

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Court of Common Pleas

Charles M. Watson, Jr., Special Referee

Case No. 2025-000569

Greenwood Mills, Inc.,

Respondent,

v.

Rodney White.,

Appellant.

[FINAL] REPLY BRIEF OF APPELLANT

Rodney White
Pro Se Appellant
341 Maxwell Ave
Greenwood SC 29646

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ARGUMENT

Respondent's Initial Brief asserts (1) Appellant preserved no issues for review; (2) the Special Referee properly granted partial summary judgment; and (3) Appellant's remaining arguments fall outside the scope of appellate review. (Respondent's Br. at 6–10.) This Reply Brief responds to those claims.

This appeal turns not on disputed legal theory, but on whether partial summary judgment may stand when the trial court accepted termination and novation without evidence, resolved disputed facts, and disregarded preservation shown in the record. (R. pp.105, 130.)

The November 6, 2024 proceeding was not conducted as a full hearing on the merits. Although Judge Griffith's order of reference contemplated a full hearing, (R. p.9.) the transcript shows the proceeding was used as a procedural mechanism to clear title and accelerate dispossession. (R. pp.113, 117.)

The transcript also confirms that Respondent framed the proceeding as "the motion for summary judgment" at the outset (Tr. Nov. 6, 2024, p. 4, ll. 1–7) (R. p.108) and later reiterated that the motion "deals only with title to the real property" and sought a "judicial confirmation" that the contract "lapsed, terminated, or expired." (Id. p. 13, ll. 3–14.) (R. pp.113, 117.)

At the outset of the hearing, Respondent's counsel acknowledged that Appellant sought "his day in court," whether before the Special Referee or a jury. (Tr. Nov. 6, 2024, p. 9, ll. 10–13.) (R. p.113.) The Special Referee immediately declared: "It's going to be in front of me." (Id. p. 9, l. 14.) (R. p.113.)

Respondent's counsel then conceded a jury request had been made and suggested it could be "deal[t] with later." (Id. p. 9, ll. 15–17.) (R. p.113.) Counsel further stated the purpose of the

proceeding was to judicially confirm that the 2021 contract was over, dissolve the lis pendens, and provide Appellant time to remove his personal property from 341 Maxwell Avenue. (Id. p. 9, ll. 17–22.) (R. p.113.)

These admissions matter because they show the November 6 proceeding was not treated as Rule 56 adjudication of undisputed facts; it was treated as a dispossessive mechanism—while a jury demand and disputed facts remained pending. (R. pp. 105-130.)

ARGUMENT

I. Respondent’s “No Preservation” Argument Is False as a Matter of Law

Respondent argues Appellant “preserved no argument supporting any aspect of this appeal.” (Respondent’s Br. at 6–7.) The record and basic preservation law refute that claim. (R. p.93.)

Preservation is satisfied when an issue is raised to and ruled upon by the trial court. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 23–24, 602 S.E.2d 772, 779–80 (2004). Here, Appellant challenged the procedural posture and the propriety of summary judgment through filed motions and post-order practice, including a Motion for Reconsideration that the Special Referee expressly denied in the Final Order. (See Appellant’s Designation of Matter, Item 26.) (R. pp 81,85-87, 93, 95, 103, 104, 165, 246.)

Respondent’s preservation argument also presumes a properly pending dispositive motion was before the court on November 6, 2024. As shown below, the record does not contain a properly noticed and pending summary judgment motion for that hearing. A party cannot manufacture “waiver” by proceeding on a motion that does not exist in the record and then faulting the opposing party for not objecting to a fiction. (R. P.81, 108, 113, 117, 119, 120, 123.)

Finally, the transcript itself preserved central issues: the existence of a jury request, the stated dispossessive objective of the hearing, and the Special Referee's declaration that the matter would be tried "in front of me" notwithstanding the jury request. (Tr. Nov. 6, 2024, p. 9, ll. 10–22.) (R. p.113.) Those statements bear directly on due process, Rule 39 jury rights, and the integrity of Rule 56 procedure.

