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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Shannon M. Phillips, Master in Equity

Appellate Case No. 2023-001897
Case No. 2018-CP-42-01222

Opinion No. 6104
Heard November 7, 2024- Filed March 5, 2025

Erin Burns Anderson……..……...…Respondent,

v.

Rudy Lamar Pearson…….....Appellant.

RESPONDENT'S PETITION FOR REHEARING

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INTRODUCTION

Pursuant to Rules 221(a) and 224, SCACR, Respondent respectfully submits this Petition for Rehearing, requesting that this Court grant rehearing and issue an amended opinion that affirms the appealed order.

ARGUMENTS

I. THIS COURT DID NOT CONSIDER CASE LAW APPLICABLE TO THE FACTS OF THIS CASE INVOLVING ONE PARTY'S INTERFERING WITH ANOTHER PARTY'S PERFORMANCE OF A CONTRACT AND INSTEAD TREATED THIS CASE AS THOUGH IT WERE SOLELY ABOUT CONTRACT MODIFICATION.

This case is not exclusively about an oral modification of a contract. It is primarily about one party's actions contributing to the delay of another party's timely performance of a contract where a contract was already in place, and then using that delay to declare the contract expired.

There is significant case law in South Carolina on contributing to the delay of another's performance of a contract. This case law is set forth in the trial court's order, in Respondent's brief, in Appellant's brief, and was discussed extensively at the hearing. The Court of Appeals' order, however, does not address that law at all, and unless this Court can distinguish those cases, the Court's opinion is wrong.

One of those cases is *Faulkner v. Millar*, 319 S.C. 216, 221, 460 S.E.2d 378, 381 (1995), which states, in part:

> We have previously recognized that a seller will not be permitted to declare a forfeiture of the rights of the buyer for nonperformance of any of the vital terms or conditions of the contract where such nonperformance has been with the express or clearly evinced tacit or implied consent of the seller.

Faulkner v. Millar, 319 S.C. at 221, 460 S.E.2d at 381 (1995).

The *Faulkner* court went on to say, "'The rule formulated in Restatement of the Law, Contracts, Section 300, raises a bar, in appropriate cases, where one party has been lulled into the

belief that his imperfect performance of the contract is satisfactory." *Faulkner*, 319 S.C. at 221, 460 S.E.2d at 381 (1995) (internal citation omitted). In *Faulkner*, there was no examination of the "reasonableness" of the buyer's actions in relying on the silence of the seller's attorney where that silence "led Buyer to believe he would be permitted additional time to conduct further inspections before being required to exercise the termination clause." *Id.* There was no discussion about the Statute of Frauds or about a modification of a contract. [1]

In this case, Mrs. Pearson lulled Dr. Anderson into the belief that because Mr. Pearson wanted to have right-of-way across the property subject to the contract, the Pearsons would provide a survey to Dr. Anderson to give to her lender so that the lender could have the property appraised and issue the loan to Dr. Anderson to purchase the property. Then, while Dr. Anderson was trying to accommodate the Pearsons, Mrs. Pearson said the contract had expired.

What else is this Court doing besides permitting the forfeiture of the rights of the buyer for not closing the sale on time with the clearly evinced tacit or implied consent of the seller? Mrs. Pearson repeatedly said that she would provide the survey to Dr. Anderson prior to the date for closing. Mrs. Pearson said it just 11 days before the closing deadline and confirmed her understanding that Dr. Anderson's lender needed to have to survey and that it would confirm where the Pearsons right-of-way would be. (R. 345).

Dr. Anderson's case is far stronger than the buyer's in *Faulkner*. In *Faulkner*, the buyer relied on the seller's realtor and attorney's failing to object to notice from the buyer that the buyer needed an extension to finish an inspection. In Dr. Anderson's case, Mrs. Pearson actually told Dr. Anderson that Mrs. Pearson would provide the survey to Dr. Anderson showing where Mr.

[1] In *Faulkner*, the contract was for the sale of real property just as the contract was in this case.

Pearson wanted to have a right-of-way on the property he was selling, knowing that Dr. Anderson needed the survey for her loan package if the Pearsons were going to have a right-of-way over it.

