



estopped from denying the novation as he performed under the Month-to-Month lease for two years without objection. Defendant further asserts that in two Magistrate Court hearings, the Magistrate previously found and held that the controlling agreement between the parties was a Month-to-Month Lease which, Defendant contends, is the controlling law of the case and has the right to the benefits of the doctrines of res judicata and collateral estoppel. Defendant further asserts that Plaintiff is not entitled to specific performance due to Plaintiff's inequitable conduct. Defendant seeks an order that the Plaintiff has defaulted on the Month-to-Month Rental Agreement and should be evicted and pay rental damages for the unpaid rent.

While the court is sympathetic to both parties financial and personal issues, and it is unfortunate the parties could not resolve their disputes, *Rivers v. Smith*, 2025 S. C. LEXIS 24 (SC February 19, 2025) is controlling authority for this case analysis. *Rivers* provides a framework to review the proper steps when a tenant disputes the landlord-tenant relationship in an eviction action. It is this court's experience that in many former cases, if a tenant raised title, the Magistrate Judge would decline jurisdiction. *Rivers* holds otherwise. The tenant merely raising title does not deprive the magistrate of jurisdiction. *Rivers* establishes that the controlling issue is if there is a landlord-tenant relationship. If the Magistrate Judge rules there is a landlord-tenant relationship, then the situation is reversed from former practice, that is, the tenant cannot raise title as defense since the Magistrate Judge has already found a Landlord-Tenant relationship exists.

Here, Magistrate Judge Whittle found twice that the Landlord-Tenant Relationship existed. The second time, Plaintiff moved for Reconsideration. That Motion was denied. The Magistrate Judgment was not appealed. Only the absence of a landlord-tenant relationship defeats Magistrate authority to evict; challenges to title must be litigated elsewhere if that landlord-tenant relationship does not exist.

The parties called no witnesses but personally testified and submitted multiple exhibits.

For the reasons stated below, the Court rules:

**THE COURT FINDS THE FOLLOWING UNDISPUTED FACTS**

1. On or about November 28, 2014, Defendant Gregory Lucas entered into a Residential Lease Purchase Agreement with Dennis and Kristen Gilpatrick, under which the Gilpatrick's agreed to lease about 2 acres of land at 117 Noah Lucas Rd. in Pelion, SC for a term of 96 months beginning November 28, 2022. Defendants Trial Exhibit Number Two. Trial transcript page 91, line 16 to page 97, line 18 to page 98 line 11.
2. The Gilpatrick's promised to pay monthly rent for the premises for \$725 in 96 monthly installments beginning November 28, 2022 of which \$575 was allocated towards the purchase of the land and mobile home for a total purchase price of \$63,200. Defendants Trial Exhibit Number 3; trial transcript page 97.
3. Further under the Residential Lease Purchase Agreement, the Gilpatrick's agreed to pay \$8000 down; maintain renters' insurance until the end of the contract and pay \$400 every February towards house taxes. Defendants Trial Exhibit Number Two.
4. Under the Residential Lease Purchase Agreement, Defendant Lucas agreed that after payment of the full amount of monthly payments by Plaintiff, he would convey a fee simple deed of the property to Plaintiff. Defendants Trial Exhibit Number Two.
5. The Residential Lease Purchase Agreement further stated that upon default of the Gilpatrick's, Defendant Lucas could declare the term of the lease ended and repossess the premises and peacefully expel and remove the tenant and that no monies would be refunded if tenant broke the contract. Defendant's Trial Exhibit Number Two.
6. Plaintiff understood and agreed to all terms of the Residential Lease Purchase Agreement. Trial transcript page 58, line 12 to page 59, line 12; Defendant's Trial Exhibit Number Three; Deposition of Gilpatrick, pp.18-24, Defendant's Trial Exhibit Number 18.
7. Lucas did not pay the 2018 taxes and maintain rental insurance which were breaches of the Residential Lease Purchase Agreement. Deposition of Gilpatrick, pp.28-34, Defendant's Trial Exhibit Number 18.
8. That on October 31, 2019, Lucas informed the Gilpatrick's that they were in breach of the Residential Lease Purchase Agreement contract due to their failure to pay the 2018 taxes by February 2019 as agreed and failure to maintain rental insurance. Lucas advised the Gilpatrick's that the Residential Lease Purchase Agreement was being terminated and they were given 90 days' notice to move or eviction would be filed. Defendant's Trial Exhibit Number 4; trial transcript page 104, line 11 to page 105 line 20.