II. The November 6, 2024 Hearing Was Conducted Without a Pending Summary

Judgment Motion and in Disregard of Properly Filed Motions

Respondent asserts the Special Referee heard Respondent's "previously filed and outstanding motion for summary judgment" on November 6, 2024. (Respondent's Br. at 7.) That assertion is unsupported by a docket citation and is contradicted by the posture reflected in the designated materials. (R. pp.81, 108, 113, 117.)

A review of the designated record reveals no summary judgment motion set for hearing on November 6, 2024 by filing date, docket entry, or notice. Respondent identifies none. By contrast, Appellant filed a written opposition disputing material facts, along with a Motion for Continuance and a jury trial request—motions that were not ruled upon before the Special Referee proceeded to dispositive adjudication. (See Appellant's Designation of Matter, Items 6, 7, 18–20.) (R. pp. 81, 85-87, 93, 95.)

A court may not conduct a dispositive hearing or grant relief in the absence of a properly noticed and pending motion. Proceeding otherwise deprives the non-moving party of notice and violates due process. *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). (R. Pp. 86, 105-130.)

Respondent's counsel told the tribunal the jury request could be "deal[t] with later," while simultaneously seeking judicial confirmation the 2021 contract was "over" and requesting time for removal of personal property. (Tr. Nov. 6, 2024, p. 9, ll. 15--22.) (R. p.113.) That is structural error: the tribunal effectively foreclosed a properly demanded jury trial without ruling and proceeded as though a dispositive motion were properly before it. (R. p.86.) These defects independently require vacatur because they corrupt the procedural predicate for the partial summary judgment order and prevent meaningful appellate review on a reliable record.

III. Summary Judgment Cannot Stand Under Rule 56 Because Respondent's Defense Depends on Nonexistent Termination Evidence and Disputed Facts

Summary judgment is appropriate only when "there is no genuine issue as to any material fact." Rule 56, SCRCF; *Baughman v. AT&T*, 306 S.C. 101, 104, 410 S.E.2d 537, 538 (1991). In deciding a Rule 56 motion, courts may not weigh evidence, resolve credibility, or draw inferences against the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

Respondent's merits defense assumes (1) a valid breach notice; (2) a valid termination notice; and (3) an undisputed termination of the governing contract(s). (Respondent's Br. at 8--10.) But Respondent points to no termination letter in the record, and Appellant has designated deposition testimony in which the seller denies sending or authorizing the alleged breach/termination letters relied upon to justify termination and novation. (R. Pp. 110, 111, 112, 212, 213 242, 242.)

Even if Respondent disputes that testimony, the dispute itself defeats summary judgment. *Fleming v. Rose*, 350 S.C. 488, 493--94, 567 S.E.2d 857, 860 (2002).

Respondent further argues the lawsuit "itself can be deemed to be termination." (Respondent's Br. at 9.) That argument underscores the Rule 56 problem: termination becomes a litigated inference,

not an undisputed fact, and therefore cannot support summary judgment—particularly where Appellant has contested notice and termination and sought a merits hearing. Indeed, during the hearing the Special Referee announced in advance that the 2021 contract “is going to be a novation” and that termination appeared “cut and dry” based on an unproduced notice. (Tr. Nov. 6, 2024, p. 20, ll. 10–15.) (R. p.124.)

IV. The 2021 Contract Cannot Constitute Novation as a Matter of Law on This Record

Respondent argues the Special Referee properly found the 2021 contract served as a novation. (Respondent’s Br. at 9–10.) But novation requires mutual assent to extinguish an existing obligation and substitute a new one. *Superior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 259, 199 S.E.2d 719, 720 (1973). (R. Pp. 93-103, 109-111, 113, 116, 117, 118, 212, 213, 226-230, 262, 263, 268, 269, 338-345 .)

On this record, mutual assent is disputed. Appellant has consistently maintained the 2021 contract was procured under threat of eviction and misrepresentation, and the seller’s testimony and surrounding communications create, at minimum, genuine issues as to whether the altered 2021 contract was approved and intended to extinguish the 2003 agreement. (R. pp.65, 110, 111, 226-230, 262, 263, 268, 269, 338-345

A contract executed under duress or without the necessary assent cannot operate as a novation as a matter of law. *Regions Bank v. Schmauch*, 354 S.C. 648, 658–59, 582 S.E.2d 432, 437–38 (2003). Where the premise of novation depends on disputed facts and credibility, Rule 56 relief is unavailable. (R. p.124.)

