

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

The Honorable Diane Goodstein, First Judicial Circuit  
Honorable Maite Murphy, First Judicial Circuit

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Appellate Case No. 2023-000879

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Molly M. Morpew

Appellant

v.

Stephen Dudek and Doreen Cross

Respondents

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APPELLANT'S REPLY BRIEF

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ISSUES ON APPEAL

1. Did the lower court properly granted summary judgment while discovery ordered by the lower court was still pending?
2. Did the lower court committed discovery error or a violation of when it issued a protective order on discovery relating to material issues or allegations within the scope of the complaint and when any reasoning to not be had by Respondents falls outside the criteria for protection as mandated by discovery Rule 26?
3. Did the court of equity lack subject matter jurisdiction and discretion to award specific performance to the Respondents in the original action, and now this court in which this action arises, raising a genuine dispute about material facts or allegations within the scope of the complaint?

4. Does the Respondents' terminated or expired *time is of the essence* sales contract affect the legal standing of the Respondents, Appellant or jurisdiction of the courts?

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STANDARD OF REVIEW

When reviewing a grant of summary judgment, an appellate court applies the same standard used by the trial court. *Lanham v. Blue Cross and Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule

56(c), SCRCPP; *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997).

Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo. *Catawba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). *Town of Summerville v. City of North Charleston*, 662 SE 2d 40 - SC: Supreme Court 2008.

“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court.

*Fielden v. Fielden*, 274 S.C. 219, 262 S.E. (2d) 43 (1980); *Harden v. South Carolina State Highway Dept.*, 266 S.C. 119, 221 S.E. (2d) 851 (1976); *State v. Gorie*, 256 S.C. 539, 183 S.E. (2d) 334 (1971).

Issues related to subject matter jurisdiction may be raised at any time. *Browning v. State*, 320 S.C. 366, 465 S.E.2d 358 (1995).

In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without a reference. The judge's findings are equivalent to a jury's findings in a law action. *Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 211 S.E. (2d) 876 (1974).

In an action in equity tried by the judge alone, on appeal the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005); *Campbell v. Carr*, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct. App. 2004)

In an action in equity, tried first by the master or a special referee and concurred in by the judge, the findings of fact will not be disturbed on appeal unless found to be without evidentiary support or against the clear preponderance of the evidence. *Ex Parte, Guaranty Bank & Trust Co.*, 255 S.C. 106, 177 S.E. (2d) 358 (1970).

## ARGUMENTS AND PROCEDURAL HISTORY

### **1. The lower court improperly granted summary judgment while discovery ordered by the lower court was still pending.**

The outstanding discovery or document requests and court order should have been sufficient to inform this Court that, in the absence of a waiver, proceeding to summary judgment is appropriate only after Appellant has had a full opportunity to conduct discovery and the validity of, and obtain full knowledge or understanding of the parties' legal standing and their ability to defend here and at trial. (also *see* Mtn Rule Show Cause; 59e motion(s)). It was premature and in error for this Court to grant summary judgment under these circumstances. Due the above, Appellant moves this Court to allow Appellant's right to due process and reverse the order for summary judgment, motion to compel and motion for rule to show cause, and for sanctions due Respondents contempt of court orders.

In January 2023, Appellant issued a 59e motion arguing summary judgment was improper due to pending discovery ordered by the court. It further pointed out errors of facts and issues raised in support for summary judgment, and/or for the first time in the order or where appellant first notice of these issues or alleged findings was in the court order, and appellant was not given the opportunity to defend or obtain the discovery ordered by the court as argued in Appellant's Initial Brief and repeated here.

Further, the record contains many items proving trespass upon real property, including Respondents' expired or invalid contract to purchase, lack of loan approval to purchase at all times material due to lack of a legal contract to purchase the property at issue in this instant case, and issue of lack of subject matter jurisdiction in the original action in which this case arises, a void order, and Respondents' lack of standing in the courts, as argued herein and repeated here.

Regardless, the lower court prevented all discovery requests, even those ordered to be served on Appellant. (Order)(Mtn Compel Discovery/response)(Mtnrule to show cause)(transcript). It is

against the rules of this court and its discretion in granting summary judgment to prevent ordered discovery especially pertaining to the material facts at issue. The court cannot ‘find’ there is no evidence when ordered discovery is still pending. Meaning, it cannot be found Appellant has no evidence when the court itself prevented the evidence from being discovered in the first place.

