

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

2025 - 001596

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

Martha M. Rivers, Circuit Court Judge

RECEIVED

DEC 08 2025

SC Court of Appeals

Case No. 2023-CP-41-00232

Sandra Holmwood and Hugh Price.....Appellant,

v.

Lisa Molstad.....Respondent

[INITIAL] BRIEF OF APPELLANT

Sandra Holmwood, pro se and
Hugh Price, pro se
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Ward, SC 29166

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INTRODUCTION

This appeal challenges the trial court's July 29, 2025 Order Granting Partial Summary Judgment, which dismissed Appellants' claims for rescission, abuse of process, malicious prosecution, intentional infliction of emotional distress, and defamation. The court erred as a matter of law and procedure by (a) applying the doctrine of merger without giving effect to the parties' contrary intent and contemporaneous written lease executed at closing; (b) treating a narrow guilty plea as dispositive of issues arising from numerous, separate false reports; (c) dismissing a defamation claim based on per se imputations of serious crimes where falsity and malice remain disputed; and (d) granting summary judgment while discovery was incomplete and triable issues of material fact existed. See Argument Sections I–IV, *infra*.

For the reasons set forth herein, Appellants Sandra Holmwood and Hugh Price respectfully request that this Court reverse the grant of partial summary judgment and remand the matter for further proceedings.

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in applying the merger doctrine to treat the two-year Lease as a distinct, extinguished obligation when the March 31 addendum, contemporaneous execution of the Lease and Move-Out Agreement at closing, and express contract language show the lease was integral consideration of the sale?
2. Did the trial court err by holding that a single guilty plea to Harassment (2nd Degree) precludes Appellants' malicious prosecution and abuse of process claims that arise from numerous other and factually distinct false reports and recalled warrants?
3. Did the trial court err in dismissing the defamation claim when statements accusing Mr. Price of dealing drugs and "making meth" were published to law enforcement and the community, are actionable per se, and material disputes exist as to falsity and malice?
4. Whether summary judgment was premature while discovery—particularly depositions and law-enforcement/bodycam/SLED records—remained incomplete and likely to yield material facts.

STATEMENT OF THE CASE

A. Factual Background

Appellants Sandra Holmwood and Hugh Price sold a parcel of real property to Appellee Lisa Molstad. The final terms of the sale, memorialized in a March 31, 2023 addendum and the closing documents, included a two-year leaseback of a portion of the property designated as Lot D for the benefit of Mr. Price. The Lease Agreement and a related Move-Out Agreement were executed contemporaneously with the Deed at the June 1, 2023 closing, forming an integrated part of the overall transaction. (Am. Compl. ¶¶ 8–13).

Within days of closing, Appellee initiated a campaign of harassment and intimidation by making repeated false reports to law enforcement against Mr. Price. These reports included accusations of theft of cookies, painting property without permission, animal cruelty, sabotaging the hot water heater, and, most severely, drug dealing and manufacturing methamphetamine. (Am. Compl. ¶¶ 15–31). This conduct precipitated multiple law enforcement responses, including the procurement of warrants that were later investigated and recalled by the Saluda County Sheriff's Office. Appellee also initiated baseless eviction filings. Body-camera footage from a responding deputy recorded Appellee admitting that her motive in involving law enforcement was to achieve a civil result—namely, the eviction of Mr. Price. (Hearing Tr., June 9, 2025.)

B. Procedural History

Appellants filed an Amended Complaint on December 4, 2023, asserting causes of action for Rescission, Trespass, Nuisance, Abuse of Process, Malicious Prosecution, Intentional Infliction of Emotional Distress (IIED), and Defamation. Discovery was significantly delayed by Mr. Price's incarceration, which resulted directly from Appellee's actions. At the time of the summary judgment hearing, depositions of key witnesses, including Appellee and the involved law enforcement officers, had not been taken, and critical records from the Sheriff's Office, SLED, and the magistrate court had not yet been obtained.

On Appellee's motion, the trial court granted partial summary judgment on July 29, 2025, dismissing the claims for Rescission, Abuse of Process, Malicious Prosecution, IIED, and Defamation. The court left Appellants' claims for Trespass and Nuisance to proceed. This timely appeal followed.

ARGUMENT

A. Standard of Review

An appellate court reviews a grant of summary judgment de novo, applying the same standard as the trial court under Rule 56(c), SCRCP. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate only when "there is no genuine issue as to any material fact and... the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. The evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329, 673 S.E.2d 801, 802 (2009). Summary judgment is a drastic remedy that must be denied if the non-moving party demonstrates the "mere possibility that a genuine issue of material fact exists." *Id.* at 330, 673 S.E.2d at 803.