This Court appears to accept the fact that Mrs. Pearson, the elderly wife of the property owner, Mr. Pearson, was scheming against Dr. Anderson to mislead her about providing the survey so that Mrs. Pearson could terminate the contract.[2] This Court appeared, at the hearing at least, to be aware that Dr. Anderson was agreeing to allow the Pearsons to provide the survey and have a right-of-way, though the contract did not provide for one, just because Dr. Anderson was kind and accommodating. However, contrary to every case that Respondent has located, this Court came down on the side of the deceiver.

In *Low Country Open Trust v. Charleston Southern University*, 376 S.C. 399, 405, 656 S.E.2d 775, 778 (Ct. App. 2008), a buyer, Low Country Open Land Trust ("Low Country"), brought an action, in part, for specific performance against Charleston Southern University for the sale of real property. Though the date for the contract to close pursuant to the terms of the contract, had passed, the buyer, Low Country, was still trying to gather the information necessary to perform under the contract, and Charleston Southern had said nothing about it. *Id.* at 405, 656 S.E.2d at 778. Weeks later, Charleston Southern's president asked the University's attorney about the status of the contract. The University's attorney contacted Low Country's attorney who advised the University's attorney that Low Country was waiting on the completed title work. Low Country's attorney then emailed the University's attorney seeking an extension of the contract (again, several weeks after the expiration date had passed). Charleston Southern responded with a letter terminating the contract. *Id.*

[2] Appellant never argued at trial or on appeal that Respondent's relying on Appellant was not reasonable because Appellant should not have been trusted.

In ordering specific performance in favor of Low Country, the Court of Appeals held:

> [A] seller will not be permitted to declare a forfeiture of the rights of the buyer for nonperformance of any of the vital terms or conditions of the contract where such nonperformance has been with the express or clearly evinced tacit or implied consent of the seller." (citing *Faulkner,* 319 S.C. at 221, 460 S.E.2d at 381). Accordingly, we find the University's communications and actions after January 31, 2005, demonstrate the tacit or implied consent of the University to Buyer's nonperformance.

Id. at 408, 656 S.E.2d at 780.[3]

Just as in *Low Country*, Dr. Anderson was continuing to check with Ms. Graves about the survey after the deadline had passed because, frankly, it was unthinkable that Mrs. Pearson had been deceiving her about providing the survey when the Pearsons had asked Dr. Anderson to allow the Pearsons to provide the survey, and the survey was for the Pearson's benefit. (R. 0342-0344). Unlike in *Faulkner* and *Low Country*, Dr. Anderson's not closing the contract on time was only because she was trying to do something nice for the Pearsons that they asked her to do. At a minimum, there was clearly evinced tacit or implied consent that Dr. Anderson would not be held to the deadline in the contract.

This Court gave no mention to *Champion v. Whaley,* 280 S.C. 116, 121, 311 S.E.2d 404, 407 (Ct. App. 1984) which held:

> [I]f the seller prevents a condition from occurring, then the condition is excused and his obligation to pay becomes unconditional. *Shear v. National Rifle Association of America,* 606 F.2d 1251 (D.C.Cir.1979). This is simply an instance of the general rule that one who prevents a condition of a contract cannot rely on the other party's resulting nonperformance in an action on the contract. *Farrow v. Martin,* 16 S.C.L. (Harp.) 409 (1824); *Young v. Hunter*, 6 N.Y. (2 Selden) 203 (1852); *Fisher v. Drewett,* (1878) 48 L.J.Q.B. 32.

[3] As will be discussed later, in both *Faulkner* and in *Low Country*, the only thing buyers stood to lose was the value of their contracts.

Champion, 280 S.C. at 120, 311 S.E.2d at 406. As demonstrated in *Faulker* and in *Low Country,* as long as one party interferes with another's timely performance, that is sufficient to prevent the interfering party from creating a forfeiture.

This Court has also held:

> 'A court of equity abhors forfeitures, and will not lend its aid to enforce them.' *Jones v. N.Y. Guar. & Indem. Co.,* 101 U.S. 622, 628, 25 L.Ed. 1030 (1879). 'Equity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice.' *Lane v. N.Y. Life Ins. Co.,* 147 S.C. 333, 374, 145 S.E. 196, 209 (1928). The court has the power in equity to deny or delay forfeiture when fairness demands. *Lewis v. Premium Inv. Corp.,* 351 S.C. 167, 172, 568 S.E.2d 361, 364 (2002).

Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 256, 715 S.E.2d 348, 356 (Ct. App. 2011).