The ordered discovery is still pending, including discovery regarding a question of a violation of a county ordinance,<sup>1</sup> making it impossible for Appellant to present evidence, thus summary judgment is improper.

**2. The lower court committed discovery error or a violation of when it issued a protective order on discovery relating to material issues or allegations within the scope of the complaint and when any reasoning to not be had by Respondents falls outside the criteria for protection as mandated by discovery Rule 26.**

a. Appellant raised subject matter jurisdiction in its 59e motion and now here (Motion).

Respondents did not defend or respond to Appellant’s arguments. The lower court did not take notice, consider or adjudicate the lack of subject matter jurisdiction.(Order(s)). Subject matter jurisdiction or the lack of needs to be addressed before summary judgment is awarded.

To further support the question of lack of jurisdiction and the validity of the Respondents’ purchase contract, IF the easement as it existed is found illegal and/or found illegal AFTER discovery on the matter is concluded, the Respondents’ purchase contract therefore would contain unlawful language and considered illegal.<sup>2,3</sup> Another trial or hearing would have to take place for the court to address the unlawful language in the Respondents’ purchase contract.

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<sup>1</sup> This court should take note neither the judge nor the Respondents are experts in the construction of the easement or of county law or ordinances; did not present documented evidence nor provided the ordered discovery of same to support any unlawful easement as constructed; The judge improperly interpreted the the law and prevented discovery on the very issue granting summary judgment.

<sup>2</sup> As testified by Respondents, “*And because the easement itself as it existed was illegal....that easement cannot continue to exist. It's illegal. It's an illegal contract.*” (transcript)

<sup>3</sup> When faced with unlawful language in a contract, the judge generally has three options: Sever or strike the unlawful clause from the contract and enforce the rest of the agreement; Edit the illegal or unenforceable term to something legal and reasonable, or Void the entire agreement. The facts of each

When bringing a summary judgment motion, a party is arguing that there can be no real dispute about material facts, and the moving party is entitled to win the case as a matter of law. A motion for summary judgment does not allow the court to decide issues of fact or conclusions of law, but to examine the pleadings and proof to determine if a trial is necessary. The court is only to review if there is a genuine issue of material fact, that de novo review is improper for summary judgment; it must not weigh the evidence and reach a decision on the merits, rather than to determine only whether material issues of disputed fact exists.

"[T]here is no such thing as ... findings of fact, on a summary judgment motion." *Thompson v. Mahre*, 110 F.3d 716, 719 (9th Cir.1997). But in a bench trial on the record, the judge will have to make findings of fact under SCRCP 52(a). The process of finding the facts "specially," as that rule requires, sometimes leads a judge to a different conclusion from the one he would reach on a more holistic approach. Also, it completely changes a court's authority on review, from de novo review of summary judgment to clearly erroneous review of findings of fact. That change could be outcome determinative. Thus trial on the record, even if it consists of no more than the trial judge rereading what he has already read, and making findings of fact and conclusions of law instead of a summary judgment decision, may have real significance. *Kearney v. Standard Ins. Co.*, 175 F. 3d 1084 - Court of Appeals, 9th Circuit 1999

. Further, additional ordered discovery pending addresses many other material facts thus the lower court cannot find there is no genuine issue to any material fact until ALL discovery is complete. Additional questions may arise from discovery, It's clear that summary judgment is not proper nor warranted until discovery is complete. (59e Motion)

**3. The court of equity lacked subject matter jurisdiction and discretion to award specific performance to the Respondents in the original action, and now this court in which this**

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situation will determine which option the judge chooses. <https://willcoxlaw.com/2021/10/07/if-one-clause-in-a-contract-is-deemed-unlawful-is-the-whole-contract-invalid/>

**action arises, which raises a genuine dispute about material facts or allegations within the scope of the complaint.**

Lack of subject matter jurisdiction by the trial court is an issue that can be raised at any time and may even be raised sua sponte by the Appellate court. Otherwise, the prevailing party would benefit from a judgment rendered by a court without jurisdiction.