Furthermore, Rule 56(f), SCRCP, requires a court to deny or defer summary judgment when the non-movant shows that facts essential to justify its opposition are unavailable without further discovery. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

B. The Trial Court Misapplied the Merger Doctrine to an Integrated Sale-Leaseback

The trial court erred in dismissing the rescission claim by finding that the Lease Agreement merged into the Deed. This holding ignores the clear and convincing evidence of the parties' contrary intent and the collateral nature of the leaseback, which was essential consideration for the sale.

1) Governing Law

Under South Carolina law, the doctrine of merger by deed provides that upon delivery and acceptance of a deed, a prior executory contract of sale is ordinarily subsumed into the deed, extinguishing its provisions. Woodlands Site Dev., LLC v. Uhl, 422 S.C. 396, 403, 811 S.E.2d 791, 794 (Ct. App. 2018). However, this doctrine is not absolute and is subject to significant exceptions. The party opposing merger can overcome the presumption by showing, through clear and convincing evidence, either (1) that the parties did not intend for the provisions to merge, or (2) that the contractual provision at issue is a "collateral agreement" independent of the conveyance of title. Wilson v. Landstrom, 281 S.C. 260, 262, 315 S.E.2d 130, 132 (Ct. App. 1984). An agreement is collateral if it does not relate to the "title, possession, quantity, or emblements of the land." *Id.*

2) Application

The evidence before the trial court clearly demonstrated the parties' intent for the two-year leaseback to survive the closing and Deed. First, the March 31, 2023 addendum to the purchase agreement simultaneously added Lot D to the sale, increased the purchase price, and expressly mandated the two-year lease for Mr. Price. This shows the lease was not an incidental term but a bargained-for, material component of the consideration.

Second, the Lease Agreement and a Move-Out Agreement were executed contemporaneously with the Deed at closing and signed by all three parties.

South Carolina courts have long recognized that the execution of

contemporaneous documents demonstrates an intent to create obligations that survive the delivery of a deed. See, e.g., *Woodlands Site Dev.*, 422 S.C. at 404, 811 S.E.2d at 795 (finding no merger where a separate, unrecorded agreement was executed at closing); *Parrott v. Caskey*, 87 S.C. 458, 70 S.E. 3 (1911) (holding a separate agreement regarding timber rights, made at the time of conveyance, did not merge into the deed). The Lease and Move-Out Agreement were not preliminary negotiations; they were final, executed contracts intended to govern the parties' relationship for two years after closing. They are textbook examples of collateral agreements intended to survive the deed. The trial court's application of merger ignored this compelling evidence of contrary intent.

3) Merger Doctrine Does Not Bar Tort Claims

Even if the merger doctrine were applicable to certain contract provisions, the trial court erred by extending it to bar tort claims arising from Appellee's extrinsic misconduct. The doctrine of merger governs the survival of contractual obligations. It does not operate as a shield to insulate a party from liability for intentional torts such as abuse of process, malicious prosecution, or defamation. These claims are not premised on a breach of the antecedent sales contract; they are premised on Appellee's wrongful and malicious conduct that occurred after the contract was executed and after closing. The legal duties Appellee breached—the duty not to maliciously prosecute, abuse the legal process, or defame another—exist independently of any contract.

Dismissing these tort claims on merger grounds was a fundamental misapplication of the doctrine.

4) Relief

Because the Lease was essential consideration for the sale and Appellee's post-closing campaign of harassment directly assaulted this bargained-for exchange, Appellants' request for rescission was improperly dismissed. The evidence creates a genuine issue of material fact as to whether there was such a failure of consideration, due to Appellee's conduct, that rescission is an appropriate remedy. At a minimum, Appellants are entitled to pursue contract-based damages and the attendant tort remedies. The trial court's order should be reversed.

C. The Trial Court Overextended Collateral Estoppel From a Limited Guilty Plea

The trial court erroneously concluded that Mr. Price's guilty plea to a single count of Harassment (2nd Degree) collaterally estopped Appellants' claims for malicious prosecution and abuse of process. This holding improperly treats a narrow plea as a blanket adjudication of every false report Appellee made, contrary to the strict requirements of issue preclusion.

