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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENWOOD COUNTY  
Common Pleas

Roy R. Hemphill, Special Referee

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Case No. 2023-CP-24-00287  
Appellate Case No. 2026-000235

Brian C. Holtzclaw,

Appellant,

v.

Jeffrey K. Gillian and  
Marshall Casey Pfeiffer,

Respondent.

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FINAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

- I. THE SPECIAL REFEREE ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THE SPECIAL REFEREE MADE FINDINGS OF FACT ON DISPUTED ISSUES.
  
- II. THE SPECIAL REFEREE ERRED IN FINDING ANY ORAL AGREEMENT FOR RESPONDENT TO SELL HIS PROPERTY FAILS UNDER THE STATUTE OF FRAUDS BECAUSE THE STATUTE OF FRAUDS IS A PERSONAL DEFENSE AND WAS NOT PLED AS REQUIRED UNDER SCRCP 8(C).
  
- III. THE SPECIAL REFEREE ERRED IN DISMISSING THE BREACH OF CONTRACT CLAIM BY CONCLUDING NEITHER PEART NOR RESPONDENT'S ATTORNEY HAD AUTHORITY TO BIND RESPONDENT TO ANY AGREEMENT, BECAUSE THIS IS A FINDING OF FACT ON A DISPUTED ISSUE.
  
- IV. THE SPECIAL REFEREE ERRED IN FINDING THERE WAS NO EVIDENCE OF THE ESSENTIAL TERMS, SUCH AS PRICE OR CLOSING DATE, AND NO DOCUMENTATION INDICATING MUTUAL CONSENT BECAUSE THERE WAS AMPLE EVIDENCE OF THESE FACTS.

## STATEMENT OF THE CASE

The Appellant, Brian C. Holtzclaw, filed his Complaint against Respondent, Jeffrey K. Gillian, on March 29, 2022, in the Court of Common Pleas in the Tenth Judicial Circuit. Appellant amended his Complaint on May 9, 2022, to name Respondent, Marshall Casey Pfeiffer, as an additional Defendant.

Appellant sought specific performance to purchase a parcel of land or damages for breach of contract. The Respondents jointly filed an Answer to the Amended Complaint on May 27, 2022, in which they denied any relief was due to the Appellant.

The matter was referred to the Special Referee, Roy Hemphill, by Order filed January 31, 2024.

The Respondents filed a Motion for Summary Judgment on April 10, 2024. The Summary Judgment Motion was heard and granted by Order filed November 26, 2025. The Appellant moved for Reconsideration on December 5, 2025.

By Order of the Special Referee, the Motion for Reconsideration was denied on January 14, 2026.

A Notice of Appeal was filed by Appellant on January 23, 2026, and served on the Respondents and the Special Referee.

### **STATEMENT OF THE FACTS**

Prior to this action, David Peart and Jeffrey K. Gillian owned adjoining lakefront lots in Greenwood County. In October 2019, Gillian and Peart signed a contract for Gillian to sell his two lots to Peart. Peart paid Gillian \$2,500 as a down payment.

A title check revealed two tax liens on Gillian's lots, so the sale fell through. Peart sued Gillian in magistrate court for the return of his \$2,500 and obtained a judgment.

Gillian's lots were set to be sold in a mortgage foreclosure sale. A short time before the foreclosure sale, Gillian hired attorney Alicia Compton to file bankruptcy to stop the sale of his lots. Peart was named as a creditor in the bankruptcy and objected to any discharge. As a result, the bankruptcy fell through.

Another foreclosure sale was set for Gillian's lots. Again, Gillian filed for bankruptcy to stop the sale.

During the time Gillian was in bankruptcy proceedings, Peart was in contact with attorney Compton. He expressed a desire to still purchase Gillian's lots. Peart recorded a number of telephone conversations with Gillian's attorney, Compton, in which a sale was established.

Gillian's attorney prepared the necessary documents for the sale of Gillian's lots to Peart's son-in-law, the Appellant, Holtzclaw. A written price was agreed upon, and attorney Crumpton set a closing date. At the last minute, attorney Compton canceled the closing.

Believing he had a valid contract to buy Gillian's lots, Holtzclaw sued for specific performance or breach of contract. He caused to be filed a Lis Pendens.

After the Lis Pendens was filed, Gillian sold the two lots to Pfeiffer by a quitclaim deed. Holtzclaw amended his complaint to name Pfeiffer as a defendant as well as Gillian.