A Court of competent jurisdiction is one having power and authority of law at the time of acting to do a particular act; one that has jurisdiction both of the person and of the subject matter; one provided for in the constitution or created by legislature and which has jurisdiction of the subject matter and of the person; ..." 21 C.J.S. Courts § 22, p. 35. *Harden v. SC State Highway Dept.*, 221 SE 2d 851 - SC: Supreme Court 1976

"Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court." *Lake v. Reeder Const. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct.App.1998). The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). *See Fielden v. Fielden*, 274 S.C. 219, 262 S.E.2d 43 (1980); *Harden v. South Carolina State Highway Dept.*, 266 S.C. 119, 221 S.E.2d 851 (1976); *State v. Gorie*, 256 S.C. 539, 183 S.E.2d 334 (1971). In personam jurisdiction may be waived; subject matter jurisdiction may not be waived and the issue may be raised at any stage of the proceeding. *Eaddy v. Eaddy*, 283 S.C. 582, 324 S.E.2d 70 (1984). Even though the issue of the Court's subject matter jurisdiction was not raised until appeal, and it was raised by the Respondent, it is the duty of this court to take notice and determine if the Court had proper jurisdiction for its actions.*id*

Lack of jurisdiction of the subject matter cannot be waived even by consent and therefore such lack can and should be taken notice of by this Court *ex mero motu*. *State v. Gorie, supra; McCullough v. McCullough, supra; Hunter v. Boyd*, 203 S.C. 518, 28 S.E. (2d) 412 (1943).

The burden rests on the Appellant to show the Circuit Court's decision is against the preponderance of the evidence. *Chavis, supra; Crim v. Decorator's Supply*, 291 S.C. 193, 352

S.E.2d 520 (Ct.App.1987). Or that the decision was based on fraud and fraudulent misrepresentations.

The trial court erred granting summary judgement when subject matter jurisdiction of the court in the original action in which this complaint arises was raised, consequently affecting the subject matter jurisdiction of the court in this instant case (59e motion(s)).

In the complaint in this instant action, Appellant states as fact the Respondents' *time is of the essence* sales contract expired November 30, 2012 (herein referred to as "Respondents' purchase contract" or "Respondents' contract"), that the Respondents are not bona fide purchasers, and that they are trespassers to real property (herein "property" or "servient property") (Amended Complaint). Throughout prior cases and this instant case, the Appellant has been prevented from obtaining discovery to address these genuine issues of material fact, even court ordered discovery. (Mtn Compel Discovery/response)

As clearly demonstrated, the Respondents, with *full knowledge* at all times material came to the courts in the original action and now this action with unclean hands and no legal standing<sup>4</sup>. Respondents committed critical material perjury, misrepresentation, and forgery, while their attorney suborned critical and material perjury to obtain an award of specific performance.

In a nutshell, the equity court lacked subject matter jurisdiction over them as non-qualifying movants for the purpose of specific performance. The movants or Respondents failed to satisfy the elements or guiding principles of law and equity required in order for the judge to retain subject matter jurisdiction to adjudicate or order the contract to be performed, which is a substantive and/or dispositive requirement to retain subject matter jurisdiction. In its order, the master points to those

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<sup>4</sup> The fact remains, the Respondents had no legal claim to the property, specifically no valid and negotiable purchase contract at initial application, such critical failure or breach was not remedied thus were denied any ability to obtain a loan to tender payment for the purchase of.

principles in which it is held to in order to retain jurisdiction or discretion to award the remedy of specific performance. (Order, p. 3-4 below, Guiding Principles of Law & Equity, herein "Principles")

#### GUIDING PRINCIPALS OF LAW & EQUITY

This Court is guided by many principals of law and equity. These guides include the following:

1. It is not the province of the courts to construe contracts broader than the parties have elected to make them or to award benefits where none was [sic] intended. Stewart v. State Farm Mut. Auto. Ins. Co., 341 S.C. 143, 151, 533 S.E.2d 597, 601 (2000).
2. The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous. Hardee v. Hardee, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003).
3. The law by which a contract is to be governed, is resolved into the terms whereby it is entered into; provided that the contract be consistent with morality and not repugnant to law or the principles of public policy. Satterwhite's Adm'rs v. McKie, 16 S.C.L. 397, 398 (S.C. Const. App. 1824).
4. Where a contract's language is plain and unambiguous, the language used by the parties "determines the instrument's force and effect." Jordan v. Sec. Group, Inc., 311 S.C. 227, 230, 428 S.E. 2d 705, 707 (1993).
6. If a promisor prevents or hinders the occurrence of a condition, or the performance of a return promise, and the condition would have occurred or the performance of the return promise been rendered except for such prevention or hindrance, the condition is excused, and the actual or threatened nonperformance of the return promise does not discharge the promisor's duty, unless (a) the prevention or hindrance by the promisor is caused or justified by the conduct or pecuniary circumstances of the other party; or (b) the terms of the contract are such that the risk of such prevention or hindrance as occurs is assumed by the other party. Restatement (First) of Contracts § 295 (1932)

