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SC Court of Appeals

AMENDED INITIAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

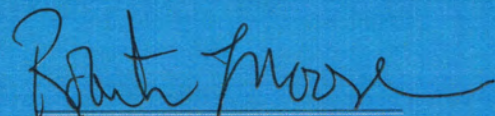
Appellate Case No. 2024-000557

Roberta Moore, ..... Appellant,

v.

Rebecca Giesler, ..... Respondent.

AMENDED INITIAL BRIEF OF APPELLANT



Roberta Moore  
3194 Pine Bluff Way  
Indian Land, South Carolina 29732  
(803) 524-1842

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT ON MARCH 8<sup>TH</sup>, 2024 WHEN COUR CASE CONTINUED BASED ON JUDGE'S DISPOSITION ON JULY 25, 2023 FOR REASONABLE EVIDENCE TO PROVE BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT?
  
2. BASED ON COURT RULES AND PROCEDURES, COUNSEL FOR THE RESPONDENT FAILED TO MEET COURT ORDERED TIMELINE FOR FILING FINAL PAPERWORK, WHICH IN ESSENCE IS THE SAME REASON SHE WAS GRANTED SUMMARY JUDGEMENT.
  
3. DID THE JUDGE ERR IN GRANTING SUMMARY JUDGMENT WHEN THE RESPONDENT FAILED TO INCLUDE ALL LEGAL CONTRACTS IN QUESTION THAT WERE A PART OF THE COURT FILING IN HER REQUEST FOR SUMMARY JUDGMENT?
  
4. DID COUNSEL ERR IN FORMAL PAPERWORK SUBMITTED WHERE SHE INDICATED THAT THERE WERE NO OBJECTIONS IN COURT WHEN A LIST OF NOTARIZED OBJECTIONS WERE GIVEN TO HER AND THE COURT AT THE

TIME OF THE PROCEEDING? ALL INTERROGATORIES THAT WERE ASKED AND ANSWERED IN WRITING WERE ALL A PART OF PUBLIC RECORD AND HAD BEEN SUPPLIED TO THE RESPONDENT PREVIOUSLY AND WAS UNNECESSARY AND DUPLICATIVE.

### STATEMENT OF THE CASE

This is an action against Respondent, Rebecca Giesler for relief sought in for Breach of Contract and Breach of Contract accompanied by a Fraudulent Act. The circuit court granted the Respondent's motion to dismiss based on failure to respond to interrogatories. Appellant seeks reversal of the judgment in that the Interrogatories Request was duplicative in nature and the Respondent already had all of the documentation which had been provided previously. Also, the Respondent was given a written list of objections by the permission of the court which was notarized. (List provided to The Honorable Judge Brian Gibbons, Respondent's Legal Counsel, and included in Designation of Matter)

On April 24<sup>th</sup>, 2023, the Appellant initiated and action against the Respondent in regards to the binding mortgage agreement for sale of real estate property namely a "Real Estate Contract of Sale", "Promissory Note For Sale", "Agreement To Buy and Sell Real Estate Residential", and "Addendum to Prior Contract Which Included The Steps of Foreclosure" (all of which are a part of the Lancaster County Public Index and also included in the Designation of Matter). The

Appellant then filed and amended complaint against the Respondent on June 8<sup>th</sup>, 2023 indicating 8 causes of action.

On June 19<sup>th</sup>, 2023 the Respondent filed a Motion to Dismiss which went before the Honorable Judge Gibbons on July 24<sup>th</sup>, 2023. At which time the motion was taken under advisement and partially granted with the exception of two cause of action. Those actions were Breach of Contract and Breach of Contract accompanied by a fraudulent act. . *(Form 4, Electronically Filed July 25, 2024)*

On February 12<sup>th</sup>, 2024 another Motion to Dismiss was heard by the Honorable Judge Gibbons. At that time the Respondent's counsel and The Honorable Judge Gibbons was given a written list of objections to the Respondent's Interrogatories which the lack thereof was the basis for the request for dismissal.

On March 5<sup>th</sup>, 2024, the judge granted a motion for summary judgement with the stipulation for the Respondent to prepare a formal order with 10 days. The Respondent failed to meet the timeline mandated by the court. *(Form 4, Electronically Filed March 5<sup>th</sup>, 2024 included in Designation of Matter)*

Not only did the Respondent fail to meet the court mandate. Also, there was still fraudulent actions that were still in question pending that needed to be ruled on. *(Form 4, Electronically Filed July 25<sup>th</sup>, 2024 included in Designation of Matter)*

## ARGUMENTS

S.C. App. Ct. R. 3.4

*“A lawyer shall not:*

*(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;*

*(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;*

*(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;*

*(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party.”*

In this case, the Respondent concealed the contractual agreement that was signed by all parties and relative to foreclosure procedures for the property. (*Exhibit D – Addendum to Prior Contracts*)

SC Code § 16-17-640 (2012)

“Any person who verbally or by printing or writing or by electronic communications:

*(1) accuses another of a crime or offense; (2) exposes or publishes any of another's personal or business acts, infirmities, or failings; or (3) compels any person to do any act, or to refrain from doing any lawful act, against his will; with intent to extort money or any other thing of value from any person, or attempts or threatens to do any of such acts, with the intent to extort money or any other thing of value, shall be guilty of blackmail and, upon conviction, shall be fined not more than five thousand dollars or imprisoned for not more than ten years, or both, in the discretion of the court.”*