Even if the contract were not modified in accordance with the Statute of Frauds requiring Appellant to provide a survey, South Carolina still requires adherence to the duty of good faith and fair dealing. *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 360, 367, 147 S.E.2d 481, 481 (1966). This Court's opinion acknowledges that Mrs. Pearson created an expectation in Dr. Anderson that the Pearsons would have a survey prepared and sent to Dr. Anderson before the closing date and stalled in doing so. South Carolina has not permitted forfeitures under facts far less egregious than the facts in this case.

Therefore, Respondent respectfully petitions this Court to apply the case law set forth above and issue an amended order affirming the opinion below.

II. TO THE EXTENT RESPONDENT'S CLAIM IS SUBJECT TO THE STATUTE OF FRAUDS, DR. ANDERSON'S PART PERFORMANCE TAKES THIS CASE OUT OF THE STATUTE OF FRAUDS.

This Court correctly notes that Dr. Anderson signed a document called "Transaction Brokerage Agreement" stating that the property she would receive pursuant to the contract was "20 Acres or contingent on new survey." (R. 335). That document also states that the address was

355 Gibbs Rd., Wellford, South Carolina 29385. The parcel located at 355 Gibbs Rd., Wellford, South Carolina 29385 described in the contract, with no right-of-way, was 21.84 acres. (R. 369).

Under the Statue of Frauds, the Transaction Brokerage Agreement was enforceable against Dr. Anderson to allow the parcel to be reduced to 20 acres because Dr. Anderson had signed it. As shown by the survey, prepared on August 17, 2017, while 355 Gibbs Road was subject to the contract, Mr. Pearson took .64 acres out of the control of Dr. Anderson and the contract. (R. 369). When Mr. Pearson sold the adjoining 9.32-acre property,while this action was pending in the trial court, it was with the .64 acres that had been a part of the contract that Dr. Anderson had agreed to release in reliance on Mrs. Pearson's promise to provide a survey to Dr. Anderson. Thus, Mr. Pearson through his counsel, asked Dr. Anderson to amend her lis pendens to show that the subject of the property was only 21.00 acres as set forth on the survey which Mrs. Pearson had, but did not provide to Dr. Anderson, and Dr. Anderson did so (R. 168, 373).

"An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to other." *Graham v. Prince*, 293 S.C. 77, 81, 358 S.E.2d 714, 717 (Ct. App. 1987). If Mrs. Pearson's promise, on behalf of Mr. Pearson to provide a survey to Dr. Anderson prior to closing so that Dr. Anderson could get her loan was in fact a modification of the contract that had to satisfy the Statute of Frauds, Dr. Anderson's performance by reducing in writing the amount of property she would receive under the contract and Mr. Pearson's accepting that property reduction by having the property reduced on the survey he filed, was part performance by Dr. Anderson

("loss to [her]self and benefit to the other.") which obligated Mr. Pearson to provide the survey in a timely fashion or be in breach of the contract. [4]

III. THIS COURT INCORRECTLY ANALYZED AND APPLIED THE REASONABLENESS REQUIREMENT OF THE DOCTRINE OF EQUITABLE ESTOPPEL.

If this Court correctly sees this as a case of contract modification and not a case of interfering with another party's performance, there is at least one fact missing from the Court's analysis. The opinion states: "On September 12, 2017, Graves reported Mrs. Pearson told her they were coming to Spartanburg over the weekend and would record the survey on Monday." The opinion does not discuss that Mrs. Graves responded to Mrs. Pearson on September 12, 2017 saying: "Okay I think you should be satisfied with the survey before it is recorded, then we can send the survey to the lender,"**and Mrs. Pearson responded, in part: "Right. That was the purpose of giving up an acre."** (R. 345). The Monday following September 12, 2017 was September 18, 2017, which was 11 days before the closing was to take place.

How is it not reasonable to read Mrs. Pearson's response as saying that the survey would be filed so that it could be given to the lender, and that Mrs. Pearson understood that the importance of the survey she had promised to provide was that it would show where the right-of-way would be?

This Court, using 20/20 hindsight and knowing now that Mrs. Pearson intended to deceive Dr. Anderson, holds that Dr. Anderson should have known in real time that this elderly person, who has been presented throughout this matter as a good person who was just trying to do right, was in fact scheming to get out of the contract by misstating her intentions right up to the time of

[4] This Court may affirm for any ground appearing in the record on appeal. Rule 220(c), SCACR.

closing. This Court states that Ms. Graves indicated to Dr. Anderson that Mrs. Pearson was stalling, but that conclusion does not come from the text messages (R. 337-53), nor is it in Ms. Graves' testimony.