9. That on November 6, 2019 and November 7, 2019, Mr. Lucas offered Mr. Gilpatrick a six-month lease to avoid eviction and grant time for Mr. Gilpatrick to obtain a loan for the purchase price of the home Defendants Trial Exhibits Number 5, 6 and 7; trial transcript, page 105 to page 109 line 23.
10. That on January 28, 2020, Mr. Gilpatrick agreed to enter into a new Month-to-Month Rental Agreement and agreed to sign the Month-to-Month Lease that was emailed him on January 28, 2020. Mr. Gilpatrick's email stated "I agree to the terms and to conditions of the Month-to-Month Rental Agreement" Defendant's Trial Exhibit Number 8. Trial transcript page 110 line 13 to page 115 line18; page 73, line 13 to page 76, line 22.
11. Mr. Lucas provided Mr. Gilpatrick with a copy of the Month-to-Month Lease to review. Defendant's Trial Exhibit Number Nine; trial transcript page 115 line 19 to line 24.
12. Mr. Gilpatrick did not qualify his acceptance of the Month-to-Month Lease and was not threatened to enter into the Month-to-Month Lease. Deposition of Gilpatrick, page 49, line 9; Defendants Trial Exhibit Number18; trial transcript page 73, lines 3-18.
13. Mr. Gilpatrick was aware that he could have sought legal remedies rather than to sign the Month-to-Month Lease. Deposition of Gilpatrick, page 48, line 11. Defendants Trial Exhibit Number 18; trial transcript page 120 lines 4 -21.
14. That as of January 28, 2020, the date of the parties entering into the new Month-to-Month Lease, Plaintiff had paid the agreed-upon monthly payments of \$750 from November 28, 2014 to October 1, 2019, of which \$575 was applied towards the purchase price per the Residential Lease Purchase Agreement. The total amount of \$41,925 was paid towards the purchase price of \$63,200. Defendants Trial Exhibit Number 11. Trial transcript page 116 to page 119 line 12 to line 21; page77, line24 to page 78, line 9; Plaintiff's Trial Exhibit Two.
15. That Mr. Gilpatrick began to pay the newly agreed-upon \$900 Month-to-Month Rental payments on January 28, 2020, and made the initial monthly rental payments for January 2020 and February 2020. Mr. Gilpatrick acknowledged the Month-to-Month Lease in writing and performed by making the new \$900 rental payment from January 2020 through June 1, 2022. Defendants Trial Exhibit Number 17.
16. That Mr. Gilpatrick did not pay the 2019 taxes as required by the Month-to-Month Lease and on August 25, 2021, Mr. Gilpatrick was given 90-day notice in writing to vacate the property. Defendant's Trial Exhibit Number 12. Trial transcript page 125 line 8 to page 126, line 21.