In this case, the Respondent and her legal counsel both put in writing letters of demand giving the ultimatum of paying over \$100,000 more than the contracted amount for the home or being forced to leave. *(Correspondence Pg 1 and P4, included in the Designation of Matter)*

SC Code § 16-13-240

*“A person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of a:*

*(1) felony and, upon conviction, must be fined not more than five hundred dollars and imprisoned not more than ten years if the value of the property is ten thousand dollars or more;*

*(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;*

*(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days.”*

In this case the Respondent sought to defraud Appellate by trying to force a new Purchase Agreement on her with the threat of losing home if she did not sign. *(Correspondence Pg 1 and Correspondence Pg 4 included in the Designation of Matter.)*

SC Code § 32-3-10

*“Agreements required to be in writing and signed.”*

In this case all agreements were in writing and signed by all parties. Yet Respondent is not disclosing in Motion to Dismiss, Addendum to Contract, Foreclosure Procedure. *(Exhibit D included in the Designation of Matter)*

SC Code § 39-5-10 (2023)

*"Trade" and "commerce" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.*

The Respondent entered a binding Real Estate Contract for Real Estate Property which at the time of contract, it still had a mortgage lien on it which was unlawful and constitutes and unfair trade practice. *(Transcript Dated July 24<sup>th</sup>, 2023, violates Dodd-Frank Act, Page 10, lines 5-23 included in the Designation of Matter)*

SC Code § 37-22-110

**SECTION 37-22-110**

*(2) "Act as a mortgage lender" means to engage in the business of making or servicing a mortgage loan for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, including soliciting, processing, placing, or negotiating a mortgage loan.*

The Respondent acted as a Mortgage Lender which based on the law, because their was an outstanding lien against the house at the time of mortgage, it was unlawful for her to do so.

Dodd Frank Act

*"If the loan will be secured by a property that the borrower will use for residential purposes, then the person who arranges the loan is defined as a "loan originator," and must have a mortgage originator license. Seller-financers must be licensed mortgage*

*originators unless they qualify for one of the two exceptions, which will be discussed below.”*

Respondent originating loan and was not a licensed mortgage originator when mortgage contract was originated. This hindered the process of getting Appellant’s name on the deed in order for taxes to be reduced and billed to the Appellant. *(Transcript Dated July 24<sup>th</sup>, 2023, page 10, lines 5-19 included in the Designation of Matter)*

#### Penal Code 523

*Penal Code 523 PC addresses extortion by sending a letter that threatens*

- *to injure the person,*
- *to accuse the person of a crime, or*
- *to reveal a damaging secret about the person.*

The Respondent and the Respondent’s counsel both sent threatening letters which fall in line with the rules governing extortion because of the demand to pay approximately \$90,000 more for the property. *(Correspondence 1 and Correspondence 4 from Respondent and Respondent’s legal counsel.)*

#### SC Rule 26

*“The frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought;”*

The interrogatories for which the case was dismissed were duplicative. All documents requested had already been provided and were part of the Public Index. Some of which were a

part of Respondent's filings. (Transcript from February 12<sup>th</sup>, 2024, page 6 – line 25, and page 7 – lines 1-3)

SC Rule 56

*“(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.”*

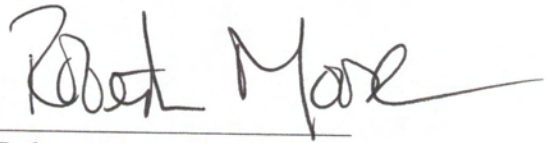
Respondent should not have been entitled to a summary judgment because there was a genuine issue related to Breach of Contract with A Fraudulent Act in which the Appellant was entitled to judgment.

## CONCLUSION

For the reasons stated along with the fact that the Respondent's Counsel contacted the Honorable Judge Brian Gibbons and the Clerk of Circuit Court Ex Parte, this Court should reverse the judgment of the Circuit Court and this case should be ruled in favor of the Appellant. The Respondent also indicated that the Honorable Judge Brian Gibbons signed a new order but Appellant was never notified about a new order being sent over to him nor it being signed.

July 29, 2024

Respectfully submitted,

A handwritten signature in black ink that reads "Roberta Moore". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.

---

Roberta Moore  
3194 Pine Bluff Way  
Indian Land, SC 29707  
(803) 524-1842  
Appellant

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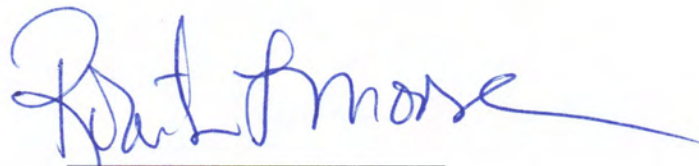
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PROOF OF SERVICE

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I certify that I have served the REVISED INITIAL BRIEF on Rebecca Giesler by depositing a copy of it in the United States Priority Mail, postage prepaid on July 29<sup>th</sup>, 2024 addressed to her attorney of record, Jennifer M. Cloud, 1467 Ebenezer Road, Rock Hill, South Carolina 29732.

July 29, 2024



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Roberta Moore  
3194 Pine Bluff Way  
Indian Land, South Carolina 29732  
(803) 524-1842