7. Impracticability excuses the non-occurrence of a condition if the occurrence of the condition is not a material part of the agreed exchange and forfeiture would otherwise result. *Restatement (Second) of Contracts* § 271 (1981).
8. Waiver is the voluntary and intentional relinquishment of a known right. *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387. It may be implied from circumstances indicating an intent to waive. *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981); *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Cl.App.1987). Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver. *Bonnette*, 282 S.E.2d 597. *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928-29 (Cl. App. 1994).
9. In the construction of a contract, the intention of the parties to be collected from the instrument, (if in writing,) should be constantly in view, and in their performance, good faith and fair dealing is always required. And from hence, [the Court] deduce[s] the rule that when a contract stipulates for the performance of a condition on the event of a contingency, the occurrence of which must be known to one of the parties, but not necessarily known to the other, it is the duty of him to whom it is known to give notice of it to the other. . . *Birdseye v. Davis*, 13 S.C.L. 296, 298, 297-98 (S.C. Const. App. 1822).
10. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. *Restatement (Second) of Contracts* § 205 (1981).
11. The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case." *Guignard v. Atkins*, 282 S.C. 61, 64, 317 S.E.2d 137, 140 (Cl.App.1984); accord *Bishop v. Tolbert*, 249 S.C. 289, 298, 153 S.E.2d 912, 917 (1967) ("The rule is well settled that the granting of specific performance is not a matter of absolute right, but rests in the sound or judicial discretion of the Court, guided by established principles, and exercised on a consideration of all the circumstances of each particular case."). "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Cl.App.1985). "[S]pecific performance ... is only available to enforce a contract that is fair, just, and equitable." *Hodge v. Shea*, 252 S.C. 601, 612, 168 S.E.2d 82, 87 (1969). "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291. *Campbell v. Carr*, 361 S.C. 258, 263-64, 603 S.E.2d 625, 627-28 (Cl. App. 2004).

The Respondents at their own hand failed to have the ability to tender payment or perform their contract at the moment they compelled specific performance on January 15, 2013. "The party seeking to compel specific performance must be able to perform at the exact time he requested specific performance, not some reasonable time in the future. *Ingram*, 340 S.C. at 106 n.1, 531 S.E.2d at 291 n.1." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000) ("At a

minimum, Ingram must demonstrate that he was ready and willing to perform his part of the contract (i.e. willing to tender the purchase price) on February 28, 1994, the date the lease expired, or on March 14, 1994, the date he brought the action for specific performance.) The record indicates the Respondents were not, and could not be due their expired purchase contract, in a position to pay the sellers for the purchase price of the servient property on contract expiration, November 30, 2012, nor on January 15, 2013, the day they filed their complaint for specific performance. It is especially critical when time is of the essence<sup>5</sup>. A “time is of the essence” clause makes completion dates a *material* term of a contract, causing a breach if performance is late, particularly in this instance where performance wasn’t attempted or didn’t take place. They filed an intentional frivolous action and then committed perjury by answering the complaint and then testifying at trial they were ready to close or ready, able and willing at all times material. According to the rules, guiding principles of law and equity, maxims of equity, and supported by the master himself in his order (Order, pg.4 #11), specific performance can only be compelled and awarded if it is found by valid and documented evidence that the Respondents’ purchase contract is valid and negotiable AND that at all times material, the party who has come to compel specific performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291. *Campbell v. Carr*. 361 S.C. 258, 263-64, 603 S.E.2d 625. 627-28 (Ct. App. 2004).

The Respondents’ critical conditions were *time is of the essence*, It also states clearly that obligations of the seller under para. 19 terminates on the closing date or contract expiration of November 30, 2012. (Purchase contract) (Order, pg. 5 #1 below)

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<sup>5</sup> The phrase “time is of the essence” means that timely performance is an essential obligation under a contract, and thus failure to perform in a timely manner or on or before the date required amounts to a material breach of contract giving rise to the other party's right to exercise its remedies for breach.