17. That on or about January 18, 2022, Defendant filed an Application for Ejectment against Mr. Gilpatrick in case number 2022-CV-33-110-0077 alleging that the Month-to-Month Lease had expired and Mr. Gilpatrick was further in breach of the Month-to-Month Lease for failure to pay taxes in February 2019 and for lapses in rental insurance coverage. Defendants Trial Exhibit Number 13.
18. That at the eviction hearing on February 7, 2022, Magistrate Judge Whittle ruled that the parties had terminated the Residential Lease Purchase Agreement and had entered into a Month-to-Month Lease Agreement. The eviction was denied, however, based on the Defendant Lucas's failure to give Gilpatrick the statutorily required 30 days' Notice of Termination of a Month -to-Month Lease. Defendant's Trial Exhibit Number 14.
19. Mr. Gilpatrick did not appeal the final February 7, 2022 oral ruling of Judge Whittle.
20. That on June 12, 2022, Defendant Lucas gave Plaintiff the statutorily required 30 days' Notice of Termination of a Month-to-Month Lease and filed a second Application for Ejectment in case number 2022-CV-33-110-0873. Defendant's Trial Exhibit Number 15.
21. That on August 15, 2022, an eviction hearing was held and Judge Whittle reaffirmed that the previous ruling that the parties had terminated the Residential Lease Purchase Agreement and entered into a Month-to-Month Lease Agreement but transferred the case to Circuit Court based on the motion to amend by Mr. Gilpatrick's attorney. Defendant's Trial Exhibit Number 16.
22. On July 1, 2022, Plaintiff filed suit asserting the first cause of action for specific performance of the Residential Lease Purchase Agreement, a second cause of action for damages for breach of contract and filed a *Lis Pendens* over the entire 4 acre tract. Plaintiff did not join Kristin Gilpatrick in the action.
23. Plaintiff paid Month-to-Month rental payments of-\$900 from January 28, 2020 through June 1, 2022, and the total amount of \$27,000. Defendants Trial Exhibit Number 17.
24. On October 13, 2023, Defendant filed its Answer and Counterclaims.
25. That by Quit Claim dated December 1, 2023, Kristin Gilpatrick conveyed whatever interest she had in the November 28, 2014 Residential Lease Purchase Agreement to Dennis Gilpatrick. Plaintiff's Trial Exhibit Number 3.
26. That by Consent Order filed December 6, 2023 civil actions number 2022-CP-32-02217 and 2022-CP-32-0294 were consolidated.
27. An Order of Reference was filed August 23, 2023.

28. This matter was tried before the Master in Equity on May 21, 2025. Plaintiff's counsel and Defendant's counsel stipulated to the admissibility of all offered exhibits.
29. When Plaintiff's case ended, Defendant moved for and was granted a directed verdict/nonsuit as to Plaintiff's cause of action for damages.

### **DISPUTED FACTS**

**1. The parties dispute whether a binding novation was entered into by the parties in November 2019.**

Plaintiff argues that he was coerced into entering into the Month-to-Month Rental Agreement, that there was no consideration for the agreement, and that the asserted breaches of the Residential Lease Purchase Agreement were not material.

Defendant argues that Plaintiff's breaches of the Residential Lease Purchase Agreement were material as the failure to maintain insurance and reimburse Defendant for property taxes was expressly required by the Residential Lease Purchase Agreement and exposed Defendant to financial risk and loss, and were therefore material breaches of the specified duties of Plaintiff under the Residential Lease Purchase Agreement.

The Court finds that the elements of a novation were met and that Plaintiff unequivocally consented to the novation and the new Month-to-Month Rental Agreement in writing as required by Defendant. The court finds that the breaches asserted by Defendant were material. The Court further finds that the novation was supported by adequate consideration in the form of mutual promises and the forbearance of eviction litigation. The Court finds that the parties did enter into a novation by which the Residential Lease Purchase Agreement was terminated and a new Month-to-month Rental Agreement was agreed upon. The Court finds that the elements of a binding novation existed between Plaintiff and Defendant. The Court also finds that Plaintiff performed under the new Month-to-Month Rental Agreement for two years without complaint and is equitably estopped from denying its existence.

**2. The parties dispute whether Plaintiff and/or his ex-wife are entitled to the equity of redemption.**

Plaintiff contends that both he and his ex-wife Kristin Gilpatrick are entitled to the equity of redemption and may redeem the property by paying any outstanding sums.

Defendant contends that the right of redemption was surrendered by Plaintiff when he voluntarily agreed to the novation and the extinguishment of the Residential Lease Purchase Agreement. Defendant contends that Plaintiff's ex-wife transferred any rights of redemption she may have had in the property when she executed the quit claim deed stating that she release and forever quitclaimed under Dennis Gilpatrick all of her right title and interest in the Residential Lease Purchase Agreement dated November 28, 2014.

