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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

James O. Spence, Circuit Court Judge

Case No. 2022-CP-32-02217

Dennis Gilpatrick.....Appellant,

v.

Gregory Lucas.....Respondent.

Appellate Case No. 2025-001607

INITIAL BRIEF OF APPELLANT

October 24, 2025

*s/ Rolf M. Baghdady*  
Rolf M. Baghdady / SC Bar # 0464  
Rolf M. Baghdady, P.A.  
118 Cobblestone Court  
Chapin, S.C. 29036-9705  
(803) 345-7653  
E-mail: rolf@rolfbaghdady.com  
Attorney for Appellant

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STATUTES

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## STATEMENT OF ISSUES ON APPEAL

1. Did the Master err in failing to find Kristin Gilpatrick, Plaintiff Dennis Gilpatrick's former spouse, had a one-half ( $\frac{1}{2}$ ) real estate interest in the right of redemption in the Installment Land Sale Contract that she could and did convey to Plaintiff Dennis Gilpatrick by quit claim deed that he now owns?
2. Did the Master err in failing to find that Kristin Gilpatrick's transfer of the one-half ( $\frac{1}{2}$ ) real estate interest under quit claim deed dated December 1, 2023 and recorded December 6, 2023 was subsequent to any agreement or court action to which Plaintiff Dennis Gilpatrick was a party?
3. Did the Master fail to find that Installment Sale Contracts are similar to mortgages in their right of redemption in South Carolina affording the owner, Plaintiff Dennis Gilpatrick, of what was Kristin Gilpatrick's one-half ( $\frac{1}{2}$ ) of an equity of redemption in an Installment Land Sale Contract to redeem a default by paying the amount due before a foreclosure sale?
4. Did the Master err in failing to credit all payments Plaintiff Dennis Gilpatrick made to Defendant Gregory Lucas to the amount due for Kristin Gilpatrick's interest under the Installment Land Sale Contract?
5. Did the Master err in finding there was any inequitable conduct by Plaintiff Dennis Gilpatrick after he became the owner by quit claim of Kristin Gilpatrick's one-half ( $\frac{1}{2}$ ) interest?
6. Did the Master err in applying a general breach of contract standard in reviewing the

facts related to the novation instead of the heightened burden of proof on the Landlord/Seller Defendant Gregory Lucas, thereby seeking to deprive the Buyer/Tenant, Plaintiff Dennis Gilpatrick, of his equity interest, in determining his conduct to be inequitable?

7. Did the Master err in determining that Plaintiff Dennis Gilpatrick is not entitled to specific performance of Kristin Gilpatrick's one-half ( $\frac{1}{2}$ ) interest for failure to pay the redemption amount before a foreclosure sale?
8. Did the Master err in finding failure to pay taxes or rental insurance was a material default?
9. Did the Master err in finding that the filing of the lis pendens was malicious prosecution and abuse of process?

#### STATEMENT OF THE CASE

The proceedings in this case began with a Rule to Vacate in Swansea Magistrate's Court, Plaintiff Gregory Lucas v. Defendant Dennis Gilpatrick (2022-CV-321100077). That case was dismissed in favor of Defendant Dennis Gilpatrick. Thereafter, the case was followed by the filing of the action in this appeal in the Court of Common Pleas captioned as Plaintiff Dennis Gilpatrick v. Defendant Gregory Lucas (2022-CP-32-02217) filed on July 1, 2022 [Index] which sought specific performance or damages for breach of the Installment Land Sale Contract over approximately two (2) acres of real property to include a mobile home located at 117 Noah Lucas Road described on the lis pendens. Defendant Gregory Lucas answered and counterclaimed, denying Plaintiff Dennis Gilpatrick's claims, claiming entitlement to declaratory judgement as to its novation and termination, and seeking rents as damages. Defendant Gregory Lucas's filed his Rule to Vacate in Magistrate's Court July 19, 2022 [Index].

The Magistrate's Court Rule to Vacate matter was transferred to a Circuit Court case

captioned as Gregory Lucas v. Dennis James Gilpatrick, Civil Action No:2022-CP-32-02944.

Both Circuit Court actions were consolidated into Dennis Gilpatrick v. Gregory Lucas (2022-CP-32-02217) [Order of Consolidation]. Order of Reference was filed on December 8, 2023 [order of reference].

The matter was tried May 21, 2025 and judgment was entered July 30, 2025 denying Plaintiff Dennis Gilpatrick specific performance and finding for Defendant Gregory Lucas for declaratory judgment ~~that~~ and there was a novation of the Installment Land Sale Contract into a month-to-month tenancy, granting a writ of ejectment (not at issue on this appeal), judgment for damages in the amount of \$30, 600 against Plaintiff Gilpatrick for unpaid rent, and ~~cancellation~~ cancellation of the lis pendens [Order]. The Notice of Appeal was filed August 11, 2025 [Notice of Appeal].

