their 12(b)(8), Morphew argues the Respondents are not the same parties for the same claim, and the action was not pending, therefore its 12(b)(8) motion fails. (Carolina One, et al. MTD) (R. pg. 747-756 [pg. 3, para. 4-pg. 4 para 2; pg. 5 para. 2; pg. 6 para. 2; pg. 6-10]). It is clear the motion(s) are skeleton motions, where Morphew could only present defenses made clear on its face, for it had no specific arguments from these Respondents to defend. Though Morphew raised these issues, the trial court granted and denied as it saw fit. Morphew appealed the orders. Respondents did not appeal.

5. **This court should not affirm the orders of the lower court for any reason found in the other Respondents' briefs and any additional grounds appearing in the record, especially the allegation Appellant has taken two (2) separate positions in regards to the Dudeks' validity of their sales contract**

Respondents raise issue that Morphew has taken two (2) separate positions in regards to the Dudeks' validity of their sales contract. This issue was not raised or adjudicated in the trial court therefore cannot be considered by this court. Even so, in order to apply judicial estoppel in this instance there are five (5) elements that must be proven. Respondents have proved none, therefore their argument fails or is without merit.

> Five elements are required for the application of judicial estoppel:
>
> (1) two inconsistent positions must be taken by the same party or parties in privity with each other;
>
> (2) the two inconsistent positions were both made pursuant to sworn statements;
>
> (3) the positions must be taken in the same or related proceedings involving the same parties in privity with each other;
>
> (4) the inconsistency must be part of an intentional effort to mislead the court; and
>
> (5) the two positions must be totally inconsistent-that is, the truth of one position must necessarily preclude the veracity of the other position.
>
> *Quinn* v. *Sharon Corp.*, 343 S.C. 411, 422, 540 S.E.2d 474, 480 (Ct.App.2000)

In fact, Morphew has neither formally asserted or made a sworn statement at any time that the Dudeks' sales contract was valid, and has only asserted in all instances, even in its pending Trespass upon Easement complaint[45], that their sales contract was expired or invalid. (Case No. 2018-CP-18-1661, Amended Compl., ¶ 43(b)(i)). As the Respondents point out, punishment should be to those who take the truth seeking function of the system lightly. In this case, all Respondents in this instant action should be punished for their perjury, misrepresentation and non-disclosure of the *truth* in the original action, notwithstanding their duty to disclose or the extensive discovery or

[45] Morphew was forced to sell her home in 2020 to prevent the foreclosure action, all due the Dudeks' intentional assault upon her property, where they dug up her water line to her home and physically chopped it up so she did not have water, hence the Trespass upon Easement complaint. As a consequence, Morphew was forced to immediately leave her home and obtain alternate living arrangements but was unable to maintain two households pending the action.

effort to seek the truth prior to (and even after) trial. It is the Respondents' actions that undermine the truth-seeking function of the judicial process. The courts have failed to protect an innocent litigant, Morphew, and her sole legal rights to her property and to a lawful judgment. Instead, the courts *choose* to disregard the truth and the law. Doing so not only punishes an innocent litigant and rewards an unlawful litigant, but supports a judgment contradicting the principles of law and equity and that is void. It is not the fault of Morphew that we are now here with this horrible mess to unwind, but instead the Respondents with their lies and deceit and then the courts turning a blind eye to the fraud and the invalidity of the Dudeks original proceeding, their abuse of discretion and to the fraud upon their courts[46] and void judgments.

This court has the power and discretion to right the grave injustices, but they *choose* to allow unlawful and VOID judgments to stand, for what reason? For the "finality of a judgment?" There is no finality to a judgment that is unlawful or void ab initio, for that judgment has no legal affect or legal affect from the beginning. Instead, they *choose* to allow fraud on the court. They *choose* to allow critically material perjury, misrepresentation and forgery of financial documents in a court proceeding. They *choose* to allow the Dudeks to retain stolen property, property which at all times material they had no legal claim to. They *choose* to prevent Morphew her sole legal right to the property. Both a violation of her constitutional rights. Maybe most importantly, they choose to abuse its discretion. Meaning, its failure to use its discretion and power to right the unlawful wrongs or grave injustices is also an abuse of discretion. Due the Respondents' unlawful obtaining of the property, Morphew has now lost two homes (*See* also R. pg. 1719-1791, Tres. Upon Ease., where the Dudeks destruction of Morphew's neighboring property has caused her loss of).

Regardless, it is irrelevant whether the sales contract is valid or not in regards to the Trespass complaint, as it has no bearing to the fact the Dudeks breached the agreed upon water easement. In other words, the Defendants "purchased the subject property subject to the terms of the purchase

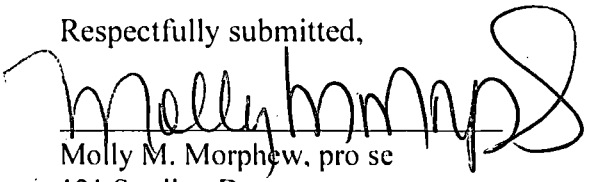
[46] In the original action, both the trial court and this court were presented several times with the newly discovered facts and evidence, but chose to ignore it.

contract. In so doing, Plaintiffs agreed via the contract to grant a "water and sewer easement." (R. pg. 971, Addendum B), (R. pg. 1280-1284). Therefore, their argument has no merit or fails.

Conclusion

For all of the above reasons, and reasons set forth in its brief(s), Morphew respectfully asks this Court to vacate or reverse the Order in-part of November 6, 2014 and any subsequent orders arising from it, and the orders of the lower court in this instant case; and any other relief this court deems proper.

Respectfully submitted,



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November 19, 2020

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, David Collins, Allison Williams, First Federal, Michael Scarafile, Susan Nicholson, Carolina One Real Estate, Carrie Boyer, Wooddy Law Firm, Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Appellant's Combined Reply complies with Rule 208(b).

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November 19, 2020