1) Governing Law

Collateral estoppel, or issue preclusion, prevents a party from relitigating an issue that was "actually litigated and directly determined in a prior action." *Beall v. Beall*, 291 S.C. 224, 228, 353 S.E.2d 152, 154 (1987). To successfully assert collateral estoppel, a party must show that the issue in the present action is identical to the issue decided in the prior action, the prior action resulted in

a final judgment on the merits, the party against whom it is asserted was a party (or in privity with a party) to the prior action, and that party had a full and fair opportunity to litigate the issue. S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). A guilty plea can satisfy the "actually litigated" requirement for issues essential to the conviction. See Caddell v. Lexington Cnty. Sch. Dist. One, 296 S.C. 397, 373 S.E.2d 598 (1988).

2) Distinctness of Incidents

The trial court's error was its failure to adhere to the "identical issue" requirement. Mr. Price pleaded guilty to Harassment, 2nd Degree (S.C. Code Ann. § 16-17-430), which requires proof of a "pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose and causes the person... to suffer mental or emotional distress." The plea admits only the statutory elements of that specific offense. It does not, as a matter of law, adjudicate the truthfulness or probable cause behind Appellee's numerous other, factually distinct false reports—including accusations of theft, vandalism, animal cruelty, and, most egregiously, manufacturing methamphetamine.

Each of these false reports constitutes a separate and discrete factual event that could independently support claims for malicious prosecution and abuse of process. The issue of whether Appellee had probable cause to report Mr. Price for "making meth" is not identical to the issue of whether Mr. Price engaged in a "pattern" of harassment. Our courts have cautioned that collateral estoppel

applies only to ultimate facts and not to "evidentiary facts which are merely subsidiary" to the prior determination. Zurcher v. Bilton, 379 S.C. 132, 136, 666 S.E.2d 46, 49 (2008). Treating the harassment plea as dispositive of all of Appellee's separate allegations was clear legal error. See Tunstall v. S.C. Dep't of Motor Vehicles, 387 S.C. 596, 602, 693 S.E.2d 73, 76 (Ct. App. 2010) (holding issue preclusion is a "narrowly drawn doctrine" that requires precise identity of issues).

3) Favorable Termination: Malicious Prosecution

To maintain a malicious prosecution action, a plaintiff must show, inter alia, the termination of the prior criminal proceedings in his favor. Law v. S.C. Dep't of Corr., 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006). A "favorable termination" does not require an acquittal on the merits; it is satisfied when the proceeding is terminated in a manner that reflects on the merits and is not the result of a compromise or procedural irregularity. McKenney v. Jack Eckerd Corp., 304 S.C. 21, 22-23, 402 S.E.2d 887, 888 (1991) (holding that a nolle prosequi can constitute favorable termination).

Here, several of the warrants procured by Appellee were later investigated and formally recalled by the Saluda County Sheriff's Office. The voluntary withdrawal or recall of a warrant by law enforcement upon reinvestigation is compelling evidence of a lack of probable cause and constitutes a favorable termination for the purposes of a malicious prosecution claim. The trial court completely ignored the distinct proceedings related to the recalled warrants, which cannot be barred by a guilty plea to a separate charge.

4) Abuse of Process – Ulterior Purpose

An abuse of process claim requires proof of (1) an ulterior purpose, and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding. *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). The "essence of the tort is the malicious misuse or perversion of the system to accomplish an end not commanded in the judgment." *Id.* The ulterior purpose is typically to "coerce the opposite party to do some collateral thing which he could not legally be compelled to do." *Id.*

The record contains direct evidence of Appellee's ulterior purpose. On body-camera footage, Appellee admitted to a deputy that she intended to use the sheriff and the criminal process to accomplish a civil objective: removing Mr. Price from the property. This admission creates, at a minimum, a genuine issue of material fact as to whether Appellee acted with an improper, ulterior motive. Granting summary judgment in the face of such direct evidence of Appellee's state of mind was improper.

D. The Defamation Claim Was Improperly Dismissed – Per Se Accusations of Drug-Manufacturing and Publication to Third Parties

The trial court erred in dismissing the defamation claim by improperly relying on the unrelated harassment plea to adjudicate the truth of Appellee's accusations that Mr. Price was manufacturing and selling drugs. These statements are defamatory per se, and genuine issues of fact regarding their falsity and Appellee's malice preclude summary judgment.

1) Governing Law

Under South Carolina law, slander is actionable per se if it charges the plaintiff with the commission of a crime of moral turpitude. *Erickson v. Jones*, 376 S.C. 192, 203, 656 S.E.2d 378, 384 (Ct. App. 2007). Manufacturing and distributing controlled substances are crimes of moral turpitude. See *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 86 (1995) (defining moral turpitude as an act of "baseness, vileness, or depravity").