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#### FINDINGS OF FACT

1. The Dudek/Cross Contract is a conditional contract. Four conditions<sup>1</sup> are in the “printed matter” of the Contract. The parties agree these conditions require that “TIME IS OF THE ESSENCE.” These conditions are found in Paragraph 3<sup>2</sup>; Paragraph 8;<sup>3</sup> Paragraph 12;<sup>4</sup> and Paragraph 19: Condition of Property (B. Inspection<sup>5</sup>) and (D. Wood Infestation<sup>6</sup>).

The court found that the transaction was required to occur on or before November 30, 2012 (Order, pg. 5 #3). The closing or tender of payment and transfer of deed did not take place on or before November 30, 2012, because the Respondents abandoned their *time is of the essence* purchase contract when they critically breached their material conditions precedent of any seller obligation. Specifically, they intentionally allowed their purchase contract to expire. The Respondents were required to inform the other parties their inability to perform their contract and/or required to inform the master the truth of the matters to any material fact that pertains to its jurisdiction and/or discretion to award specific performance. (Order, pg. 4)

The Respondents, their agent (Susan Nicholson) and loan officer (Allison Williams) had full knowledge their contract expired and was invalid/non-negotiable at least on or about December 6, 2012 (App. Requirements Checklist); again on December 12, 2012; and again with express notice on January 3, 2023, (10-day notice) which they received no reply to; They were denied any lending and their file closed. (Denial letters). The Respondents and their counsel, David Collins, had full knowledge of the Respondents lack of legal claim to the property thus inability to tender payment. The Respondents had a duty of good faith and fair dealings in its performance and its enforcement *Restatement (Second) of Contracts* § 205 (1981). The performance, good faith and fair dealings of the Respondents is always required and if one party knows of a contingency precedent to another it cannot perform, it is required that the knowing party inform the other parties, Sellers Ferro, or other parties to the case, Sellers Ferro and Appellant, where Appellant’s purchase contract was contingent upon termination of Respondents’ contract (Appellant contract) and where Appellant was granted

specific performance and its ability to perform was contingent upon termination of Respondents' contract (Order p. ).

It's evident that the master had no jurisdiction or discretion to award specific performance to the Respondents under the circumstances of the action, case precedent, or in accordance with the guiding principles of law and equity required for a court to retain jurisdiction or its discretion to award. [S]pecific performance ... is only available to enforce a contract that is fair, just, and equitable.' *Hodge v. Shea*, 252 S.C. 601, 612, 168 S.E.2d 82, 87 (1969). "In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Ingram*, 340 S.C. at 106, 531 S.E.2d at 291. *Cambell v. Carr*. 361 S.C. 258, 63-64, 603 S.E.2d 625. 627-28 (Ct. App. 2004).

1) Based on testimony of their loan officer, and the court record, the Respondents' *time is of the essence* purchase contract expired at the hands of the Respondents, and was never remedied<sup>6</sup>, thus terminated on contract end date or November 30, 2012. All due their critical material breach resulting in their lack of a valid and negotiable purchase contract.

Direct examination of witness Allison Williams (A), loan officer, First Federal [at the time] by John Massalon (Q) (**Transcript**, pg. 210 l. 1-6 Case #2013-CP-18000183)

A ~~The remaining condition was a contract extension,~~

~~which we never got.)~~

Q ~~So the contract expired and you didn't have a~~

~~live contract at the time --~~

A ~~We wouldn't move forward without the contract~~

~~extension.)~~

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<sup>6</sup> There is no clear or valid evidence in the record of a valid agreement.

Not only does their breach and expired time is of the essence sales contract waive their right to demand performance of, but according to the guiding principles neither the Respondents had the ability to compel specific performance nor did the court retain jurisdiction or have discretion to award the remedy. (Application Checklist requiring contract extension)(**10-day letter**, where Respondents failed to respond to, requiring contract extension addendum)(Denial letters, Respondents failed to complete their app. with a valid contract).

2) The Respondents' expired purchase contract that was never remedied is void and cannot be found *under any circumstance*, even with a court order, to be a valid and negotiable agreement, therefore specific performance or the property was not available to the Respondents. An expired contract is neither valid nor negotiable thus not equitable. "[S]pecific performance ... is only available to enforce a contract that is fair, just, and equitable." *Hodge v. Shea*. 252 S.C. 601, 612, 168 S.E.2d 82, 87 (1969)("Principles", #1-5, #8-11 above). The validity of the contract was never specifically raised and adjudicated. Regardless, a valid contract is a critical requirement directly relating to the master's jurisdiction and discretion to award specific performance, notwithstanding the Respondents were never ready or able to perform at all times material. "The party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." *Campbell v. Carr*, 361 S.C. 258, 262, 603 S.E.2d 625, 628 (Ct. App. 2004). "The party seeking to compel specific performance must be able to perform at the exact time he requested specific performance, not some reasonable time in the future." *Ingram*, 340 S.C. at 106 n.1, 531 S.E.2d at 291 n.1.