V. Respondent's "Outside the Scope" Argument Misstates Rule 201 and This Court's

Authority; Rule 2 Intervention Is Warranted to Prevent Manifest Injustice

Respondent contends Appellant's remaining arguments are "issues beyond the scope of the summary judgment order" and therefore outside review. (Respondent's Br. at 10.) That position misunderstands both Rule 201, SCACR, and the Court's inherent authority to protect the integrity of its process.

Rule 201 permits correction and supplementation of the record when necessary for meaningful review. When the validity of the judgment itself is challenged—because the judgment rests on assumed termination, disputed novation, and a procedurally defective hearing—appellate review is not confined to labels. See *Chewning v. Ford Motor Co.*, 354 S.C. 72, 79–80, 579 S.E.2d 605, 609 (2003); *Holmes v. Black River Elec. Coop.*, 274 S.C. 252, 255, 262 S.E.2d 875, 877 (1980).

Rule 2, SCACR authorizes this Court to suspend the rules to prevent manifest injustice and to ensure the orderly administration of justice. This case presents the rare circumstances warranting Rule 2 intervention: a dispositive adjudication conducted on an infirm procedural predicate, with jury rights acknowledged but informally foreclosed, and with the judgment then used as a vehicle for dispossession before the merits were tried. (R. Pp. 113, 124)

As Appellant stated in his designated materials: "This case was initiated and adjudicated on a false notice premise (breach/termination), then accelerated through summary judgment despite disputed facts, while the Respondent used possession tactics (evictions) to win in practice before merits were tried—compounded by counsel abandonment that distorted the appellate record. The appellate court must intervene to protect the integrity of its process and return the parties to the posture required by the governing agreement and due process." (R. pp.27-28, 32, 47, 108, 122-122, 226-230, 242.)

VI. Summary Judgment Was Used as a Substitute for Eviction and to Clear Title, Which Independently Warrants Vacatur

The November 6 transcript contains an unusual and highly probative admission: Respondent's counsel stated the proceeding was being used to confirm the 2021 contract was over, dissolve the lis pendens, and provide time for Appellant to remove personal property. (Tr. Nov. 6, 2024, p. 9, ll. 17–22.) (R. pp.113, 117.)

Summary judgment may not be used as a dispossessive mechanism, nor may courts bypass contested merits by using Rule 56 to accomplish practical eviction. When a proceeding is openly used to clear title and effect removal while disputed facts remain, vacatur and remand for a merits hearing are required to protect due process and the integrity of the judicial process. *Hollie v. Ernest Burwell, Inc.*, 371 S.C. 221, 228–29, 638 S.E.2d 415, 419 (Ct. App. 2006). (R. pp.108, 113, 117)

VII. Additional Verbatim Record-Based Argument (Incorporated; Largely Verbatim)

A. The November 6, 2024 Proceeding Was Not a Hearing on the Merits

The Honorable Eugene Griffith ordered a full hearing on the merits. (R. Pp.105-130) The November 6, 2024 proceeding was not conducted in accordance with that order. (R. p.9)

At the outset of the hearing, Respondent's counsel expressly acknowledged that Appellant sought "his day in court," whether before the Special Referee or a jury. (Tr. Nov. 6, 2024, p. 9, ll. 10–13.)(R.p.113.) Despite this acknowledgment, the Special Referee immediately declared: "It's going to be in front of me." (Id. p. 9, l. 14.) (R. p.113.)

Respondent's counsel then conceded that a jury trial had been requested, stating: "I know — I know that the request was made late last night for a jury trial. And we can deal with that later." (Id. p. 9, ll. 15–17.) (R. Pp.86, 113)

Respondent's counsel further stated that the purpose of the proceeding was not adjudication, but instead to "confirm judicial confirmation that the 2021 contract is over," "remove the lis pendens Mr. White filed on the property," and "give him a reasonable amount of time to remove his personal property from anywhere at 341 Maxwell Avenue." (Id. p. 9, ll. 17–22.) (R. Pp.113, 117.) These statements establish, as adjudicative fact, that the November 6, 2024 proceeding was designed to clear title and effect removal, not to adjudicate disputed contractual or equitable rights as ordered by Judge Griffith. (R, p.9.)