#### STANDARD OF REVIEW

Appellate Court scope of review for equitable action is the authority to find facts in accordance with its own view of the preponderance of the evidence. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

#### ARGUMENTS

- I. BECAUSE KRISTIN GILPATRICK, PLAINTIFF DENNIS GILPATRICK'S FORMER SPOUSE, HAD A ONE-HALF (½) REAL ESTATE INTEREST IN THE RIGHT OF REDEMPTION IN THE INSTALLMENT LAND SALE CONTRACT THAT SHE COULD AND DID CONVEY TO PLAINTIFF DENNIS GILPATRICK BY QUIT CLAIM, THE MASTER ERRED IN FAILING TO FIND THAT PLAINTIFF DENNIS GILPATRICK OWNS THAT RIGHT OF REDEMPTION.

Kristin Gilpatrick, Plaintiff Dennis Gilpatrick's former spouse, and Plaintiff Dennis Gilpatrick each obtained a real property interest in the Installment Land Sale Contract at issue [Installment Land Sale Contract]. In South Carolina Residential Land Sale

Contracts, the purchaser/tenant has a right of redemption. *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 568 S.E.2d 361 (S.C. 2002). Plaintiff's former spouse, Kristin Gilpatrick, could transfer the right of redemption. S.C. Code § 36-2-210 *State v. Laval*, 4 McCord 336 (1827). Plaintiff Dennis Gilpatrick acquired her right of redemption. [Quitclaim Deed].

- II. BECAUSE KRISTIN GILPATRICK'S TRANSFER OF THE ONE-HALF (½) REAL ESTATE INTEREST UNDER QUIT CLAIM DEED DATED DECEMBER 1, 2023 AND RECORDED DECEMBER 6, 2023 WAS SUBSEQUENT TO ANY AGREEMENT OR COURT ACTION TO WHICH PLAINTIFF DENNIS GILPATRICK WAS A PARTY, THE MASTER ERRED IN FAILING TO FIND THE FACT OF HIS PROPER OWNERSHIP OF THAT INTEREST.

There was no court action or agreement among the parties in dispute that were adverse to the real estate interest Kristin Gilpatrick conveyed to Plaintiff Dennis Gilpatrick by quitclaim deed dated December 1, 2023 and recorded December 6, 2023 [Quitclaim][The Record]. No novation exist because Plaintiff Dennis Gilpatrick's former spouse, Kristin Gilpatrick, was a necessary party to any novation of the contract and she was not a party to the month-to-month rental agreement between Plaintiff Dennis Gilpatrick and Defendant Gregory Lucas. "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); *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (S.C. App. 2007).

The deed itself indicates that the right was intended to have been conveyed at the divorce, however, the right was not conveyed at that time and conveyance did not take

place until December 1, 2023 [Quitclaim Deed].

- III. BECAUSE INSTALLMENT LAND SALE CONTRACTS ARE SIMILAR TO MORTGAGES IN THEIR RIGHT OF REDEMPTION IN SOUTH CAROLINA IT AFFORDS THE OWNER, PLAINTIFF DENNIS GILPATRICK, OF WHAT WAS KRISTIN GILPATROICK'S ONE-HALF (½) INTEREST OF AN EQUITY OF REDEMPTION IN THE INSTALLMENT LAND SALE CONTRACT, THE MASTER ERRED IN FAILING TO FIND PLAINTIFF DENNIS GILPATRICK HAD THE RIGHT TO REDEEM THE DEFAULT BY PAYING THE AMOUNT DUE BEFORE A FORECLOSURE SALE.

South Carolina courts have long recognized that the relationship between vendor and vendee in an installment land contract is analogous to that of mortgagee and mortgagor. In *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 568 S.E.2d 361 (S.C. 2002), the Supreme Court of South Carolina held that courts of equity may relieve a defaulting purchaser from a strict forfeiture provision in an Installment Land Sale Contract and provide an opportunity for redemption when equity so demand and equity so demands in this case because there is no evidence of any inequitable conduct by Kristin Gilpatrick [The Record]. Therefore, Dennis Gilpatrick has the right to redeem what was once her right.

- IV. BECAUSE KRISTIN GILPATRICK AND HER GRANTEE WITH HER RIGHT OF POSSESSION MADE PAYMENTS REQUIRED UNDER THE INSTALLMENT LAND SALE CONTRACT, THE MASTER ERRED IN FAILING TO CREDIT ALL PAYMENTS PLAINTIFF DENNIS GILPATRICK MADE TO DEFENDANT GREGORY LUCAS TO THE AMOUNT DUE FOR HER INTEREST UNDER THE INSTALLMENT LAND SALE CONTRACT .