Further, the Respondents very critical and inexcusable breach of contract waived

3) The Respondents gave false testimony or committed fraud in their filings and at the

trial testifying they were approved for a loan, ready to close or ready, able and willing or that they had nothing else they had to produce [to obtain the loan or close] (Respondents' Complaint)(Respondents' Answers to Appellant complaint)(trial testimony)

Examination of D. Cross by John Massalon  
Transcript, pg. 79 l. 1-4

**John Massalon:** I may have misunderstood you, but I thought I understood you to say that this letter approved you for a loan \$295,000?

**Doreen Cross:** Correct.

DIRECT EXAMINATION D. CROSS BY MR. COLLINS  
Transcript, pg 75 l.8-14

**COLLINS:** Mr. Massalon asked you a question and really this is what really boils down to, Doreen, on the 14th of December you were ready to close with all of your documents, correct?

**Doreen Cross:** I personally, Mr. Dudek, we were ready to go. Nobody was waiting on anything from us, we had provided it long ago.

REDIRECT EXAMINATION D. Cross BY MR. MASSALON  
Transcript, pg 80, l.6-7

**Doreen Cross:** Basically when the December 12th letter came out we were ready to close.

The Respondents solely and completely prevented a closing or the ability of the sellers to transfer the deed due *they had no legal claim to the property or valid & negotiable purchase contract after November 30, 2012* to obtain a loan to tender the payment to purchase the property. They failed to inform the sellers or court of this material fact. No court can excuse Respondents their intentional and critical breach or their false evidence or fraud.

the court's complete lack of jurisdiction or discretion to award specific performance to the Respondents, most, if not all, of the findings of fact in favor of the Respondents or against sellers and Appellant in its Order is based on fraud, improper, fails the four corners and has no standing, violates the remedy of specific performance, precedence, and the maxims and principles of equity and law, thus has no standing and/or is void. (Order). Further, again, the Respodents had no contract when they filed for breach of contract and the remedy of specific performance, therefore were not properly before the court at any time.

Consequently, in this instant case, the lower court has no ability or jurisdiction to award summary judgment to the Respondents.

According to the record, Appellant had sole right to obtain the property at all times material but was unlawfully prevented from performing or obtaining the Property. Further, the Respondents committed fraud, or material perjury, misrepresentations, and concealment of material facts in order to obtain an award for specific performance, thus fraud in the transfer of the deed. The fraud committed in their filings, depositions and at trial unequivocally established their willingness to resort to any means to produce the results they sought. This so taints the entire endeavor as to render the claims of the Respondents, which derive solely from the illegal or voided agreement, unenforceable. The Respondents award for specific performance, which derived solely from their expired or illegal purchase contract offends public policy. “Thus, it should be concluded that public policy would be offended by permitting the partners, who were all parties to the illegal contract, to invoke the aid of our courts to enforce any claims depending on it.’ *Jackson v. Bi-Lo Stores, Inc.*, 437 SE 2d 168 - SC: Court of Appeals 1993.

4) According to the maxim of clean hands, which states that “one who comes into equity must come with clean hands,” the courts must deny thus reverse the award granting specific performance to the Respondents. This doctrine requires the court to deny equitable relief to a party who has violated good faith with respect to the subject of the claim. The purpose of the doctrine, as explained in *Colby Furniture Company, Inc. v. Belinda J. Overton* is to prevent a party from obtaining relief when that party’s own wrongful conduct has made it such that granting the relief would be against equity and good conscience. *COLBY FURNITURE COMPANY, INC. v. Overton*, 299 So. 3d 259 - Ala: Court of Civil Appeals 2019. The Respondents came to the court complaining of seller breach and demanded the sellers specifically perform due their wrongful actions, when they themselves committed the most critical and material breach, abandoning their *time is of the essence*

contract and allowing it to expire at their own hand. They then intentionally committed fraud in order to obtain their award for specific performance. Now in this instant case, evidence has been presented that proves the Respondents are undoubtedly not bona fide purchasers, no legal standing before the court for relief, and the order granting them specific performance is void from the beginning.