Under Rule 56(c), SCRCP, summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court must view the evidence in the light most favorable to the non-moving party. A trial court may not weigh evidence or decide credibility at summary judgment

B. Jay Self's Sworn Testimony Contradicted Respondent's Litigation Narrative

Jay Self, the seller and Respondent's principal, testified under oath that he never sent, authorized, or knew of any breach letter regarding the 2003 contract and never sent or authorized any termination letter regarding the alleged 2021 contract. He further testified that he never discussed, approved, or even knew of the altered 2021 contract that Respondent claims constituted a novation. (Tr. Nov. 6, 2024, pp. 7:6–9; 18:18–25; 19:1–5.) (R. pp.212, 213, 226-230, 242.) These sworn admissions directly contradict Respondent's breach, termination, and novation theories and establish genuine issues of material fact.

C. Summary Judgment Was Explicitly Opposed as Premature

On the record, Appellant’s counsel expressly opposed summary judgment as premature, explaining that forfeitures are disfavored, that Appellant possessed an equitable interest under the totality of the circumstances, that demolition occurred without notice, and that additional factual development was required. (Tr. Nov. 6, 2024, p. 15, ll. 17–25; p. 16, ll. 1–2.) (R. Pp.108, 110-113, 116, 118-121, 123-126.)

D. The Special Referee Announced a Predetermined Outcome Before Ruling

Before resolving disputed facts, the Special Referee announced a predetermined outcome, stating: “In my mind, it seems that the 2021 contract is going to be a novation... That seems cut and dry.” (Tr. Nov. 6, 2024, p. 20, ll. 10–19.) (R. p.113, 124.)

This statement reflects improper fact-weighting and prejudgment at the summary judgment stage.

II. ARGUMENT

A. Appellant Preserved All Issues for Appellate Review

Respondent’s assertion that Appellant preserved no issue for appeal is refuted by the record. The November 6, 2024 transcript placed squarely before the court the existence of a jury demand, (R. P.86.) disputed material facts, and Respondent’s dispossessive objectives. (Tr. Nov. 6, 2024, p. 9.) Appellant’s counsel expressly opposed summary judgment as premature. (Id. p. 15, p. 15, ll. 17–25; p. 16, ll. 1–2.) (R. pp.81, 119, 126.) (R. pp.119, 124-126.)

Following entry of the November 22, 2024 Partial Summary Judgment Order, Appellant timely filed a Motion for Reconsideration raising the same Rule 56 violations and procedural defects. Those issues were preserved through the Designation of Matter, including Item 26. (R.p.93.) No issue before this Court has been waived.

B. No Pending or Properly Noticed Motion for Summary Judgment Existed for the November 6, 2024 Hearing

Respondent repeatedly asserts—both below and on appeal—that the Special Referee heard a “previously filed and outstanding motion for summary judgment” on November 6, 2024. The record does not support that claim. (R. p.108.)

There is no motion for summary judgment contained in Respondent’s Designation of Matter. Nor does the record reflect any notice of hearing, docket entry, or filed motion establishing that a Rule 56 motion was properly pending for adjudication on November 6, 2024. Respondent cites none. The absence of such a motion is dispositive: a court may not grant summary judgment sua sponte or adjudicate a nonexistent motion. See Rule 56, SCRCP. (R. p.108.)

By contrast, Appellant did file a written motion and memorandum in opposition to summary judgment, disputing material facts and expressly arguing that summary judgment (R.p.81.) was premature. That opposition was never addressed, ruled upon, or reconciled with the Special Referee’s subsequent dispositive order.

Proceeding to grant summary judgment without a properly filed and noticed motion—and without ruling on the opposing party’s filed opposition—constitutes reversible procedural error and independently requires vacatur.