The Court finds that the Defendant Dennis Gilpatrick surrendered any right of redemption when he voluntarily extinguished the Residential Lease Purchase Agreement and entered into a Month-to-Month lease Agreement, which he maintained for over two years. The Court further finds that the ex-wife, Kristen Gilpatrick, also released and surrendered her right of redemption because of the quitclaim deed in which she conveyed “whatever interest she had in the November 28, 2014 Residential Lease Purchase Agreement”.

**3. The parties dispute whether the Magistrate Court had authority to rule on the issue of agreement between the parties.**

Plaintiff argues that the Magistrate’s Court lacked jurisdiction to make a ruling as the agreement between the parties.

Defendant argues that the Magistrate Court had authority to make an initial ruling as to whether it had jurisdiction.

The Court finds that under the recent authority of *Rivers v. Smith*, 2025 S. C. LEXIS 24 (SC February 19, 2025) ,the Magistrate’s Court had appropriate authority to decide that it had jurisdiction to consider the issue of the agreement between the parties and to make a finding that the controlling agreement between the parties was a month-to-month lease.

**4. The parties dispute whether the ruling of the Magistrates Court was a final, binding order.**

Plaintiff contends that the Magistrate’s Court ruling was not a final, binding order.

Defendant contends that the Magistrate’s Court ruling was a final, binding order and is the law of the case.

The Court finds that the Magistrate’s Court ruling that the binding agreement between the parties was a Month-to-Month Lease is a final binding order that is the law of this case. Plaintiff’s argument that the ruling is dicta is not persuasive. The finding of the landlord-tenant relationship is paramount to the next finding the case had to be dismissed since the 30 day notice was not followed or jurisdictional amount was exceeded. If there was no landlord-tenant relationship, there would be no 30 day or jurisdictional statutory notice or amount to follow.

**5. The parties dispute whether Plaintiff has the right to an order of specific performance.**

Plaintiff argues that he has the right to an order of specific performance compelling the Defendant to perform under the Residential Lease Purchase Agreement and convey clear title to 2 acres of land to the Plaintiff.

Defendant argues that Plaintiff is barred from specific performance as he has not fully performed, is guilty of inequitable behavior and that the Residential Lease Purchase Agreement was terminated by mutual agreement. Defendant argues that Plaintiff has not made all of the payments required under the Lease Purchase Agreement, failed to pay the property taxes and failed to maintain rental insurance. Defendant argues that Plaintiff is guilty of inequitable behavior in misleading Defendant by stating he agreed to the new month-to-month lease agreement but is now disavowing the agreement.

The Court finds that Plaintiff has no right to specific performance as the Residential Lease Purchase Agreement was terminated by the mutual agreement of the parties and the parties entered into a novation in which a Month-to-Month Lease was entered into. By such actions Plaintiff surrendered his right of redemption. Further, Plaintiff did not fully perform as required by the Residential Lease Purchase Agreement which also bars specific performance and, finally, Plaintiff is guilty of inequitable behavior which further bars specific performance.

**6. The parties dispute whether Defendant has the right to an order of eviction.**

Plaintiff argues that the controlling agreement between the parties is a Residential Lease Purchase Agreement and not a Month-to-Month Lease and therefore eviction is inappropriate.

Defendant argues that the controlling agreement between the parties is a Month-to-Month Lease and Plaintiff has breached the lease by failure to pay for over two years and that Defendant is therefore entitled to an order of eviction.

The Court finds that the controlling agreement between the parties is a Month-to-Month Lease and that the Plaintiff's breach of lease for failure to pay the rental payments agreed-upon and Defendant is therefore entitled to an order of eviction.

**7. The parties dispute whether Defendant has the right to an award of damages for unpaid rent.**

Plaintiff argues that the controlling agreement between the parties is a Residential Lease Purchase Agreement and not a Month-to-Month Lease and no damages are due.