5) Appellant claims intentional interference with the Appellant's contractual relations with the sellers Ferro, where Appellant was ready, able and willing, had a closing date in January 2013 but was prevented its [sole] right when the Respondents filed a frivolous lis pendens to prevent that sale (**Qualey email**)(**Lis pendens**) and frivolous complaint against the sellers when they had no valid, legal or negotiable sale contract. Further, Appellant was granted specific performance contingent on the termination of the Respondents' contract<sup>7</sup>. (**Order**). Based on validated/documentated evidence in the record, the Respondents' purchase contract terminated November 30,2012. Appellant has been denied its sole right to obtain the property or use of since December 16, 2012 or January 3, 2013 (when she was ready and able to tender payment for but was prevented intentionally by Respondents with no legal right to the property or to purchase.

Due the above, the granting of specific performance to the Respondents is unlawful, based on fraud, and violates many, if not all, the guiding principles of law and equity and maxims of equity. Consequently, the order granting specific performance to the Respondents is void ab initio. "Any order entered without jurisdiction is void ab initio." *Turner v. Malone*, 24 S.C. 398 (1886) (judgment entered without jurisdiction is void ab initio). A contract which contravenes public policy is void, and an action cannot be maintained for either its breach or for inducing its breach. W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 129, at 994 & n. 68 (5th ed. 1984); James O. Pearson, Jr., Annotation, *Liability for Interference With Invalid or Unenforceable Contract*, 96 A.L.R.3d 1294

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<sup>7</sup> Respondents' had full knowledge their contract expired, thus terminated, on November 30, 2012; and that they had no legal right to the property and no ability to tender payment as required by precedent and the principles of law and equity.

(1979). In this case, where the guiding principles of law and equity were not met, the court failed to retain jurisdiction in the Respondents' claim for specific performance. In the same case, where those principles were met, the court retained jurisdiction in the Appellant's claim for specific performance. Complete justice is due. "A court of equity, when it acquires jurisdiction in a claim made for specific performance, can retain jurisdiction, and adjudicate all of the legal rights of the parties to the suit in conformity with justice, equity, and good conscience. The court is bound to see that complete justice is done to the parties before the court.' *Bull v. Fallaw*, 109 S.C. 306, 96 S.E. 147, 148." (emphasis added). An order that fails on its face and is unlawful is void. An unlawful order violates public policy and must be voided.

6) Due the above and repeated here, the Respondents are not bona fide purchasers and are actual trespassers upon real property in this instant case; Consequently, the court in this action lacks subject matter jurisdiction to grant or award anything to the Respondents, including summary judgment, therefore must be reversed.

7) The question of the litigants legal standing in this instant case arises out of the court's lack of jurisdiction in the original action thus this instant action, as such is a genuine issue of material fact where summary judgment is improper and must be reversed.

**4. The Respondents' terminated or expired *time is of the essence* sales contract affects the legal standing of the Respondents, Appellant or jurisdiction of the courts.**

As argued herein and repeated here, the Respondents' *time is of the essence* purchase contract expired at their own hand on November 30, 2012. In this instant action, Respondents testified the contract itself contained unlawful actions and verbiage and the contract is illegal, giving rise to a genuine issue of material fact as to the contract's validity/termination, thus this court's and the equity court's lack of subject matter jurisdiction to award anything to the Respondents, let alone summary judgment in this instant case, especially while discovery on these issues is pending.

Consequently, summary judgment must be reversed, and Appellant's motion to compel and motion for rule to show cause granted [in order to obtain the discovery or ordered discovery pending to address the issues raised in the complaint and the court(s) lack of subject matter jurisdiction]. (59e motion(s))

These are issues at law and equity, issues that violate discovery rules and the rule for Summary Judgment, issues that question the legal standing of the litigants and the jurisdiction and discretion of the lower court in these matters. For these reasons and due the above, the denial of Appellants motions must be reversed. (Order(s))

## **CONCLUSION**

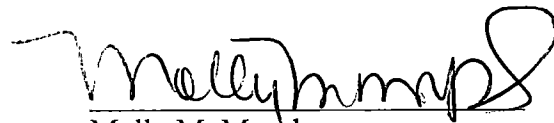
Due to the herein, that the Respondents had no valid and negotiable sales contract after November 30, 2012, thus had and have no legal standing before the courts, are not bona fide purchasers, and that [ordered] critical discovery is still pending, summary judgment is improper and must be reversed.