C. The Special Referee Committed Reversible Error Under Rule 56

Summary judgment is appropriate only where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56, SCRCF. The November 6 transcript demonstrates that this standard was not applied. (R. p.107-130.)

The Special Referee engaged in discussion and weighing of disputed facts, including Jay Self's deposition testimony denying authorization of termination or novation. (Tr. Nov. 6, 2024, pp. 18–19.) (R.p.242.) Credibility determinations and fact-weighting are strictly prohibited at the summary-judgment stage. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991).

Most critically, the Special Referee announced a predetermined outcome before resolving disputed facts. (Tr. Nov. 6, 2024, p. 20, ll. 10–19.) (R.pp.113, 124) This alone constitutes reversible error under Rule 56 and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

D. Summary Judgment Was Used as a Substitute for Eviction

Respondent's own statements establish that the November 6 proceeding was used to clear title, dissolve a lis pendens, and force Appellant's removal from the property while disputed facts and a jury demand remained pending. (R. P.86, 103, 119, 117.) Summary judgment may not be used as a dispossessive mechanism to accomplish what amounts to eviction without trial. *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 568 S.E.2d 361 (2002); *Wall v. Huguenin*, 305 S.C. 100, 406 S.E.2d 377 (1991).

E. Rule 2, Rule 201, and the Court's Inherent Authority Require Intervention

Rule 201 permits recognition of adjudicative facts not subject to reasonable dispute, including that no Rule 56 motion was pending, that a jury trial (R.p.86.) was requested and acknowledged that

the November 6 proceeding was used to effect removal rather than adjudicate merits, and that judgment was announced in advance. (R.p.124.) Rule 2 authorizes this Court to suspend ordinary procedural requirements to prevent manifest injustice and protect the integrity of the judicial process.

III. Summary Judgment Was Used as a Substitute for Eviction**

Respondent's own statements establish that the November 6 proceeding was used to clear title, dissolve a lis pendens, and force Appellant's removal from the property while disputed facts and a jury demand remained pending. (Tr. Nov. 6, 2024, p. 9, ll. 17–22.) (R. p.113, 117.) Summary judgment may not be used as a dispossessive mechanism to accomplish what amounts to eviction without trial. *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 568 S.E.2d 361 (2002); *Wall v. Huguenin*, 305 S.C. 100, 406 S.E.2d 377 (1991).

IV. Rule 2, Rule 201, and the Court's Inherent Authority Require Intervention

Rule 201 permits recognition of adjudicative facts not subject to reasonable dispute, including that a jury trial was requested and acknowledged, that the November 6 proceeding was used to effect removal rather than adjudicate merits, and that judgment was announced in advance. Rule 2 authorizes this Court to suspend ordinary procedural requirements to prevent manifest injustice and protect the integrity of the judicial process. (R. p.86, 113)

III. ARGUMENT (ADDITIONAL VERBATIM SUBSECTION – INCORPORATED BY REFERENCE)

V. Verbatim Record-Based Argument Demonstrating Preservation, Rule 56 Error, and Dispossessive Use of Summary Judgment

A. The November 6, 2024 Proceeding Was Not a Hearing on the Merits

The Honorable Eugene Griffith ordered a full hearing on the merits. (R.pp.105-130.) The November 6, 2024 proceeding was not conducted in accordance with that order. (R.p.9.)

At the outset of the hearing, Respondent's counsel expressly acknowledged that Appellant sought "his day in court," whether before the Special Referee or a jury. (Nov. 6 Tr. p. 9, ll. 10–13.) (R. p.113.) Despite this acknowledgment, the Special Referee immediately declared: "It's going to be in front of me." (Id. p. 9, l. 14.) (R. p.113.)

Respondent's counsel then conceded that a jury trial had been requested, stating: "I know I know that the request was made late last night for a jury trial. And we can deal with that later." (Id. p. 9, ll. 15–17.) (R. p.113.)

Respondent's counsel further stated that the purpose of the proceeding was not adjudication, but instead to "confirm judicial confirmation that the 2021 contract is over," "remove the lis pendens Mr. White filed on the property," and "give him a reasonable amount of time to remove his personal property from anywhere at 341 Maxwell Avenue." (Id. p. 9, ll. 17–22.) (R. p.113, 117.) These statements establish that the proceeding was designed to clear title and effect removal, not to adjudicate disputed contractual or equitable rights as ordered by Judge Griffith.