When a statement is defamatory per se, general damages and malice are presumed. *Id.* at 277, 465 S.E.2d at 85. While truth is an absolute defense to defamation, see S.C. Code Ann. § 15-33-10, the burden of proving truth rests on the defendant. Where the falsity of the statement is disputed, the issue is a question of fact for the jury.

2) Application

Appellee's accusations that Mr. Price was "selling drugs" and "making meth" are textbook examples of slander per se. These statements were published to third parties—namely, Saluda County Sheriff's deputies—and were serious enough to precipitate a SLED helicopter investigation. Publication is clearly established. The trial court's reliance on the harassment plea to establish the "truth" of these specific and highly inflammatory allegations was legally and factually unsupported. There is nothing in the record to suggest that the harassment plea had any factual connection to drug manufacturing. Appellee has presented no evidence proving the truth of these particular statements, and

Appellants vigorously contest them. Therefore, a quintessential jury question exists as to their falsity.

3) Malice and State of Mind

Even if the accusations were not defamatory per se, the record contains substantial evidence from which a jury could infer actual malice—that Appellee made the statements with knowledge of their falsity or with reckless disregard for the truth. Appellee's admitted strategy to "get the sheriff... involved" in what she perceived as civil disputes is direct evidence of a malicious state of mind. Her motivation was not to report a crime in good faith, but to harass, intimidate, and evict Mr. Price. South Carolina precedents make clear that where a defendant's state of mind is a key element and is contested, summary judgment is inappropriate. The question of malice is uniquely within the province of the jury.

E. Summary Judgment Was Premature While Discovery Remained Incomplete

The trial court abused its discretion by granting summary judgment while critical discovery was outstanding, thereby violating the letter and spirit of Rule 56(f), SCRPC.

- 1) Rule 56(c) states that summary judgment should be rendered if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." The rule thus presumes that parties will have had an adequate opportunity for discovery. When they have not, Rule 56(f) provides the remedy: "Should it appear from the affidavits of a party opposing the motion

that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had..."

Summary judgment should not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baughman*, 306 S.C. at 112, 410 S.E.2d at 543. The "mere possibility" that further discovery will uncover a factual dispute is sufficient to deny the motion. *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803. Indeed, summary judgment is generally improper when "further inquiry into the facts of the case is desirable to clarify the application of the law." *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995).

2) Application

Here, discovery was in its nascent stages when the court granted summary judgment. Appellants informed the court on the record that discovery was delayed due to Mr. Price's incarceration and that depositions were "barely begun." Crucially, the depositions of Appellee herself, the involved Sheriff's deputies, and other key witnesses had not yet been taken. These depositions are essential to probe Appellee's motives, establish the precise content and context of her reports to law enforcement, and confirm the circumstances surrounding the recalled warrants.

Furthermore, key documentary evidence remained outstanding, including authenticated body-camera footage, complete SLED and Sheriff's Office investigative files, 911 call-for-service logs, and official magistrate court

documents reflecting the recalled warrants. This evidence is necessary to substantiate the falsity of Appellee's reports, the lack of probable cause, and her malicious intent. Granting summary judgment before Appellants had a reasonable opportunity to obtain this essential evidence was premature and unjust. See *Osborne v. Adams*, 346 S.C. 4, 8, 550 S.E.2d 319, 321 (2001) ("The nonmoving party must be given a reasonable opportunity to conduct discovery to develop a factual basis for his claims."). The trial court should have, at a minimum, deferred its ruling pending the completion of targeted discovery pursuant to Rule 56(f).

CONCLUSION AND RELIEF SOUGHT

For the foregoing reasons, the trial court's grant of partial summary judgment was improper. Genuine issues of material fact exist as to every dismissed cause of action, the court misapplied controlling legal doctrines, and the ruling was premature given the incomplete state of discovery. Appellants respectfully request that this Court:

- I. Reverse the trial court's July 29, 2025 Order Granting Partial Summary Judgment as to the First (Rescission), Fourth (Abuse of Process), Fifth (Malicious Prosecution), Sixth (IIED), and Seventh (Defamation) causes of action; and
- II. Remand the case for further proceedings, including the completion of targeted discovery and a trial on the merits.

Respectfully submitted

 12/8/2025

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DECEMBER 8, 2025
~~November 10, 2025~~

 12/8/2025

CERTIFICATE OF SERVICE

8th day of December

I certify that on this ~~10th~~ day of ~~November~~, 2025, a true and correct copy of the foregoing Initial Brief of Appellants was served upon opposing counsel by U.S. Mail, first-class postage prepaid, addressed as follows:

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SC Court of Appeals

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