If this Court's conclusion is correct, knowing that Mrs. Pearson said that the survey would be filed on September 12, what was the date that Dr. Anderson should have known that Mrs. Pearson was not going to do what she said? Would that date have left enough time or Dr. Anderson to get her own survey? Appellant provided no evidence on this issue.

Respondent has found no case, nor has one been cited by this Court or any other court where the party claiming estoppel was denied relief where the claimant had relied in good faith on the representation of another party who had the authority to make that representation because the claimant failed to piece clues together that the party making the representation was being deceitful.

There can be more than one reasonable response to a set of facts. South Carolina case law teaches that it is reasonable to rely upon the covenant of good faith and fair dealing, *Commercial Credit Corp.*, 247 S.C. at 367, 147 S.E.2d at 481, and to expect that a person who speaks with the authority to do so will do what he or she says, or will at least not cheat the person who relied. *Southern Development Land and Golf, Co., Ltd. v. South Carolina Public Service Authority*, 311 S.C. 29, 32, 426 S.E.2d 748,750 (1993). Further, even though this Court is effectively saying that it would have acted differently in Dr. Anderson's shoes, that does not mean that the trial judge erred in concluding that Dr. Anderson's actions were reasonable. Although this Court may find facts in accordance with its own view of the evidence, "this broad scope does not relieve the appellant of his burden to show that the trial court erred in its findings. *Ballard v. Roberson*, 399 S.C. 588, 593, 733 S.E.2d 107, 109 (2012). The least this Court should do is explain how the buyers were reasonable in *Faulkner* and in *Low Country,* but Dr. Anderson was not.

IV. THIS COURT'S RULING THAT RESPONDENT CANNOT RELY UPON EQUITABLE ESTOPPEL BECAUSE SHE ONLY LOST THE BENEFIT OF THE CONTRACT IS ERRONEOUS BECAUSE THE PARTIES ACTUALLY HAD A CONTRACT. [5]

The error in the Court's analysis as to this point is that it overlooks the fact that Dr. Anderson and Mr. Pearson had a contract that this Court is allowing Dr. Anderson to lose. Dr. Anderson was not merely giving up an expected benefit based upon the promise of Mr. Pearson's agent, Mrs. Pearson. That would have been the case if the only contract at issue here were for Mrs. Pearson to provide a survey. Dr. Anderson, however, gave up the rights to the contract she already had in reliance on Mrs. Pearson's promise to provide a survey. That absolutely is detrimental reliance.

In *Collins Music, Co. v. Cook*, 281 S.C. 580, 316 S.E.2d 580 (1984), Collins argued that it had detrimentally relied upon an oral promise of defendants for them to assume a prior contract by not having sued under the prior contract. This Court rejected that argument because Collins Music had not given up that right, and, in fact, could still sue under the prior contract. *Id.* at 584, 316 S.E.2d at 420-21. Based upon other case law in this state, if Collins Music's reliance had resulted in its losing its rights under another contract, then it would have been found to have detrimentally relied on the actions of the defendants.

In this case, in reliance on Mrs. Pearson's stating that the Pearsons would provide the survey, Dr. Anderson did not take steps to obtain her own survey excluding the right-of-way that the Pearsons wanted. That is a change of position in reliance upon the statements of Mrs. Pearson, and this Court's decision will cause Dr. Anderson to lose her rights under the contract she had with Mr. Pearson.

[5] Respondent pointed out it her Response to Plaintiff's Motion to Alter or Amend that Plaintiff/Appellant did not raise this argument at trial.