### **STANDARD OF REVIEW**

In *Scott v. McAlister*, 436 S.C. 324, 871 S.E.2d 620 (Ct. App. 2022), the Court of Appeals set out the requirements for summary judgment. The Court of Appeals wrote:

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

“When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP.” *Id.* (quoting *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011)). “A circuit court shall grant summary judgment if ... there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” *Id.* (second omission by court) (quoting Rule 56(c), SCRCP).

“In determining whether a genuine issue of fact exists, a court must view the facts in the light most favorable to the nonmoving party.” *Id.* (quoting *George*, 345 S.C. at 452, 548 S.E.2d at 874). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.”

*Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

## **ARGUMENT I**

### **THE SPECIAL REFEREE ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THE SPECIAL REFEREE MADE FINDINGS OF FACT ON DISPUTED ISSUES.**

A cardinal rule for a court considering a Motion for Summary Judgment is that it does not make factual determinations nor consider the merits of competing testimony. David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

In its Order granting summary judgment, the Special Referee specifically labeled the main paragraph of his Order “Findings of Fact.” (ROA 2) The Special Referee then found the following facts, which were disputed.

1. There was insufficient evidence of a valid agreement to sell the subject property (ROA 2).

The record reflects that the Respondent Gillian, who owned the property, was represented in his bankruptcy by attorney Alicia Compton. Appellant Holtzclaw’s father-in-law, David Peart, was a creditor in the bankruptcy and had numerous dealings with attorney Compton.

In a series of recorded telephone calls, attorney Compton advised Peart that Respondent Gillian was willing to sell his property to Peart (ROA 070). Compton then proceeded to prepare for a closing by ordering a title search of the subject property, in which she stated the buyer was David Peart, the seller was Jeffery Gillian, and it is a cash

sale (ROA 071). She also stated they wanted to close ASAP. Compton then prepared the papers necessary for a closing in which she represented that she was the closing attorney, the agent for title insurance, and was entitled to an attorney's fee (ROA 076 - 105). At the instruction of Peart, the Appellant Holtzclaw was to be the title owner. Later, Compton furnished on a slip of paper the amount Holtzclaw was to bring to the closing, and a closing date was furnished to Holtzclaw (ROA 065). Assuming one's attorney can bind that attorney's client, there is more than a scintilla of evidence that a contract was formed.

2. The Special Referee found as a fact that attorney Compton was the Respondent Gillian's bankruptcy attorney only.

Despite her statements and preparation for a closing, attorney Crumpton was found by the special referee to be limited to representing Gillian in bankruptcy only.

The Special Referee's finding that Compton was not the Respondent Gillian's attorney for the purpose of the sale of Respondent Gillian's property is not supported by Compton's actions and avoids the issue of apparent authority to bind a client (ROA 076 - 105).

The record clearly reflects that Respondent Gillian's attorney conveyed her client's willingness to sell the property to Peart. The Respondent's attorney's message to a title examiner cannot be misunderstood. The property was identified, the seller was Respondent Gillian, the buyer was Peart, the sale was for cash, and the parties wanted to close ASAP.

These statements and other actions by the Respondent Gillian's attorney clearly reflect that attorney Compton was acting for her client outside any bankruptcy proceedings.

The question of whether an attorney can act for a client without that client's knowledge was answered in Lord Jeff Knitting Co., Inc. vs. Mills, 281 S.C. 374, 315 S.E.2d 377 (Ct. App. 1984). While that controversy dealt with an attorney allowing his client to default, the principle was stated to be that the acts of one's attorney binds the client in the absence of fraud or collusion. That principle was followed in Motley v. Williams, 374 S.C. 107, 647 S.E.2d 244 (Ct. App. 2007). In that case, the parties both claimed ownership of the same piece of property. The attorneys proposed a settlement in court for the disputed property to be divided. The court approved the agreement with the parties present. Later, one party repudiated the agreement and claimed he advised his attorney not to settle.

The court upheld the agreement in accordance with the principle the acts of one's attorney binds the client in the absence of fraud or collusion.

The Special Referee ignored the apparent authority of the attorney to bind her client to the sale. There is at least a scintilla of evidence that the Respondent Gillian's attorney negotiated a sale of his property to the appellant.

3. Under its heading "Findings of Fact," the Special Referee excused the recorded telephone conversations of attorney Compton and her preparation for a closing based on her claim she was waiting for a written contract.

Nowhere in the negotiations for the sale does attorney Compton state that the parties needed a written contract. She did not prepare one for her client or present one to the Appellant. As a matter of law, a written contract is not required to sell one's property. Oral agreements to transfer real estate have been enforced in this state. See Parr v. Parr 268 S.C. 58, 231 S.E.2d 695 (1977).