South Carolina law provides that tenants in common each hold an undivided interest in the property, which entitles every cotenant to use and possess the entire property in common with the others,

“In the case of cotenancy as in instant case, each tenant has the right in common with a

cotenant to possession of the premises held in common and the possession of one is considered the possession of all. The occupancy of the common property by one of the cotenants is entirely consistent with the existence of the cotenancy and a recognition of the rights of the other cotenants to share the possession.” *Horne v. Cox*, 237 S.C. 41, 115 S.E.2d 513 (S.C. 1960), 515. Therefore, Kristin Gilpatrick and the grantee of her interest, Plaintiff Dennis Gilpatrick, had up until the writ of eviction the right to full possession of the property superior to that of Defendant Gregory Lucas.

Furthermore, the grantee of Kristin Gilpatrick’s right to possession, Plaintiff Dennis Gilpatrick, is entitled to credit for one-half (½) all rents paid for her one-half (½) interest to Defendant Gregory Lucas in the total amount to be credited to the purchase price of \$77,775.00, and this includes a deposit of \$8,000.00 of which \$64,425.00 is credited to the purchase price of the property [Plaintiff’s Exhibit 2][Trial Tr. 32:1 – 33:9][Trial Tr. 49:8-20].

- V. BECAUSE THERE WAS NO INEQUITABLE CONDUCT BY PLAINTIFF DENNIS GILPATRICK AFTER HE BECAME THE OWNER BY QUIT CLAIM OF KRISTIN GILPATRICK’S ONE-HALF (½) INTEREST, THE MASTER ERRED IN FINDING THERE WAS INEQUITABLE CONDUCT BY PLAINTIFF DENNIS GILPATRICK WITH RESPECT TO THAT INTEREST.

All of the Master’s findings of Plaintiff Dennis Gilpatrick’s inequitable conduct occurred prior to his acquisition of Kristin Gilpatrick’s interest [Master’s Order][Record].

- VI. BECAUSE THE MASTER APPLIED A GENERAL BREACH OF CONTRACT STANDARD IN REVIEWING THE FACTS RELATED TO THE NOVATION AND DETERMINING THAT PLAINTIFF DENNIS GILPATRICK’S CONDUCT WAS INEQUITABLE INSTEAD OF THE HEIGHTENED BURDEN OF PROOF ON THE LANDLORD/SELLER DEFENDANT GREGORY LUCAS SEEKING TO DEPRIVE THE BUYER/TENANT, PLAINTIFF DENNIS GILPATRICK, OF HIS EQUITY INTEREST, THE MASTER ERRED.

Novation extinguishing a right of redemption requires strict scrutiny into the unfair treatment of the tenant. Defendant Gregory Lucas's unilateral refusal to accept payments absent the so-called novation and his unilateral declaration that he would not honor the contract triggers an unfavorable view of his attempt to deprive Plaintiff Dennis Gilpatrick of his right of redemption. Persuasively, North Carolina's public policy does not look favorably upon efforts to deprive a debtor and mortgagor of real property of his equity of redemption. See *Wilson v. Fisher*, 148 N.C. 535, 62 S.E. 622, 624 (1908) (holding, *inter alia*, that agreement between debtor and creditor to waive debtor's equity of redemption is void). *Banks v. Hunter*, 251 N.C. App. 528, 796 S.E.2d 361 (N.C. App. 2017), 367.

Assuming arguendo, even if an abusive threat of litigation could constitute a peppercorn of consideration in a regular contract, in this instance it would be unconscionable to put an economically disadvantaged tenant in a particularly weak situation in light of the emotional and financial difficulties which were brought about due to his divorce. Oklahoma law persuasively holds "... a subsequent release or waiver of the equity of redemption will be sustained if supported by a sufficient consideration in the absence of fraud, oppression and undue advantage." *Haynes v. Rosenfield*, 99 Okla. 158, 225 P. 975, (1924).

- VII. BECAUSE THE MASTER DETERMINED THAT PLAINTIFF DENNIS GILPATRICK IS NOT ENTITLED TO SPECIFIC PERFORMANCE OF KRISTIN GILPATRICK'S ONE-HALF (½) INTEREST FOR FAILURE TO PAY ANY SUMS DUE PRIOR TO THE THEIR DETERMINATION AND OPPORTUNITY FOR THE REDEMPTION AMOUNT BEFORE A FORCLOSURE SALE, THE MASTER ERRED.