Further, due Respondents are in contempt of a court order; that the Respondents failed to show good cause shown for being in contempt; that the Respondents took the law into their own hands terminating water service to the Appellants property or trespassing upon easement without notice to the Appellant or prior amendment of their contract; that if the easement is found illegal, the contract has not been amended and still contains the water easement agreement or alleged unlawful language and requires a separate trial to address; that the equity court in the case in which this instant case arises lacked subject matter jurisdiction or any lawful ability to award specific performance to the Respondents thus the order is void from the beginning; that due the equity court's lack of retaining subject matter jurisdiction, this court in which this instant complaint arises lack's subject matter jurisdiction to award [anything] to the Respondents, let alone summary judgment, especially while

discovery is pending on the very dispositive issues ruled on in its order; thus all relief requested herein brief be granted.

Additionally, the order protecting discovery failed to include Appellant's pending motion and the response, which is notice to the court to consider, therefore the motion for protection was not fully heard or considered. The court abused its discretion failing to consider the pending documents. The order and denial of Appellant's 59e motion to compel discovery/response requires reversal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Molly M. Morhew". The signature is written in a cursive, flowing style with a large loop at the end.

Molly M. Morhew, pro se  
285 Wooden Horse Run  
Ridgeland, SC 29936

January 5, 2024

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Honorable Maite Murphy, First Judicial Circuit

Appellate Case No. 2023-000879

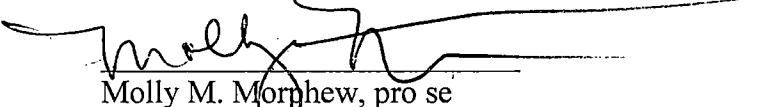
Molly M. Morphew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

CERTIFICATE OF COMPLIANCE

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

  
Molly M. Morphew, pro se  
285 Wooden Horse Run  
Ridgeland, SC 29936  
(843) 514-7299

January 5, 2024

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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Honorable Maite Murphy, First Judicial Circuit

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Appellate Case No. 2023-000879

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SC Court of Appeals

Molly M. Morpew, Appellant,

v.

Stephen Dudek and Doreen Cross, Respondents.

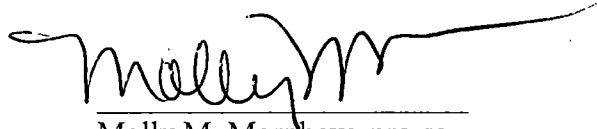
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CERTIFICATE OF SERVICE

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I, Molly M. Morpew, Appellant, pro se for said case, hereby certify that I have, on this date indicated below, served counsel below with an Appellants REPLY BRIEF, CERTIFICATE OF SERVICE, CERTIFICATE OF COMPLIANCE pursuant Rule 208(b), and its DESIGNATION OF MATTER to be included in Record on Appeal, by mailing a copy of same via United States Mail, postage prepaid and return address clearly indicated on said envelope, to counsel at the following address:

**Zachary Closser, Esquire**  
**P.O. Box 40578**  
**Charleston, SC 29423-0578**  
**Attorney for Respondents:**  
Stephen Dudek  
Doreen Cross



---

Molly M. Morphey, pro se

January 5, 2024

January 6, 2024

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29211

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JAN 09 2024  
SC Court of Appeals


Re: Appellate Case No. 2023-000879  
Molly M. Morphew v. Stephen Dudek and Doreen Cross

Dear Ms. Kitchings:

Please find enclosed Appellants REPLY BRIEF, the CERTIFICATE OF SERVICE, CERTIFICATE OF COMPLIANCE, and its DESIGNATION OF MATTER to be included in Record on Appeal, to be recorded and filed.

Also enclosed is a copy of above to be kindly recorded and returned in the self-addressed, stamped envelope.

Thank you and very truly yours,

  
Molly Morphew, pro se

Cc: Zachary Closser, Esq.

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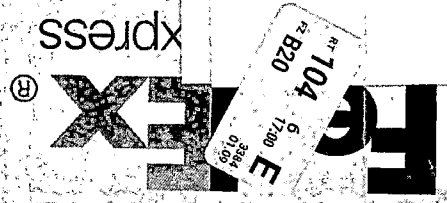
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