4. The Special Referee found as a fact that there may have been an offer, but there was no evidence of acceptance.

Besides making this finding of fact, the Special Referee ignored the statements and actions of the Respondent's attorney that demonstrate a meeting of the minds. For example, the statement that Respondent Gillian wanted to sell the property to Peart. The attorney's statement to the title examiner that the seller was Respondent Gillian and the sale was for cash and the parties wanted to close ASAP. Finally, the Respondent's attorney furnished the Appellant the amount he needed to bring to the closing — \$125,224.60. The Appellant accepted that price and asked if the Respondent wanted a certified check. With these negotiations finished, a closing date was set by the Respondent's attorney, and the Appellant secured the funds to close. Under these facts there is at least a scintilla of evidence that the attorney for the Respondent and the Appellant had a meeting of the minds through the respondent's attorney.

5. The Special Referee states in his Order, "Moreover, Ms. Compton testified that she had no communications with Plaintiff Holtzclaw."

This statement ignores the fact that Peart directed the Respondent's attorney to place Appellant Holtzclaw's name on the deed, and the attorney listed Holtzclaw as the buyer on her closing documents. Notably, the Special Referee does not say why this fact supports his grant of summary judgment, and the Appellant can find none.

6. The Special Referee goes on to find as a fact that "the Defendants (Respondents) have demonstrated there was no meeting of the minds, no written agreement, and no

communications between Mr. Gillian and Mr. Holtzclaw regarding the sale of the property.”

In considering summary judgment, the court must give the non-moving party all inferences favorable to it.

The statement of Respondent Gillian’s attorney to Peart gives rise to the inference that Respondent Gillian was willing to sell his property to Peart (ROA 070).

The instruction from Respondent’s attorney to the title examiner that Peart is the buyer and Respondent Gillian is the seller, and it is to be a cash sale, gives rise to the inference that Respondent Gillian agreed to sell the property (ROA 071).

Furnishing a price for the sale gives rise to the inference that a sale is to take place for that price (ROA 065).

Naming a closing date for the Appellant certainly gives rise to the inference that a sale is imminent (ROA 065).

## **ARGUMENT II**

**THE SPECIAL REFEREE ERRED IN FINDING ANY ORAL AGREEMENT FOR RESPONDENT TO SELL HIS PROPERTY FAILS UNDER THE STATUTE OF FRAUDS BECAUSE THE STATUTE OF FRAUDS IS A PERSONAL DEFENSE AND WAS NOT PLED AS REQUIRED UNDER SCRCP 8(C).**

In short, the Special Referee ignored the pleading requirement for the Statute of Frauds defense. There is at least an inference that the Respondent Gillian waived this defense (ROA 041).

## **ARGUMENT III**

**THE SPECIAL REFEREE ERRED IN DISMISSING THE BREACH OF CONTRACT CLAIM BY CONCLUDING NEITHER PEART NOR RESPONDENT’S ATTORNEY HAD AUTHORITY TO BIND RESPONDENT TO**

**ANY AGREEMENT, BECAUSE THIS IS A FINDING OF FACT ON A DISPUTED ISSUE.**

The Special Referee's Order states the communications relied upon by the Appellant were exclusively between Peart and attorney Compton, neither of whom had authority to bind Respondent to any agreement. One cannot escape that this is a finding of fact on a disputed issue. No weight is given to the acts of the Respondent's attorney, but her communication gives rise to the belief Appellant was buying Respondent's property, on the apparent authority to do so under the undisputed facts.

**ARGUMENT IV**

**THE SPECIAL REFEREE ERRED IN FINDING THERE WAS NO EVIDENCE OF THE ESSENTIAL TERMS, SUCH AS PRICE OR CLOSING DATE, AND NO DOCUMENTATION INDICATING MUTUAL CONSENT BECAUSE THERE WAS AMPLE EVIDENCE OF THESE FACTS.**

The Special Referee had to ignore the following as to price: The closing documents prepared by the Respondent's attorney, which reflect the price on several required pages, and the slip of paper given to Appellant with the amount he was to bring to the closing. These amounts were the price for the sale of the property (ROA 076 - 105).

A closing date was given to Appellant by the Respondent's attorney. The Special Referee simply ignored that fact.

From all the communications and paperwork, the inferences favorable to the Appellant were that Respondent's attorney negotiated a sale for her client and her client was in agreement (ROA 106 lines 28-29).

**CONCLUSION**

Drawing all the inferences most favorable to Appellant from disputed and undisputed facts, summary judgment was not warranted.

April 23, 2026



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