In *Faulkner*, all that the buyer was going to lose were his rights under the contract as written because he gave up those rights in reliance on the silence of the seller when the buyer asked for more time. The same thing occurred in *Low Country*. All the Plaintiff had given up were its rights under the contract in reliance on the conduct of the Defendant which made the Plaintiff believe it had more time to close. What made that reliance detrimental was that Plaintiff already had a contract with Defendant. That was not the case in *Collins Music.*

In *Florence Printing Co. v. Parnell,* 178 S.C. 119, 182 S.E.313 (1935), the South Carolina Supreme Court held that, assuming that a written agreement for the purchase of stock fell within the Statute of Frauds, an oral promise by the seller that he would not insist on enforcing the time of performance set froth in the contract estopped him from attempting to use the Statute of Frauds to do so. Just as in *Faulkner, Low Country,* and the case now before the Court, the parties already had a contract, and in those cases, reliance that would cause the plaintiffs to lose the value of those contracts that were already in place was sufficient detrimental reliance to prove estoppel. In this case, after the contract had been entered into, Dr. Anderson went about applying for and obtaining the loan and paying the earnest money, just as the plaintiff did in *Faulkner.* This Court's ruling as to this issue is clearly erroneous.

V. THIS COURT'S DISCUSSION OF THE "TIME IS OF THE ESSENCE CLAUSE" IGNORES APPLICABLE LAW.

With no discussion at all, this Court states "Pearson argues the master erred in granting specific performance where the contract included a "time is of the essence" clause, …" And this Court agreed with Mr. Pearson.

However, controlling law provides:

> Moreover, even were we to find the present contract to create an option, [which operates as a time-is-of-the-essence contract] the Sellers are estopped to complain. We have previously recognized that a seller will not be permitted to declare a

> forfeiture of the rights of the buyer for nonperformance of any of the vital terms or conditions of the contract where such nonperformance has been with the express or clearly evinced tacit or implied consent of the seller.

Faulkner, 319 S.C. at 221, 460 S.E.2d at 381.

In an unpublished case, *Dudek v. Ferro,* No. 2014-002633, 2017 WL, 128702*,* (S.C. Ct. App. 2017), the South Carolina Court of Appeals affirmed the master in equity's order of specific performance for the sale of real property involving a time-is-of-the-essence clause, quoting 61 Am Jur. *Proof of Facts* § 325 (2001) as follows:

> Ordinarily, a contract for the sale of land containing a clause that 'time is of the essence' must be performed by the date fixed in the contract or the contract is no longer viable."); *id.* ("This general rule is, however, subject to the limitation that such a contract may nevertheless be specifically enforced if the failure to perform within the designated time results from the act or fault of the party against whom specific performance is demanded."); *id.* ("Accordingly, where a contract expressly states that time is of the essence—such that performance by the purchaser within a specified time is a condition precedent to the seller's duty to perform his part—and the purchaser has been caused to delay his performance beyond the specified time by the request or agreement or other conduct of the seller, the purchaser can enforce the contract in spite of the seller's delay.
>
> *Dudek v. Ferro*, No. 2014-002633, 2017 WL 128702, at *1.

Even without cases completely contradicting this Court's conclusion, why would using a "time is of the essence" clause be allowed to enhance one's efforts to cheat another out of a contract pursuant to the principles of equity?

VI. THIS COURT IMPROPERLY APPLIED THE MERGER CLAUSE AND THE NON-RELIANCE CLAUSE IN THE CONTRACT AND THE PAROL EVIDENCE RULE TO STATEMENTS MADE AFTER THE CONTRACT HAD BEEN ENTERED INTO AND WHERE THE STATEMENTS DID NOT ALTER, VARY OR EXPLAIN THE CONTRACT.

The Court's opinion relies upon a quote from a law review article which misstates the parol evidence rule. Contrary to the implications of that quote, the parol evidence rule, merger clauses, and non-reliance clauses absolutely do not prevent the admission of evidence of conversations or discussions that occurred after a contract was entered into. "The parol evidence rule prevents the

introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument. *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 471, 581 S.E.2d 496, 502–03 (Ct. App. 2003) (emphasis added)(internal citations omitted).

The primary discussions at issue in this case took place after the contract was entered into. (R. 340-48). All of the discussions that this Court discusses in its opinion about the reasonableness of Dr. Anderson's reliance concern discussions after the contract had been entered into. Further, the contract as signed was a fully-formed, completed valid contract. Discussions about simply providing the survey did not contradict, vary or explain the written instrument. Had Mrs. Pearson said, in a timely fashion, that the Pearsons had decided not to change the extent of the property being conveyed and would not be providing a survey, Mr. Pearson offered no evidence that Dr. Anderson could not have closed the contract on a timely basis. Therefore, the parol evidence rule, the merger clause and the non-reliance clause do not apply to these facts in any event.