Defendant argues that the controlling agreement between the parties is a Month-to-Month Lease and Plaintiff has breached the lease by failure to pay for over two years and that

Defendant is entitled to an order of damages for \$30,600 constituting rent from July 1, 2022 through and including May 1, 2025.

The Court finds that the controlling agreement between the parties is a Month-to-Month Lease and that the Plaintiff's breach of lease for failure to pay the rental payments agreed-upon and Defendant is entitled to an award of damages for unpaid rent for \$30,600 constituting rent from July 1, 2022 through and including May 1, 2025.

**8. The parties dispute whether the *Lis Pendens* filed by Plaintiff was proper.**

Defendant argues that filing the *Lis Pendens* over the entire 4 acres was an abuse of process because the parties agreement only concerned 2 acres and at the time of filing the *Lis Pendens*, Plaintiff had agreed to substitute a Month-to-Month Lease Agreement for the Residential Lease Purchase Agreement.

Plaintiff argues there is no contradiction between the approximately 2 acres and the actual 4 acres as specifically reference for the property address is recorded and even if the Defendant created any ambiguity, it is construed against the Defendant as a drafter of the installment land sales contract.

The Court finds that filing the *Lis Pendens* was improper and an abuse of process as the parties only agreement concerned 2 acres and that at the time of filing the *Lis Pendens*, Plaintiff had agreed to substitute a Month-to-Month Lease Agreement for the Residential Lease Purchase Agreement.

**CONCLUSIONS OF LAW**

1. Jurisdiction is proper before the Lexington County Master pursuant to the Order of Reference filed with this Court on December 8, 2023.
2. The Appellate Court scope of review for legal actions is primarily limited to the correction of errors of law. The South Carolina Constitution and statutory provisions, such as S.C. Const. Ann. Art. V, § 5 and S.C. Code Ann. § 14-3-330, establish that appellate courts, including the South Carolina Supreme Court and Court of Appeals, review legal issues without deference to the lower court's legal conclusions. However, factual findings by the trial court are generally upheld unless they are clearly erroneous or unsupported by evidence S.C. Const. Ann. Art. V, § 5, S.C. Code Ann. § 14-3-330, State v. Asbury, 328 S.C. 187, State v. Sweat, 379 S.C. 367, Houston v. Deloach & Deloach, 378 S.C. 543.
3. The appellate Court scope of review for an equitable action allows the court to review both factual and legal issues de novo, allowing it to make its own findings based on the preponderance of the evidence. McKinney v. Pedery, 413 S.C. 475, Lewis v. Lewis, 392 S.C. 381, Taylor v. Taylor, 434 S.C. 307.