B. Jay Self's Sworn Testimony Contradicted Respondent's Litigation Narrative

Jay Self, the seller and Respondent's principal, testified under oath that he never sent, authorized, or knew of any breach letter regarding the 2003 contract and never sent or authorized any

termination letter regarding the alleged 2021 contract. He further testified that he never discussed, approved, or even knew of the altered 2021 contract that Respondent claims constituted a novation. These sworn admissions directly contradict Respondent's breach, termination, and novation theories and, at minimum, establish genuine issues of material fact. (R. p.212, 213, 226-230, 242.)

C. Appellant Preserved All Issues for Appellate Review

At the November 6, 2024 hearing, the existence of a pending jury demand, disputed material facts, and Respondent's dispossessive objectives were placed squarely on the record. (Nov. 6 Tr. p. 9.) Appellant's counsel expressly opposed summary judgment as premature, arguing that disputed facts and equitable considerations required trial. (Id. p. 15, ll. 17–25; p. 16, ll. 1–2.) (R. p.119-120.) Following entry of the November 22, 2024 Partial Summary Judgment Order, Appellant timely filed a Motion for Reconsideration raising the same Rule 56 violations and procedural defects. No issue before this Court has been waived. (R. p.93.)

D. The Special Referee Committed Reversible Error Under Rule 56

The Special Referee weighed disputed evidence and announced a predetermined outcome, stating: "In my mind, it seems that the 2021 contract is going to be a novation... That seems cut and dry." (Nov. 6 Tr. p. 20, ll. 10–19.) (R. p.113, 124.)

Credibility determinations and fact-weighting are prohibited at the summary-judgment stage, and this statement alone constitutes reversible error.

E. Summary Judgment Was Used as a Substitute for Eviction

Respondent's own statements establish that the November 6 proceeding was used to clear title, dissolve a lis pendens, and force Appellant's removal from the property while disputed facts and a jury demand remained pending. (Nov. 6 Tr. p. 9, ll. 17–22.) (R. p.113, 117.) Summary judgment may not be used as a dispossessive mechanism to accomplish what amounts to eviction without trial.

E. The November 22, 2024 Partial Summary Judgment Order Fatally Tainted the November 27, 2024 Counterclaims Hearing, Rendering It Inconsistent with Judge Griffith's Order for a Full Hearing on the Merits

The Honorable Eugene Griffith expressly ordered a full hearing on the merits. That mandate required adjudication of liability, defenses, and counterclaims in a procedurally neutral posture, without pre-judgment of dispositive facts. (R. p.9.)

That did not occur.

Instead, the sequence of proceedings demonstrates that the merits of this case were effectively decided before the November 27, 2024 counterclaims hearing ever occurred. (R. pp.113, 117, 124.)

At the November 6, 2024 proceeding, Respondent's counsel expressly framed the purpose of the hearing as one designed to (1) obtain judicial confirmation that the 2021 contract was over, (2) dissolve Appellant's lis pendens, and (3) give Appellant time to remove his personal property from the premises. (Tr. Nov. 6,

2024, p. 9, ll. 17–22.) (R. p.113.) Those objectives are dispositive in nature and go to the core merits of ownership, possession, and contractual rights.

The Special Referee then announced a predetermined legal conclusion during the November 6 hearing, stating: "In my mind, it seems that the 2021 contract is going to be a novation... That

seems cut and dry.” (Id. p. 20, ll. 10–19.) (R. p.124.) This statement occurred before resolution of disputed facts and before entry of any order.

Those conclusions were subsequently memorialized in the November 22, 2024 Partial Summary Judgment Order, which declared the 2021 contract terminated and resolved the foundational issues of title and possession. (R. p.4.)

By the time the court convened the bifurcated counterclaims hearing on November 27, 2024, the core factual and legal issues underpinning Appellant’s counterclaims—contract validity, termination, possession, and equitable rights—had already been adjudicated. The November 27 hearing (R. p.131.) therefore could not function as an independent merit proceeding because the predicates for liability had already been fixed by the prior order.