VII. THIS COURT INCORRECTLY SHIFTED THE BURDEN OF PROOF TO RESPONDENT TO PROVE HER ABILITY TO PERFORM THE CONTRACT AFTER APPELLANT HAD INTERFERED WITH RESPONDENT'S PERFORMANCE.

This Court held, contrary to the record in this case, that Dr. Anderson did not present evidence that she had the ability to perform her part of the contract at the time of closing or within the five-day grace period. Dr. Anderson testified that she could have paid for the property without a loan if she had had to. (R. 0170). The trial court found that Dr. Anderson had the ability to perform under the contract even if the appraisal had come back lower than necessary to obtain her loan, "which was her right to do." (R. 023). That Dr. Anderson could have performed under the contract without having obtained a loan and that she had the right to do so was not challenged on

appeal.[6] In fact, counsel for appellant argued at the appellate hearing that because Dr. Anderson could have closed the transaction with cash, she acted inequitably. That argument makes no sense, but it at least established that Dr. Anderson had "the ability to perform her part of the contract at the time of closing or within the five-day grace period." She clearly testified that she had the ability to pay $100,000.00, actually several hundred thousand dollars, by the closing date. (R. 0182-83).

Further, saying that Dr. Anderson did not show that she was ready, willing and able to close by presenting evidence that at the time of closing she had obtained other items necessary to close, such as an appraisal or mortgage title insurance[,]" and "did not come forward at the time of closing with the $100,000" is completely contrary to law.

As noted above, in *Champion v. Whaley,* the court held:

> It is sufficient for the plaintiff to present evidence that the defendant's prevention "substantially contributed" to the nonoccurrence of the condition. *See, Shear v. National Rifle Association, supra.* Once he has made such proof, the burden shifts to the defendant. If the defendant can show that the condition would not have occurred regardless of the prevention, then the prevention did not contribute materially to its nonoccurrence and the condition is not excused. This is the rule adopted in the Restatement (Second) of Contracts § 245 (1979), and we approve it as the proper rule in this jurisdiction.

Id. at 280 S.C. at 122, 311 S.E.2d at 407.

Also, as set forth in the trial court's order, Respondent does not have to have tendered the funds to close in order to seek specific performance. (R. 023). *Shay v. Austin,* 466 F. Supp. 2d 664 (D.S.C. 2006) (citing *Speed v. Speed,* 213 S.C. 401, 49 S.E.2d 588, 593 (1948)).

[6] Appellant's argument in his briefs that the contract was contingent on Dr. Anderson's obtaining a loan is also not correct. Obtaining a loan was Dr. Anderson's contingency. Nothing in the contract prohibited Dr. Anderson from simply paying cash. However, there is nothing to suggest that Dr. Anderson would have had any trouble obtaining her loan had the Pearsons not deceived her.

As set forth in the record, the lender said the lender was waiting on the survey to order the appraisal. (R.365). The appraiser had to be hired by the lender. (R. 359). Also, mortgage title insurance is purchased at the closing. It is a completely routine matter. One does not buy mortgage title insurance until one obtains a mortgage. In accordance with *Shay*, Respondent was not required to tender $100,000.00 just to show that she could.

Further, obtaining an appraisal and mortgage title insurance was strictly between Dr. Anderson and her lender. They were not conditions of the contract of sale. Appellant and this Court are simply speculating about the effects of not having the appraisal and mortgage title insurance. Appellant put up no evidence regarding when those had to be obtained or if they could have been waived by the lender.

VIII. THIS COURT IMPROPERLY REFERRED TO A RELEASE WHICH WAS NOT IN THE RECORD, WHICH THIS COURT HAS NEVER SEEN AND OF WHICH THE COURT DOES NOT KNOW THE TERMS, AND WHICH WAS NOT ARGUED BY APPELLANT ON APPEAL.

While the Court's reference to a release does not appear to impact the Court's findings, Appellant did not argue that the release was valid and did not include it in the record on appeal. This Court has not seen the terms of that purported release to understand why it has no legal effect. Therefore, Respondent submits that the Court's order should not refer to it in any way.

CONCLUSION

Based upon the foregoing, Respondent prays that this Court grant a rehearing of this matter and amend its order to affirm the order of the trial court.

March 20, 2025

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Rehearing on Counsel for the Appellant by emailing copies of the petition on March 20, 2025, to the following:

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