4. "A **novation** is an agreement between all parties concerned for the substitution of a new obligation between the parties with the intent to extinguish the old obligation." *Wayne Dalton Corp. v. Acme Doors, Inc.*, 302 S.C. 93, 96, 394 S.E.2d 5, 7 (Ct. App. 1990) (citing *Ophuls & Hill Inc. v. Carolina Ice & Fuel Co.*, 160 S.C. 441, 158 S.E. 824 (1931)). There must be an intention to create a **novation**. *Adams v. B & D, Inc.*, 297 S.C. 416, 377 S.E.2d 315 (1989). There can be no **novation** unless both parties so intend. *Id.* "The circumstances attending the transaction alleged to be a **novation** must show the intention to substitute a new obligation in place of the existing one." *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 72, 620 S.E.2d 86, 92 (Ct. App. 2005).
5. The Court concludes that Plaintiff and Defendant entered into a novation extinguishing the Residential Lease Purchase Agreement and substituting a Month-to-Month Lease.
6. Under South Carolina law, a contract is formed when there is an offer, acceptance, valuable consideration. *Hennes v. Shaw*, 397 S.C. 391, 725 S.E.2d 501 (Ct. App. 2012).
7. In South Carolina, if a party to a contract is "in position to learn the contents of the paper and thus fully to protect himself by reading it or having it read," that party's acceptance to the agreement binds it to all terms and conditions, absent actionable fraud. *J.B. Colt Co. v. Britt*, 129 S.C. 266, 123 S.E.2d 845 (1924).
8. "The consideration to support an agreement need not of necessity be a pecuniary one, nor even a beneficial one to the person promising. If it be a loss or even an inconvenience to the promisee, the relinquishment of a right, as the discharge of a debt, or the postponement of a remedy, as the discontinuance of a suit, or a forbearance to sue it is enough. *Timmons v. Boyd*, 89 S.C. 11, 71 S.E. 298 (1911).
9. The Court finds no persuasive evidence of coercion or duress and that Plaintiff Gilpatrick agreed to enter into the Month-to-Month Agreement to avoid an eviction lawsuit. The Court finds the mutual promises and the forbearance of the litigation to be sufficient consideration to support the Month-to-Month Lease Agreement.
10. The Court finds that the parties agreed to a novation by which they terminated the Residential Lease Purchase Agreement dated November 28, 2014, and voluntarily agreed to substitute a Month-to-Month Lease Agreement with clear terms and Plaintiff is bound by its terms.
11. Courts only have the authority to specifically enforce contracts that the parties themselves have made; they do not have the authority to alter contracts or to make new contracts for the parties. *Amick v. Hagler*, 286 S.C. 481, 485, 334 S.E.2d 525, 527 (Ct. App. 1985). Parties have the right to make their own contracts. *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975); *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct. App. 2003). A court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction... See, e.g., *Lewis*

v. Premium Inv. Corp., 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002) ("It is not the function of the court to rewrite contracts for parties.").

12. A mortgagor may waive the right of redemption through a subsequent agreement provided it is made fairly, voluntarily, with full understanding by the mortgagor and for valuable consideration. *Hall v. Hall*, 41 S.C. 163, 19 S.E.305(1894).
13. All releases of the equity of redemption shall be binding and effectual in law. S. C. Code Anno.§ 29 – 3– 10.
14. The Court concludes that Dennis Gilpatrick waived and released the right of redemption by extinguishing the Residential Lease Purchase Agreement dated November 28, 2014, and entering into the Month-to-Month Rental Agreement, which was made fairly, voluntarily with full understanding by Gilpatrick, and for valuable consideration in the form of the forbearance of litigation and the exchange of mutual promises.
15. The Court concludes that Kristen Gilpatrick waived and released the right of redemption by executing a quit claim deed conveying all her right, title and interest in the Residential Lease Purchase Agreement dated November 28, 2014, and expressly stating that the consideration was the previously executed divorce agreement with her and Defendant Dennis Gilpatrick, of which Kristen Gilpatrick acknowledged the receipt and sufficiency thereof.
16. The Court concludes that because of the quit claim deed, Plaintiff is the sole owner of any and all interest arising out of the Residential Lease Purchase Agreement dated November 28, 2014 and his extinguishing of the Residential Lease Purchase Agreement, and entering into the Month-to-Month Rental Agreement is binding upon any interest previously held by Kristin Gilpatrick.
17. In South Carolina that, “in order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Gibson v. Hryzikos*, 293 S.C. 8, 358 S.E.2d 173 (Ct. App. 1987) ...*King v. Oxford*, 282 S.C.307,318 S.E.2d 125(Ct. App.1984).
18. “Unclean hands precludes a Plaintiff from recovering in equity if he acted unfairly in a manner that is the subject of the litigation to the prejudice of the Defendant” *First Union Nat. Bank of South Carolina v. Soden*, 333S.C. 554, 511 S.E.2d 372 (Ct. App. 1998). Intentional misleading actions constitute unclean hands. *Ingram v. Kasey’s Associates et al.* 340 S.C. 531 S.E.2d 287 (2000).