Logically, requiring full performance prior to a right to redeem and obtain specific performance would destroy the right of redemption afforded to tenant/purchasers in

residential installment land sale agreements.

VIII. BECAUSE ANY FAILURE TO MAINTAIN RENTAL INSURANCE OR PAY TAXES WAS NOT A MATERIAL DEFAULT, THE MASTER ERRED.

There is uncertainty as to whether or not there was a lapse in renter's insurance that was a covenant of the agreement. However, in any case, there was no claim made against the renter's insurance [Trial Tr. 29:16 – 30:4]. Defendant argues there was a lapse [Trial Tr. 104:15-20]. [Defendant's Exhibit 4] Even assuming *arguendo* that the renter's insurance lapsed, such a failure was not a material breach and there were no damages.

Plaintiff Dennis Gilpatrick either made all of the tax payments or they were waived during the relevant time period [Trial Tr. 30:9-14]. Defendant Gregory Lucas testified that Plaintiff did not pay the 2019 taxes as required by the Month-to-Month Lease [Defendant's Trial Exhibit Number 12][Trial Tr. 125:8 – 126:21]. Assuming *arguendo* some amount was due, ~~that~~ any dispute as to small amount of taxes due is not a material breach.

There was no material breach of contract by way of lapse in renter's insurance coverage, nor was there a material breach for failure to pay taxes. "A breach of contract claim warranting rescission of the contract must be so substantial and fundamental as to defeat the purpose of the contract." *Brazell v. Windsor*, 384 S.C. 512, 516-17, 682 S.E.2d 824, 826 (2009). "Thus, a rescission will not be granted for a minor or casual breach of a contract, but only for those breaches which defeat the object of the contracting parties." *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 143-44, 382 S.E.2d 915, 917 (1989). *Palmetto Mortuary Transp., Inc. v. Knight Sys., Inc.*, 424 S.C. 444, 818 S.E.2d 724 (S.C. 2018). Therefore, any damages may be redeemed in connection with the right of

redemption.

IX. BECAUSE THE FILING OF THE LIS PENDENS WAS NOT MALICIOUS PROSECUTION AND ABUSE OF PROCESS, THE MASTER ERRED IN SO FINDING.

The filing of the Lis pendens is legitimate because it is authorized under S.C. Law in cases such as these. SC Code § 15-11-10.

In any case, the notice of pendency is not a lien or encumbrance; it is merely a notice to refer to the pleadings on file which show the actual terms of the Residential Lease-Purchase Agreement and the record title and, therefore, discloses the issues in the pending litigation, particularly the “approx. 2 acres,” which was handwritten in the Residential Lease-Purchase Agreement and the four (4) acres reflected in the property’s record title and in Plaintiff Dennis Gilpatrick’s lis pendens. The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation. *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct.App. 1985); *Wooten v. Seanch*, 187 S.C. 219, 196 S.E. 877 (1938); *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (S.C. App. 2002).

The filing of a Lis pendens is absolutely privileged. “... the filing of a lis pendens is *ABSOLUTELY* privileged in South Carolina. The filing of a lis pendens enjoys the absolute privilege accorded to judicial proceedings.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (S.C. App. 2002) [*emphasis in original*].

#### CONCLUSION

For the reasons stated above, this Court of Appeals should:

1. Reverse of the judgment denying specific performance as to the one-half (½) interest of

2. Kristin Gilpatrick under the Installment Land Sale Contract conveyed to Plaintiff Dennis Gilpatrick dated December 1, 2023 and recorded December 6, 2023;
3. Reverse of the finding that there was any malicious prosecution or abuse of process in the filing of the lis pendens;
4. Reverse the judgment granting damages to Defendant Gregory Lucas for rents in the sum of \$30,600.00;
5. Remand the case to the Master-in-Equity to determine the amount due Plaintiff Dennis Gilpatrick for loss of use of the one-half (½) interest of the real property conveyed from Kristin Gilpatrick, net any sums remaining due under the right of redemption under the Installment Land Sale Contract and enter damages for that amount against Defendant Gregory Lucas; and,
6. Order transfer of a one-half (½) interest in the property described as 117 Noah Lucas Road from Defendant Gregory Lucas to Plaintiff Dennis Gilpatrick.

Respectfully submitted,

October 24, 2025

/s/ Rolf M. Baghdady  
Rolf M. Baghdady / SC Bar # 0464  
Rolf M. Baghdady, P.A.  
118 Cobblestone Ct.  
Chapin, SC 29036-9705  
(803) 345-7653  
E-mail: rolf@rolfbaghdady.com  
Attorney for Appellant