A counterclaims hearing conducted after dispositive findings on ownership and contract termination is not a “full hearing on the merits” within the meaning of Judge Griffith’s order. (R. p.9.) Rather, it is an illusory proceeding constrained by prior rulings that foreclosed meaningful consideration of Appellant’s claims.

Because the November 22 Partial Summary Judgment Order predetermined the outcome of the November 27 counterclaims hearing, the bifurcation violated due process, Rule 56, and the express directive for a full merits hearing. Both the November 22 and November 27 orders are therefore structurally defective and must be vacated. (R. pp.1-6.)

V. The Partial Summary Judgment Order Entered on November 22, 2024 Irreparably Prejudiced the Bifurcated Counterclaims Hearing Held on November 27, 2024 (R. pp.131-164)

Judicial notice under Rule 201 is appropriate to recognize that the procedural sequence employed below deprived Appellant of the full hearing on the merits ordered by the Honorable Eugene Griffith. (R. p.9.)

The November 6, 2024 transcript establishes that the proceeding was expressly framed as a vehicle to clear title, dissolve a lis pendens, and effectuate removal of Appellant's property, rather than adjudicate disputed facts. (Tr. Nov. 6, 2024, p. 9, ll. 17–22.) (R. p.113) The Special Referee further announced his view that the 2021 contract constituted a novation and that termination was “cut and dry” before ruling on disputed issues. (Id. p. 20, ll. 10–19.) (R. p.124.)

Those conclusions were then reduced to a Partial Summary Judgment Order entered on November 22, 2024. (R. p.4.) As a matter of adjudicative fact, that order resolved the foundational questions of contract validity, title, and possession.

Once those issues were judicially determined, the bifurcated counterclaims hearing conducted on November 27, 2024 (R. p.131) could not operate as a neutral merits proceeding. The counterclaims depended on factual determinations that had already been decided. The hearing therefore functioned as a constrained, post-hoc exercise rather than a genuine adjudication.

Rule 201 authorizes this Court to recognize that the November 27 hearing was structurally compromised by the November 22 (R. p.4.) order. Rule 2 authorizes this Court to intervene to prevent manifest injustice where procedural mechanisms were used to defeat substantive rights.

Vacatur of both the November 22 Partial Summary Judgment Order (R. p.4.) and the resulting November 27 (R. p.1.) counterclaims disposition is required to restore the case to the posture mandated by Judge Griffith's order. (R. p.9.)

Once the Special Referee resolved the core factual and legal issues on November 6, 2024 and memorialized those conclusions in the Partial Summary Judgment Order entered on November 22, 2024, the subsequent counterclaims hearing on November 27, 2024 could not satisfy the requirement of a full hearing on the merits. The merits had already been decided. A bifurcated hearing conducted under those circumstances is procedurally illusory and constitutionally insufficient.

CONCLUSION

This appeal does not concern a routine disagreement over contract interpretation. It concerns a proceeding in which dispositive relief was granted without a pending motion, without adjudication of disputed facts, and in direct contravention of an order requiring a full hearing on the merits.

The record establishes that Respondent used the November 6, 2024 proceeding to secure judicial confirmation of its preferred narrative, that the Special Referee announced dispositive conclusions in advance, and that those conclusions were memorialized in a Partial Summary Judgment Order that predetermined the outcome of subsequent proceedings. (R. pp.4-6, 124.)

Most critically, the sworn testimony of Respondent's principal refutes the factual predicates upon which the orders below rest. No breach letter for the 2003 contract was ever sent. No termination letter for the alleged 2021 contract was ever sent or authorized. The governing 2003 contract was never legally cancelled. (R. pp.212-213, 242.)

Where procedural shortcuts are used to defeat substantive rights, and where adjudicative facts are contradicted by sworn testimony, appellate intervention is required. Vacatur and remand with instructions to restore the parties to their prior positions under the governing contract is necessary to preserve due process and the integrity of the judicial process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rodney White', written in a cursive style.

s/ Rodney White

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January 25, 2026

Greenwood, South Carolina