19. The Court concludes that Plaintiff has not established the elements of specific performance as the novation extinguished the Residential Lease Purchase Agreement and substituted a Month-to-Month Lease. Also, at the time of the novation and the entering into the Month-to-Month Agreement, Plaintiff had failed to fully perform the terms and conditions of the Residential Lease Purchase Agreement. Plaintiff is also estopped from seeking specific performance because he acted with unclean hands in misleading Defendant by promising he agreed to the month-to-month lease and then later disavowing same. The Court further finds that Plaintiff acted with the improper ulterior motive of filing a *Lis Pendens* over greater property than ever discussed between the parties.
20. A Magistrate's Court is not deprived of the authority to conduct an eviction proceeding simply because the tenant claims [that the underlying contract is installment land sales contract] rather, the magistrate court must first answer the primarily factual question of whether a landlord-tenant agreement exists between the parties. If the Magistrate's Court find that it does then the magistrate may proceed to determine whether tenant breached the agreement and, if so whether eviction is warranted" *Rivers v. Smith*, 2025 S. C. LEXIS 24 ((SC February 19, 2025).
21. Under South Carolina law a magistrate must first resolve the question of whether there a contract between the parties, express or implied which created the relationship of landlord and tenant. *Rivers v. Smith*, 2025 S. C. LEXIS 24 (SC February 19, 2025).
22. The Court concludes that the Magistrate's Court had authority to determine what contract governed the relationship between Plaintiff and Defendant and in determining that the Residential Lease Purchase Agreement had been terminated and a Month-to-Month Lease Agreement had been substituted.
23. A final ruling in South Carolina refers to a judgment that resolves all issues in a case, leaving nothing further for the court to determine. *Fullmer v. Cain*, 380 S. C. 466, 670-S.E.2d 652(2008).
24. The Court concludes that at the February 7, 2022 eviction hearing and again at the August 15, 2022 eviction hearing, Magistrate Judge Whittle made a binding, final ruling that the agreement between the parties was a month-to-month lease Agreement and not the Residential Lease Purchase Agreement. The denial of an order of eviction was procedural and did not alter the final ruling on the main issue of the case.
25. "The proper action against a maliciously filed *Lis Pendens* is under abuse of process or malicious prosecution." *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128 (2014).
26. The Court concludes that the *Lis Pendens* against all 4 acres was filed improperly and not in good faith and constitutes an abuse of process.

27. A tenant may be ejected upon application of the landlord or his agent when (1) the tenant fails or refuses to pay the rent when due or when demanded, (number two) the term of tenancy or occupancy is ended, or (3) the terms or the conditions of the lease have been violated SC Code of Laws Section 27-37-10.
28. The Court concludes that a landlord-tenant relationship exists between Defendants and Plaintiff and that Defendant has breached the Month-to-Month Lease by failing to pay rent when due or demanded thus entitling Defendant to judgment on its counterclaim for an order of ejectment.
29. If the Rental Agreement is terminated, the landlord has a right to possession and for rent and a separate claim for actual damages for the breach of the Rental Agreement and reasonable attorney's fees SC Code of Laws Section 27-40-750.
30. The Court concludes that Defendant has the right to judgment on its counterclaim for unpaid rent for \$30,600 representing rent from July 1, 2022 through and including May 2025.

IT IS ORDERED THAT:

1. Plaintiff's cause of action for specific performance is denied.
2. Defendant's cause of action for a declaratory judgment declaring that Plaintiff and Defendant entered into a novation extinguishing the Residential Lease Purchase Agreement and substituting a month-to-month lease is granted.
3. Defendant's cause of action for ejectment is granted. Plaintiff shall vacate the property within 21 days of the entry of this order.
4. Defendant's cause of action for damages for unpaid rent is granted. Judgment for \$30,600 shall be entered against Plaintiff.
5. The Lexington County Register of Deeds is hereby ordered to cancel Plaintiff's *Lis Pendens* as to the property.

AND IT IS SO ORDERED.

PRESIDING JUDGE'S SIGNATURE TO FOLLOW



Lexington Common Pleas

**Case Caption:** Dennis Gilpatrick VS Gregory Lucas

**Case Number:** 2022CP3202217

**Type:** Master/Order/Other

AND IT IS SO ORDERED.

S/JUDGE JAMES O. SPENCE-3068